Bariat Ullah Khan Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: April 25, 1963

Acts Referred: Constitution of India, 1950 â€" Article 154(1), 166(3), 226
Motor Vehicles Act, 1939 â€" Section 68C, 68D, 68I

Citation: AIR 1964 All 329

Hon'ble Judges: V. Bhargava, J; B.D. Gupta, J

Bench: Division Bench

Advocate: S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

1. This special appeal has been filed by Bariat Ullah Khan whose petition under Article 226 of the Constitution has been dismissed by a learned

Single Judge of this Court. The facts giving rise to the writ petitions that the appellant held a permit for plying a stage carriage on Bareilly Shiahgarh

route. The transport authorities decided to nationalise this route. On 14th May, 1960, a notification was issued u/s 68-C of the Motor Vehicles

Act (hereinafter referred to as the Act) and was published in the U. P. Gazette dated 21st May, 1960. Various objections to the scheme were filed

amongst which was an objection by the petitioner. That objection was heard by Sri Rule Chandra, Joint Secretary to the State Government in the

Judicial Department. His objection was dismissed and then on 10th July, 1961, a notification was issued u/s 68-D of the Act approving the draft

scheme. This notification was published in the U. P. Gazette dated 15th July, 1961. As a consequence of the scheme being enforced, the

petitioner"s permit for stage carriage was cancelled and the State Government started running its own stage carriage on this route. The petitioner

by the petition under Article 226 of the Constitution prayed for quashing the notifications dated 14th May, 1960 and 10th July, 1961 as also the

notice dated 31st July, 1961 and the order dated 28th July, 1961, accompanying it. The notice dated 31st July, 1961 and the order dated 28th

July, 1961, related to the cancellation of the permit of the appellant. There was a further prayer for the issue of a writ of mandamus directing the

respondents, the State of Uttar Pradesh and the Regional Transport Authority Bareilly not to implement the scheme published in the U. P. Gazette

dated 15th July, 1961. The petition was opposed by the respondents and was dismissed by the learned single Judge holding that the appellant was

not entitled to any relief.

2. Sri Section C. Khare, learned counsel appearing for the appellant, urged before us as his first point the submission, which was made before the

learned single Judge also, that the hearing of the objection u/s 68-D of the Act by Sri Rule Chandra, Joint Secretary to the State Government in the

Judicial Department did not amount to hearing by the State Government and consequently did not satisfy the requirements of Section 68-D of the

Act. Sri Section C. Khare could not, however, indicate who should have been the person who should have given a hearing to the appellant on the

objection u/s 68-D. of the Act because that provision of law only mentions the State Government which is not a human being, and the Government

must necessarily Act through human beings. On the other hand, on behalf of the State reliance was placed on Rule 7 framed by the State

Government on this subject which was notified by notification No. SRT SDR--AM 1-757-TM/XXX-4492-T-55 published la Part I-A of the U.

P. Gazette dated 7th March, 1959. This rule lays down:

The objections received shall be considered by the Judicial Secretary to Government U. P., or an officer of his department, not below the rank of

a Joint Secretary, nominated by the former for the purpose.

The rule also lays down the procedure to be adopted by the Officer requiring him to give an opportunity of being heard to the objectors or their

representatives and also the representatives of the transport undertaking. It also lays down that, after hearing such parties as appear, the officer

shall give a decision whether the scheme should be approved or modified, as he may deem proper. The authority conferred on the State

Government to hear objections u/s 68-D of the Act has thus, under this rule, required to be exercised through the Judicial Secretary or an officer of

his department nominated by him being of a rank not below that of a Joint Secretary. Admittedly Sri Rule Chandra was Joint Secretary in the

Judicial Department and having been nominated to hear the objections by the Judicial Secretary he competently acted on behalf of the Government

in hearing the objections and giving a decision in accordance with Rule 7.

