ANDHRA PRADESH HIGH COURT

M. Gangappa

Vs.

State (A.P)

(Gopal Rao Ekbote, C.J. and Lakshmaiah, J.)

Writ Petns. Nos. 5253 to 5258, 5312, 5260 to 5263, 5269, 5259, 5288 to 5293, 5302, 5428, 5594, 5294, 5299, 5300, 5301, 5310, 5311, 5316, 5322 to 5324, 5326 to 5329, 5347, 5495, 5636, 5689, 5663, 5674, 5742, 5350, 5332, 5345, 5645, 5346, 5352, 5664, 5675, 5676, 5732, 5613, 5624, 5677, 5397 and 5399 of 1973

11.10.1973

JUDGMENT

Ekbote, C.J.

1. The nationalization of transport in a part of the Andhra Pradesh State had a chequered career. It is unnecessary to go into the history of the ups and downs of the various attempts made to nationalize. It is enough to say that in all 218 schemes were published, 133 of them were published on 15-11-1972 in the State Gazette. The other 85 were published on 10-4-1973. Objections were invited from the existing operators and others against the schemes so published. In 40 schemes no objections whatsoever were filed. In regard to 178 schemes, however, objections were filed mostly by the existing operators. The Home Secretary, who was duly authorized to hear and enquire into objections commenced the hearing on 31-7-1973 and concluded the same on 14-8-1973.

2. On a consideration of the proposed schemes in the light of objections that were filed, the Home Secretary approved 35 schemes on 3-9-1973. Out of them 32 schemes as approved were published in the Gazette on 15-11-1972. The rest of the three schemes were published on 10-4-1973.

3. Of these 35 approved schemes, 32 belonged to Rayalaseema area including a part of Nellore District, 2 belonged to a part of East Godavari and one belonged to Medak.

4. After the schemes were thus approved, the Road Transport Corporation (hereinafter called the Corporation) applied for the grant of permits in regard to 32 schemes whereby certain routes were nationalised on 4-9-1973. In regard to three other schemes, the Corporation made applications for the grant of permits on 5-9-1973. These applications were granted by the Secretary, the State Transport Authority. Simultaneously the licences held by the operators on the routes so nationalised were cancelled excluding those enumerated in the approved schemes.

5. It is this action on the part of the Home Secretary of approving the schemes and the cancellation of the permits by the Secretary, State Transport Authority that has given rise to this third batch of Writ Petitions.

6. It may be recalled that previously 133 draft schemes were published on 15- 11-1972. Several persons filed their objections before the Home Secretary. Before he could take up the hearing, the existing operators filed a batch of writ petitions No. 2735 of 1973 and others questioning the powers of the Home Secretary to hear the objections. A Single Judge of this Court by his judgment dated 18-6-73 held that the Home Secretary was not properly authorized by the Adviser to the Governor. If the Governor so desires, he could authorize the Home Secretary to make the enquiries.

7. The Governor accordingly delegated the powers to the Home Secretary under Section 68-D of the Motor Vehicles Act (hereinafter called the Act) appropriately.

8. Notices were therefore issued to all the concerned persons who filed their representations to appear before the Secretary who would inquire into the objections from 30th July, 1973. Once again the existing operators filed a second batch of writ petitions No. 4193 of 1973 and batch questioning the powers of the Home Secretary to act under Section 68-D of the Act. These writ petitions were ultimately dismissed by this court on 28th August, 1973. The Special Leave Petitions against the said judgment of this court were dismissed by the Supreme Court.

9. Since there was no stay in regard to hearing and enquiry, the Home Secretary heard the objections. After the writ petitions were dismissed, as stated earlier, he approved certain schemes and published the same in the Gazette of 3rd, 4th and 5th September 1973.

10. In the present batch of cases, various contentions were raised and we will deal with them in the order in which they were advanced before us.

11. The first argument which was put in the forefront was that Section 68-C of the Act required the State Transport Undertaking to form the opinion, it is the Corporation which ought to have formed the opinion requisite for the section and not the Routes Committee constituted by the Corporation. Since there was no consideration by the Corporation, the schemes prepared by the Routes Committee and published in the official gazettes were inconsistent with Section 68-C of the Act and consequently bad in law.

12. In order to appreciate the merits of this contention, it is necessary to read Section 68-C.

> "Where any State Transport Undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular 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."

13. Even a casual reading of this section would disclose that it is the State Transport Undertaking which should form the requisite opinion. It must, in the opinion of the State Transport Undertaking, for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, be necessary in the public interest that road transport services wholly or partly should be run and operated by the State Transport Undertaking. It can, on the formation of such opinion, exclude wholly or partly persons who are operating on the relevant routes. Once that opinion is formed, the State Transport Undertaking can prepare a scheme giving particulars enumerated in the section. Such schemes shall then be published in the manner mentioned in the section.

14. In Section 68-A the term 'State Transport Undertaking' is defined. It means "any undertaking providing road Transport service" where such undertaking is carried on by amongst others, any road transport corporation established under Section 3 of the Road Transport Corporations Act, 1950 (hereinafter called the Corporations Act).

15. In the light of this definition, Section 68-C requires the Corporation to form the opinion required, prepare the scheme and publish the same in the Gazette. The statutory authority therefore is the Corporation for the purposes of Section 68-C of the Act. The question then is can the Corporation delegate its functions under Section 68-C of the Act to a sub-committee consisting of members of the Corporation called 'Routes Committee' to discharge the functions under Section 68-C of the Act.

16. Now it cannot be doubted that the statutory authority to form the opinion required under Section 68-C has a discretion to form the opinion, one way or the other. One way such functions can be abused is where the function is delegated to someone not entitled to exercise it. The central question in all such cases is what the Parliament intended to permit. The statute, in some cases, itself may permit delegation either expressly or impliedly. Unless therefore such a delegation of power is made, the Courts are vigilant in preventing discretion of any kind being exercised by anyone other than the authority to which it is entrusted by the Parliament. Much therefore depends upon the construction of Section 68-C of the Act and Section 12 of the Corporations Act. That alone would provide an answer as to whether the delegate i. e. the Routes Committee is within the statutory description of the Corporation authorized to wield the power. Although thus the power conferred upon a statutory body is more zealously watched, like so many other rules of administrative law, the validity of the delegation in the instant case depends upon the correct understanding of the Parliament's intention which has enacted both these laws.

