Pioneer Motors Ltd. Vs. O.M.A. Majeed Mirania Motor Service and ors.

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Court : Chennai

Decided On : Apr-04-1956

Reported in : (1956)2MLJ430

Appellant : Pioneer Motors Ltd.

Respondent : O.M.A. Majeed Mirania Motor Service and ors.

Judgement :

ORDER

1. These several writ petitions are by a number of motor transport operators who are aggrieved by the orders of the State Government, purporting to be under Section 64-A of the Motor Vehicles Act, and call in question the legality of each of the orders of the State Government, disposing of such revision petitions under Section 64-A of the Act which had been filed before them. In these writ applications the orders of Government are impugned on various grounds, but a ground common to all these relates to the effect of Act XXXIX of 1954 upon the jurisdiction of Government to pass the orders now challenged, and we propose to deal with this point alone.

2. Section 64-A of the Motor Vehicles Act empowered the State Government

of its own motion or on application made to it to call for records of any order passed or proceeding taken under Chapter IV by any authority or officer subordinate to it and to pass such order in reference thereto as it thinks fit.

3. Under this provision a large number of such revision petitions had been filed before the State Government and were pending till about the end of December, 1955. Madras Act XXXIX of 1954, which amended various provisions of the Motor Vehicles Act, repealed Section 64-A of the parent or principal Act, with the result that on such repeal the powers of the Government to pass the orders set out in the last portion of Section 64-A was terminated. This Amending Act received the assent of the President on 22nd January, 1955 and was published in the Fort St., George Gazette on the 22nd February, 1955. But the repeal did not take effect immediately on the passing of the enactment because Section 1(2) of this Amending Act provided for the amendments including the repeal of Section 64-A coming into-force

on such date as the State Government may by notification in the Fort St. George Gazette-appoint.

4. The notification, which was issued in pursuance of this provision, fixed the date on which the Amending Act was to come into force as 1st January, 1956, so that on that date the repeal took effect, and the powers of the Government under Section 64-A became no longer available. The Amending Act provided an alternative forum for the determination of the matters which theretofore were being dealt with by the State Government, designating this as the prescribed authority; and Section 5 of the 1954 Act enacted:

All proceedings pending with the State Government on the date on which this Act comes into force shall stand transferred to the prescribed authority referred to in Section 64 of the principal Act and be proceeded with

from the stage which had been reached immediately before such date.

5. The result was that, if any proceeding was 'pending' with the State Government on 1st January, 1956, such proceeding stood, by force of the statute, transferred to 'the prescribed authority', thus depriving the Government of any further power to deal with it.

6. The orders issued by the State Government, which are impugned in these several writ petitions, bear dates beyond 1st January, 1956, the earliest of them being the orders in W.P. Nos. 26, 33, 58 and 59 of 1956 which are dated 2nd January, 1956; and the others bear later dates. One of the principal grounds raised by the petitioners in these several writ petitions - and this is the common ground to which we referred to earlier - relates to the validity of these orders, the contention being, that on the repeal by Act XXXIX of 1954 taking effect, all the revision petitions not disposed of by the Government by 31st December, 1955, stood automatically transferred to the prescribed authority, and that the Government has thereafter no power to pass the orders which they have. On the language of Section 5 of the Amending Act which we have set out above, there can be no controversy, that if the orders of the Government which are impugned in these petitions are really to be taken, to have been passed on the dates they bear, the contention of the petitioners must be accepted, viz., that the Government had ceased to have jurisdiction over these several revision petitions at midnight on 31st December, 1955. But, in the counter-affidavit filed by the State Government, which has been impleaded in the several writ petitions, the Additional Secretary to the Government (Home Department), being the department dealing with questions arising under the Motor Vehicles Act, stated:

I have perused the affidavit of the petitioner in each of the writ petitions and in regard to the -contention raised that the orders in question were passed by the Government subsequent to 1st January, 1956, I submit as follows:

From 19th November, 1954, orders in revision petitions presented to the Government under Section 64-A of the Motor Vehicles Act and appeals preferred under Section 64 were being issued after circulation of the concerned files to the following three Ministers, viz., (1) the Hon'ble Minister for Transport, (2) The Hon'ble the Minister for Works and (3) Hon'ble Minister for Revenue and after obtaining their final orders.