3. In view of these facts learned counsel for the appellant slightly shifted his ground and urged before us that this Rule 7 referred to above, was not

a valid and competently made rule and, since the rule itself was void, the hearing of the objection and its decision by Sri Rule Chandra, Joint

Secretary to the State Government in the Judicial Department did not result in complying with the requirements of Section 68-D. The notification in

the U. P. Gazette bringing into force Rule 7 mentions that the Governor was making this rule in exercise of the powers conferred by Section 68 of

the Motor Vehicles Act. It has appeared to us that in the Gazette Notification the mention of ""Section 68"" was probably a misprint for ""Section 68-

1"", because Section 68 of the Act occurs in Chapter IV and relates to framing of rules on subjects which have no connection with the subject-

matter of this Rule 7. It is only Section 68-1 of the Act which deals with framing of rules by the Government for the purposes of Chapter IV-A of

the Act which comprises within it Section 68-D and other relevant sections. Even learned counsel for the appellant did not in fact rely on this

apparent accidental error in the notification. The point urged by learned counsel was that even u/s 68-1 it was not competent for the State

Government to make a rule conferring upon the Judicial Secretary or a joint Secretary of his department nominated by him the power of the State

Government to hear objections u/s 68-C of the Act and he urged that for this reason the rule should be held to be invalid. We agree with learned

counsel that the provisions of Section 68-1 of the Act do not contemplate the framing of a rule of this nature and the rule as framed cannot be

justified as having been in exercise of the powers conferred on the State Government by Section 68-1 of the Act. It has appeared to us that such a

rule could be competently made by the State Government under Article 166(3) of the '' Constitution read with Article 154(1) of the Constitution.

Against this view of ours learned counsel made two submissions. One point urged by learned counsel was that even Article 166(3) read with

Article 154(1) of the Constitution did not in fact justify the framing of this Rule 7. The second submission was that the State Government in fact

purported to exercise the rule making power conferred on it by Section 68 or Section 68-1 of the Act, and since the rule was beyond the scope of

the powers conferred by the Act, it was not permissible to take shelter behind, the power conferred by Article 166(3) and Article 154(1) of the

Constitution for justifying the exercise of the power to make this rule.

4. So far as the first submission is concerned, it is very clearly met by the language of Article 166(3) and Article 154(1) of the Constitution. Under

Article 166(3) the power given includes the power of the Governor to make rules for the more convenient transaction of the business of the State

Government, and it is obviously for the more convenient transaction of the business of the State Government that this Rule 7 was needed and was

actually made. As we have said earlier, the State Government not being a human being, its functions could only be discharged by nominating some

one to do so, and it was therefore, for the convenient transaction of the business of the State Government that some one had to be nominated.

Under the rule, the person nominated was the Judicial Secretary or his nominee who had to be an officer of the Judicial Department not below the

rank of a Joint Secretary. Under Article 154(1) of the Constitution the executive power of the State vests in the Governor and has to be exercised

by him either directly to through an officer subordinate to him in accordance with the Constitution. In this case, the power of the State Government

to discharge its functions u/s 68-D of the Act could therefore, have been exercised by the Governor either directly or through an officer

subordinate to him in accordance with the Constitution. It was in accordance with the Constitution viz., the provision contained in Article 166(3),

that the Governor made the rule directing that the power may he exercised on behalf of the State Government either by the Judicial Secretary or by

a Joint Secretary in the Judicial Department nominated by the Judicial Secretary. Thus the nomination of the officer, who actually heard the

objection, was directly in accordance with the provisions of these Articles of the Constitution. In fact learned counsel, when we pointed out this

aspect, had to concede that this objection of his had been raised on the basis of the later portion of Article 566 (3)"" where the Governor was given

the power to make rules for the allocation amongst ministers of the business of the Government of the State in so fat as it is not business with

respect to which the Governor is by or under the Constitution required to act in his discretion. It appears that he had, in reading this provision of

the Constitution, misunderstood, the position and made his submissions on the basis that the rules even under the first part of Article 166(3) were

confined to rules allocating business amongst the ministers. The first clause which shows that the Governor shall make rules for the more convenient

transaction of the business of the Government of State, is clearly independent of and separate from the provision requiring the Governor to make

rules for the allocation of the business amongst ministers, so that Rule 7 could be completely framed under Article 166(3) of the Constitution.