17. What happened is this. After the Corporation was constituted in this State under Section 3 of the Corporations Act, in so far as introduction or withdrawal of services were concerned, the Corporation passed resolution No. 24 on 23rd January, 1968. According to that resolution, it was decided to constitute a Standing Committee with the members mentioned therein "to study comprehensively proposals for the introduction or withdrawal of services and offer its recommendations" for the consideration of the Corporation. The Committee was authorized to co-opt Shri V. P. Rama Rao whenever it was considered necessary to consult him.

18. There was then a move to enlarge the membership of the committee and to delegate it the powers to finally approve schemes under Chapter IV-A of the Act. At the meeting of the Corporation held on 22nd April, 1969 the said move was not agreed to. It was resolved that the existing procedure as laid down in Resolution No. 24 of 23-1-1968 should be continued.

19. At a meeting of the Corporation held on 21st October, 1969, the Corporation, however practically modified resolution No. 24 of 23-1-1968 and superseded resolution No. 92 of 22nd April, 1969. The Routes Committee, according to that resolution was reconstituted with the members mentioned therein. The committee was delegated with powers to take a final decision on proposals referred to it and to approve for publication schemes for operation of road transport services prepared under Chapter IV-A of the Act. Item 1 of list (i) appended to Resolution No. 24 of 7th March, 1958 was declared modified accordingly. It was also resolved that a report regarding schemes approved by the Routes Committee be submitted to the Corporation for information.

20. We then come to the next meeting of the Corporation held on 22nd May, 1971. The note which was circulated to the members of the Corporation related to the appointment of committees and to delegate to any such committees or others such of the Corporation's powers and duties as the meeting thinks fit. The historical background of this committee as stated is given in the said note.

21. The Corporation decided to constitute six committees under Section 12 of the Corporations Act. The Routes Committee consisted of 4 official-members including the Chairman and two non-official members.

22. At a meeting of the Corporation held on 22nd January, 1972, the Routes Committee was reconstituted. This time it consisted of seven members, the officials and non-officials.

23. It is this Routes Committee which decided to frame schemes under Section 68-C at its meeting held on 4th November, 1972. Out of 7 members, 5 members were present. Shri P. V. Choudhari and Sri G. S. Reddy were the members who were not present. The Committee considered the questions relating to the availability of the vehicles, the capital required for the purchase of more vehicles and for augmentation as well as replacement and expansion of services. That apart, matters explained in annexure A to the note were also considered by the committee. It was only then that the schemes were framed and it was decided to publish the same. The Committee authorized the General Manager to publish the said schemes.

24. The schemes so finally approved by the Routes Committee were then placed before the Corporation for information as was decided by the Corporation earlier. The Corporation by its resolution No. 183 of 20th December, 1972 noted and recorded the approved schemes numbers 207 to 372 pertaining to the nationalization of routes in the Rayalaseema area and also of Nellore and other Districts.

25. It is in the light of these facts that we have to decide as to whether the schemes framed and published by the Routes Committee under its delegated authority is valid in law for the purposes of Section 68-C of the Act.

26. It is true that like Section 44 (5) appearing in Chapter IV of the Act by and under which the State Transport Authority and the R. T. A. may delegate some of its powers and functions to any authority or person, there is no provision on this line in chapter IV-A of the Act. Section 12 of the Corporations Act, however, empowers the Corporation by resolution passed at a meeting to appoint committees of its members for performing such functions as may be specified in the resolution and to delegate to any such committee such of its powers and duties as it may think fit subject to such conditions and limitation as specified in the resolution. Thus the Corporation can validly delegate any of its functions to a committee appointed by it. Now, the word 'function' used in Section 12 of the Corporations Act applies, in our judgment, to all the functions of the Corporation, whether under the Corporations Act or any other Act including the Motor Vehicles Act. The Corporations Act is the principal Act by and under which the Corporations are constituted and their functions, powers and duties are regulated. The Motor Vehicles Act on the other hand concerns itself in Chapter IV-A with the nationalization of the transport services, whether that is operated by the Government department, a municipality or by a Corporation. The Motor Vehicles Act is not at all concerned with the working of the State Government, the Municipality or the Corporation. Their constitution and functioning are governed by separate and different enactments. When Section 68-C mentions the Corporation to form the requisite opinion it is not concerned as to how the Corporation should form the opinion. That is the concern of the Corporations Act under which the Corporations work. Either in Section 68-C or in any other provisions of the Motor Vehicles Act there is no restriction placed on the Corporation that it is that body alone that should function for the purposes of the Motor Vehicles Act with which aspect the Motor Vehicles Act is unconcerned. Merely because there is no parallel provision in chapater IV-A on the lines of Section 44 (5) it does not necessarily follow that the Corporation is deprived of its power to delegate the function which it has to discharge under Section 68-C. It is not difficult to understand as to why no such provision as in Section 44 (5) was made in Chapter IV-A of the Motor Vehicles Act. Because the Parliament which enacted both these Acts was aware that it has authorized in Section 12 of the Corporations Act to delegate to any committee any of the Corporation's functions which in our opinion includes the functions under Section 68-C of the Act. Any other interpretation would main Section 12 of the Corporations Act and make it inapplicable to its essential purpose. The Court should avoid any such result because it will be contrary to the intention of the Parliament and defeat the very purpose for which Section 12 was enacted. We are therefore clear in our mind that the Corporation could validly delegate its functions under Section 68-C of the Act to a committee constituted by it under Section 12 of the Corporations Act. The delegation to the Routes Committee therefore of the Corporation's function to frame and publish schemes under Section 68-C was perfectly valid and unassailable.

27. The contention that the resolution by which such power is delegated uses the words "may be delegated" does not indicate immediate delegation of such power but merely expresses its desire to do so in future is devoid of any substance. Those words clearly indicate the delegation of such powers to be exercised right from the date onwards when such resolution was passed without requiring any further specific delegation. If the resolution is read as a whole no one would doubt that the delegation was complete and unconditional. The Corporation merely expected the information regarding the approval of the schemes and nothing more.