7. He appended in an annexure the dates on which the Hon'ble Ministers passed their final orders in each one of the orders impugned in the writ petitions numbered above, together with the date of the issue of the order by the Government. These showed that the order of the last Minister dealing with the files involved in some of the writ petitions was passed on 30th December, 1955 and others on 31st December, 1955, but that the Government Order was dated from and beyond 2nd January, 1956. The Additional Secretary continued:

Thus it will be seen that final orders in the revision petitions covered by the above writ petitions were passed by the Government on or before 31st December, 1955, even though the orders were issued and communicated to the parties subsequently, as the drafting, numbering and fair copying the order necessarily take some time...

8. He concluded:.even though the dates of the order of issue were subsequent to 1st January, !956, orders were actually passed by the Ministers concerned on or before 31st December, 1955. It is respectfully submitted that the orders in question were passed at a time when the Government had the power to pass such orders under Section 64-A of the Motor Vehicles Act.

9. It is the correctness of the last submission that has been canvassed or supported by learned Counsel appearing for the aggrieved operators or by those in whose favour the particular order has been passed.

10. Shed of all unessentials, the question that arises is simply this. Were these revision petitions 'pending' before the State Government on 1st January, 1956, so that they stood transferred to the prescribed authority under Section 5 of the Amending Act, or should they be taken to have been disposed of by the State Government when the Ministers indicated their 'decisions' in the file? In other words did these petitions cease

to be pending when the concerned Ministers recorded their 'decisions' on the file, or did the pendency only cease when the order was issued? Expressed in another form, the question is, is the order or decision of a Minister, the order of the State Government, or are there any formalities or procedure necessary in order to convert an order of a Minister into an order of the State Government.

11. Under Section 64-A of the Motor Vehicles Act the authority empowered to act is the State Government, and the manner in which it should act is by 'passing an order'. The question, therefore, is does the expression 'order of the State Government' in Section 64-A mean an order of a Minister or does it involve anything more.

12. Though no doubt the power conferred upon the State Government in the present case by Section 64-A is traceable to to the Motor Vehicles Act, still that power has been conferred upon an authority set up by the Constitution and functioning under it. What then is the 'State Government', and what is it that could be said to be an order of that Government as envisaged or provided for by the Constitution. Part VI of the Constitution is concerned with the Part A States and its Chapter II deals with 'the executive' or the Government. Article 153, with which this Chapter starts, provides for there being a Governor for each State. The other relevant provisions of this Chapter are Articles 154, 161, 162, 163, 164, 166 and 167:

154. (1). The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this Article shall

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or (b) Prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

161. The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.163. (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and, if so, what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court.

164.(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.

Provided that in the State of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and Backward Classes or any

other work.(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and until the Legislature of the State so determines shall be as specified in the Second Schedule.

166. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

167. It shall be the duty of the Chief Minister of each State:

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires, to submit for consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

13. We shall premise the discussion by stating that it is unnecessary for us to debate the question as to whether an order passed by the State Government under Section 64-A of the Motor Vehicles Act is or is not an executive action within Article 166, for the argument before us has proceeded on the basis that it is, and this, in our opinion, rightly, as the expression 'executive action' in Article 166 is comprehensive enough and apt to include even orders which emerge after, and embody the results of a judicial or quasi-judicial disposal by Government. We might ' in this connection refer to the decision of the Privy Council in King v. Shibbanath Bannerjee L.R. 72 IndAp 241 : 1945 F.L.J. 222 : (1945) F.C.R. 195 : (1945) 2 M.L.J. 325 , where their Lordships said : that

The term 'executive' in Chapter II, Part III of the Government of India Act, 1935, (corresponding to Chapter II, Part VI of the Constitution), was used in a broader sense as including both a decision as to action and the carrying out of such decision.