5. So far as the second objection raised by learned counsel is concerned"", learned counsel urged before us that, if a power is purported to be

exercised by an authority empowered to do so under any specific provision of law and an act is done in exercise of that power, the validity of that

act cannot be justified by reference to another power which may vest in the same authority under which the act would have been validly done. In

this connection learned counsel referred us to a Supreme Court decision in Pandit Ram Narain Vs. The State of Uttar Pradesh and Others, . In

that case a certain tax was imposed by a Town Area in Uttar Pradesh u/s 14 (1) (f) of the U. P. Town Areas Act (2 of 1914). The imposition of

that tax was challenged by a petition under Article 226 of the Constitution in this Court. This Court held that there could be no assessment of the

tax under Clause (f) of Sub-section (1) of Section 14 of the U. P. Town Areas Act, but the imposition of the tax was upheld as valid on the ground

that the tax imposed, which was challenged in that case, could clearly be imposed under Clause (d) of Section 14 of the Act. Against this decision,

the person taxed went up in appeal to the Supreme Court and the Supreme Court held that the tax having been imposed u/s 14 (1) (f) of the U. P.

Town Areas Act, it could not be justified by calling in aid the provisions of Clause (d) of Sub-section (1) of Section 14 of the Act. In that case,

however, there was a distinctive feature which appears to have been ignored by learned counsel and it was that feature which was the real basis of

the decision given by their Lordships of the Supreme Court. Under the procedure prescribed for imposition of the tax by a Town Area Committee

a list of persons liable to pay the tax under each head had to be prepared showing the amount payable respectively by the persons liable to pay the

tax. That list could be revised by the District Magistrate and had to be submitted to him for confirmation. Then so confirmed, the list could only be

altered u/s 15 (2) by the District Magistrate or in pursuance of an order passed in appeal under the provisions of Section 18. Their Lordships

accepted the submission of the counsel for the appellant before them that the list prepared u/s 15 must have shown the appellant as assessed to a

certain amount of tax under Clause (f) of Sub-section (1) of Section 14, and the assessment must have been confirmed by the District Magistrate.

It was for this reason that their Lordships held that the validity of the tax imposed must be considered with reference to the clause under which the

assessment was made, and a different clause under which the assessment might have fallen cannot be called in aid of the assessment. The ratio

decidendi thus was that whenever a tax was imposed under any of the clauses of Sub-section (1) of Section 14 of the Town Areas Act a separate

list had to be prepared, there had to be separate submissions of those lists for confirmation to the District Magistrate, and the persons concerned

had right of appeal. In these circumstances, rights of persons who could object to the imposition of the tax were affected vitally by the

circumstance that the tax was imposed under one particular clause or a different clause of Sub-section (1) of Section 14 of the Town Areas Act.

The objection, that the persons concerned had to file or could file, naturally had to be prepared in view of the particular clause of Sub-section (1)

of Section 14 of the Town Areas Act because different consideration could apply to different clauses. In the appeals also, they could put forward

their cases with reference to particular clauses. In these circumstances, if a tax was imposed under one particular clause, it could not be justified

under other clauses because the person affected, when objecting, may not have raised objections which could only apply to the other clauses and

not to the clause under which the tax was purported to be imposed in the first instance. The District Magistrate''s confirmation or approval was

also based on the applicability of the particular clause under which the tax was sought to be imposed without paying any attention to the question

whether he would have confirmed it under the different clause actually applicable. This is a feature which does not exist in the case before us as we

shall point out hereafter.