28. Similarly the contention that the delegation of the functions under Section 68-C was only to the committee which then was existing and was not to the reconstituted present committee which framed the impugned schemes is untenable. The committee constituted under Section 12 of the

Corporations Act is a continuing committee unless it is abolished altogether. Members of such committee may come and go but the committee constituted under the statute continued to discharge the functions entrusted to it. The committee has because of Section 12 a separate existence apart from its members. It is not necessary that such a committee should be an incorporated body having its own seal and the power to sue and be sued. Nor it is necessary that such a committee should directly be constituted by the statute itself. Any committee permitted by the Statute to be constituted is a valid committee constituted under the statutes and would continue to operate as long as it enjoys the confidence of the delegator. Any increase in the number of the members of such committee or any change in the membership would not constitute it a new committee which would require a new delegation of the powers under Section 68-C. Even otherwise when powers under Section 68-C are delegated to the Routes Committee, even if the present committee is considered to be a new committee, no fresh delegation was at all necessary. The Committee was constituted or reconstituted for the purpose of discharging the functions already decided to be delegated to such a committee. We are therefore satisfied that the committee which framed and published the impugned schemes had the necessary powers delegated to it under Section 12 of the Corporations Act. The schemes were therefore properly framed and published under Section 68-C of the Act. It is not without relevance to mention that these very schemes when placed before the Corporation were noted and recorded by it.

29. The argument that since Section 68-B enjoins that the provisions of Chapter IV-A and the rules and orders made thereunder shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law in force, the delegation under Section 12 for the purposes of Section 68-C would be invalid is not convincing. Section 12 is not inconsistent with any provision of Chapter IV-A. Section 68-B therefore does not take away the effect of Section 12 of the Corporations Act. Nor it prohibits delegation of functions by Corporation. In fact such a delegation, if found necessary, would give full effect to Chapter IV-A.

30. We are supported in our view that the Corporation can validly delegate its power under Section 12 of the Corporations Act to a committee by the following decisions.

31. *A. Sanjeevi v. State of Madras*[1], is a case in point. That is a decision given under Section 68-C. The only difference between that case and the present case is that there it was the Government which was running the transport service and here it is the Corporation. The principle laid down in that case, however, is applicable to the present case. Hegde, J. who spoke for the Court, rejected the contention that the requisite opinion ought to have been formed either by the Council of Ministers or the Minister to whom the

[1] AIR 1970 SC 1102

business in question had been allocated under the rules. The same could not have been formed by the Secretary who is merely an official and that too by the Secretary who was not the Head of the Department to which the functions under the Act had been assigned. The learned Judge held :

> "When a civil servant takes a decision he does not do it as a delegate of his Minister. He does it on behalf of the Government.....These officers are the limbs of the Government and not its delegates."
>
> It was consequently held that "the functions under the Motor Vehicles Act had been allocated by the Governor to the Transport Minister under the Rules, and the Secretary

had been validly authorized under Rule 23-A to take action under Section 68-C of the Act. "

The said principle thus laid down can be extended to a case of Corporation where under Section 12 of the Corporations Act the powers under Section 68-C are delegated to its committee. In one case the Secretary's decision was considered to be the decision of the Minister concerned and in the other the decision of the Routes Committee must be taken to be the decision of the Corporation for the purposes of Section 68-C of the Act.
32. The same view was taken earlier in *C. M. P. Co-operative Societies v. State of M. P*[2]*.,*

33. In *Sanjeevi Naidu v. Madras State Transport*[3], a Bench of the Madras High Court said :

"Some particular individual even though he may be the Chief Executive Officer of this undertaking cannot form an opinion and frame and publish the scheme (under Section 68-C of the Act) unless under the rules of business or by some delegation of power or function, he is clothed with the authority to do so on behalf of the State Government which carries on the undertaking."

33. This decision expressly recognizes that the functions under Section 68-C can be delegated under a valid law. Section 12 permits such delegation.

34. W. P. No. 3339 of 1972 dated 2-10-1972, a judgment given by our learned brother Alladi Kuppuswami, J. and the judgment in W. A. No. 35 of 1970 dated 11-2-1970 given by a Bench of this Court take the view that the decision taken by the Chief Justice or by a committee of Judges is considered as a decision taken by the High Court.

35. *Roop Chand v. State of Punjab*[4]*,* similarly takes the view that a decision of a delegate is the decision of the delegator.

36. To the same effect is the decision given in writ petition No. 4204 of 1973 dated 20th August, 1973.

37. The next contention in this behalf was that the Routes Committee consists of seven members. All of them were not present at the crucial meeting. Only 5 members were present. Although all those who were present unanimously framed the schemes, they were

[2] AIR 1967 SC 1815
[3] (1970) 1 Mad LJ 300 at p. 308
[4] AIR 1963 SC 1503

invalid because the whole of the Routes Committee could alone have framed the scheme and published the same.

38. We find no substance in this contention. The principle of quorum to which reference was made during the course of arguments ought not to be confused with a right of the committee to take a decision either unanimously or by a majority. It is plain that the question of quorum has no application to the case on hand. The question really is whether it is necessary that all the seven members alone can take decision under Section 68-C of the Act or can such a decision be taken

unanimously or by majority of those who were present, two members being absent. There is no provision either in the Act or Rules made thereunder or in the Corporations Act or Rules made thereunder. The resolution authorizing the delegation makes no reference as to how a valid decision can be taken by the Routes Committee. In any case, it does not insist that all the seven members ought to be present and must be unanimous in taking action under Section 68-C of the Act. In such circumstances what is the mode of taking a decision by such a committee,?

39. In *Grindley v. Barker*[5], Eyre, C. J. pointed out the general principle as follows :-

> ".....I thought this question would turn on two general heads of inquiry. First, what the general rule of law was in the case of bodies of men entrusted with powers of this nature; whether they must all concur, or whether the decision of the majority would bind the whole? Secondly supposing the latter to be the general rule, whether that general rule is to be controlled by the intent of the legislature as collected from the scope and provisions of this Act?"

