

RASID JAVED & ORS. ETC. ETC.

v.

STATE OF U.P. & ANR. ETC. ETC.

(Civil Appeal No. 5951 of 2002)

JULY 5, 2010

[R.V. RAVEENDRAN AND R.M. LODHA, JJ.]

*Motor Vehicle Act, 1988:*

s. 102(1) – Cancellation or modification of scheme – Inter-state route – Saharanpur-Delhi route and other routes – 1993 Scheme whereby the entire Saharanpur-Delhi route became fully nationalized for exclusive operation by State Transport Undertakings – Proposal to modify the 1993 Scheme by State Government – Issuance of Notification dated 16.04.1999 u/s. 102(1) – Objections invited and heard by Hearing Authority – Hearing Authority approving the proposed modification that private operators be allowed to ply their vehicles – However, State Government issued Notification dated 15.04.2000 u/s. 102(1) r/w s. 21 of the 1897 Act, to rescind Notification dated 16.04.1999 – Validity of – Held: Notification dated 15.04.2000 is valid and does not suffer from any legal flaw – There was no impediment for State Government in exercising its power to rescind the Notification dated 16.04.1999 since the order of Hearing Authority cannot be treated as order of State Government u/s. 102(1) – General Clauses Act, 1897 – s. 21.

s.102 – Cancellation or modification of scheme – Extent of authority to Hearing Authority – Held: Delegatee must confine his activity within four corners of powers vested in him and if he acts beyond that, his action cannot have any legal sanction unless ratified by delegator – Distinction must be maintained where hearing authority is empowered by State Government to hear objections and approve proposed

- A *modification or modify the approved scheme and a case where it is authorized to hear objections relating to proposed modification to the approved scheme – On facts, Hearing Authority not authorized to approve the proposed modification or modify the approved scheme – Order of Hearing Authority being in excess of authority given to him, cannot be construed as final order of approval u/s. 102 (1).*
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- Permit granted to appellant relating to Saharanpur-Delhi route – Status of appellant's permit – Held: Said permits related to routes which overlapped Delhi-Saharanpur notified route – By the 1959 Scheme and 1993 Scheme, entire Saharanpur-Delhi route became fully nationalized for exclusive operation by State Transport Undertakings and no private operator could operate on the said route – Regional Transport Authority cannot either renew permit of such private operators or give any fresh permit in respect of route which overlaps notified route – Thus, appellants' permits stood cancelled.*
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- Motor Vehicles Act, 1939: s. 68 C and 68D – Publication of a scheme of road transport service by State Transport Undertakings – Effect of – Held: No person other than STU may operate on the notified area or notified route except as provided in the scheme itself.*
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- General Clauses Act, 1897: s. 21 – Invocation of – Held: Authority which has power to issue notification has undoubted power to rescind or modify the notification in the like manner – On facts, there was no impediment for State Government in exercising its power u/s. 102 of the 1988 Act r/w s. 21 to rescind the Notification dated 16.04.1999 – Order of Hearing Authority was not an order of approval u/s.102(1) of the 1988 Act – Power of State Government to rescind Notification dated 16.04.1999 did not get exhausted – Motor Vehicles Act, 1988 – s. 102(1).*
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- H The inter-State route of Saharanpur-Delhi became a**

notified route under the 1959 Scheme. It was provided in the Scheme that the persons other than the State Transport Undertaking (STU) would not be permitted in plying any road transport service on the said route or portion thereof except as stated therein. The private operators challenged the Scheme. The High Court directed the State Government not to enforce the 1959 Scheme against the said operators. This Court in *\*Jeewan Nath Wahal's* case upheld the order of High Court. Thereafter, pursuant to the decision in *\*\*Shri Chand's* case, the UPSRTC published a draft scheme on February 13, 1986 for 39 routes: Saharanpur-Delhi and others. While the said draft scheme was pending, the Motor Vehicles Act, 1939 was repealed and the Motor Vehicles Act, 1988 came into force. Subsequently, some operators were granted permits for Saharanpur to Ghaziabad via Shahdara routes. The said grant of permits was challenged in *\*\*\*Ram Krishna Verma's* case and it was held that the nationalization of Saharanpur - Delhi route by the 1959 Scheme is operative to the total exclusion of every operator except UPSRTC and 50 operators whose objections were upheld by the High Court. The permits granted to the private operators were quashed. Thereafter, the competent authority approved the 1986 draft Scheme and directed the same to be published. On May 29, 1993, the approved scheme-1993 Scheme was published in the Gazette.

In the Notification published on April 16, 1999 under section 102(1) of the Motor Vehicles Act, 1988 the State Government proposed to modify the scheme notified on May 29, 1993 by providing that permit holders shall be allowed to operate their buses along with the Uttar Pradesh State Road Transport Corporation (UPSRTC) on the said route provided they got their permits counter-signed by State of Haryana for plying their buses in that State. Objections were invited. The Hearing Authority-Z,

- A Special Secretary and Additional Legal Remembrancer heard the affected parties. It passed the Order dated October 11, 1999 that proposed modification be approved-private operators be allowed to ply their vehicle. However, the State Government by a Notification
- B dated April 15, 2000 in exercise of the powers under section 102 of 1988 Act read with section 21 of General Clauses Act, 1897 rescinded the Notification dated April 16, 1999. The private operators filed writ petition questioning the Notification dated April 15, 2000 issued
- C by the State of U.P. rescinding the earlier Notification dated April 16, 1999. The writ petitions were dismissed. Hence these appeals.

Dismissing the appeals, the Court

- D HELD: 1. The Notification dated April 15, 2000 is valid and does not suffer from any legal flaw. [Para 44] [568-C-D]

2. The permit granted to the appellants related to routes which overlapped the Delhi-Saharanpur notified
- E route. [Para 28] [559-B]

The effect of publication of a scheme under Section 68D:

3. Chapter IV-A of the Motor Vehicles Act, 1939 makes special provisions relating to the State Transport
- F Undertakings (STUs). Section 68-C provides for preparation and publication of scheme of road transport service by an STU. The objections to the draft scheme published under section 68-C may be filed under section 68-D. Sub-section (2) of section 68-D provides that the
- G State Government after considering the objections and hearing the objectors and the STU may approve or modify the scheme. Sub-section (3) of section 68-D provides that the scheme as approved or modified under sub-section (2) shall be published in the Official Gazette
- H by the State Government and the same shall then

become final and called 'approved scheme'. Once the scheme has been published under sub-section (3) of section 68-D, section 68-FF imposes restriction on grant of permits in respect of notified area or notified route. From these provisions, it is apparent that once a scheme is published under section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons or otherwise, no person other than the STU may operate on the notified area or notified route except as provided in the scheme itself. [Para 30] [559-F-H; 500-A-B]

*Adarsh Travels Bus Service and Anr. v. State of U.P. and Ors.* (1985) 4 SCC 557; *Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal* (1974) 2 SCC 750; *H.C. Narayanappa and Ors. v. State of Mysore and Ors.* (1960) 3 SCR 742; *Ram Krishna Verma and Ors. v. State of U.P. and Ors.* (1992) 2 SCC 620, relied on.

