Smt. Saraswati Devi and Others

Vs

State of Uttar Pradesh and Others

Civil Appeal No. 1755 of 1980

(CJI Y. V. Chandrachud, V. R. krishna Iyer, A. D. Koshal, P. N. Bhagwati, JJ)

04.11.1980

JUDGMENT

KOSHAL, J. –

1. This appeal by special leave is directed against a judgment dated August 8, 1980 of a Division Bench of the Allahabad High Court dismissing a petition instituted by the 18 appellants under Article 226 of the Constitution of India in which the reliefs prayed for were -

> (a) that the order dated July 19, 1969 (hereinafter referred as the impugned order) passed by the Deputy Secretary (Judicial), Government of Uttar Pradesh, rejecting all the objections filed by the appellants to a scheme (hereinafter called the impugned scheme) published on January 21, 1961 in the Government Gazette of Uttar Pradesh under Section 68-C of the Motor Vehicles Act, 1939 (for brevity, 'the Act') be set aside as illegal, and
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> (b) that the notification published in the said Gazette dated November 7, 1970 and approving the impugned scheme (for short, the 1970 notification) be quashed.

2. The notification dated January 21, 1961 declared that the State Government was of the opinion that "for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services on the routes mentioned at Item 2 of the annexed schemes should be run and operated by the State Transport Undertaking to the complete exclusion of other persons" and the impugned scheme was being published on that account under Section 68-C of the Act read with Rule 4(1) of the Uttar Pradesh State Transport Services (Development) Rules, 1958 (for short, 'the Rules'). The impugned scheme envisaged the plying of buses on the route Gorakhpur-Khajni-Gola via Dhuriapur and Malhanpur exclusively by the State Transport Undertaking (hereinafter described as the "STU") and invited all persons whose interest was affected by it to file objections thereto within 30 days of its publication in the official Gazette.

3. The impugned scheme was later on modified by different notifications and three allied routes were brought within its purview. Supplementary objections to the scheme as amended were put forward by persons interested.

4. Shri S. K. Bhargava, Deputy Secretary (Judicial) to the U.P. Government rejected all the objections and approved the scheme through the impugned order, in pursuance of which the 1970 notification was published in the Government Gazette.

5. On behalf of the 18 appellants (out of whom appellants 1 to 17 are transport operators who were plying their buses on the routes covered by the impugned scheme while appellant 18 is the Motor Operators Association, Gorakhpur) the following grounds were put forward before the High Court in support of the prayers made :

> (i) The impugned scheme was vitiated by mala fides inasmuch as it was the outcome of action taken by Shri Hanumant Singh Negi, Deputy Transport Commissioner, U.P., who had threatened Shri Bajrangi Lal, Pairokar for one of the petitioners, namely, Shri Kashi Prasad Gupta, that the disputed route would be nationalised in case the latter pursued in the Supreme Court the matter which had earlier been decided against him by the High Court.
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> (ii) The impugned order did not deal at all with objections of a personal nature which had been filed by the appellants and which, inter alia, indicated that the scheme would operate to the great disadvantage of the appellants all of whom were plying buses on the disputed route and had invested huge sums of money for that purpose.
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> (iii) The impugned order did not record specific findings on any of the objections of a "personal nature" and was liable to be quashed for that reason alone.
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> (iv) It was incumbent on the author of the impugned order to compare the services rendered by the appellants with those to be rendered by STU. That not having been done, the impugned order and the 1970 notification were both vitiated.

6. The High Court went at length into the question of mala fides and rejected the contention of the appellants in that behalf mainly on the ground that it was not Shri Hanumant Singh Negi who had initiated the nationalisation of the disputed route but that it was the State Government under whose decision the impugned scheme was formulated.