He then went on :

> "With respect to the first question, I think, it is now pretty well established, that where a number of persons are entrusted with powers not of mere private confidence but in some respects of a general nature, and all of them are regularly assembled, the majority will conclude the minority, and their act will be the act of the whole." That was the general principle which was stated and he then went on to say at page 237 :
> "But the question is still open, whether on the construction of this particular statute, it does not appear that not only all the persons must be assembled, but that every one of them should concur or at least that one of each class should concur."

40. This case was approved in the Court of Appeal in *New Zealand Atkinson v. Brown*[6],

41. These two cases were considered by Lord Parker, C. J. in *Picea Holdings v. London Rent Panel (D. C*[7]*.),* and approved of the general principle. We are respectfully in entire agreement with the abovesaid decisions.

42. The question which then remains after recognizing the above said general principle is whether this well established rule of law has been controlled either by something

[5](1798) 1 Boss P. 229
[6](1963) NZLR 755
[7] (1971) 2 WLR 1374

expressed in the Act etc. or by something to be collected from the nature of the power and the duty to be performed under it. The answer in our judgment clearly is that there is nothing anywhere in any statute which makes the intention of the Legislature or in any case of the Corporation that this general rule of law would not apply and every action under Section 68-C ought to be taken only by all the members of the Routes Committee. The general rule therefore does not seem to have been abrogated. On the other hand, the very fact that the decision of the Routes Committee is required to be placed before the Corporation for information

unambiguously indicates that the Routes Committee can take a decision either unanimously in presence of all the members or in presence of those who have chosen to attend the meeting or by a majority of those who were present.

43. In the instant case, two members chose not to attend the meeting. They were free to do so. No one could have compelled them to be present. As many as five members were present including the Chairman and took the action under Section 68-C unanimously. We therefore experience no difficulty in rejecting this contention.

44. The contention that the resolution of the Corporation was vitiated because modified schemes were not put up to the Routes Committee is factually incorrect. It is also incorrect that the publication in the Gazette was not in approved form.

45. The next submission was that the Routes Committee did not consider all aspects under Section 68-C of the Act. The argument was mainly based on the resolution passed by the Routes Committee. The contention was that all the materials in accordance with the forms and to consider all the facts of the schemes as required by Section 68-C or the Rules and forms prescribed thereunder were not placed before the Committee. What all they considered was only the availability of the vehicles and finances. It was therefore argued that such a consideration was inadequate and does not satisfy the requirements of Section 68-C. We are unable to agree with this contention. The Corporation's file was produced for our perusal. The entire record relating to the crucial meeting was perused by us. We are satisfied that every material required for the purpose of taking a decision under Section 68-C and the Rules made thereunder was placed before the Routes Committee. The Committee was supplied with this material before they met at the meeting. Merely because all the aspects have not been referred to in the resolution, it will not be proper to deduce that the committee did not apply its mind to all these matters or consider them. The General Manager of the Road Transport Corporation in his affidavit categorically stated that all the particulars required to form an opinion were furnished to the Routes Committee to form an opinion after considering the matter. The allegation made to the contrary is denied.

46. Section 68-C does not require the Corporation to give reasons or record findings.
47. In AIR 1967 Supreme Court 1815 it is held :

> "There is no express provision in Sections 68-C and 68-D laying down that the authority hearing objections must come to some finding of fact as a condition precedent to its final order. As such no express finding is necessary under Section 68-C read with Section 68-D that the scheme provides an efficient, adequate, economical and properly co-ordinated road transport service..... In the absence of a provision requiring an express finding in these two sections, it is clear that the very order of the State Government or the authority appointed by it to hear objections must be held to mean either, where the scheme is approved or modified, that it subserves the purposes mentioned in Section 68-C or where it is rejected, that it does not subserve the purposes."

48. In *M. S. Road Transport v. S. B. R. Motor Service*[8], it was held :

"that there is no general principle that a statutory tribunal should always give its judgment in writing and should always give reasons thereof immediately with the pronouncement of the judgment. In the absence of any statutory provision, it is sufficient if the tribunal gives a decision orally and subsequently reduces to writing the reasons thereof and communicate them to the parties."

49. Similarly *M. S. Sadananda v. State*[9], at p. 326 decides that "And Section 68-C does not direct the disclosure of the material which assisted the formation of the opinion to which it refers."

50. The contention that the minimum and maximum number of buses and trips alone is given or the timings were not given or they overlap is not factually correct. The seating capacity was fixed between 51 and 60 in some cases. Different vehicles having different sitting capacity have necessarily to be operated upon the route. The same thing applies to other similar cases. In any case the scheme is not vitiated because of any of them. See *Aswathanarayana v. State of Mysore*[10], *A. Vishwanath Rao v. State of Mysore*[11], and C. A. No. 330 of 1965 dated 23-4-1965 (SC).

51. We could not find any variation in the decision taken by the Routes Committee and the gazette publication of the schemes. This argument was advanced solely on the ground of resolution. If the annexures were to be seen along with the papers placed before the committee, one would not have found any variation between the opinion of the Committee and what was published in the gazette.

52. These were all the contentions regarding Section 68-C of the Act.

53. It is also pertinent to note that most of these objections were not at all raised either before the Routes Committee or before the Home Secretary. More than that these grounds although available were neither raised in the first batch of writ petitions nor in the second batch of writ petitions. It is now well settled that a proceeding under Article 226 of the Constitution is a civil proceeding. The principles of *res judicata* including the constructive *res judicata* are applicable to such proceedings. These grounds might and ought to have been raised by those who previously filed their writ petitions and they are precluded from raising the same in these writ petitions. See *Devilal v. Sales Tax Officer*[12], and *T.G. Mudaliar v. State of T. N.*[13],

54. We, however, considered those objections because there are some writ petitioners

[8](1969) 1 SCA 211 [10] AIR 1965 SC 1848 [12] AIR 1965 SC 1150
[9] AIR 1969 Mysore 319 [11] AIR 1968 SC 1095 [13] AIR 1973 SC 974

who have filed the petitions for the first time. A list of those petitioners who had earlier filed the writ petitions was supplied to us by the Principal Government Pleader. Its correctness was not doubted. All those petitioners therefore are precluded from raising these grounds as they had not raised them earlier.

55. We then turn to the grounds of attack directed against the decision approving the schemes with modification of the Home Secretary. In the second batch of writ petitions, this court held that the Home Secretary was competent to hear the objections and make the enquiry. No argument was therefore advanced in that behalf in these cases.