The status of appellants' permits

4.1. The Saharanpur-Delhi route became a notified route under the 1959 Scheme. The Saharanpur-Delhi route on its nationalization stood frozen under the 1959 Scheme against everyone except 50 operators. The draft scheme published on February 13, 1986 was confined to those 50 operators alone and not to other private operators. By the 1993 Scheme, Saharanpur-Delhi route stood frozen against 50 operators as well. The effect of these two schemes (1959 Scheme and 1993 Scheme), thus, has been that the entire Saharanpur-Delhi route became fully nationalized for the exclusive operation by the STU i.e., UPSRTC and no private operator could operate on the said route. Thus, the Regional Transport Authority cannot either renew the permit of such private operators or give any fresh permit in respect of a route which overlaps the notified route, the appellants' permits stood cancelled and in any case these permits lost their

A legal significance and sanctity. [Para 33] [561-A-G; 562-A]

4.2. The whole exercise undertaken by the State Government under sub-section (1) of section 102 of 1988 Act proposing to modify the 1993 Scheme relating to Saharanpur-Delhi notified route was misconceived as the permits specified in that Notification did not exist in law. The finding of the High Court that the modification proposal dated April 16, 1999 proceeded on the misconception that the appellants were holding permits on the concerned route cannot be said to be unjustified. Moreover, in the absence of any proposal to modify the 1959 Scheme, the modification proposed in the 1993 Scheme vide Notification dated April 16, 1999 was meaningless. The submission that the 1959 Scheme merged in the 1993 Scheme has no merit. The 1959 Scheme was approved under 1939 Act and even after repeal of 1939 Act by 1988 Act, the State Government was competent to prepare fresh scheme by following the procedure contemplated in sections 99 and 100 or modify that scheme under section 102 of the 1988 Act but the proposed modification published in the Notification on April 16, 1999 does not seek to modify the 1959 scheme at all. Since the Notification dated April 16, 1999 is, *ex facie*, misconceived and meaningless as regards Saharanpur-Delhi route, the proceedings taken pursuant thereto by the Hearing Authority and his decision dated October 11, 1999 also have no legal effect. [Para 33] [562-A-F]

\**Jeewan Nath Wahal v. State Transport Appellate Tribunal* (C.A. No.1616 of 1968) decided by S.C. on 03.04.1968; \*\**Shri Chand v. Govt. of U.P. Lucknow and Ors. Citizen Council for Public Service v. Govt. of U.P. and Anr.* (1985) 4 SCC169; \*\*\**Ram Krishna Verma and Ors. v. State of U.P. and Ors.* (1992) 2 SCC 620; *Nisar Ahmad and Ors. v. State of U.P. and Ors.* 1994 Suppl. (3) SCC 460; *Gajraj*

*Singh and Ors. v. State of U.P. and Ors.* (2001) 5 SCC 762, A  
referred to.

**Section 102 of the 1988 Act and the extent of authority  
to the Hearing Authority**

5.1. A close look at section 102 of the Motor Vehicles B  
Act, 1988 would make it manifestly clear that modification  
of the approved scheme may be done by the State  
Government in the public interest after giving opportunity  
of being heard in respect of proposed modification to the C  
STU and the persons likely to be affected by the  
proposed modification. The modification proposed is  
required to be published in the Official Gazette and in one  
of the newspapers in the regional languages circulating  
in the concerned area under section 102(2). It was  
submitted that in the proposed modification published in D  
the Official Gazette on April 16, 1999, the authority to hear  
the objections/representations was given to Z-Special  
Secretary and Additional Legal Remembrancer and the  
said Hearing Authority after hearing the objections of the  
affected persons and the UPSRTC approved the E  
proposed modification and rejected the objections  
received in this regard and the approval by the Hearing  
Authority of the proposed modification by his order dated  
October 11, 1999 is the approval of the State Government.  
It cannot be said that the order dated October 11, 1999 F  
of the Hearing Authority approving the proposed  
modification published in the Official Gazette dated April  
16, 1999 is an order of the State Government modifying  
the approved scheme of 1993 under section 102(1) of the  
1988 Act because Z was given authority to hear the  
representations received by the State Government to the G  
proposed modification but no authority was given to him  
to approve the proposed modification or modify the  
approved scheme. The Notification dated April 16, 1999  
does not empower the Hearing Authority to approve or  
modify the scheme; he has only been empowered to hear H

- A the objections. That a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. But based on such principle the limited authority of hearing given to the Hearing Authority by the State Government cannot be treated as enlarged in its scope. A delegatee must confine his activity within four corners of the powers in vested in him and if he has acted beyond that, his action cannot have any legal sanction unless ratified by the delegator. [Para 35] [563-H; 564-A-H; 565-A]
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*Gullapalli Nageswara Rao and Ors. v. Andhra Pradesh State Road Transport Corporation and Anr.* AIR 1959 SC 308, referred to.

- D 5.2. A distinction must be maintained where the hearing authority is empowered by the State Government to hear objections and approve the proposed modification or modify the approved scheme and a case where the hearing authority is authorized to hear the objections/representations relating to the proposed modification to the approved scheme. In the latter case, the authority delegated to the Hearing Authority is limited and he is not authorized to approve the proposed modification or modify the approved scheme. The instant case falls in the latter category and accordingly the order of the Hearing Authority dated October 11, 1999 is in excess of the authority given to him and cannot be construed as a final order of approval under section 102 (1) of the 1988 Act. Whether such limited authority of hearing to the Hearing Authority makes any legal sense is an aspect for consideration by the State Government. Suffice, however, to say that it was not open for the Hearing Authority to approve the proposed modification or modify the proposed scheme. [Para 36] [565-B-E]
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Invocation of Section 21 of General Clauses Act : whether valid

6.1. Having held that the order of the Hearing Authority dated October 11, 1999 is in excess of the authority given to him and that the said order has no legal effect, there was no impediment for the State Government in exercising its power under section 102 of the 1988 Act read with section 21 of the General Clauses Act, 1897 to rescind the Notification dated April 16, 1999. [Para 37] [565-F-G]

*Kamla Prasad Khetan and Anr. v. Union of India* AIR 1957 SC 676, referred to.