7. In support of ground (ii) reliance on behalf of the appellants was placed before the High Court mainly on Gullapalli Nageswara Rao v. A. P. State Road Transport Corporation (1959 Supp 1 SCR 319 : AIR 1959 SC 308), which was decided by a Bench of five Judges of this Court. The crucial question before the court in that case was whether the authority deciding the objections under Section 68-D of the Act was bound to act judicially. Subba Rao, J. (as he then was), who answered the question in the affirmative on behalf of behalf of the majority consisting of himself, Das, C.J. and Bhagwati, J., dealt at length with the provisions of Sections 68-C and 68-D of the Act and, while concluding that the matter partook the character of a dispute between two parties, observed :

The citizen may object to the scheme on public grounds or on personal grounds. He may oppose the scheme on the grounds that it is not in interest of the public or on the ground that the route which he is exploiting should be excluded from the scheme for various reasons. There is, therefore, a proposal and an opposition and the third party, the State Government is to decide that lis and prima facie it must do so judicially. The position is put beyond any doubt by the provisions in the Act and the Rules which expressly require that the State Government must decide the dispute according to the procedure prescribed by the Act and the Rules framed thereunder, viz., after considering the objections and after hearing both the parties. It therefore appears to us that this is an obvious case where the Act imposes a duty on the State Government to decide the act judicially in approving or modifying the scheme proposed by the transport undertaking . . . . The scheme propounded may exclude persons from a route or routes and the affected party is given a remedy to apply to the

government and the government is enjoined to decide the dispute between the contesting parties. The statue clearly, therefore, imposes a duty upon the government to act judicially. Even if the grounds of attack against the scheme are confined only to the purposes mentioned in Section 68-C - we cannot agree with this contention - the position will not be different, for, even in that case there is a dispute between the State Transport Undertaking and the person excluded in respect of the scheme, though the objections are limited to the purposes of the scheme. In either view the said two provisions, Sections 68-C and 68-D, comply with the three criteria of a judicial act laid down by this Court.

8. Emphasis before the High Court was laid on the underlined portions of the above observations. On the other hand, attention of the court was invited to Capital Multi-purpose Cooperative Society, Bhopal v. State of M. P. ((1967) 3 SCR 329 : AIR 1967 SC 1815) on behalf of the State for the proposition that the objections to the impugned scheme had to be related to the four purposes indicated in Section 68-C of the Act. After giving consideration to the matter the High Court held :

> There can be no quarrel with the proposition that an objection of a personal nature can be filed but it should be for the purposes of showing that the four purposes indicated in Section 68-C cannot be achieved. In other words objections of the nature that the petitioners will suffer hardship and there will be financial loss to the petitioner or that the petitioners have invested large amount cannot per se be sufficient to nullify a scheme of the nature referred to above unless they have a material bearing on the purposes indicated in Section 68-C of the Act. When a scheme is framed for nationalisation of a route, whether wholly or partly, the necessary consequence will be that the persons who have invested their money in purchasing vehicles will be displaced and that there will be loss in their earnings. If this could have been the ground for rejecting or modifying a scheme, could be taken up. A bare perusal of Section 68-C indicates that the purpose of the scheme is to provide an efficient, adequate, economical and properly coordinated road transport service which is necessary in public interest, and such a scheme will be liable to be approved under the provisions of the Act. The objections of personal nature in the instant case in our opinion fail to establish that the four purposes which are sought to be achieved by the scheme will not be achieved and for that reason the scheme should either be rejected or modified.

9. Ground (iii) was repelled by the High Court with a remark that even if objections of a personal nature were covered by Section 68-C the impugned order was not liable to be quashed merely on the ground that its author did not record specific findings thereon. Support for this view was sought from a Full Bench decision of the same Court reported as Khuda Dad Khan v. State of U. P. (1979 ALJ 1249 : AIR 1980 (NOC) 21 (All FB)).

10. The last ground of attack against the impugned order and the 1970 notification also did not find favour with the High Court as, according to it, in Capital Multi-purpose Cooperative Society, Bhopal v. State of M. P. ((1967) 3 SCR 329 : AIR 1967 SC 1815), the Supreme Court had taken the view that it was not necessary for the concerned authority to compare the services rendered by the private operators with those to be expected from the STU.