56. It was, however, contended that at the time of hearing, the objections by the Home Secretary Shri Gurudas, Joint Secretary, who happens to be ex- officio Member of the Routes Committee was present. He was also hearing and rejecting on the spot some of the objections. It was therefore argued that the Home Secretary was biased inasmuch as Shri Gurudas as a member of the Routes Committee participated in framing the schemes and has also participated in approving the same.

57. In the counter of the Home Secretary, it is denied that Shri Gurudas participated in the hearing. It was denied that he heard some objections or rejected them. We have no reason to disbelieve the affidavit of the Home Secretary. He states that no doubt Shri Gurudas was present during the course of the enquiry along with other officers, viz., The Transport Commissioner, Assistant Secretary and the Secretariat staff to assist him as and when necessary. He emphatically stated :-

> "It is therefore incorrect and most untenable to say that he (Shri Gurudas) conducted the proceedings or influenced my decision in any way. I have arrived at the decision regarding each scheme on consideration of the material myself. The plea that the Joint Secretary is ex-officio member of the R. T. C. has no relevance in this context."

58. It must be noted that the objection of bias was not raised by any of the petitioners before the Home Secretary. No one objected to the presence of the Joint Secretary along with the other members of the staff. This objection therefore has been raised for the first time only in one Writ Petition No. 5269 of 1973 and not in others. It is relevant to notice it was also not raised in the first or second batch of Writ petitions.

59. Now, if an adjudicator is likely to be biased, he is disqualified from adjudicating. Likelihood of bias may arise from, a number of causes. A bias, if it is to be a disqualification, must mean something more than an ideological bent of mind or the policy bias of the Governmental department. The Ministers and their departments are committed to their own policies which inevitably they tend to favor. If bias meant no more than the creation of a tribunal under Section 68-D of the Act before which enquiry is to be held, it would indeed become difficult if not impossible for it to function. A policy bias or a departmental bias standing alone would not disqualify the home Secretary to hear objections. In fact if one looks at it a little closely the authority hearing the objections under Section 68-D would seem to have a built-in bias as a planned ingredient of the originating legislation. What follows therefore is that the generalised attitudes of an authority under Section 68-D in advance of hearing are not regarded as constituting a disqualifying bias.

60. In this connection it must be remembered that Shri Gurudas was a member in his official capacity. Thereby he does not cease to be Joint Secretary of the Home Department. His bias based on departmental policy would exist at both the places since the Home Secretary would also have the same departmental bias. We fail to see how it can be felt that mere presence of the Joint Secretary would create a likelihood of a personal bias in the Home Secretary apart from the generalized bias.

61. It follows therefore that there must be some extraneous circumstances peculiar to the

authority hearing the objection which would create unseemly atmosphere inconsistent with the values summed up by the phrase "fair hearing". Unfortunately the differentiation between generalized attitude and a particularized hostility or other disqualifying bias is easy to state like many broad principles. It is not always easy to apply.

62. Broadly, however, it can be said that our system of law has always endeavoured to prevent even the probability of unfairness. It is to this end no one can be permitted to be a judge in his own cause. Appearance as well as the reality of justice must have to be ensured.

63. The test commonly formulated in such cases is : Would a member of the public looking at the situation as a whole, reasonably suspect that the adjudicating authority would be biased : The other formulation is : Is there in fact a real likelihood of bias and real likelihood of bias means at least a substantial probability of bias.

64. Applying both these tests to the facts of the present case, we do not consider that the Home Secretary was disqualified merely because some members of his staff including the Joint-Secretary were present. The presence of the Joint-Secretary who was an ex officio member of the Corporation is of a somewhat tenuous nature before the matters came up for consideration before the Home Secretary. We are therefore clear that the hearing of objections by the Home Secretary in the presence of Joint-Secretary does not constitute a bias or deprivation of fair hearing.

65. Mere presence of Shri Gurudas, without any participation on his part, would not render the final order of the Home Secretary invalid. It is commonplace for officers of the department to be in attendance at a hearing or present for some limited purpose, and yet nobody would suggest that this invalidated the hearing participation in the enquiry and deliberations or the decision is another matter. If Shri Gurudas had participated in the process of decision making then the decision may have been perhaps allowed to be attacked but he has not taken any part. The case of *Lane v. Norman*[14], is different. In that case the finding was that a non-member of the committee took part in the discussion and it was found impossible to say what effect his views had upon the members of the committee. There is no such thing here. This decision has so been explained in *Ieary v. Nat, Union of Vehicle Builders*[15], at pp. 447 and 448.

[14](1891) 66 LT 83
[15](1970) 3 WLR 434

66. We have already stated that no objections in this behalf were taken at an earlier stage.
A litigant cannot wait until an adverse decision has been made or until proceedings have long been in progress and then belatedly propose that the administrator withdraw or be reversed by a reviewing Court because of the previously unchallenged bias. A man who agrees knowing all the circumstances to be heard by a so-called biased tribunal, cannot complain subsequently of a breach of natural justice. We have no hesitation in rejecting the contention that the petitioners or any of them were not aware of the fact that Shri Gurudas, Joint Secretary is an ex-officio member of the Corporation. All these appointments are publicly made and known in any case to the operators.

67. In *Manak Lal v. Dr. Prem Chand*[16], it was held :

"The alleged bias in a member of the tribunal does not render the proceedings invalid if it is shown that the objection against the presence of the member in question had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of his right to challenge the presence of the member in the tribunal. It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question."

68. In the instant case, we have no hesitation in reaching the conclusion that the petitioners waived their objection and cannot be allowed to raise it. Quite a few of the petitioners are bound by the principles of constructive res judicata.