6. The correct position, it appears to us, is that, if the authority exercising the power purports to act under a provision under which that power is

not vested in that authority, the exercise of that power can be justified under some other provision of law conferring the appropriate power only if it

can be held that the exercise of the power under the wrong provision of law, instead of the correct provision, did not in any way prejudice anyone

and did not curtail the rights of any person affected. In the case before us, rules framed by the Governor under Article 166(3) of the Constitution

had to be for the purpose of the convenient transaction of the business of the Government of the State. With the framing of such rules, no persons

other than the Governor were concerned. Such rules did not curtail or affect the rights of any citizen. The rules when framed were not open to any

objection by anyone. It was entirely in the discretion of the Governor to make rules, and in making those rules the Governor could lay down what

particular duties of the State Government had to be carried out by which particular officer. No special procedure for making rules was laid down.

It was entirely at the discretion of the Governor that a rule like Rule 7, referred to above, could be framed under Article 166(3) of the Constitution

without any one''s rights being curtailed or the right of filing objection being affected. In such a case, the rule framed under the purported exercise

of a wrong power can be justified under the right power provided further that the procedure prescribed for exercise of the correct power is not

violated. This view that we are taking is clearly supported by a decision of a Full Bench of this Court in Buddhu Vs. Municipal Board and Others, .

Bind Basni Prasad, J., in his judgment in that case dealing with the validity of a bye-law held:-

Another argument on behalf of the applicant was that these amendments have been made u/s 298-F (d) and J (d) of the Municipalities Act and as

under none of these provisions the impugned bye-law of prohibition of slaughter of bulls, bullocks, cows and calves can fall, so it is invalid. It is

now a well established rule of law that if an action taken by an authority can be supported under any law other than the one under which it purports

to have been taken its validity must be upheld. It has already been shown above that under the general power given by Sub-section (1) of Section

298, read with Section 8 of the U. P. Municipalities Act and Articles 47 and 48 of the Constitution the Board was competent to make the

impugned bye-law.

This principle laid down by him was fully assented to by Harish Chandra, J. Dayal, J., the third member of the Bench expressed no definite opinion

on this aspect of the case but did not disagree with the view expressed by Bind Basni Prasad, J., and assented to by Harish Chandra, J. The same

principle, it appears to us, has been laid down by the Supreme Court in P. Balakotaiah Vs. The Union of India (UOI) and Others, . Dealing with

this principle their Lordships of the Supreme Court said: -

It is argued that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a

wrong provision if it can be shown to be within its powers under any other rule and that the validity of an order should be judged on a

consideration of its substance and not its form. No exception can be taken to this proposition, but, ...

This quotation from the judgment of their Lordships of the Supreme Court shows that they approved of the general principle that, when an order is

passed by an authority competent to pass it under one provision of law, it has to be held to be valid even though the authority may have purported

to pass it under another provision of law under which it had no power to do so. Their Lordships in that case, however, proceeded to examine this

principle further and held that there may be cases where this general principle may not apply. It was because of this further consideration of the

question by their Lordships of the Supreme Court that the learned counsel for the appellant cited this decision of the Supreme Court before us in

order to support his submission that Rule 7 should be held to be void and its validity could not be justified under Articles 166(3) and 154(1) of the

Constitution. The further proposition that their Lordships examined and which led them to hold that the particular rule in question before them was

not valid was expressed as follows: -

If the interpretation which the respondents seek to put on the Security Rules is correct, then it is difficult to see what purpose at all they serve. Mr.

Ganapathy Iyer for the respondents argued that they are intended to afford protection to persons who might be charged with being engaged in

subversive activities. If that is their purpose, then if action is taken thereunder but the procedure prescribed therein is not followed, the order must

be held to be bad, as the protection intended to be given has been denied to the employee, and Rule 148 cannot be invoked to give validity to

such order.