11. It was in these premises that the High Court passed the judgment under appeal.

12. Out of the grounds put forward before the High Court on behalf of the appellants, two, namely,

those listed at serials (i) and (ii) above were not pressed before us by their learned counsel, Shri S. N. Kacker, who, however, argued the point covered by ground (iv) with great force and also challenged the finding recorded by the High Court in relation to ground (iii). In order to determine the questions raised before us and canvassed by learned counsel for the parties it is necessary to undertake an analytical study of Sections 68-A to 68-E contained in Chapter IV-A which was added to the Act by Central Act 100 of 1956. Section 68-A contains two definitions. According to it -

> (a) 'road transport service' means a service of motor vehicles carrying passengers or goods or both by road for hire or rewards;
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> (b) 'State transport undertaking' means any undertaking providing road transport service, where such undertaking is carried on by, -
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> (i) the Central Government or a State of Government;
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> (ii) any Road Transport Corporation established under Section 3 of the Road Transport Corporations Act, 1950;
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> #(iii) * * * * *##
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> (iv) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments.

13. Section 68-B gives overriding effect to the provisions of Chapter IV-A. Contents of Sections 68-C and 68-D are reproduced below :

> 68-C. Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particulars class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the official Gazette and also in such other manner as the State Government may direct.
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> 68-D. (1) On the publication of any scheme in the official Gazette and in not less than one newspaper in regional language circulating in the area or route which is proposed to be covered by such scheme, -
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> (1) any person already providing facilities by any means along or near the area or route proposed to be covered by the scheme;
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> (ii) any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government; and
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> (iii) any local authority or police authority within whose jurisdiction any part of the

area or route proposed to be covered by the scheme lies,

may, within thirty days from the date of its publication in the official Gazette, file objections to it before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter, if they so desire, approve or modify the scheme.

(3) The scheme as approved or modified under sub-section (2) shall then be published in the official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route :

Provided that no such scheme which related to any inter-State route shall be deemed to be an approved scheme unless it has been published in the official Gazette with the previous approval of the Central Government.

14. Sub-section (1) of Section 68-E gives to the STU, power to cancel or modify at any time any scheme published under sub-section (3) of Section 68-D and provides that

the procedure laid down in Section 68-C and Section 68-D shall, so far as it can be made applicable, be followed in every case where the scheme is proposed to be cancelled or modified as if the proposal were a separate scheme.

Sub-section (2) of Section 68-E confers on the State Government the power to modify a scheme published under sub-section (3) of Section 68-D after giving the STU and any other person likely to be affected by the proposed modification an opportunity of being heard in respect thereof.

15. A bare reading of the sections noted above makes it clear that they provide for nationalisation of road transport services. However, such nationalisation, in view of the provision of Section 68-C, is not nationalisation for nationalisation's sake but nationalisation with a view to the achievement of certain specified objects. A break up of the section brings out the following essential features :

(a) The STU is competent to prepare and publish a scheme under Section 68-C only after it has formed the opinion that it is necessary in the public interest that road transport services covered by the scheme should be run and operated by itself, whether to the exclusion, complete or partial, of other persons or otherwise.

(b) The necessity for the road transport services to be run and operated by the STU must flow, in its opinion, from the purpose of providing an efficient, adequate, economical and properly coordinated road transport service.

16. Unless a scheme conforms to these two conditions it will fall outside the ambit of Section 68-C.

17. Section 68-D gives the right to certain persons, associations and authorities to file objections to a scheme published under Section 68-C within the specified period of 30 days of its publication and also lays down the procedure for the hearing and disposal of such objections by the State

Government. An important feature of sub-section (2) of the section is that every objector or his representatives and the representatives of the STU have to be given an opportunity of being heard in the matter and it is only thereafter that the State Government has to exercise its power to approve or modify the scheme, which power includes the power not to approve the scheme at all and to drop it in its entirety, as held in Malik Ram v. State of Rajasthan ((1962) 1 SCR 978, 981 : AIR 1961 SC 1575).

18. The procedure provided in Section 68-D is thus designed to -

(a) enable parties affected by the scheme to point out flaws therein,

(b) enable the State Government to find out which flaws, if any, the scheme suffers from, and

(c) enable the State Government either to remedy the flaws by a suitable modification of the scheme or to rescind the scheme altogether.