69. In *Kondala Rao v. Andhra Pradesh S. R. T. Corporation*[17], it was contended that the Government was biased against the private operators. The Government had complete control over the R. T. C. The Government was thus made a judge in its own cause. It was also urged that a subcommittee consisting of Ministers, Secretaries and Officers of connected departments presided over by the Transport Minister had decided about the question. Rejecting this contention, Subba Rao, J., referred to an extract from an earlier decision which is as follows :-

"The Minister or the Officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he is a limb of the Government." The learned Judge observed :-

"Even if the Sub-Committee came to such a decision it is not possible to hold that it was a final and irrevocable decision in derogation of the provisions of the Act. It was only a policy decision and in the circumstances could only mean that the subcommittee advised the State Government to implement the policy of nationalization of the bus services in that particular district. The said decision

[16] AIR 1957 SC 425

[17] AIR 1961 SC 82 at p. 89

could not either expressly or by necessary implication involve a predetermination of the issue; it can only mean that the policy would be implemented subject to the provisions of the Act. It is not suggested that the Minister in charge of the concerned portfolio has any personal bias against the operators of private buses or any of them. We therefore hold that it has not been established that the Minister in charge of the portfolio of transport had personal bias against the operators of private buses and therefore disqualified himself from hearing the objections under Chapter IV-A of the Act."

70. In this case also no suggestion is made that the Home Secretary or for that matter the Joint-Secretary had any personal hostility against the petitioners or any one of them. No allegations in that behalf are made in the petitions. To the same effect is AIR 1973 Supreme Court 974.

71. In the presence of these Supreme Court's decisions, it is unnecessary to consider some old English decisions which were cited to us. We would, however, say that in principle they do not differ from the decided cases of the Supreme Court.

72. We then take up for consideration the next point. It was argued that the Home Secretary did not give adequate hearing inasmuch as one of the petitioners had filed the application for summoning some documents and also summoning some witnesses. The application was unlawfully rejected. This offends the principle of natural justice. Although other petitioners also sought to advance a similar argument, it was soon realised that they had not filed any such application before the Home Secretary. The argument that they adopted the said application for the purposes of their cases is not borne out by the record. Thus in one writ petition alone such application was filed. Admittedly no objection in this regard has been raised. We therefore confine our consideration only to that petition.

73. It is seen from the copy of the application which was given to us that four witnesses were sought to be summoned. Admittedly the purpose in summoning these witnesses was to prove through them that the R. T. C. operating already upon some routes is inefficient in its operations, that the service provided is inadequate and that their history sheets are not in any manner better than the private bus operators.

74. We are of the opinion that the Home Secretary was justified in rejecting this application. He thought according to his counter such an evidence would be irrelevant and we agree with him.

75. In AIR 1967 Supreme Court 1815 it was held :

> "Therefore the authority was not in any case bound to summon witnesses or order inspection or discovery of documents. It seems to us that there is force in this contention and strictly speaking the authority cannot summon witnesses or order discovery and inspection of documents, as the Act has not provided for any such thing. Nor has any rule been pointed out to us making such a provision." It is further said :-
> "If the party concerned wishes to produce any document or produce any witnesses, the authority may take the documentary evidence into consideration or take the evidence of the witness, if it considers such evidence relevant and necessary. But there is in the absence of any provision in the Act or the Rules no power in the authority or the State Government to compel attendance of witnesses or to compel production of documents."

76. The question whether the Corporation did not have the equipment or finance to carry on the scheme had no relevant in the adjudication under Section 68-D and comparison between the Corporation's past record and that of the private operators had no relevance either. It is so held in AIR 1969 Mysore 319.

77. In any case it is not within the province of the High Court to examine whether on the materials which were available before the authority acting under Section 68-D it was possible for it to reach a conclusion different from the one which it reached and even if it did not embark

upon a sufficiently detailed discussion of the question which it had to decide or of the arguments which were advanced before it would not be possible for the High Court to disturb the decision reached by it.

78. What follows is that it was within the discretion of the Home Secretary to consider and decide whether the evidence sought to be adduced was relevant, and it is not for this court to substitute its opinion for that of the Home Secretary. He had all the powers of controlling the proceedings in cases before him. We do not therefore find any infirmity in the order of the Home Secretary on that account.

79. It was then submitted that the order of the Home Secretary is not a speaking order. It neither records all the objections raised before him nor he deals with them. Stereotype orders are made in all these cases which is bad.

80. It is, however, seen from the counter that the Home Secretary noticed all the objections, applied his mind to all of them and rejected the same. He was not bound to give reasons. Nor was it binding upon him to record findings. Merely because some of the objections are not noted in the order or not dealt with, it cannot be said that they were not considered. They are rejected. Otherwise the schemes would not have been approved. We find no reason to disbelieve his affidavit in this regard.

81. The next argument was that in certain schemes the Home Secretary meted out a discriminatory treatment inasmuch as he allowed two temples to continue to operate upon the relevant routes while he cancelled the permits in regard to others. That is said to be offensive to Article 14 of the Constitution. Exemption seems to have been granted in favour of Srisailam and Tirupathi Devasthanams. It is pointed out in para. VIII of the counter of the Home Secretary that the Devasthanam buses are running on important routes which are connecting the very temples for which the permits are issued but not on any other route. The Devasthanams are running the buses more with a view to provide transport facilities to the pilgrims who visit temples. It is also noteworthy that the exemption is granted for the entire route covered by the permits granted to these temples. It is not a case where the private operators plying on the same routes are eliminated while the temples are exempted. The temples alone were plying buses on such routes. We do not therefore find any discrimination made. This view of ours finds support from *N. M. T. Co-op. Society v. State of Rajasthan*[18], at p. 1102. The same conclusion applies to partial exclusion of the routes.

82. The next contention related to inter-State routes. All the routes for which the schemes are framed now are intra-State routes and not inter-State routes. According to Section 68D(3), Proviso, no scheme which relates 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. It is plain that the relationship between a scheme and inter-State route exists only when that inter-State route is a notified route in the sense that part of that notified route lies in one State and the remainder in another. If, however, the notified route is entirely within a single State the scheme cannot relate to an inter-State route. So, the proviso has application only to a case where the nationalization extends to that part of the route which is outside one State and lies in another. See AIR 1969 Mysore 319. It is thus plain that the prior approval of the Central Government was necessary only if a particular scheme covers the route

which is partly in one State and partly in another State but not otherwise. There is no prohibition for the buses operating in the inter-State route taking passengers from one terminus to the other terminus, the only objection being for picking up and setting down of passengers on the intermediate stages on the notified route within this State. That is the type of order passed in this case. Prior approval of Central Government in such cases was not necessary.