6.2. Under section 21 of the General Clauses Act, an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in the like manner. In the instant case, there is no doubt that the Notification dated April 15, 2000 has been made in the same manner as the earlier Notification dated April 16, 1999. Since the order of the Hearing Authority dated October 11, 1999 is not an order of approval under section 102(1) of the 1988 Act and cannot be treated as such, the power of the State Government to rescind the Notification dated April 16, 1999 did not get exhausted. The submission that the draft Notification dated April 16, 1999 merged in the order dated October 11, 1999 is fallacious and devoid of any substance. [Para 40] [566-E-G]

6.3. It cannot be said that even otherwise the material on record demonstrated that the order of the modification dated October 11, 1999 was approved by the Principal Secretary of the Department and, thus, there was an approval by the State Government. Except the decision of the Hearing Authority dated October 11, 1999 there is nothing on record to conclude that the State Government had approved the proposed modification as

A notified on April 16, 1999. Even if it is assumed that an executive action not expressed to be made in the name of the Governor as contemplated under Article 166(1) of the Constitution may not vitiate such action as nullity. [Para 41] [566-H; 567-A-C]

B 6.4. The non-compliance with the provisions of either of clauses of Article 166 would lead to the result that order in question would lose the protection which it would otherwise enjoy had the proper mode for expression and authentication been adopted, but then there has to be  
C some formal order by the State Government under section 102(1) of the 1988 Act. Moreover, there is nothing on record even to indicate that the order dated October 11, 1999 of the Hearing Authority was communicated to the appellants or any of the affected parties. The order  
D dated October 11, 1999 is not an order as contemplated under Section 102 (1) of the 1988 Act by the State Government approving the modification proposed in the Notification dated April 16, 1999. [Para 41] [567-C-E]

E *Dattatraya Moreshwar Pangarkar v. The State of Bombay and Ors*, (1952) 1 SCR 612, relied on.

6.5. The order of the Hearing Authority dated October 11, 1999 cannot be treated as an order of the State Government under section 102(1) of the 1988 Act. [Para  
F 42] [567-F-G]

6.6. The submission that the opportunity of hearing was required to be given to the appellants before issuance of Notification dated April 15, 2000 has no merit since this submission is founded on the premise that the  
G order of the Hearing Authority dated October 11, 1999 is the order of the State Government. What section 21 of the General Clauses Act requires is that the authority empowered to issue notification must exercise its power to rescind such notification in the like manner. The  
H Notification dated April 15, 2000 has been made in the

same manner as the earlier Notification dated April 16, 1999. [Para 43] [567-G-H; 568-A-B]

*Samsher Singh v. State of Punjab and Anr.* (1974) 2 SCC 831; *Capital Multi-purpose Co-operative Society Bhopal and Ors. v. State of M.P. and Ors.* (1967) 3 SCR 329; *A. Sanjeevi Naidu, Etc. v. State of Madras and Anr.* (1970) 1 SCC 443; *M/s. Nehru Motor Transport Co-operative Society Ltd. and Ors. v. State of Rajasthan and Ors.* AIR 1963 SC 1098; *Afsar Jahan Begum (Smt) and Ors. v. State Of M.P. and Ors.* (1996) 8 SCC 38; *C.P.C. Motor Service, Mysore v. State of Mysore and Anr.* AIR 1966 SC 1661; *Karnataka State Road Transport Corporation v. Ashrafulla Khan and Ors.* (2002) 2 SCC 560, referred to.

Case Law Reference:

|                  |              |                             |   |
|------------------|--------------|-----------------------------|---|
| (1985) 4 SCC169  | Referred to. | Para 11,12, 33,             | D |
| (1992) 2 SCC 620 | Referred to. | Para 14, 15, 16, 23, 32, 33 |   |
| (1974) 2 SCC 831 | Referred to. | Para 21                     | E |
| (1967) 3 SCR 329 | Referred to. | Para 21                     |   |
| (1970) 1 SCC 443 | Referred to. | Para 21                     |   |
| AIR 1959 SC 308  | Referred to. | Para 21, 35                 | F |
| AIR 1963 SC 1098 | Referred to. | Para 21                     |   |
| (1996) 8 SCC 38  | Referred to. | Para 26                     |   |
| AIR 1966 SC 1661 | Referred to. | Para 26                     |   |
| (2002) 2 SCC 560 | Referred to. | Para 26                     | G |
| (1985) 4 SCC 557 | Relied on.   | Para 30                     |   |
| (1974) 2 SCC 750 | Relied on.   | Para 31                     |   |
| (1960) 3 SCR 742 | Relied on.   | Para 32                     | H |

- A     **1994 Suppl.(3)**  
           **SCC 460**                      Referred to.            **Para 33**  
           **(2001) 5 SCC 762**       Referred to.            **Para 33**  
           **AIR 1957 SC 676**       Referred to.            **Para 39**  
 B     **(1952) 1 SCR 612**       Relied on.              **Para 41**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5951 of 2002.

- C     From the Judgment & Order dated 23.4.2002 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 24070 of 2000.

WITH

- D     C.A. Nos. 4894, 4895 of 2010.

Dinesh Dwivedi, Nagendra Rai, P.N. Gupta for the Appellants.

- E     Ratnakar Dash, Shail Kr. Dwivedi, Addl. A.G., Raj Kumar Gupta, Rajeev Kr. Dubey, Kamendra Mishra, Vandana Mishra, Pramod Swarup, Rani Chhabra, Garima Prashad, Neha Goyal for the Respondents.

The Judgment of the Court was delivered by

- F     **R.M. LODHA, J.** 1. Delay condoned and leave granted in SLP(C) No.820 of 2003. Leave also granted in SLP (C) No. 21707 of 2002. The applicants in the I.As. for impleadment are allowed to intervene.

### Introduction

- G     2. Five writ petitions by various operators came to be filed before High Court of Judicature at Allahabad questioning the Notification dated April 15, 2000 issued by the State of U.P. rescinding the earlier Notification dated April 16, 1999 and for

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consequential reliefs. The Division Bench of Allahabad High Court heard these writ petitions together and by a common judgment dated April 23, 2002 dismissed all the writ petitions. It is from this common judgment that these three appeals by special leave arise. A

### Facts

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3. The brief facts in relation to these appeals may be set out first.

#### A. Appeal by Rasid Javed and others

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4. The appellants in this appeal claim that they have been operators on Saharanpur-Karnal route (inter-State route) via Jandhera – Rampur – Gangoh – New Yamuna Bridge. In the Notification published on April 16, 1999 under Section 102(1) of the Motor Vehicles Act, 1988 (for short, 'the 1988 Act'), the State Government proposed to modify the scheme notified on May 29, 1993 by providing that permit holders bearing Nos. 168/94, 169/94, 170/94, 171/94, 172/94, 173/94, 222/94, 233/94, 23/95, 24/95, 25/95, 739/89, 242/94, 764/90, 787/90, 772/90, 800/90 and 784/90 shall be allowed to operate their buses along with the Uttar Pradesh State Road Transport Corporation (UPSRTC) on Saharanpur-Karnal route (via Jandhera-Rampur-Gangoh-New Yamuna Bridge) provided that they get their permits counter-signed by State of Haryana for plying their buses in that State. By the said Notification, objections were invited from the UPSRTC and the persons likely to be affected by the proposed modification and Shri Zamirruddin, Special Secretary and Additional Legal Remembrancer, Uttar Pradesh was appointed Hearing Authority to hear and decide the objections that may be received. Pursuant to the said Notification, objections were received and the Hearing Authority after hearing the affected parties held in its Order dated October 11, 1999 that proposed modification be approved, i.e. private operators be allowed to ply their vehicles. According to D E F G

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- A the appellants, they are covered by the permits mentioned at Sl. No. 1 [column 4 - (c)(iii)] of the Schedule to the Notification dated April 16, 1999.