19. This brings us to the main point of controversy in the case, that is, the nature of objections which parties affected by a scheme may prefer to it. Section 68-D does not specify the type of objections envisaged by it but then their purpose being to point out flaws in the scheme they must be confined to the matters covered by Section 68-C. If the opinion forming the basis of the scheme does not suffer from errors such as may render it obnoxious to the dictates of Section 68-C and on the other hand, conforms to the conditions laid down in that section, the scheme would be unobjectionable. Objections may thus be made to show -

(a) that it is not necessary in the public interest for the concerned road transport services to be operated by the STU;

(b) that it is not necessary in the public interest that such services be taken over by the STU to the complete exclusion (if such exclusion is envisaged by the scheme) of other persons and that their partial exclusion would suffice;

(c) that it is not necessary in the public interest that such services shall be taken over by the STU even to the partial exclusion of others;

(d) that the scheme is not calculated to provide an efficient road transport service;

(e) that the scheme would not provide an adequate road transport service;

(f) that the road transport service envisaged by the scheme would not be economical; or

(g) that the road transport service provided for by the scheme would suffer from lack of proper coordination.

20. Objections falling outside the seven categories above set out would not be admissible inasmuch as they would not have anything to do with any of the conditions which a scheme must satisfy in order to be covered by Section 68-C. To this conclusion there is no challenge from either side, but then it has been vehemently contended on behalf of the appellants that a comparison of the road transport services operating on the route covered by a scheme with those envisaged by the scheme

itself may be necessary in order to find out if the scheme conforms to the provisions of Section 68-C and this contention is controverted by learned counsel for the respondents on the strength of Capital Multi-purpose Cooperative Society, Bhopal v. State of M. P. ((1967) 3 SCR 329 : AIR 1967 SC 1815), wherein Wanchoo, J., speaking for a Bench of this Court which consisted of himself, Bachawat and Ramaswami, JJ., observed :

We are further of opinion that there is no question of consideration of comparative merits of the State Transport Undertaking and the private operators in the context of Chapter IV-A. As we have said already Chapter IV-A was enacted for nationalisation of road transport services in accordance with the amendment made in Article 19(6) of the Constitution. The nationalised road transport under that Chapter can only be run by the State Transport Undertaking as defined in Section 68-A(b) of the Act. In view of that fact, if nationalisation has to come as envisaged by the amendment of the Constitution, the only body which can run the nationalised service is the State Transport Undertaking, and in those circumstances we fail to see any necessity for comparison between a State Transport Undertaking on the one hand and individual operators on the other.

Apart from this general consideration, we are further of opinion that ordinarily no question of comparative merits based on past record between a State Transport Undertaking and individual operators can arise. Section 68-C provides that the State Transport Undertaking has to run an efficient, adequate, economical and properly coordinated road transport service, and for doing that it does not take up just one route and put one transport vehicle on it. It takes up a large number of routes and puts a large number of transport vehicles on them in order to run an integrated service whether for passengers or for goods, or for both. In these circumstances it is difficult to see how can compare such an undertaking with individual private operators who are running one transport vehicle or so on individual routes. Secondly, it would be unusual for the State Transport Undertaking to be running transport vehicles on individual routes before it produces a scheme for nationalisation of the type provided for in Chapter IV-A, though it may be conceded that this may not be quite impossible, for some State Transport Undertaking might have entered into competition with private operators and might have obtained permits under Chapter V : (see for instance Parbhani Transport Cooperative Society Ltd. v. R. T. A. ((1960) 3 SCR 177 : AIR 1960 SC 801). Even so, when the State Transport Undertaking takes action under Chapter IV-A of the Act there can in our opinion be no question of comparison between a State Transport Undertaking running an integrated service and individual operators running one transport vehicle or more on individual routes. We are therefore of opinion that the authority cannot be said to have gone wrong in not asking for past records of the corporation in the present case for purposes of such comparison. It is true that Section 68-C required that the scheme should be in the public interest. But unless the scheme is shown not to be efficient, adequate, economical and properly coordinated, it will in our opinion generally follow that it is in the public interest. We do not think therefore that the comparative merits of the corporation as against individual operators require to be judged under Chapter IV-A in the public interest.