83. We have already in a way considered the objection regarding the defective operation of the R. T. C. and rejected the same. The contention that there are not enough finances with the Corporation is no ground for rejecting the schemes. We are, however, satisfied that the Corporation has enough finances. The contention is that there has been 10% increase in the traffic and therefore proportionately services should have been increased : instead not only capacity is reduced but the routes also are curtailed. It was also contended that there has been no co-ordination between the various schemes. Some of these arguments have been rejected relying upon the decision of the Supreme Court and the Mysore High Court. Merely because inconvenience would be caused to passengers it cannot afford ground for the challenge that the scheme is invalid. Vide *Viswanath Rao v. State*[19]*,*

84. In AIR 1973 Supreme Court 974, it is held that Co-ordination in all the routes is not necessary nor that can be said to be condition precedent for approval of the scheme.

85. The contention then is that the schemes as published in the official gazette do not show that each scheme at the end was signed by the Home Secretary. That is inconsistent with the prescribed form. The schemes as published are bad. We have gone through the record and the gazette. Each scheme is separately signed by the Home Secretary. The publisher of the gazette, however, at the end of all the schemes indicated the signature of the Home Secretary. When thus each scheme is signed and the schemes which are published in the gazette indicate signature at the end which can only mean that each scheme is approved by the Home Secretary under his signature, we fail to see how on that account the schemes would be invalid.

[18] AIR 1963 SC 1098

[19] AIR 1968 Mys104

86. A highly technical ground was also raised. It was said that the Home Secretary merely indicated that he has modified the scheme but did not use the expression "approved as modified". Firstly it is not in accord with the record and secondly no one can doubt that the schemes were approved as modified by the Home Secretary.

87. A further contention was raised that in some cases old schemes which were published were not rejected. Yet the new schemes regarding the same routes were approved while the old schemes were still pending. It is seen from para. 21 of the Home Secretary's affidavit that earlier scheme was not in the proper form. So the R. T. C. has come up with a fresh scheme in the proper form and the same is approved now. The earlier defective scheme was rejected by the Government by a G. O. dated 30th July, 1973 and the same was not pending when the present scheme was approved. Even otherwise when the new scheme is approved even when the old scheme was pending it would mean that the old scheme stood rejected. It was not necessary to say in the new scheme that the old scheme is cancelled Vide *Standard Motor v. Kerala State*[20]*,*

88. The next contention was that previously buses used to start from Proddatur which is an

important business centre, but it has now been made an intermediate station. We fail to see how on that account the scheme would be bad. If the passengers are not served adequately, the R. T. C. would have to provide such facilities as are necessary.

89. It was then contended that in one case at least notice was served not in accordance with Rule 319 of the Rules. While the notice was served on 26-7- 1973 the hearing was posted on 4-8-1973 without leaving 14 clear days in between. We are not impressed with this argument. Admittedly, the notices were issued with a clear gap of more than 14 days. The words used in Rule 319 are "communicated to the party concerned not less than 14 days in advance. The word "communication" has been interpreted in *State of Punjab v. Kemi Ram*[21], It is observed :

> "The ordinary meaning of the word "communicate" is to impart, confer or transmit information. It is the communication of the order which is essential and not its actual receipt." It is further said :
> "The word "communicate" cannot be interpreted to mean that the order would become effective only on its receipt." The same view is taken by a Bench of this Court in W. P. No. 4069 of 1969 dated 25-11-1969.

90. In *A/S Cathrineholm v. Nor equipment*[22], it was held that :

> "as the plaintiffs had sent the writ by prepaid post to the company's registered office and it was not returned it must be deemed to have been delivered and served in the ordinary course of Post."

91. What follows therefore is that the communication was sent according to Rule 319. It was actually, served; it may be that the adjournment asked for by the petitioner was rejected, but no prejudice is shown to have been caused to the petitioner. He had his say

[20] AIR 1969 SC 273 [22](1972) 2 WLR 1242
[21] AIR 1970 SC 214

before the Home Secretary. We are not therefore inclined to hold the scheme a nullity on that account. In view of the said Supreme Court decision and a decision of this Court, we deem it unnecessary to deal in detail with the two old English decisions cited by the learned Advocate.

92. One more point was raised in four or five writ petitions. We do not think it necessary to give their numbers. The contention was that between one terminus and the other in certain cases there are two routes although common sector would be very large. The diversion at certain point makes two routes between the termini. The authority could not have cancelled the permits even in regard to the portion where the diversion route is provided for. The Principal Government Pleader assured us that if the said petitioners approached the authority concerned with their grievance, the authority will examine their cases and if it is found that certain permits were cancelled on such routes by mistake, the authority will be glad and willing to correct the same. The said petitioners may approach the authority concerned and we have no reason to suppose that in spite of the assurance given, the authority will not consider their representations. We are, however, clear in our mind that because of such supposed mistakes the schemes cannot be said to be vitiated.

93. These were the only arguments advanced in regard to the hearing and enquiry under Section 68-D by the Home Secretary.

94. The last point which survives for our consideration relates to the cancellation of permits of the private bus operators after the schemes of nationalization are approved under Section 68-F (2) of the Act. Under that provision

> "For the purpose of giving effect to the approved scheme in respect of a notified route, the State Transport Authority or as the case may be, the Regional Transport authority concerned may, by order :-
> (a) xx xx xx xx
> (b) cancel any existing permit;
> (c) xx xx xx xx
> (i) xx xx xx xx
> (ii) xx xx xx xx
> (iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route"

95. The contention was that the permits ought to have been cancelled by the State Transport Authority or the Regional Transport Authority but in no case by the Secretary, State Transport Authority as is done in all the cases. The contention, however, of the respondents was that the Secretary was also competent under Rule 321 of the Rules made under Section 68-I to cancel such permits. Rule 321 reads :

> "The Regional Authority concerned or the State Transport Authority may by notification in the Andhra Pradesh Gazette, delegate allot any of its functions, duties or powers, specified in sub-sections (1) (1-A) (1-B) (1-C) and sub-section (2) of section 68-F to its secretary."

96. It is common ground that the power to make rule cannot be traced to any of the clauses of sub-section (2) as no clause empowers to make impugned rule. Reliance was therefore placed on sub-section (1) which reads :

> "Section 68-I (1) The State Government may make rules for the purpose of carrying into effect the provisions of this chapter."