**B. Appeal by Masood Ahmad and others**

- B 5. The appellants in this appeal claim to be permit holders in respect of Saharanpur-Loni route via Shamli-Baghpat-Marginal Bandh Road – ISBT Delhi. According to them, they are covered by Sl. No.1 [column 4 - (c)(i)] of the Schedule to the Notification dated April 16, 1999. By the said Notification,
- C the approved scheme dated May 29, 1993 was sought to be modified and it was proposed to allow these operators to operate their buses along with the UPSRTC on Saharanpur-Loni via Shamli-Baraut-Baghpat-Marginal Bandh Road – ISBT Delhi route.

D **C. Appeal by Raghunandan Goyal and Others**

6. The appellants claim to have been granted inter-State permits by the State Transport Authority (STA), Uttar Pradesh for an inter-State route known as Meerut-Chandigarh via Baraut-Shamli-Gangoh-Saharanpur-Sarsawa-Yamuna Nagar-Ambala. Their case is that in the draft modification published in the Notification dated April 16, 1999, their permits are mentioned at Sl. No. 1 [column 4 - (c)(ii)] of the Schedule thereof. By the said modification, it was proposed to allow these operators to
- E operate their buses along with the UPSRTC on Meerut-Chandigarh via Baraut-Shamli-Gangoh-Saharanpur-Sarsawa-Yamuna Nagar-Ambala route provided that the permit holders get their permits counter-signed by the State Government of Haryana for plying their buses in that State.

G **Saharanpur-Delhi route (the 1959 Scheme) and previous litigation**

- H 7. On February 26, 1959, a draft scheme was published under Section 68-C of the Motor Vehicles Act, 1939 ('the 1939

Act' for short) in respect of the inter-State route viz; Saharanpur – Delhi proposing to authorize the State Transport Undertaking (STU) of Uttar Pradesh to operate stage carriages on the said route to the exclusion of all other operators. A

8. On September 29, 1959 the State Government approved the said draft scheme and published it under sub-section (3) of Section 68-D of 1939 Act (hereinafter referred to as 'the 1959 Scheme'). The 1959 Scheme provided 50 (25 each way) State Road Transport Services or more as may appear necessary from time to time on that route or portion thereof from November 1, 1959 or thereafter. It was provided in the approved scheme that the persons other than the STU will not be permitted in plying any road transport service on the said route or portion thereof except as mentioned therein. B C

9. A group of writ petitions, one by 32 operators and the other by 18 operators was filed before the High Court of Allahabad questioning the validity of the 1959 Scheme. The High Court vide its judgment dated October 30, 1961 directed the State Government not to enforce the 1959 Scheme against 32 operators who had filed the first batch of writ petitions and it was directed that the State Government should hold a fresh enquiry into the question whether the scheme should be approved or not. Similar judgment was passed in the other batch of writ petitions relating to 18 operators on February 7, 1962. D E

10. The aforesaid judgments of Allahabad High Court were affirmed by this Court in *Jeewan Nath Wahal v. State Transport Appellate Tribunal* (C.A. No.1616 of 1968) decided on 03.04.1968. In *Jeewan Nath Wahal*, it was held that the 1959 Scheme was operative and not affected and its enforcement was prohibited against 50 operators only who approached the High Court. It was further held that the STU has the exclusive right to ply its vehicles on the notified route (Saharanpur – Delhi route). F G H

- A 11. Two writ petitions, one by *Shri Chand*<sup>1</sup> and the other by *Citizen Council for Public Service* were directly filed before this Court under Article 32 of the Constitution in the year 1985 challenging the validity of proceedings which were pending before the State Government pursuant to a draft scheme published on February 26, 1959. This Court allowed these writ petitions on August 23, 1985 by the following order :

C “.....In the instant case the delay is in the order of 26 years. In view of the above decisions we allow these writ petitions and quash the impugned scheme published on February 26, 1959 and the proceedings which have taken place till now pursuant thereto and direct the State Government not to proceed with the hearing of the matter. It is now open to the State Transport Undertaking of Uttar Pradesh to publish a fresh draft scheme under Section 68-C of the Act if it is of opinion that it is necessary to do so. We, however, permit the State Transport Undertaking to run the stage carriage vehicles which it is now running on the route in question under permits issued pursuant to the scheme which is now quashed, till February 28, 1986 or till they are replaced by temporary permits to be issued under sub-section (1-A) of Section 68-F of the Act after the publication of a fresh draft scheme or by permits issued under Chapter IV of the Act, whichever is earlier.”

- F 12. Pursuant to the aforesaid decision in *Shri Chand's* case<sup>1</sup>, the UPSRTC published a draft scheme on February 13, 1986 for 39 routes; Saharanpur – Delhi (Saharanpur-Nanauta-Thanabhawan-Shamlikandhla – Baraut – Baghpat – Loni-Delhi) being the 1st Item in the draft scheme.

G **The 1988 Act and matters before this Court in respect of Saharanpur-Delhi route**

1. *Shri Chand v. Govt. of U.P., Lucknow & Ors.*  
*Citizen Council for Public Service v. Govt. of U.P. & Anr.* [ (1985) 4 SCC 169]

13. While the said draft scheme was pending, the 1939 Act was repealed and the 1988 Act came into force with effect from July 1, 1989. A

14. It appears that immediately after the 1988 Act came into force, two things happened viz; (one) some operators were granted permits for Saharanpur to Ghaziabad via Shahdara routes and (two) the Hearing Authority held that the draft scheme published on February 13, 1986 by the UPSRTC under the 1939 Act had lapsed by operation of Section 100 (4) of the 1988 Act. Ram Krishna Verma and few others filed writ petitions in the High Court of Allahabad challenging the grant of permits for Saharanpur to Ghaziabad via Shahdara route while the UPSRTC challenged the order of the Hearing Authority by a separate writ petition. The writ petition filed by the UPSRTC was dismissed by Allahabad High Court on March 16, 1990. The writ petitions filed by Ram Krishna Verma and others were also dismissed by the Allahabad High Court on July 23, 1990. Special leave petitions were filed against the aforesaid judgments before this Court in which leave was granted. These appeals (*Ram Krishna Verma and Ors. v. State of U.P. & Ors.*<sup>2</sup>) were allowed vide judgment dated March 31, 1992. This Court held that the nationalization of Saharanpur – Delhi route by the 1959 Scheme is operative to the total exclusion of every operator except UPSRTC and 50 operators whose objections were upheld by the High Court. In the operative order, this Court quashed the permits granted to the private operators under Section 80 of the 1988 Act on the respective routes, parts or portions of the nationalized routes or February 13, 1986 draft scheme. B  
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15. After decision of this Court in *Ram Krishna Verma*<sup>2</sup>, the competent authority approved the Scheme and directed the same to be published. On May 29, 1993, the approved scheme ( for short, 'the 1993 Scheme') was published in the Gazette. At Serial No. 1 of the 1993 Scheme is Saharanpur-Delhi route. G

2. (1992) 2 SCC 620.