A careful study of these observations would show that they were meant to exclude from consideration a comparison between the STU and private operators for the purpose of finding out which of them should be preferred on the basis of their past performances and not to declare irrelevant a comparison between the service envisaged by the scheme and pre-existing services for the purpose of determining whether the scheme as framed provides for the operation of a service which would be efficient, adequate, economical and properly coordinated. Normally, as pointed out by Wanchoo, J., a STU takes up a large number of routes and puts a large number of vehicles on them in order to run an integrated service while private operators cater to individual routes and may

not, therefore, be in a position to provide what is described in Section 68-C as "a properly coordinated service". That does not mean, however, that all schemes, howsoever framed, would in the very nature of things provide for services which conform to the quality insisted upon by Section 68-C. As stated above, objections calculated to show that a scheme does not provide a road transport service which can be considered efficient, adequate, economical or properly coordinated would certainly lie; and the adjectives "efficient", "adequate", "economical" and "properly coordinated" are not absolute but more or less comparative terms. A service consisting of only one round trip per day may be adequate if the traffic on the concerned route is lean. On the other hand, a hundred round trips may not be adequate for a route burdened with heavy traffic. If a private operator is running 10 buses either way and is sought to be replaced by the STU under a scheme which makes provision only for five round trips per day the proposed road transport service cannot be considered adequate if the number of round trips required to fully cope with the traffic is more than five. Efficiency of the service covered by a scheme may similarly have to be determined in comparison to that which pertains to the pre-existing services. Economics and proper coordination of the service proposed in a scheme may again be matters for which a comparison with the pre-existing services is called for. In order to find out, therefore, if the scheme fulfils the requirements of Section 68-C a comparison of the attributes of the two services, such as quality, capacity, financial implications and coordination would certainly fall within the scope of the inquiry to be conducted by the State Government, although a comparison would not be permissible for the sole purpose of finding out whether the private operators should be given a preference over the STU. If such a comparison as we have held to be permissible is ruled out, the result would be to shut out from the enquiry held by the State Government under Section 68-D most of the material relevant for determination of the validity of the scheme - a result contemplate neither by Section 68-D nor by Wanchoo, J., in the observations above quoted, which, on the other hand, make it clear that the proposed scheme may certainly be shown (in whatever way it is possible) not to fulfil the criteria of efficiency, adequacy, economy and proper coordination. The comparison ruled out by him was not between the merits of the rival services but between the expectations from their operators in view of their respective past records including those relating to other areas and routes. The High Court thus erred in arriving at the conclusion that The Capital Multi-purpose case ((1967) 3 SCR 329 : AIR 1967 SC 1815) eschewed all comparison and its finding in that behalf, insofar as it runs counter to the opinion expressed by us above, is set aside.

21. We may in passing refer to what are called objections of a "personal" nature. These may be of two types : (1) those challenging the scheme on the ground that it harms an existing operator, and (2) those which indicate the details of the services afforded by an existing operator for the purpose of showing that the service envisaged by the scheme would in comparison not be efficient, adequate, etc. Objections of the second type, as we have just above-concluded, would be admissible for the reasons stated. Those of the first type, however, would be wholly irrelevant to the determination of the validity of the scheme in view of the postulates of Section 68-C and would, therefore, be inadmissible. This proposition may appear at first sight to run counter to those observations of Subba Rao, J., in Gullapalli case (1959 Supp 1 SCR 319 : AIR 1959 SC 308) which we have extracted above but this is not really so. Those observations were made in the course of consideration by this Court of the sole question whether the State Government, in deciding objections under Section 68-D, acted judicially or purely in an administrative capacity. The answer to that question, according to Subba Rao, J., depended on whether the matter before the State Government amounted to a lis; and it was in that connection that he said that the citizen may object to the scheme on public grounds or on personal grounds and also that the court did not agree with the contention that the grounds of objection against the scheme were confined only to those

mentioned in Section 68-C. The court was not called upon to decide as to whether the scheme of Sections 68-C and 68-D embraced objections of a "personal" nature or not and it was only incidentally that reference thereto was made. We conclude that Gullapalli case (1959 Supp 1 SCR 319 : AIR 1959 SC 308) is no authority for the proposition that "personal" objections not confined to the scope of the requirements of Section 68-C are admissible under Section 68-D.