It will be seen that these remarks of their Lordships of the Supreme Court bear out our interpretation above that the general rule of calling in aid of

the exercise of a correct power of law is subject only to the limitation that it should not result in the denial of any right or protection to a person

who would have been entitled to exercise that right or seek that protection if the power had been exercised under the correct provision of law. In

the case before their Lordships of the Supreme Court, the action that was purported to be taken under Rule 3 of the Railway Services

(Safeguarding of National Security) Rule, 1949 had resulted in denying to the person affected the protection which would have been available to

him had action been taken under Rule 148 of the Railway Establishment Code, and this was the reason why their Lordships held that the action

taken under Rule 3 of the Security Rules could not be justified by invoking Rule 148 of the Railway Establishment Code. The decision clearly leads

to the inference that if there had been no such effect on the rights of the person concerned, their Lordships would have applied the general principle

that, when an authority passes an order which is within its competence, it cannot fall merely because it purports to be made under a wrong

provision, if it can be shown to be within its power under any other rule, which principle was approved by them by saying that no exception could

be taken to this proposition.

7. In this connection our attention was drawn by learned counsel to the remarks of Hon''ble the Chief Justice of our Court when delivering

judgment in a Full Bench case of The U.P. State Vs. Murtaza Ali and Another, . In that paragraph, the principle laid down is only a quotation from

the judgment of the Supreme Court in the case of P. Balakotaiah Vs. The Union of India (UOI) and Others, to which we have already referred

earlier. The extract contained in this paragraph contains only a quotation of a part of the principle laid down by the Supreme Court and it appears

to us that this part alone was quoted by the Hon''ble the Chief Justice because it was only that part which was relevant in the case which was

before him. In that case, the question that had to be considered was whether a regulation purported to have been made u/s 297, Sub-section (2)

read with Sub-section (r)(n) of the Municipalities Act, and beyond the scope of that section, could be held to be valid with reference to the rule-

making power conferred on the Government by Section 206 of the Municipalities Act. The Hon''ble the Chief Justice, dealing with this aspect, first

expressed the opinion that there was a distinction between ""rules"" and ""regulations"" and, consequently, a regulation purported to be made u/s 297

could not have been made in exercise of the rule-making power conferred by Section 296. Further, another principle relied upon was:

It is essential that an authority making a regulation in the exercise of a power conferred by a statute states it in the regulation itself, so that the

public may know at once whether it is ultra vires or intra vires and may act accordingly. A regulation is made for the public and the public have a

right to know the authority under which it is made, as soon as it is made, so that they know whether they are bound by it or not. That is why in

delegated legislation the authority is stated. This object would be defeated if the delegate is permitted to take shelter behind an undisclosed

authority. An act of delegate purporting to act under one authority cannot be sustained by reference to another authority.""

It will thus be seen that the quotation from the Supreme Court decision was being relied upon to judge the validity of power of delegated legislation

being exercised under one authority and it''s being sought to be validated by reference to a different authority. In the case before us there is no

question of any delegated legislation. We have already indicated that the function of giving a hearing u/s 68-C of the Motor Vehicles Act, though

quasi-judicial in nature, had to be exercised by the State Government through some human being, and it was for the purpose of nominating the

human being who was to discharge the function of the State Government that an order had to be made by the Governor. Passing of such an order

by the Governor cannot be held to be exercise of any power of delegated legislation. We may also add that, in that case, the other two learned

judges constituting the Bench did not specifically rely on the principle laid down by the Hon''ble the Chief Justice to which our attention has been

drawn and which we have discussed above. In these circumstances, we do not think that this Full Bench decision can be held to lay down any

principle contrary to the view we have expressed above.

8. The next point urged by learned counsel was that this scheme, as a result of which the appellant was being displaced, was completely outside

the scope of Section 68-C of the Act. According to learned counsel Section 68-C of the Act does not contemplate nationalisation of the road

transport services on one particular route or a portion of the route but only nationalisation of a particular class of vehicles or transport service or

nationalisation of particular kind of routes. Thus his submission was that it was not competent for the Government to pick out individual routes for

nationalisation as it is likely to lead to discrimination inasmuch as the Government may choose to pick out those routes where persons without

influence may be running the transport services while they may omit nationalisation of routes where transport services are being run by influential

persons. We are unable to accept that there is any force in this submission. In the notification which has been applied to the case of the petitioner, it

is stated that the State Government, for the purpose of providing an efficient, adequate, economical and properly co-ordinated road tram-port