- A 16. The controversy with regard to the extent and effect of the draft scheme dated February 13, 1986 and the 1993 Scheme vis-à-vis the 1959 Scheme relating to Saharanpur-Delhi notified route reached this Court on more than one occasion. We have noticed some of these decisions in earlier part of the judgment and shall consider this aspect further a little later. Suffice it to state here that the 1993 Scheme came to be published pursuant to decision of this Court in *Ram Krishna Verma*<sup>2</sup>.

C **Present controversy**

- D 17. By a Notification published on April 16, 1999, the State Government, in exercise of the powers under sub-section (1) of Section 102 of the 1988 Act proposed to make modification in the 1993 Scheme to the extent mentioned in column 4 of the Schedule appended thereto. In respect of Saharanpur-Delhi route modification proposed was as follows :

| E | "Sl. No. | Notification No. and date By which the Routes were Notified. | Name of the notified route in which the modification is proposed. | Modification proposed                                                                                                                                                                                                                                                                           |
|---|----------|--------------------------------------------------------------|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | 1.       | 2.                                                           | 3.                                                                | 4.                                                                                                                                                                                                                                                                                              |
| F | 1.       | No. 1635/30.2.93 565'85 dated May 29, 1993                   | Saharanpur-Delhi & 38 Delhi & 38 other routes                     | In the said scheme after Clause (b) of the following clause shall be inserted, namely :<br>(c) Notwithstanding anything contained in clauses (a) and (b) the private bus operator;<br><br>(i) holding permit numbers P.S.T.P./MPMV 1/89, 2/89, 3/89, 4/89, 5/89, 6/89, 7/89, 8/89, 9/89, 10/89, |
| G |          |                                                              |                                                                   |                                                                                                                                                                                                                                                                                                 |
| H |          |                                                              |                                                                   |                                                                                                                                                                                                                                                                                                 |

11/89, 12/89, 13/89, 14/89, 16/89, 17/89, 18/89, 19/89, Shall be allowed to operate their buses alongwith U.P.S.R.T.C. on the route namely, Saharanpur-Loni Via Shamali-Baraut-Baghatpat-Marginal Bandh Road-ISBT Delhi.

(ii) holding permit numbers P.S.R.T.P. 303/89, P.S.T.P. 304/89 and, P.S.T.P. 305/89, shall be allowed to operate their buses alongwith U.P.S.R. T.C. on the Route namely Meerut-Chandigarh via Baraut-Shamli-Gangoh-Saharanpur-Sarsawa-Yamuna-Ambala; and

(iii) holding permit numbers 168/94, 169/94, 170/94, 171/94, 172/94, 173/94, 222/94, 233/94, 23/95, 24/95, 25/95, 739/89, 242/94, 764/90, 787/90, 772/90, 800/90, 784/90, shall be allowed to operate their buses alongwith U.P.S.R. T.C. on the route namely :- Saharanpur-Karnal via Jandhera-Rampur-Gangoh - Nea Yamuna Bridge :

A

Provided that the permit Holders sub-clauses (ii) and (iii) above shall get their permits counter-signed by the State Government of Haryana for plying their buses in the State of Haryana. ”

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18. The Notification provided that the UPSRTC and any other person likely to be affected by the proposed modification may make representations within 30 days from the date of publication of the Notification in the Gazette and that the representations so received will be heard by the Hearing Authority Shri Zamiruddin, Special Secretary and Additional Legal Rememberancer, Uttar Pradesh.

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19. In pursuance thereof various representations were received. The Hearing Authority after hearing the concerned parties who made the representations passed an order on October 11, 1999 approving the notified proposed modification and the objections presented by the UPSRTC and other objectors were dismissed.

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20. The State Government, however, by a Notification dated April 15, 2000 in exercise of the powers under Section 102 of 1988 Act read with Section 21 of General Clauses Act, 1897 rescinded the Notification dated April 16, 1999.

**Main submissions of the parties**

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21. Mr. Dinesh Dwivedi, learned senior counsel led the arguments on behalf of the appellants. He argued that it was not open to the State Government to withdraw the Notification dated April 16, 1999 after it had been approved by the Hearing Authority by his order dated October 11, 1999. According to him, the order passed by the Hearing Authority on October 11,

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1999 is the order of the State Government under Section 102(1) and (2) of the 1988 Act. It is so because in the draft Notification dated April 16, 1999, Shri Zamirudeen, Special Secretary and Additional Legal Remembrancer was appointed as the Authority to hear the objections and he was acting as the State Government under the U.P. Rules of allocation of business. In this regard, learned senior counsel placed reliance on three decisions of this Court, viz., *Samsher Singh v. State of Punjab and another*<sup>3</sup>; *Capital Multi-purpose Co-operative Society Bhopal and others v. State of M.P. and others*<sup>4</sup> and *A. Sanjeevi Naidu, Etc. v. State of Madras and another*<sup>5</sup>. Mr. Dinesh Dwivedi also submitted that decision under Section 102(1) of the 1988 Act has to be by the same Authority who heard the objections and there could not be divided responsibility of a quasi judicial act. He sought support from a decision of this Court in *Gullapalli Nageswara Rao and others v. Andhra Pradesh State Road Transport Corporation and another*<sup>6</sup>. He further argued that once the decision has been taken by the Competent Authority then the State Government cannot modify that decision because it is a quasi judicial decision. He placed reliance on *M/s. Nehru Motor Transport Co-operative Society Ltd. & Ors. v. State of Rajasthan & Others*<sup>7</sup>. In the alternative, learned Senior Counsel submitted that even otherwise the material on record demonstrated that the order of modification dated October 11, 1999 was approved by the Principal Secretary of the Department.

22. Mr. Dinesh Dwivedi, learned senior counsel would also contend that approval order passed under Section 102(1) and (2) was not required to be published in the Official Gazette. He invited our attention to Section 68-E of 1939 Act and Sections

3. (1974) 2 SCC 831.

4. (1967) 3 SCR 329.

5. (1970) 1 SCC 443.

6. AIR 1959 SC 308.

7. AIR 1963 SC 1098.

A 100(3) and 102 of 1988 Act to indicate the difference in the two provisions. He further submitted that Section 21 of the General Clauses Act, 1897 is not at all attracted as the power that was sought to be exercised has been expressly provided in Section 102 of the 1988 Act.