14. The question arising for consideration is, whether the decision of a Minister noted in a file is an order of the Government within the meaning of Article 166 of the Constitution, or whether it becomes an order of Government and can operate as such only when it is issued in conformity with the terms of that Article. The language of Article 166 as also the other relevant provisions in Chapter II of Part VI have had a long antecedent history, which might usefully be referred to for undertaking their scope and import. It is not, however, necessary to go further back than the Government of India Act, 1915. Section 46 of the Government

of India Act, enacted:

Section 46(a). - The presidencies of Fort William in Bengal, Fort St. George, and Bombay are, subject to the provisions of this Act, governed by the Governors-in-Council of those presidencies respectively, and the two former presidencies are in this Act referred to as the presidencies of Bengal, and of Madras.

15. Section 47(1) made provision for the appointment of the members of the Governor's Council, and Section 49 which was the precursor of Article 166 ran:

Section 48(1). - All orders and other proceedings of the Governor-in-Council of any presidency shall be expressed to be made by the Governor-in-Council, and shall be signed by a Secretary to the Government of the presidency, or otherwise, as the Governor-in-Council may direct.

(2) A Governor may make rules and orders for the more convenient transaction of business in his executive council, and every order made or act done in accordance with those rules and orders, shall be treated as being the order on the act of the Governor-in-Council.

16. The corresponding provisions at the Centre were Sections 33, 36(1) and 40:

Section 33. - The superintendence, direction and control of the civil and military Government of India is vested in the Governor-General-in-Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State.

Section 36(1). - The ordinary members of the Governor-General's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual.

Section 40(1). - All orders and other proceedings qf the Governor-General-in-Council shall be-expressed to be made by the Governor-General-in-Council and shall be signed by a Secretary to the Government of India, or otherwise, as the Governor-General-in-Council may direct.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his Executive Council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General-in-Council.

17. The system of dyarchy was introduced into the Government of the Provinces by the Amending Act of 1919 the subjects administered1 by the Provincial Government being divided into two categories of transferred and reserved subjects. The transferred subjects were to be administered by the Governor acting with the Minister while he was to be advised by his Executive Council m dealing with the reserved subjects. Section 69 of the Government of India Act, 1919, incorporated the amendment introduced by this system. It ran:

All orders and other proceedings of the Government of a Governor's province shall be expressed to be made by the Government of the province, and shall be authenticated as the Governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings.

Orders and proceedings authenticated as aforesaid shall not be called into question in any legal-proceeding on the ground that they were not duly made by the Government of the province.

(2) The Governor may make rules and orders for the more convenient transaction of business in his Executive Council and with his Ministers, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the Government of the Province.'

18. In line with these we might refer to the definitions of Local and Provincial Government in the General Clauses Act which were varied from time to time.

19. Section 3(29) of the General Clauses Act as enacted in 1897 defined Local Government as meaning

the person authorised by law to administer executive Government in the part of British India in which the Act or Regulation containing the expression operates,

which at that time would have meant the Governor-in-Council, while Government of India was defined thus:

Section 3(22) 'Government of India' shall mean the Governor-General-in-Council, or, during the absence of the Governor -General from his Council, the President-in-Council, or the Governor-General alone, as regards the powers which may be lawfully exercised by them or him respectively.

20. This reflected the position as it was under the Consolidated Government of India Act, 1915.

21. The introduction of dyarchy in 1919, and the amendments this brought to Section 49 of the Government of India Act, were reflected in the General Clauses Act by the introduction of a new Section 31 effected by Act XXXI of 1920 reading as follows:

In any enactment made by any authority in British India before the date on which Section 3 of the Government of India Act, 1919, comes into opreation, and in any rule, order, notification, scheme, bye-law or other document made under or with reference to any such enactment, any reference by whatever form of words to an authority authorised by law, at the time the enactment was made, to administer executive Government in any part of British India, shall where a corresponding new authority has been constituted by the Government of India Act, 1919, be construed for all purposes after the above-mentioned date, as a reference to such new authority.