service, was of the opinion that it was in the public interest that road transport services on the routes mentioned at No. 2 of the annexed scheme

shall be run and operated by the State Transport Undertaking to the complete exclusion of other persons. The notification thus was for

nationalisation of road transport services in general in respect of the routes particularly mentioned in the scheme. The language of Section 68C of

the Act also requires that the scheme should be in respect of ""road transport services in general or any particular class of such service in relation to

any area or route or portion thereof"". The notification in the present case, as we have just said, was thus for nationalisation of road transport

services in general in relation to certain specified routes. Clearly, such a notification is fully contemplated by the language used in Section 68-C of

the Act. The present is a case of applying the scheme to road transport services in general in relation to a number of routes, and the word ""route"",

as used in Section 68-C of the Act, has to be read as meaning one or more routes. The notification thus fully complies with the language of Section

68-C of the Act, so that, on the face of it, there is no force at all in this point raised by learned counsel.

9. Learned counsel next took up the point that, in this case, no proper hearing was given to the appellant u/s 68-D of the Act. In this connection,

learned counsel drew our attention to the principles, defining the nature of the hearing in such a case, as laid down by the Supreme Court in

Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . Dealing with the question of an

inquiry and objection u/s 68-D of the Act, their Lordships of the Supreme Court observed:

Under the said provisions, the State Government is enjoined to approve or modify the scheme after holding an enquiry and after giving an

opportunity to the objectors or their representatives and the representatives of the State Transport. Undertaking to be heard in the matter in person

or through authorised representatives. Therefore, the proceeding prescribed is closely approximated to that obtaining in court of justice. There are

two parties to the dispute. The State Transport Undertaking, which is a statutory authority under the Act, threatens to infringe the rights of a citizen.

The citizen may object to the scheme on public grounds or on personal grounds. He may oppose the scheme on the ground that it is not in the

interest of the public or on the ground that the route which he is exploiting should be excluded from the scheme for various reasons.

In the same case, at a later stage, their Lordships held:

The dispute comprehends not only objections raised on public grounds, but also in vindication, of private rights and it is required to be decided by

the State Government after giving a personal hearing and following the rules of judicial procedure.

10. Reference was also made to the views expressed by their Lordships of the Supreme Court in the case of Malik Ram Vs. State of Rajasthan,

where, dealing with the scope of an inquiry u/s 6S-D (2) of the Act, their Lordships held:

It seems to us, considering the nature of the objections and the purpose for which the hearing is given, that production of evidence, either oral or

documentary, is comprehended within the hearing contemplated in Section 63-D (2).

Learned counsel''s submission was that the order recorded by the joint Secretary, Judicial Department, who actually heard this dispute, shows that

he did not comply with the principles laid down by the Supreme Court as mentioned above. Learned counsel urged that a reading of the order of

the joint Secretary, Judicial Department, shows that he did not at all consider the personal grounds that had been raised by the appellant. In that

order, the officer formulated the four points on which the validity of the scheme was challenged and proceeded to deal with all those four points.

Two of the objections taken were technical and legal objections. One was that the scheme was not in conformity with the provisions of Section

68-C of the Motor Vehicles Act, and the other was that the State Government itself, which published the scheme, was not competent to hear and

decide the objections The other two objections dealt with by him were that the road under the scheme was not motorable throughout the year, and

that a portion of the road involved under the scheme had already been nationalised.

11. Dealing with the first question of the scheme not being in conformity with the provisions of Section 68-C of the Act, the officer held that, u/s

68-C of the Act, for initiation of a scheme, all that was needed was that the State Transport Undertaking should satisfy itself that the scheme was

necessary in order to provide better facilities and amenities to the public, where after it could launch upon nationalisation. He found that the scheme

published showed that such an opinion had been formed by the State Transport Undertaking and, consequently, it was not invalid u/s 68-C of the

Act. The second question was also dealt with by him and was rejected on the ground that he was competent to give a hearing and decide the

objections. We need not deal with it any further as we have already held earlier that be was competent to hear the objections and decide them.