B 23. While dealing with the effect of the draft proposal dated April 16, 1999 and whether the 1993 Scheme superseded the 1959 Scheme, Mr. Dinesh Dwivedi submitted that there could not be operation of two notified schemes in respect of Saharanpur-Delhi route and consequently the judgment of this  
C Court in *Ram Krishna Verma*<sup>2</sup> has to be read in the light of the provisions of law and not in contravention of the provisions of law. Learned senior counsel submitted that the 1959 Scheme has been superseded by the 1993 Scheme and that is what the State Government also understood. He also  
D assailed the judgment of the High Court and submitted that writ petitions have been dismissed on the grounds contrary to law. Learned senior counsel submitted that the appellants have been granted permits validly in the year 1989 which have been renewed in the year 1994 and the High Court overlooked the  
E fact that revocation of permits by virtue of the decision of this Court in *Ram Krishna Verma*<sup>2</sup> implied only revocation to the extent of only overlapping portion of Delhi-Saharanpur route. He, thus, submitted that appellants' permits are valid as far as non-notified portion is concerned.

F 24. Mr. Nagendra Rai, learned senior counsel appearing for the appellants in Civil Appeal No. 5951 of 2002 adopted the arguments of Mr. Dinesh Dwivedi and submitted that the 1959 Scheme stood modified by the 1993 Scheme published on May 29, 1993 and that for the same route, there could not  
G be two approved schemes. He submitted that the approval order dated October 11, 1999 by the Hearing Authority is not passed by virtue of any delegation of power nor any right of appeal is available against the said order and as such the order dated October 11, 1999 is a final order of the State  
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Government in terms of Section 102 of 1988 Act and required A  
no publication in the Official Gazette.

25. Mr. P.N. Gupta, learned counsel while adopting the  
arguments of Mr. Dinesh Dwivedi and Mr. Nagendra Rai  
contended that once the final order of approval was passed on B  
October 11, 1999, the proposal for modification as provided  
in Notification dated April 16, 1999 could not have been  
cancelled or rescinded as the draft Notification dated April 16,  
1999 merged in the final order dated October 11, 1999.  
According to him, the proposal for modification of the approved C  
scheme under Section 102 of the 1988 Act and its approval  
by the State Government are not legislative in nature and  
consequently Section 21 of the General Clauses Act, 1897 has  
no application. Learned counsel would submit that even if it be  
assumed that the impugned Notification amounts to modify the D  
approved scheme and Section 21 of the General Clauses Act  
has application, in that event the impugned Notification dated  
April 15, 2000 is vitiated because it has to be issued in the  
same manner as provided under Section 102 of 1988 Act which  
was not done. He also contended that once the modification  
was approved as per order dated October 11, 1999, the E  
valuable rights accrued in favour of the appellants and that could  
not be taken away except after giving an opportunity of hearing  
and on this ground also the impugned Notification dated April  
15, 2000 is bad in law.

26. Mr. Ratnakar Dash, learned senior counsel for the F  
State of U.P. and Ms. Garima Prashad, learned counsel for the  
UPSRTC supported the impugned judgment. The thrust of their  
submission is that both approved schemes, namely, the 1959  
Scheme and the 1993 Scheme are effective and in operation G  
to make the Saharanpur-Delhi route fully nationalized for the  
exclusive operation by the STU and no private operator can  
operate on this route and, therefore, notified route viz;  
(Saharanpur-Delhi route) could not have been modified without  
modifying the 1959 Scheme. Learned senior counsel for the H

- A State as well as counsel for the UPSRTC contended that the order of the Hearing Authority after hearing objections of the affected parties is a quasi-judicial order and is not the final order of the State Government. They contended that it was open to the State Government to modify the order of the Hearing
- B Authority before publication of the modified scheme. Reliance in this connection was placed upon a decision of this Court in *Afsar Jahan Begum (Smt) And Others v. State Of M.P. And Others*<sup>8</sup>. Learned counsel for the UPSRTC also contended that the appellants did not have permits on the route in question
- C either in 1959 or 1986 or even in 1993 and that the permits given to the private operators under the draft scheme of 1986 as well as under the 1993 scheme have been quashed by Allahabad High Court and that appellants have no permits at all. She submitted that a total of 124 permits have been granted
- D to UPSRTC on Saharanpur-Delhi route which are valid till the scheme remains in force and that the UPSRTC has been plying exclusively on the Saharanpur-Delhi route and there is no operation by the private operators. Learned counsel for the UPSRTC placed reliance upon the decisions of this Court in
- E *Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal*<sup>9</sup>; *C.P.C. Motor Service, Mysore v. State of Mysore and Another*<sup>10</sup>; *Adarsh Travels Bus Service and Another v. State of U.P. and Others*<sup>11</sup> and *Karnataka State Road Transport Corporation v. Ashrafulla Khan And Others*<sup>12</sup> and submitted that no private bus can be allowed to overlap
- F fully or partially on nationalized route if there is no mention of that in the scheme of nationalization of the said route itself.

### The issue

- G 27. In light of the contentions outlined above, the core
8. (1996) 8 SCC 38.
9. (1974) 2 SCC 750.
10. AIR 1996 SC 1661.
11. (1985) 4 SCC 557.
- H 12. (2002) 2 SCC 560.

question that falls for consideration is : whether the Notification dated April 15, 2000 is invalid and vitiated by any legal flaw?

28. Insofar as the factual aspect is concerned, it does not seem to be in dispute that the permits granted to the appellants related to routes which overlapped the Delhi-Saharanpur notified route.

### Our appraisal

(A) The effect of publication of a scheme under Section 68D

29. The expression "route" is defined in Section 2(28-A) of 1939 Act as follows :

"S. 2 (28-A) "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another;"

30. Chapter IV-A of the 1939 Act makes special provisions relating to the STUs. Particularly Section 68-C provides for preparation and publication of scheme of road transport service by an STU. The objections to the draft scheme published under Section 68-C may be filed under Section 68-D. Sub-section (2) of Section 68-D provides that the State Government after considering the objections and hearing the objectors and the STU may approve or modify the scheme. Sub-section (3) of Section 68-D provides that the scheme as approved or modified under sub-section (2) shall be published in the Official Gazette by the State Government and the same shall then become final and called 'approved scheme'. Once the scheme has been published under sub-section (3) of Section 68-D, Section 68-FF imposes restriction on grant of permits in respect of notified area or notified route. From these provisions, it is apparent that once a scheme is published under Section 68-D in relation to any area or route or portion thereof, whether to the exclusion, complete or partial of other persons

- A or otherwise, no person other than the STU may operate on the notified area or notified route except as provided in the scheme itself. In *Adarsh Travels Bus Service*<sup>11</sup>, this Court held that a necessary consequence to these provisions is that no private operator can operate his vehicle on any part or portion of a notified area or notified route unless authorized so to do by the terms of the scheme itself.

