A **CAPITAL MULTI-PURPOSE CO-OPERATIVE SOCIETY BHOPAL AND OTHERS**

v.

THE STATE OF M.P. & OTHERS

March 30, 1967

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[K. N. WANCHOO, R. S. BACHAWAT AND V. RAMASWAMI, JJ.]

Motor Vehicles Act (4 *of* 1939)—*Ss.* 68*A*, 68-*C and* 68*D*—*State Road Transport Corporation publishing schemes for take-over of certain routes—Particulars to be given in the scheme for validly originating proceedings—Whether authority to hear objections can be appointed under the Rules of Business under Article* 166(3) *of the Constitution or only under s.* 68-*D* (2-*A*)—*Whether express finding necessary by authority that scheme would fulfil four-fold purposes mentioned in s.* 68-*C—Authority not summoning documents or witnesses at the instance of objectors regarding past records or financial position to consider ability of the State Undertaking to run nationalised transport services and to consider comparative merits of undertaking and private operators—Whether such evidence relevant—Therefore, whether hearing of objections adequate and real.*

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On May 11, 1964, the Madhya Pradesh State Road Transport Corporation published two schemes for the take-over by the corporation of certain routes under Chapter IV-A of the Motor Vehicles Act 4 of 1939 to the exclusion of the existing private operators on those routes and objections were invited within 30 days. After the objections filed by various private operators were heard by a Special Secretary to the State Government empowered under s. 68-D of the Act, he passed orders on June 8, 1965, modifying the schemes in certain particulars. The modified and corrected schemes were finally published on June 18, 1966. Writ petitions were thereafter filed by the appellants challenging the two schemes but were dismissed by the High Court.

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In the appeal to this Court it was contended on behalf of the appellants: (i) that the proposed schemes were bad as they were not in compliance with s. 68-C of the Act and the rules framed thereunder for they did not give necessary particulars which would enable the appellants to formulate their objections to the proposed schemes in respect of the four-fold purposes mentioned in s. 68-C *i.e.*, that a scheme should be for the purposes of providing an "efficient, adequate, economical and properly coordinated Road Transport Service" and that as the proposed schemes were themselves bad, the entire proceedings initiated by them must fall through; (ii) that the Special Secretary who heard the objections on behalf of the State Government was not validly authorised to do so as he had been appointed under the Rules of Business framed under Art. 166(3) of the Constitution while the appointment should have been under s. 68-D (2-A) of the Act; (iii) that the order approving the schemes passed on June 8, 1965 was invalid as it did not say that the schemes fulfilled the purposes mentioned in s. 68-C and an express finding to this effect was necessary to validate the schemes; (iv) that the hearing given by the authority to the objectors was not adequate and real as required under s. 68-D of the Act: the authority wrongly rejected the appellants application to summon documents from the Corporation to show that the Corporation did not have the equipment and finances to carry out the schemes, and that the Corporation's past record of running its services was worse

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than that of the private operators; and furthermore the authority had also wrongly refused to summons witnesses sought to be called to show that the schemes would not fulfil the four-fold purposes stated in s. 68-C. A

HELD : Dismissing the appeal :

(i) S. 68-C requires two things, namely, (1) the nature of the services proposed to be rendered and (2) the area or route proposed to be covered; it further requires that such other particulars respecting the schemes as the rules may prescribe should be given. The particulars given in the present proposed schemes were clearly in compliance with the provisions of s. 68-C and that was enough for validly originating the proceedings. [334B, G] B

(ii) The first part of s. 68-D(2-a), which is the substantive part, lays down that the person who is to hear the objections cannot be an officer below the rank of Secretary to the Government. The second part is procedural and states how the officer should be appointed, namely, by notification in the official gazette. In the present case as the person appointed was a Special Secretary, the substantive part of the provision had been complied with. As far as the second and procedural part was concerned, the appointment of the authority could be by notification as provided in the Section or by an order under the Rules of Business under Art. 166(3) of the Constitution. Accordingly, the appointment of the authority to hear objections in the present case could not be considered invalid. [335H; 336C-D] C D

(iii) There is no express provision in Section 68-C read with Section 68-D that the authority hearing objections must come to a finding that the scheme under examination provides an efficient, adequate, economical and properly coordinated road transport service. In the absence of such a provision, the very order of the State Government or the authority appointed must be held to mean either, where the scheme is approved or modified, that it subserves the purposes mentioned in s. 68-C or where it is rejected, that it does not. [337B, D-E] E

(iv) The authority had rightly held the documentary and oral evidence proposed to be called was irrelevant and the hearing of the objections was therefore both adequate and real.