12. Under the third point, the officer took notice of the allegation made in the objection that a portion of the road involved under the scheme was

not motorable throughout the whole year, and held that if the road was in such a condition that private operators could ply then vehicles on that

road, there was no reason why the State Transport Undertaking could also not use that road, so that he found that the objection had no Substance

and had to fail. The last point urged before him was that a portion of the road had already been nationalised under another scheme of

nationalisation. On this point, he first took notice of the circumstance that no such objection had been raised specifically within the period of

limitation prescribed under law, and he further held that, though a portion of the route sought to be nationalised was common and was a portion of

the route already nationalised earlier, this would not invalidate the scheme because the scheme was for nationalisation of a route which, taken as a

whole, was different from the route previously nationalised.

13. The points dealt with by the officer show that the assertion made by learned counsel, that the personal grounds of the appellant were not dealt

with by the officer when deciding the objections, has some substance, but that itself will not invalidate the hearing or the decision unless we also

find that he was actually called upon to give a decision on any objection on personal grounds. It is true that, in the objections filed on behalf of the

appellant, some personal grounds were mentioned and that, subsequently, even affidavits were filed by him. The order of the officer, however,

shows that at the time when he heard the objections, there were objections by 12 operators before him, and they were all duly, represented by

lawyers who were heard. It seems that the officer in his order dealt with only those points which were actually argued before him by the lawyers,

and did not consider it necessary to deal with points taken in the objections or in the affidavits which were not urged before him at the time of the

oral hearing. Though learned counsel for the appellant, in these circumstances, wanted us to draw an inference that the officer did not pay any

consideration at all to personal grounds in paragraph 12 of the first affidavit filed in sup-port of the writ petition, the appellant stated that the

objections were ultimately heard and ""considered"" by Shri Rule Chandra, Joint Secretary, Judicial Department, Lucknow. It is to be noted that the

appellant himself, in the affidavit, proceeded to assert that Shri Rule Chandra bad not only heard the objections but had ""considered"" them. If there

was, in fact, no consideration but only a nominal hearing, there was no reason why the appellant should, in his affidavit, have stated that the

objections were ""considered"" by Shri Rule Chandra in addition to stating that they were ""heard"". This means that Shri Rule Chandra did in fact,

consider the objections in the manner in which they were required to be considered and it was not a case where there was a mere for mal hearing

without paying due consideration. Learned counsel in this connection also referred us to a sentence contained in paragraph 19 of the affidavit filed

on behalf of the appellant on 22-1-1962, the sentence being the learned Legal Remembrancer did not apply his mind to all these considerations

and he approved the scheme without-considering the scheme."" So far as this assertion in paragraph 19 is concerned, the first point to be noticed is

that this paragraph occurs in an affidavit which was filed in support of a miscellaneous application for amendment of the writ petition, and therefore

the assertion has to be given the value that is given to facts sought to be put forward before the court at a late stage. The more important

circumstance is that this sentence, relied upon by learned counsel, does not, in plain language, contain any assertion that at the time of oral hearing

any personal grounds were urged on behalf of the appellant and those grounds were not considered by the Joint Judicial Secretary. In that

paragraph at the beginning, the assertion by the appellant was as follows : ""that as already stated in the affidavit filed along with the writ petition, the

objection filed by the deponent contained that the scheme was not in conformity with the provisions of Section 68-C of the Act and for the

purpose necessary facts were placed before the Joint Legal Remembrancer as contained in the original affidavit of the deponent and also

representations from the members of the public during the course of arguments also specific objections were raised that the scheme was not in the

public interest and that the operation of the Government vehicles would not be efficient, economical or coordinated one than the present operators

had been providing to the members of the public.