31. A definite legal position has been crystalised by this Court in *Mysore State Road Transport Corporation*<sup>9</sup> that any route or area either wholly or partly can be taken over by a State Undertaking under any scheme published, approved and notified under the provisions of Chapter IV-A of 1939 Act and that if the scheme prohibits private transport operators to operate on the notified area or route or any portion thereof, the Regional Transport Authority (RTA) cannot either renew the permit of such private operators or give any fresh permit in respect of a route which overlaps the notified route.

32. That the scheme framed under Section 68-C of 1939 Act is a 'law' is settled by a Constitution Bench decision of this Court in the case of *H.C. Narayanappa and Ors. v. State of Mysore and Others*<sup>13</sup>. This position has been reiterated by this Court in *Ram Krishna Verma*<sup>2</sup>. *H.C. Narayanappa*<sup>13</sup> also holds that the scheme framed under Section 68-C of 1939 Act excludes the private operators from notified routes or areas.

F **(B) The status of appellants' permits**

33. Insofar as Saharanpur-Delhi route is concerned, it became a notified route under the 1959 Scheme. The controversy regarding the 1959 Scheme reached this Court initially in *Jeewan Nath Wahal* case wherein a three-Judge Bench of this Court upholding the order of the High Court held in unambiguous terms that Saharanpur-Delhi route approved in the 1959 Scheme stood nationalized to the complete

H <sup>13</sup>. (1960) 3 SCR 742.

exclusion of private operators except 50 operators against whom it was held not be operative till their objections are heard and decided by the Hearing Authority. The decision of this Court in *Shri Chand*<sup>1</sup> has been explained in subsequent decision in the case of *Ram Krishna Verma*<sup>2</sup> by holding that nationalization of Saharanpur-Delhi route in the 1959 Scheme cannot be said to have been quashed in *Shri Chand*<sup>1</sup> except to the extent of 50 operators and in any case the decision of a Bench of two-Judges in *Shri Chand*<sup>1</sup> cannot have the effect of overruling the decision of a Bench of three-Judges in *Jeewan Nath Wahal*. This Court further held in *Ram Krishna Verma*<sup>2</sup> that the fresh draft scheme published on February 13, 1986 must be construed to be in relation to 50 existing operators only. The same position was reiterated by this Court in *Nisar Ahmad and Ors. v. State of U.P. and Ors.*<sup>14</sup> and *Gajraj Singh and Ors. v. State of U.P. & Ors.*<sup>15</sup>. In *Gajraj Singh*<sup>15</sup>, it was clearly stated that insofar as Saharanpur-Delhi route is concerned, it shall be deemed to have been approved and maintained in terms of this Court's decision in *Ram Krishna Verma*<sup>2</sup>. In light of these decisions of this Court, there is no scope of any doubt that Saharanpur-Delhi route on its nationalization stood frozen under the 1959 Scheme against everyone except 50 operators. The draft scheme published on February 13, 1986 was confined to those 50 operators alone and not to other private operators. By the 1993 Scheme, Saharanpur-Delhi route stood frozen against 50 operators as well. The effect of these two schemes (1959 Scheme and 1993 Scheme), thus, has been that the entire Saharanpur-Delhi route became fully nationalized for the exclusive operation by the STU i.e., UPSRTC and no private operator could operate on the said route. As a matter of fact, consequent upon decision of this Court in the case of *Ram Krishna Verma*<sup>2</sup> and the settled legal position that RTA cannot either renew the permit of such private operators or give any fresh permit in respect of a route which overlaps the notified route, the appellants' permits stood cancelled and in any case

14. 1994 Suppl. (3) SCC 460

15. (2001) 5 SCC 762.

- A these permits lost their legal significance and sanctity. In this backdrop, the whole exercise undertaken by the State Government under sub-section (1) of Section 102 of 1988 Act proposing to modify the 1993 Scheme relating to Saharanpur – Delhi notified route was misconceived as the permits
- B specified in that Notification did not exist in law. The finding of the High Court in the circumstances that the modification proposal dated April 16, 1999 proceeded on the misconception that petitioners (appellants herein) were holding permits on the concerned route cannot be said to be unjustified. Moreover, in
- C the absence of any proposal to modify the 1959 Scheme, the modification proposed in the 1993 Scheme vide Notification dated April 16, 1999 was meaningless. The contention that the 1959 Scheme merged in the 1993 Scheme has no merit. It is true that 1959 Scheme was approved under 1939 Act and even
- D after repeal of 1939 Act by 1988 Act, the State Government was competent to prepare fresh scheme by following the procedure contemplated in Sections 99 and 100 or modify that scheme under Section 102 of the 1988 Act but the proposed modification published in the Notification on April 16, 1999 does not seek to modify the 1959 scheme at all. Since the
- E Notification dated April 16, 1999 is, *ex facie*, misconceived and meaningless as regards Saharanpur-Delhi route, the proceedings taken pursuant thereto by the Hearing Authority and his decision dated October 11, 1999 also have no legal effect.

F (C) *Section 102 of the 1988 Act and the extent of authority to the Hearing Authority*

34. Chapter VI of the 1988 Act contains special provisions relating to the STUs. Section 99 thereof makes a provision for
- G preparation and publication of proposal by the State Government regarding road transport service of an STU. As per sub-section (1) of Section 100, on the publication of such proposal, the objections may be filed before the State Government within 30 days therefrom. Sub-section (2) of
- H

Section 100 provides that the State Government may approve or modify such proposal after hearing the objectors and the representatives of the STU. Sub-section (3) of Section 100 makes a provision that the scheme relating to the proposal as approved or modified under sub-section (2) shall be published in the Official Gazette in at least one newspaper in the regional language circulating in the area or route covered by such scheme. On publication of the said scheme in the Official Gazette, it becomes final. Section 102 of the 1988 Act empowers the State Government to modify the approved scheme in the public interest. Since the controversy relates to this Section, it is appropriate that we reproduce Section 102 of the 1988 Act as it is. The said Section reads thus:

"S.102. *Cancellation or modification of scheme.*- (1) The State Government may, at any time, if it considers necessary, in the public interest so to do, modify any approved scheme after giving –

- (i) the State transport undertaking; and
- (ii) any other person who, in the opinion of the State Government, is likely to be affected by the proposed modification,

an opportunity of being heard in respect of the proposed modification.

(2) The State Government shall publish any modification proposed under sub-section (1) in the Official Gazette and in one of the newspapers in the regional languages circulating in the area in which it is proposed to be covered by such modification, together with the date, not being less than thirty days from such publication in the Official Gazette, and the time and place at which any representation received in this behalf will be heard by the State Government."