Chapter (IV-A) of the Act was enacted for nationalisation of road transport services in accordance with the amended Article 19(6) of the Constitution. The nationalised road transport under the Chapter can only be run by a State Transport Undertaking defined by s. 68-A (b) of the Act which would always be under the control of the Central or State Government. In this context, it would be futile for any object to show that the undertaking backed by the Central or State Governments could not have the equipment or finances to carry out the schemes. Furthermore, as only a State Transport Undertaking can run a nationalised service, there was no necessity for considering the comparative merits of the undertaking and individual private operators. [341C-E, G] F G

If a party concerned wishes to produce any document or produce any witness, 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. This is not to say that if the authority wants any party before it to produce any document for satisfying itself whether the scheme is for the purpose mentioned in s. 68-C it cannot so ask; and if the party asked to produce

documents does not do so, the authority would be entitled to draw such inferences as it might consider justified from the non-production of documents. But apart from this, there is no power conferred on the authority under the Act or the Madhya Pradesh Rules to compel production of documentary evidence or to summon any witness. [339H—340C]

Gullapalli Nageswara Rao, v. *Andhra Pradesh Road Transport*. [1959] 1 S.C.R. 319, *Malik Ram* v. *State of Rajasthan*. [1962] 1 S.C.R. 978 and *Nehru Motor Transport Co-operative Society, Limited* v. *The State of Rajasthan*, [1964] 1 S.C.R. 220, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2201 and 2202 of 1966.

Appeals from the judgment and order dated September 15, 1966 of the Madhya Pradesh High Court in Misc. Petitions Nos. 351 and 311 of 1965 respectively.

M. N. Phadke, Naunit Lal, Y. S. Dharmadhikari and *M. N. Puranik*, for the appellants (in both the appeals).

A. P. Sen, Advocate-General for the State of Madhya Pradesh and *I. N. Shroff*, for the respondent No. 1 (in both the appeals).

S. V. Gupte, Solicitor-General, K. A. Chitale, Rameshwar Nath and *Mahinder Narain*, for respondents Nos. 5 and 6 (in C.A. No. 2201 of 1966) and respondents Nos. 4 and 5 (in C.A. No. 2202 of 1966.)

The Judgment of the Court was delivered by

Wanchoo, J. These are two appeals on certificates granted by the Madhya Pradesh High Court. The appeals are connected and will be dealt with together. The Madhya Pradesh State Road Transport Corporation (hereinafter referred to as the Corporation), constituted under the Road Transport Corporation Act, (No. 64 of 1950), came into existence in May 1962 to operate as a State Transport Undertaking under s. 68-A of the Motor Vehicles Act, No. 4 of 1939, (hereinafter referred to as the Act). The Corporation passed two resolutions in April and May 1964 by which it decided to take over certain routes under Chapter IV-A of the Act to the exclusion of the existing private operators on those routes. Two schemes, namely, Nos. 16 and 22 dated May 11, 1964, were published by the Corporation inviting objections within 30 days. The schemes appeared in the Government Gazette of May 22, 1964 and objections thereto were filed by private operators affected thereby within the period prescribed. Thereafter the authority empowered to hear objections under s. 68-D of the Act gave notices fixing a date for hearing. The hearing was to begin on September

4, 1964, but it was postponed a number of times. Finally, arguments were heard on May 20, 1965. The authority passed orders on June 8, 1965 modifying the schemes in certain particulars. On June 11, 1965, the modified schemes were published, but as there were mistakes in them, corrected schemes as modified were finally published on June 18, 1965.