22. Referring to ground (iii) pressed in the High Court on behalf of the appellants, Shri Kacker made a serious grouse of the fact that the impugned order did not so much as mention those objections made by the appellants which called for a comparison of the type held by us to be permissible and he contended that the impugned order was bad on that account. In reply learned counsel for the respondents argued that at the hearing before the State Government no such objections were pressed. Our attention has been drawn by Mr. Kacker to paragraphs 14, 20(a), 21, 26, 43, 49, 51, 61, 63, 64, 73 and 75 of the statements of objections forming Annexure 'F' to the petition under Article 226 of the Constitution before the High Court. A perusal of those paragraphs makes it abundantly clear that quite a few of the objections were such as were related to the purposes mentioned in Section 68-C and called for a comparison of the proposed service with the existing one. That some of the objections were pressed before the State Government is apparent from the written arguments which were submitted to Shri S. K. Bhargava who is the author of the impugned order and which were appended to the petition under Article 226 of the Constitution of India before the High Court in the form of Annexure 'J'. The stand of the respondents to the contrary is thus not well founded. But then we further find that in the impugned order its author has devoted five paragraphs to the objections which called for comparison of both the types above-discussed. In paragraphs 24 to 27 the impugned order rightly rejects the objections which were based on a comparison of the STU with the private operators in relation to their respective past performances, and in doing so relies correctly on The Capital Multi-purpose case ((1967) 3 SCR 329 : AIR 1967 SC 1815). It proceeds then (in paragraph 28) to take note of the further opinion expressed in the same case from which it follows that a scheme may nevertheless be shown not to be in public interest by demonstrating that it does not provide for a service which would be efficient, adequate, economical and properly coordinated; but then dismisses the matter with the remark that the appellants had not been able "to show anything substantial which may justify this inference that the proposed scheme in respect of the routes in question would not be efficient, adequate, economical and properly coordinated", a remark which is obviously meant to dispose of those objections to the scheme which called for a comparison of the service envisaged by it with that already available. The cryptic remark no doubt neither lists the objections disposed of by it nor discusses the relevant evidence but the reason for the absence of a discussion in this behalf appears to be that no such evidence had been produced before the State Government. And if that be so, much fault cannot be found with the brevity of the contents of paragraph 28.

23. However, Mr. Kacker made another grouse in this connection, namely, that the State Government refused to summon witnesses and to enforce the production of documents at the request of the appellants and that in doing so it had acted illegally and by thus shutting out evidence had really denied to the appellants any real opportunity of being heard. We find that when the case was at the evidence stage before the State Government, the appellants submitted two applications requesting that witnesses, one of whom, namely, the Secretary, Legislative Assembly, U.P. was to bring the proceedings of that Assembly relating to the speech of the Chief Minister delivered on July 13, 1967 in relation to the budget of the Transport Department, be summoned through letters of request and examined. The applications were rejected by Shri S. K. Bhargava through an order dated March 20, 1969, the relevant part of which runs thus :

It is not necessary to issue letters of request as prayed for. The objectors can only examine those witnesses whom they themselves brought. It is also not necessary to send for any record as prayed.