35. A close look at Section 102 would make it manifestly

- A clear that modification of the approved scheme may be done by the State Government in the public interest after giving opportunity of being heard in respect of proposed modification to the STU and the persons likely to be affected by the proposed modification. The modification proposed is required to be published in the Official Gazette and in one of the newspapers in the regional languages circulating in the concerned area under Section 102(2). On behalf of the appellants, it was contended that in the proposed modification published in the Official Gazette on April 16, 1999, the authority to hear the objections/representations was given to Shri Zamirruddin, Special Secretary and Additional Legal Remembrancer and the said Hearing Authority after hearing the objections of the affected persons and the UPSRTC approved the proposed modification and rejected the objections received in this regard and the approval by the Hearing Authority of the proposed modification by his order dated October 11, 1999 is the approval of the State Government. Is the order dated October 11, 1999 of the Hearing Authority approving the proposed modification published in the Official Gazette dated April 16, 1999, an order of the State Government modifying the approved scheme of 1993 under Section 102(1) of the 1988 Act? The answer has to be in the negative because Shri Zamirruddin was given authority to hear the representations received by the State Government to the proposed modification but no authority was given to him to approve the proposed modification or modify the approved scheme. The Notification dated April 16, 1999 does not empower the Hearing Authority to approve or modify the scheme; he has only been empowered to hear the objections. That a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. This settled principle has also been highlighted by this Court in *Gullapalli Nageswara Rao*<sup>6</sup> but based on such principle the limited authority of hearing given to the Hearing Authority by the State Government cannot be treated as enlarged in its scope.
- H A delegatee must confine his activity within four corners of the

powers vested in him and if he has acted beyond that, his action cannot have any legal sanction unless ratified by the delegator.

36. A distinction must be maintained where the hearing authority is empowered by the State Government to hear objections and approve the proposed modification or modify the approved scheme and a case where the hearing authority is authorized to hear the objections/representations relating to the proposed modification to the approved scheme. In the latter case, the authority delegated to the Hearing Authority is limited and he is not authorized to approve the proposed modification or modify the approved scheme. The present case falls in the latter category and accordingly the order of the Hearing Authority dated October 11, 1999 is in excess of the authority given to him and cannot be construed as a final order of approval under Section 102 (1) of the 1988 Act. Whether such limited authority of hearing to the Hearing Authority makes any legal sense is an aspect for consideration by the State Government. Suffice, however, to say that it was not open for the Hearing Authority to approve the proposed modification or modify the proposed scheme.

(D) Invocation of Section 21 of General Clauses Act :  
whether valid

37. Having already held that the order of the Hearing Authority dated October 11, 1999 is in excess of the authority given to him and that the said order has no legal effect, we do not find that there was any impediment for the State Government in exercising its power under Section 102 of the 1988 Act read with Section 21 of the General Clauses Act, 1897 to rescind the Notification dated April 16, 1999.

38. Section 21 of the General Clauses Act, 1897 provides thus:

"S.21. Power to issue, to include power to add to, amend,

- A vary or rescind, notifications, orders, rules or bye-laws: –  
Where, by any Central Act or Regulation, a power to issue  
notifications, orders, rules, or bye-laws is conferred, then  
that power includes a power, exercisable in the like manner  
and subject to the like sanction, and conditions if any, to  
B add to, amend, vary or rescind any notifications, orders,  
rules or bye-laws so issued.”

39. The aforesaid provision came up for consideration  
before the Constitution Bench of this Court in *Kamla Prasad  
Khetan & Another v. Union of India*<sup>16</sup> way back in 1957. The  
C majority opinion stated:

- “It is to be remembered that S.21 of the General Clauses  
Act embodies a rule of construction, and that rule must  
have reference to the context and subject-matter of the  
D particular statute to which it is being applied....”

40. It seems to be fairly settled that under Section 21 of  
the General Clauses Act, an authority which has the power to  
issue a notification has the undoubted power to rescind or  
modify the notification in the like manner. In the instant case,  
E there is no doubt that the Notification dated April 15, 2000 has  
been made in the same manner as the earlier Notification dated  
April 16, 1999. Since the order of the Hearing Authority dated  
October 11, 1999 is not an order of approval under Section  
102(1) of the 1988 Act and cannot be treated as such, the  
F power of the State Government to rescind the Notification dated  
April 16, 1999 did not get exhausted. The argument that the  
draft Notification dated April 16, 1999 merged in the order  
dated October 11, 1999 is fallacious and devoid of any  
substance.

- G 41. Mr. Dinesh Dwivedi, learned senior counsel urged on  
behalf of the appellants that even otherwise the material on  
record demonstrated that the order of the modification dated  
October 11, 1999 was approved by the Principal Secretary of

H <sup>16</sup>. AIR 1957 SC 676.

the Department and, thus, there was an approval by the State Government. We are unable to accept this submission. In the first place, except the decision of the Hearing Authority dated October 11, 1999 there is nothing on record to conclude that the State Government had approved the proposed modification as notified on April 16, 1999. Secondly, even if we assume that an executive action not expressed to be made in the name of the Governor as contemplated under Article 166(1) of the Constitution may not vitiate such action as nullity and as held by this Court in *Dattatraya Moreshwar Pangarkar v. The State of Bombay and Others*<sup>17</sup> the non-compliance with the provisions of either of clauses of Article 166 would lead to the result that order in question would lose the protection which it would otherwise enjoy had the proper mode for expression and authentication been adopted, but then there has to be some formal order by the State Government under Section 102(1) of the 1988 Act. Moreover, there is nothing on record even to indicate that the order dated October 11, 1999 of the Hearing Authority was communicated to the appellants or any of the affected parties. For all these reasons, the only conclusion that can be drawn is that the order dated October 11, 1999 is not an order as contemplated under Section 102 (1) of the 1988 Act by the State Government approving the modification proposed in the Notification dated April 16, 1999.

42. In view of our finding that the order of the Hearing Authority dated October 11, 1999 cannot be treated as an order of the State Government under Section 102(1) of the 1988 Act, it is not necessary to consider the question as to whether the order of the State Government under Section 102(1) of the 1988 Act is required to be published in the Official Gazette or not.

43. The contention of Mr. P.N. Gupta, learned counsel for some of the appellants that the opportunity of hearing was required to be given to the appellants before issuance of

17. (1952) 1 SCR 612.

- A Notification dated April 15, 2000 has no merit for more than one reason. For one, this contention is founded on the premise that the order of the Hearing Authority dated October 11, 1999 is the order of the State Government. Secondly, what Section 21 of the General Clauses Act requires is that the authority empowered to issue notification must exercise its power to rescind such notification in the like manner. We have already noticed in the preceding discussion that the Notification dated April 15, 2000 has been made in the same manner as the earlier Notification dated April 16, 1999.

C **Conclusion**

44. For the reasons given above, we hold that the Notification dated April 15, 2000 is valid and does not suffer from any legal flaw and, accordingly, dismiss these appeals with no order as to costs. Interlocutory applications for impleadment stand disposed of, as indicated above.

N.J.

Appeals dismissed.