Then followed writ petitions to the High Court in August 1965 by private operators who were dissatisfied with the order of the authority concerned. The High Court dismissed the writ petitions rejecting all the contentions raised by the petitioners before it. Thereafter the High Court gave certificates to appeal to this Court, and that is how the appeals have come before us.

It is unnecessary to set out all the points raised before the High Court, for learned counsel for the appellants have raised only some points before us out of those raised before the High Court. It is enough therefore to set out the points that have been raised before us and to indicate the decision of the High Court thereon. The first contention raised before us is that the proposed schemes published on May 22, 1964 were bad inasmuch as they were not in compliance with s. 68-C of the Act and the rules framed thereunder, for they did not give necessary particulars which would enable the appellants to formulate their objections to the proposed schemes in respect of the four-fold purposes mentioned in s. 68-C. The High Court rejected this contention holding that there was sufficient compliance with the provisions contained in s. 68-C and the rules framed thereunder and there was enough material in the proposed schemes to enable the appellants to file objections thereto. The second contention is that the Special Secretary who heard the objections on behalf of the State Government was not validly authorised to do so inasmuch as he had been appointed under the Rules of Business framed under Art. 166 (3) of the Constitution while appointment should have been under s. 68-D(2-a) of the Act, which was inserted therein by the Motor Vehicles (Madhya Pradesh Amendment) Act, No. 2 of 1963. The High Court rejected this contention holding that the provision in s. 68-D (2-a) was supplementary to the power which the State Government had under the Rules of Business and therefore it was open to the State Government to act under either of the provisions. The third contention is that the order approving the schemes passed on June 8, 1965 was invalid inasmuch as it did not say that the schemes fulfilled the purposes mentioned in s. 68-C. The High Court rejected this contention also holding that as soon as the authority approved the schemes, it must be held to have impliedly decided that the schemes fulfilled the purposes mentioned in s. 68-C. The last contention is that the hearing given by the authority was not adequate and real and therefore the approval given was invalid. The

A High Court rejected this contention also holding that in the circumstances of the case the hearing given was sufficient for the purpose. In the result the High Court dismissed the writ petitions after rejecting other points which were raised before the High Court but are not raised before us. We shall now proceed to deal with the four contentions raised before us in that order.

B The first contention relates to the invalidity of the proposed schemes published on May 22, 1964, on the ground that they are not in compliance with s. 68-C, and the argument is that if the proposed schemes which initiate the proceedings leading to final approval thereof are themselves bad, the entire proceedings must fall through. Now section 68-C lays down that where any State C Transport Undertaking is of opinion that it is necessary in the public interest that road transport services in general or any particular class of such services 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 has to prepare D a scheme. Further the State Transport Undertaking forms this opinion for the purposes of providing "an efficient, adequate, economical and properly co-ordinated road transport service". Section 68-C further provides that where the State Transport Undertaking is of this opinion for the purposes mentioned above it has to prepare a scheme and cause it to be published in the official E gazette and in such other manner as the State Government may direct. The publication is for the purpose of inviting objections to the proposed scheme by those affected thereby. Section 68-C further provides that the proposed scheme should give 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. It is not the case of the appellants F that the proposed schemes published on May 22, 1964 did not give particulars of the nature of the services proposed to be rendered, and the area or route proposed to be covered. Nor is it the case of the appellants that it did not give such other particulars respecting thereto as were prescribed by rules. The argument is that the proposed schemes must disclose data in support of the four purposes G which are the basis of what may be called nationalisation of road transport service, namely, the providing of an efficient, adequate, economical and properly co-ordinated road transport service. Now the two schemes with which we are concerned in these appeals have given detailed particulars of what the State Transport Undertaking considered was in compliance with s. 68-C and the rules framed H thereunder. But the argument is that more particulars should have been given to disclose how the schemes were for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, and in particular it is urged that the

timings on which services would be run should have been indicated in the schemes as that would have indicated whether the services to be provided by the Corporation were co-ordinated services. A