No further reasons appear in the order for a rejection of the prayer made for issuing letters of request but it seems that while making the order Shri Bhargava had in mind the provisions of sub-rules (2) and (4) of Rule 7 of the Rules and of the absence from the Act and the Rules of any express provision conferring on the State Government the right to issue process for enforcing the attendance of witnesses and the production of documents. The said two sub-rules may be reproduced :

> (2) The said officer shall fix the date, time and place for the hearing of the objections and issue notices thereof to the objector, and the representatives of the State Transport Undertaking, calling upon them to appear before him in person or through a duly authorised agent or counsel and to produce their oral and documentary evidence on the date fixed for hearing.
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> (4) Subject to the provisions of sub-rule (7) the objector and the State Transport Undertaking shall produce their evidence and witnesses, necessary and relevant to the inquiry, on the first date fixed for the hearing.

The contention raised on behalf of the respondents is that the power the exercise of which the appellants sought by their applications had not been conferred by the Act or the Rules on the State Government and that, therefore, the order passed by Shri Bhargava was correct. We find substance in this contention. It is true that the State Government was acting in the discharge of its quasi-judicial functions and it could devise its own procedure (in the absence of express provisions to the contrary) so that its functions could be effectively discharged. Further, when the statute gives the power to the State Government to afford to the objectors a reasonable opportunity of being heard and to take evidence, oral as well as documentary, in support of their objections, the power to send letters of request to witnesses to appear and give evidence or to produce documents is inherent in the situation and needs no statutory sanction, although the power to enforce their attendance or compel them to produce documents is lacking on account of absence of conferment thereof by a statute. This view finds support from Nehru Motor Transport Cooperative Society Ltd. v. State of Rajasthan ((1964) 1 SCR 220), in which also the argument raised was that there could be no effective hearing without a provision for coercive process compelling attendance of witnesses and production of documents. It was pointed out in that case that the Rajasthan Rules did not provide for compelling the attendance of witnesses and that it was enough if the authority took evidence of witnesses whom the objector produced before it. It was also remarked that the authority might help the objector to secure their attendance by issue of summonses, though in the absence of any provision in the law, the witnesses might or might not appear in answer thereto.

24. But then the question arises whether an order of the State Government rejecting a prayer for issuance of summons or letters of request would be illegal. This question was answered in the negative by Wanchoo, J., in The Capital Multi-purpose case ((1967) 3 SCR 329 : AIR 1967 SC 1815) with the following observations :

> Further, reliance in this connection is placed on the observation of this Court in Nehru Motor Transport Cooperative Society's case ((1964) 1 SCR 220) that the authority might help the objectors by issuing summonses. This observation in our opinion does not mean, in the absence of any provision in the Act or the Rules, that

> the authority was bound to summon witnesses even though the persons summoned were not bound to obey the summonses as there was no provision in law for issue of such summonses. The use of the words 'by issue of summonses' in the circumstances of that case was by oversight, for issue of summonses presumes that there is authority to issue them and the person to whom they are issued is bound to obey. But in the absence of such power all that the authority can do is to issue letters merely requesting persons to appear and it is open to those persons to appear or not. In this situation if an authority decides not to issue such letters it cannot be said that there was no effective hearing.

These observations have our concurrence and we do not find that any right of the appellants was infringed when their applications for summoning witnesses and production of documents were rejected.

25. Here we may briefly advert to another aspect of the matter to which our attention was drawn on behalf of the respondents. Sub-rule (5) of Rule 5 of the Rules states :

> A person filing an objection and desiring to be heard shall also submit along with the memorandum of objections, a list of documents and witnesses with their names and addresses and a brief summary of the nature and type of evidence which each such witness is likely to give. No compliance with this rule was made by the appellants when the two applications just above-considered were filed. The sub-rule serves a salutary purpose and, that is, that the inquiring authority may shut out all evidence which is sought to be brought on the record but which is either irrelevant or otherwise inadmissible. The two applications, therefore, suffered from a serious flaw by reason of which alone they merited dismissal unless the summary insisted upon by sub-rule (5) was supplied before they were disposed of.

26. In the result the appeal must fail in spite of the fact that we have accepted one main contention raised by Mr. Kacker, namely, that objections involving comparison of the pre-existing services with those proposed in a scheme are relatable to the ingredients of Section 68-C and are, therefore, admissible under Section 68-D of the Act. Accordingly it is dismissed but with no order as to costs.

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