22. We are mentioning these provisions to emphasise the close correlation between the authority vested with executive power under the Constitution and the definition of that Government under the General Clauses Act.

23. The Government of India Act, 1935, put to an end to dyarchy in this form but introduced what in effect was a triarchy. There was an area of Ministerial responsibility wherein the Governor who continued to be a vital part of the executive mechanism was to be aided and advised by his Ministers. There were circumstances in which within this area he could overrule them designated as the area of special responsibility. There was lastly another area wherein the Ministers did not come into the picture at all, when he was said to act in his discretion. In the first of the fields the responsibility for executive action was to the Provincial Legislature, a responsibility taken by the Ministers. In the other two the Governor was responsible to the Governor-General, and he to the Secretary of State, who in his turn was responsible to Parliament (vide Section 54).

24. The long standing practice in this country of the issue of orders of Government under the signatures of officers of the Secretariat was well known, and the White Paper of 1931 as well as the Joint Select Committee of the Houses of Parliament on the Bill, which ultimately became the Government of India Act, 1935, noted this feature and recommended its continuance; and it was this that was embodied in Section 59 of the Government of India Act, 1935, and which has come to us in almost the same form under Article 166 of the Constitution.

25. The Joint Parliamentary Committee which reported on the Bill which emerged as the Government of India Act, 1935, said:

The White Paper authorises the Governor after consultation with his Ministers to make at his discretion rules which he considers as requisites to regulate the disposal of Government business and the procedure to be observed for its conduct and for the transmission to himself of all such information as he might direct. We understand that both the distribution and conduct of public business have in India long been regulated almost entirely by rules of this kind and there is therefore nothing strange or novel in the proposal.

26. After referring to the new Constitution under which they were envisaging the grant of large powers to the

Ministers, they added:

We see no ground for supposing that the rule making power cannot be adapted to meet the reasonable requirements of the case. It would for example be competent for the Governor to prescribe by rule that orders on such specific matters are not to be passed unless the decision on that, has been initialled by himself. That would ensure that all matters in that particular sphere were at least brought to his attention before action is taken upon them. We are not suggesting that the decision taken would on that account be of the Governor alone without or contrary to the advice of the Ministers.

27. As the nomenclature employed in the relevant provisions of the Government of India Act, 1935, (when attention is focussed on and confined to the area of Ministerial responsibility in the Provinces) was nearly identical with that in the Constitution of India, we shall briefly refer to these for a proper understanding of the matter.

28. Section 48 made provision for the appointment of a Governor, of the Province.

29. Section 49(1) ran:

The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon Subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian Law on any Court, judge, or officer or any local or other authority.

30. Section 50 followed a sub-heading entitled 'Administration of Provincial affairs' and was in these terms:

50(1). - There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this sub-section shall be construed as preventing the Governor from

31. Section 50(1) with the proviso, had reference to the Governor's power to override the advice of his Ministers in regard to the matters set out in Section 52. This section introduced the expression 'aid and advice' which was a deliberate departure for the language employed in Section 4(3) of the Government of India Act, 1919, which ran:

In relation to transferred subjects the Governor shall be guided by the advice of his Ministers unless he sees sufficient cause to dissent from their opinion, in which case he may require action to betaken otherwise than in accordance with that advice.

32. The Joint Parliamentary Committee recommended this change on the ground that to impose a statutory obligation to follow the advice would be

to convert a constitutional convention into a rule of law and thus perhaps bring it within the cognizance of the Courts.

33. Section 51 empowered the Governor to choose his Ministers and Sub-section (4) enacted:

The question whether any, and, if so, what advice was tendered by Ministers to the Governor shall not be inquired into in any Court.