Now the section itself requires two things, namely, (i) the nature of the services proposed to be rendered, and (ii) the area or route proposed to be covered. Further the section provides that such other particulars respecting the scheme should be given as the rules prescribe, and that has been done. But the argument seems to be that even though the section and the rules have been complied with, certain other things should have been mentioned in order to enable the private operators to show that the schemes did not provide an efficient, adequate, economical and properly co-ordinated road transport service. We are of opinion that this argument must be rejected. The schemes have given sufficient details to enable the appellants to file their objections. The four purposes mentioned in s. 68-C are so all-embracing in their nature that it would always be possible for a private operator to put forward some small particular and say that this particular should also have been given in the proposed scheme and as it is not given it is not possible for him to make a proper objection with respect to the four purposes mentioned in the section. The result of accepting the argument on behalf of the appellants would be that no scheme would ever get through, for some small particular or other can always be put forward by some person or other as not included in the scheme and therefore the whole proceeding should be invalidated on account of defect in the proposed scheme originating the proceeding. We are of opinion that so long as a scheme gives the two things which the section itself prescribes and such other particulars which the rules prescribe, that is enough for the purpose of validly originating the proceeding, resulting in eventual nationalisation of the routes and services concerned. Thereafter it is open to the objectors to take such objections to the proposed scheme in the light of the four purposes already indicated and the proceedings being quasi judicial, the State Government or the authority concerned can consider the objections and finally approve or modify the scheme, or if necessary reject it altogether. The particulars given in the present proposed schemes published on May 22, 1964, are undoubtedly in compliance with the provision of s. 68-C as well as the rules framed thereunder, and that in our opinion was enough for validly originating the proceeding. We therefore reject this contention raised on behalf of the appellants. B C D E F G

The second contention is that the Special Secretary who heard the objections on behalf of the State Government was not validly authorised. Now s. 68-D (2) provides that "the State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives H

A of the State Transport Undertaking to be heard in the matter, if they so desire, approve or modify the scheme". The State Government obviously is not a natural person and therefore some natural person has to give the hearing on behalf of the State Government. Article 166 (3) of the Constitution gives power to the Governor to make rules for the more convenient transaction of the business of
B the Government of the State, and Rules of Business have been framed under this power for the performance of duties which have to be performed under the law by the State Government. It is not in dispute that the Special Secretary who gave the hearing in the present case was authorised under the Rules of Business. But what is urged is that in view of the introduction of s. 68-D (2-a)
C in the Act by the Madhya Pradesh Amendment it is no longer open to the State Government to act under the Rules of Business, and that the appointment should have been made under the new provision. That provision is in these terms :—

> "(2-a). The State Government may, by notification, authorise any officer not below the rank of a Secretary
D to Government for the purpose of hearing objections under sub-section (2)."

Further as under s. 2 (25) of the Madhya Pradesh General Clauses Act, (No. 3 of 1958), the word "notification" as used in Madhya Pradesh Acts means a notification published in the official gazette, the officer who heard the objections should have been appointed
E by means of a notification in the State Gazette under this new provision.

Now this new provision may be divided into two parts. The first part may be called substantive and lays down that the person who is to hear objections on behalf of the State Government cannot be an officer below the rank of a Secretary to Government. The
F second part is procedural and states how the officer may be appointed, namely, by notification in the official gazette. So far as the substantive part of the new provision is concerned, it certainly limits the power of the State Government when it proceed to appoint some one to hear objections and such person in view of the limitation contained in the new provision cannot be an
G officer below the rank of a Secretary to Government. This means, that for example, a Deputy Secretary or an Under Secretary to Government cannot be appointed to hear objections. In the present case the person appointed is a Special Secretary to Government *i.e.*, an officer not below the rank of a Secretary to Government. Therefore the substantive part of the new provision is
H complied with by the appointment made in this behalf, and that in our opinion is mandatory and limits the power of the State Government as to the rank of the person to be appointed to hear objections on its behalf. But the second part is merely proce-