14. It is after these assertions were made in paragraph 19 (though in rather incorrect and contused language) that the appellant proceeded to make

the further assertion in the sentence relied upon by learned counsel quoted above. That sentence uses the expression ""these considerations"" which

means that, in the affidavit, the Legal Remembrancer was being changed with not applying his mind to the considerations mentioned in this latter

quotation from the affidavit. This latter quotation from the affidavit, to which that sentence referred, did not make mention of any personal ground

of the appellant or any other operator. It only made reference to public grounds to the effect that the scheme was not in public interest and that the

operation of Government vehicles would not be (more) efficient, economical or co-ordinated one than the present operators had been providing to

the members of the public. Even this assertion in paragraph 19 does not, therefore, show that any personal ground was urged at the time of the

hearing of the objections by the Joint Judicial Secretary so that on that occasion he was not called upon to deal with them.

15. So far as public grounds are concerned, a ground at one stage was raised in a general form by stating that the Government vehicles would not

be more efficient, economical and co-ordinated than the services provided by the existing operators. The specific plea was that the road on this

route was not in a good condition and Government vehicles could not efficiently run on it. The general ground was, therefore, supported only by

this solitary allegation. That allegation has been specifically dealt with and negatived by Shri R. Chandra in his order. Shri Rule Chandra held:

The mere fact that a portion of the road involved under the scheme was not motorable "throughout the year could not invalidate the scheme. If the

private operators could ply their vehicles on that road there was no reason why the State Transport Undertaking could not use that road. That

objection has no substance and must fail.

Thus the only ground which was urged before the officer in order to persuade him to hold that the scheme was not in public interest was rejected

by him as without substance, and it is not for this Court, while exercising its writ jurisdiction, to sit in judgment over the officer and to go into the

question whether the conclusion arrived at by him was or was not correct. This Court cannot arrogate to itself the function of an appellate Court in

such a matter. The order passed by the officer concerned, therefore, is an order which was made after considering the objections to the extent to

which, and the manner in which, they required to be considered, and consequently the order is not vitiated in any respect.

16. Learned counsel urged one more point before us and that point was that the decision given by Shri Rule Chandra was vitiated by his approach

to the question as to the nature of his function when giving his decision on the objections. In this connection learned counsel referred us to a portion

of the order of Shri Rule Chandra where he held that Section 68-C of the Act envisaged that the authority concerned should satisfy itself that in

order to provide better facilities and amenities to the public it was desirable to launch upon nationalisation. He also held that this matter had been

committed to the discretion of the executive authority and had been made entirely dependent on the satisfaction. Learned counsel argued before us

that Sri Chandra"s approach to the case was incorrect inasmuch as even though the matter was first left to the discretion of the State Transport

Undertaking, ultimately the question whether the scheme was in public interest and would provide a convenient and efficient service had to be

decided by the officer hearing the objections. It seems to us this submission has no force because the views that Shri Rule Chandra expressed in

his order related only to the stage of the scheme being published u/s 68-C of the Act and not to the subsequent stage of hearing u/s 68-D of the

Act. In stating the legal proposition that Section 68-C of the Act leaves the matter to the discretion of the State Transport Undertaking, he was

obviously quite correct. Section 68-C itself lays down that if the State Transport Undertaking which has to be ""of the 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... should be run and operated by the State transport undertaking ..... " The argument before him, which he was

dealing with in his order, was about the scheme being ab initio defective because the appellant was challenging the correctness of the opinion

formed by the State transport undertaking at that stage. Shri Rule Chandra rightly held that the correctness of the opinion formed at that stage

could not be challenged before him, nor could it be scrutinised by him again. Of course, when hearing objections, he was competent to go into the

question, if raised before him, whether the scheme was an appropriate scheme which should be enforced, considering the purpose of such schemes

as envisaged in the various provisions of the Act. The circumstances that he, in fact, dealt with the argument relating to the efficient running of the

public service raised on behalf of the objections shows that he never held that he was debarred from going into that question. He, in fact, did go

into it and held that there was no valid objection against the scheme, so that his order is not vitiated.

17. The result is that we have come to the conclusion that there was no ground at all for this court to interfere with the order made, and the writ

petition was rightly dismissed by the learned single judge. This appeal is consequently dismissed.