The question therefore is whether Rule 321 is validly made under Section 68-I (1) of the Act.

97. Before we consider this question it is to be borne in mind that the delegated legislation will be void on the ground that either it is not authorized by or it is repugnant to, the parent Act. The function of the court, therefore, broadly speaking, is to ensure that the authority exercised has not been broader than the terms of the delegation mentioned in Section 68-I (1). It is thus for the Courts to say whether or not there is a rational relationship between particular delegated

legislation and the governing statute, because the rules must be reasonably appropriate and calculated to carry out the legislative purpose and must be entirely within the power conferred.

98. The respondents naturally relied essentially on the point that the words in Section 68-I (1) "for the purpose of carrying into effect the provisions of this chapter" gave the Government power to make Rule 321 and when the Government consider that such a rule is necessary to give effect to the provisions of Chapter IV-A the court would be slow in interfering and holding the Rule ultra vires.

99. Now a Court is bound before reaching a decision on the question whether Rule 321 is intra vires, to examine the nature, objects and scheme of the piece of the legislation to consider exactly what is the area over which powers are given by the section under which the Government is purporting to act.

100. Now Chapter IV-A pertains to special provisions relating to State Transport Undertakings. Section 68-I empowers the Government to make Rules for giving effect to the provisions of this Chapter. After a scheme has become final, the grant of stage carriage permit to the R. T. C. and the consequential order cancelling the permits of the existing private bus operators are mechanical. The authorities have to follow as a necessary consequence of giving effect to the approved and final scheme. See *Abdul Gaffor v. State of Mysore*[23], and *Sobhraj Odharmal v. State of Rajasthan*[24], Thus the orders passed under Section 68-F (2) flow from the publication of the schemes duly approved and the issue of necessary orders which are not quasi-judicial but administrative vide *Kalyan Singh v. State of U. P*[25].,

101. It is true that Section 68-F (2) makes pointed reference to the S. T. A. or the concerned R. T. A. Does that mean that the Government under their power of making rules to give effect to Chapter IV-A cannot authorize the Secretary S. T. A. in addition to the two authorities to carry out the consequential and mechanical function of granting the permits to Road Transport Corporation and cancelling the permits of the private

[23] AIR 1961 SC 1556 [25] AIR 1962 SC 1183

[24] AIR 1963 SC 640

operators? It is to be noted that Section 68-I (1) leaves it to the opinion of the Government to say as to what provision would be necessary in order to give full effect to Chapter IV-A. The Courts will not substitute their opinion in this matter with that of the Government to whom the Parliament has entrusted the power to make rules. If the Court is satisfied that the Rule so made has reasonable relationship with the purpose sought to be effectuated, the Court will not strike down such a rule either on the ground that it is not within the power or that it is repugnant to the parent Act.

102. In *Rex v. Comptroller General of Patents : Bayer Products Ltd., Ex parte*[26], at p. 311, Scott, L. J., said :

> "..... the effect of the words 'as appear to him to be necessary or expedient' is to give the His Majesty in council a complete discretion to decide what regulations are necessary for the purposes named in the sub-section. That being so, it is not open to His Majesty's Courts to investigate the question whether or not the making of any particular regulation was in fact necessary or expedient for the specified purposes. The principle on which

> delegated legislation must rest under our Constitution is that legislative discretion which is left in plain language by Parliament is to be final and not subject to control by the courts."

Clauson, L. J., at page 314 as well as Goddard, L. J., agreed with this view.

103. *Progressive Supply Co. v. Dalton*[27], and *Yoxford Farmers' Assn. v. Llewellin*[28], followed the said decision. The later decision said :-

> "Sub-section (1) is expressed in the widest terms possible and sub-section (2) which confers particular powers, begins 'without prejudice to the generality of sub-section (1). (2) Reg. 55 incorporating 54-C confers both Legislative power to make orders and executive power to give directions. The principle of interpretation of the regulations in regard to powers of both types is plain and has been affirmed time after time in this Court and also in the House of Lords in appeals relating to orders under Reg. 188".

104. In *Amaravathi M. T. Co. v. State*[29], Subba Rao, C. J., said :

> "The Provincial Government, therefore, may make rules under the sub-section authorising the transport authority to delegate its functions, for without the said rules, the said provisions cannot be carried into effect."

105. In Civil Appeal No. 226 of 1960 dated 6-12-1962 (SC), Hidayatullah, J., speaking for the majority said :

> "An appeal is no doubt a creature of statute and does not lie in the nature of things. Under the general law relating to arbitration there is no appeal against an award. The power to provide for an appeal by a Rule must, therefore, flow from Section

[26](1941) 2 KB 306 [28](1946) 2 All England Reporter 38
[27](1943) Ch 54 [29] AIR 1956 And Prad 232

> 30 of the Act. Section 30 first confers a general power to make rules and then enumerates, as illustrative of the general power, certain, topics on which rules in particular may be made.'"

His Lordship further said :

> "In this sense sub-rule (6) providing for an appeal against the decision of the arbitrators must be considered as rule giving effect to the provision of Section 30 (2) (u) providing for the resolving of disputes by arbitration. Sub-rule (6) was thus within the rule making power of the provincial Government.

106. In *Om Prakash v. Union of India*[30], Jaganmohan Reddy, J., who spoke for the Court, held at p. 773 :

> "It is a well established proposition of law that where a specific power is conferred without prejudice to the generality of the general power already specified, a particular power is only illustrative and does not in any way restrict the general power."

107. Their Lordships followed King Emperor v, Sibnath Banerjee, AIR 1945 PC 156 (157).

108. Respectfully following the above said decisions, we find no difficulty in holding that Rule 321 was rightly considered necessary by the rule making authority to give effect to Section 68-F of the Act. The rule is thus valid and is not *ultra vires* of the main Act Consequently the cancellation of the permits of the private operators by the Secretary, State Transport Authority was proper under Section 68-F (2) read with Rule 321.

109. Since no other contention was raised and for the reasons we have given, we can find no merits in these writ petitions. They are therefore dismissed with costs. Advocate's fee Rs. 100/- in each case.

Petitions dismissed.

[30] AIR 1971 SC 771