dural, namely, how the appointment is to be made. The new provision indicates that it may be made by a notification in the official gazette. But that does not mean that if the Constitution provides for any other method of making the appointment that method is made nugatory. Such a procedural provision may be mandatory if action is taken under the new provision; but there are no words in the new provision which exclude the procedure provided under the Rules of Business under Art. 166(3) of the Constitution. Therefore we are of opinion that where the State Government proceeds under the new provision it has to make a notification in the official gazette appointing a person not below the rank of a Secretary to Government to hear objections. But it may act under the Rules of Business so long as under those rules it appoints a person not below the rank of a Secretary to Government for the purpose of hearing objections. The limitation under the new provision is only this that the person appointed cannot be below the rank of a Secretary. But so far as the procedural part is concerned, the appointment may be by notification as provided under the new provision or by an order under the Rules of Business. The objection therefore that the authority in this case was not appointed under the new provision but was appointed under the Rules of Business and therefore the appointment was invalid, must fail.

The third contention raised on behalf of the appellants is that the orders approving and modifying the schemes in this case do not show that the authority had applied its mind to the question whether the schemes were such as to subserve the purposes of providing an efficient, adequate economical and properly coordinated transport service. Reliance in this connection is placed on certain American cases which hold that the lack of an express finding necessary under a statute to validate an order of an administrative agency cannot be supplied by implication. When therefore such an administrative agency is required as a condition precedent to an order to make a finding of facts the validity of the order must rest upon the needed finding. If it is lacking the order is ineffective and the lack of express finding cannot be supplied by implication. It is unnecessary for us to refer to the American cases in detail; it is enough to say that the principles enunciated above may be unexceptionable where the existence of a finding is necessary for taking action, but that depends upon the words of the statute and therefore we must now turn to the words of s. 68-C and s. 68-D. We have already indicated that the State Transport Undertaking publishes a scheme when it has arrived at a certain opinion. After the scheme is published under s. 68-C any person affected by it can object within 30 days under s. 68-D.(1). Thereafter the State Government considers the objections and gives an opportunity to the objector to be heard and

A also to the State Transport Undertaking. Thereafter the State Government or the authority authorised by it either approves or modifies the scheme or even rejects it. There is no express provision in these two sections 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 as envisaged B in the American cases is necessary under s. 68-C read with s. 68-D that the scheme provides an efficient, adequate, economical and properly co-ordinated road transport service. Besides we are of opinion that the whole object of hearing objections under s. 68-D is to consider whether the scheme provides an efficient, adequate, economical and properly co-ordinated road transport C service. After hearing objections the State Government, or the officer authorised by it has either to approve or modify, or if necessary, to reject the scheme. Where the scheme is approved or modified it necessarily follows in our opinion that it has been found to provide an efficient, adequate, economical and properly co-ordinated transport service; if it is not of that type, the State Government or the authority appointed to hear objections would D reject it. In the absence of a provision requiring an express finding in these two sections it seems to us 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 s. 68-C, or, where it is rejected, that it does not subserve the purposes. E Section 68-D (2) does not require in our opinion any express finding, and even if there is none in the present case, it would not invalidate the orders passed by the authority hearing the objections. The argument on behalf of the appellants under this head is also rejected.

F The last contention is that an adequate and real hearing was not given to the appellants as required by s. 68-D of the Act. Reliance in this behalf is placed on a number of decisions of this Court. Before however we consider the legal position, let us see what exactly happened in this connection. It appears that an application was made by the appellants requesting the authority to summon a very large number of documents from the Corpora- G tion in order to prove *inter alia* that the present equipment and finances of the Corporation showed that it was not in a position to run the services and that on a comparison of the record of the Corporation with that of the various private operators it would appear that it was not in the interest of the public that the routes in question should be nationalised. It appears that some of the H documents were not produced by the Corporation, and in particular documents, which would have shown the record of the Corporation with respect to its running various routes in the past, were not produced and it was contended that those documents were

irrelevant. Besides this, the appellants wanted to produce a large number of witnesses in support of their contention that the schemes were not efficient, adequate, economical and properly co-ordinated. So far as the documents were concerned, the authority said in its order dated February 17, 1965 that the matter would be dealt with at the time of argument. As for the witnesses, the authority refused to summon them on the ground that their evidence would be irrelevant and in any case oral testimony was not necessary to prove what the appellants desired to prove. It appears therefore that no oral evidence was taken as it was considered irrelevant by the authority and some of the documents which the appellants wanted the Corporation to produce were not ordered to be produced. It appears from the final order of the authority that they were also considered irrelevant as the authority held that no question arose of comparing the merits of the Corporation with the private operators.

Let us now turn to the legal position in this matter as established by the decisions of this Court. The first case to which reference may be made is *Gullapalli Nageswara Rao* v. *Andhra Pradesh State Road Transport Corporation*(1) in which this Court by majority held that the hearing under s. 68-D(2) was quasi judicial in nature and the State Government acted as a quasi judicial authority under that section.

The matter was further considered by this Court in *Malik Ram* v. *State of Rajasthan*(2) and it was held that a hearing before a quasi judicial authority did not merely mean an argument, and that in proper cases it might include taking of evidence both oral and documentary. It was also held that in the circumstances of the provision contained in s. 68-D (2) and the purpose of the hearing thereunder, taking of evidence, whether oral or documentary, that might be produced by either party, was necessary, before the State Government could arrive at a just conclusion with respect to the objections to the draft scheme. But it is clear that *Malik Ram's* case(2) only decided that if any party desired to produce evidence, whether documentary or oral, the authority should take that evidence, subject to its right to consider whether the evidence was relevant or not and to reject such evidence as it considered irrelevant. It was also pointed out in that case that the authority would have full power to control the proceedings and a party would not be entitled to prolong them by producing irrelevant or unnecessary evidence.

The matter was again considered by this Court in *Nehru Motor Transport Co-operative Society Limited* v. *The State of Rajasthan*(3). In that case it was pointed out that the Rajasthan Rules did not provide for compelling the attendance of witnesses

(1) [1959] Supp. 1 S.C.R. 319. (2) [1962] 1 S.C.R. 978.
(3) [1964] 1 S.C.R. 220.

A and that it was enough if the authority took evidence of witnesses whom the objector produced before it. It was also remarked that the authority might help the objector to secure their attendance by issue of summonses, though in the absence of any provision in the law, the witnesses might or might not appear in answer thereto. These observations were made in the context of an
B argument that there could be no effective hearing without a provision for coercive process compelling attendance of witnesses and production of documents, and that argument was turned down.

It is urged on behalf of the Corporation that there is no provision in the Act and the Rules framed thereunder in Madhya
C Pradesh applying the provisions of the Code of Civil Procedure with respect to summoning of witnesses and discovery or inspection of documents, to proceedings before the authority hearing objections under s. 68-D. 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
D 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. But it is argued on behalf of the appellants that this was not the reason given by the authority for not summoning witnesses or not ordering production of documents and we should judge whether the hearing was adequate on the
E basis of the reasons given by the authority in the present case. Further, reliance in this connection is placed on the observation of this Court in *Nehru Motor Transport Co-operative Society's* case(1) that the authority might help the objectors by issuing summonses. This observation in our opinion does not mean, in the absence of any provision in the Act or the rules, that the authority
F was bound to summon witnesses even though the persons summoned were not bound to obey the summonses as there was no provision in law for issue of such summonses. The use of the words "by issue of summonses" in the circumstances of that case was by oversight, for issue of summonses presumes that there is authority to issue them and the person to whom they are issued
G is bound to obey. But in the absence of such power all that the authority can do is to issue letters merely requesting persons to appear and it is open to those persons to appear or not. In this situation if an authority decides not to issue such letters it cannot be said that there was no effective hearing. In short, what the cases of this Court to which we have referred show is only this: If the party concerned wishes to produce any document or
H produce any witness, the authority may take the documentary evidence into consideration or take the evidence of the witness, if it

(1) [1964] 1 S.C.R. 220.

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. This is of course not to say that if the authority wants any party before it to produce any document for satisfying itself whether the scheme is for the purposes mentioned in s. 68-C it cannot so ask; and if the party asked to produce documents does not do so, the authority would be entitled to draw such inferences as it might consider justified from the non-production of documents. But apart from this, there is no power conferred on the authority under the Act or the Madhya Pradesh Rules to compel production of documentary evidence or to summon any witness.

But apart from this, even if we examine the reasons given by the authority for not compelling the production of documents or for not summoning witnesses we see no reason to disagree with the view taken by the authority in this case. So far as the witnesses are concerned, the authority was of opinion that their oral evidence would be irrelevant and it said so after hearing arguments on the question. Nothing has been shown to us which would induce us to hold otherwise. As to documentary evidence, it was asked for to show, firstly, that the Corporation did not have equipment and finances to carry out the schemes and, secondly, that the Corporation's past record of running its services was worse than that of the private operators. We think that both these questions really do not arise in the context of a scheme of nationalisation envisaged in Chapter IV-A of the Act. It may be mentioned that this Chapter was introduced in the Act in 1956 after Art. 19(6) of the Constitution had been amended by the Constitution (First Amendment) Act, 1951. By that amendment the State was given power relating to the carrying on by it or by a Corporation owned or controlled by it, of any trade, business, industry, or service, whether to the exclusion, complete or partial, of citizens or otherwise. Chapter IV-A envisages what we have called nationalisation of transport service, and this has to be undertaken by a State Transport Undertaking which under s. 68-A (b) may be

(i) the Central Government or a State Government; or

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950; or

(iii) the Delhi Road Transport Authority established under section 3 of the Delhi Road Transport Authority Act, 1950; or

(iv) any municipality or any corporation or company owned or controlled by the State Government.

It will thus be clear that nationalised road transport under Chapter IV-A would be run either by the Central Government, or a State

A Government or any of the other three authorities mentioned there which are all under the control of the State Government or the Central Government. In these circumstances, with the resources of the Government behind those authorities it would in our opinion be futile for any objector to say that the Central Government, the State Government or the authorities backed by it could not have
B equipment and finances to carry out the schemes. It seems to us that the very fact that a scheme is proposed suggests that the Central Government or a State Government or the authorities would carry it out. So there is no question of asking for production of documents relating to the equipment and financial position of a State Transport Undertaking as defined in s. 68-A (b).

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

Apart from this general consideration, we are further of opinion that ordinarily no question of comparative merits based on past record between a State Transport Undertaking and individual operators can arise. Section 68-C provides that the State
F Transport Undertaking has to run an efficient, adequate, economical and properly co-ordinated road transport service, and for doing that it does not take up just one route and put one transport vehicle on it. It takes up a large number of routes and puts a large number of transport vehicles on them in order to run an integrated service whether for passengers or for goods, or for both. In these circumstances it is difficult to see how one can
G compare such an undertaking with individual private operators who are running one transport vehicle or so on individual routes. Secondly, it would be unusual for the State Transport Undertaking to be running transport vehicles on individual routes before it produces a scheme for nationalisation of the type provided for in Chapter IV-A, though it may be conceded that this may not be
H quite impossible, for some State Transport Undertaking might have entered into competition with private operators and might have obtained permits under Chap. V: (see, for instance, *Parbhani Transport Co-operative Society Ltd.* v. *The Regional Trans-*

port Authority(1). Even so, when the State Transport Undertaking takes action under Chap. IV-A of the Act there can in our opinion be no question of comparison between a State Transport Undertaking running an integrated service and individual operators running one transport vehicle or more on individual routes. We are therefore of opinion that the authority cannot be said to have gone wrong in not asking for past records of the Corporation in the present case for purposes of such comparison. It is true that s. 68-C requires that the scheme should be in the public interest. But unless the scheme is shown not to be efficient, adequate, economical and properly co-ordinated, it will in our opinion generally follow that it is in the public interest. We do not think therefore that the comparative merits of the Corporation as against individual operators requires to be judged under Chapter IV-A in the public interest. In the circumstances we are of opinion that the hearing in this case was both adequate and real.

A B C

The appeals therefore fail and are hereby dismissed with costs one hearing fee.

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R.K.P.S. *Appeals dismissed.*