34. Section 59 which corresponds to Article 166 ran:

(1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.

35. The other sub-clauses which were relevant to the Governor's discretion or special responsibilities are not now material.

36. The legal and constitutional position emerging from these provisions was reflected in the amended definitions in the General Clauses Act:

3. (43-a). - 'Provincial Government', as respects anything done or to be done after the commencement of Part III of the Government of India Act, 1935, shall mean-

(a) in a Governor's Province, the Governor acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act; and (A) in a Chief Commissioner's Province, the Central Government, and, as respects anything done before the commencement of Part III of the said Act, shall mean the authority or person authorised at the relevant date to administer executive Government in the Province in question.

37. The rule framed under Section 59(3) made provision for meetings of the Council of Ministers, allocation of the portfolios among the Ministers, and except for the reservation of powers to the Governor for taking action, contrary to the advice of Ministers in the field of his individual judgment which arose when his special responsibilities under Section 52 were involved, were nearly the same as are now in force, which we shall set out and discuss in detail later.

38. The object of Section 59 was to lay down how the business of the State Government should be conducted as between the Governor and the Ministers and the Secretaries of the Government. The responsibility for carrying on the administration rested on the Governor. Section 59 emphasised the position of the Governor, as the executive head of the State, and whatever may be the functions, exercised by the Government, they were exercised as the executive head of the province. It is this action, that was the executive action of the Government, and it was this that was emphasised, when it was stated that it had got 'to be expressed, to be taken in the name of the Governor.' If, therefore, the Government of the Province acted at all, its acts were to be clothed in the form of an order, and that order had to be issued in the name of the Governor and authenticated in the specified manner. There was no specific provision vesting the Ministry as a whole or the Ministers individually with executive functions. Such functions were to be exercised by the Governor, and the word 'aid' in relation to his functions vis-a-vis the Governor did not vest the Minister with any executive authority. Though in popular language Ministers might be referred as Government they were not legally the Government. They were in law only the Governor's advisers.

39. Under the rules framed under Section 59(3) the Minister in charge of the portfolio was made primarily responsible for tendering advice to the Governor for the disposal of the business pertaining to his department. The question whether he did tender any advice and whether, if so, what, and whether the advice was accepted by the Governor could not be investigated by the Court by reason of Section 51(4). If, however, such an investigation were permissible, it would only show that certain advice was tendered and was accepted by the Governor. This secrecy was in part designed to keep the Governors out of political controversy, and to secure that political responsibility for action taken by Government was assumed by the Council of Ministers. As the definition in the General Clauses Act made it clear, an order of the Government was an order of the Governor. It was the imprimatur of the Governor's concurrence and association which

imported vitality to it, though the machinery by which he was enabled to arrive at the decision embodied in the order was a matter beyond the purview of the Court. It was a matter of constitutional convention not of law, the relevant questions raised being political, not legal. If the Governor acted in any particular manner without the advice of the Ministers, who was the functionary to take responsibility for it before the legislature, the problems raised were not those which could be the subject of complaint in Court. The Governor, therefore, so far as the Courts were concerned, could act on any advice that he got. When a file passed through the Minister what he recorded was the final advice which he tendered to the Governor. It was only when the Governor accepted that advice, and that decision was embodied in an order issued by himself or by some one authorised to do so in his name, that it acquired the quality or character of an order of the Provincial Government and could be regarded as such.

40. An order signed by a Minister and issued by him would not be an act of the Provincial Government but would yet remain what it always was, namely, the advice which the Governor might have constitutionally been bound to accept,, subject to the reservation that he might have required reconsideration of the advice tendered in accordance with the rules.

41. Under Section 59 and the rules framed thereunder therefor an order of the Government was an order of the Governor issued by and under his authority in relation to the business of the Government under the rules framed by him.

42. It will now be convenient to turn to the rules framed by the Governor under Sub-clauses (2) and (3) of Article 166 of the Constitution and examine whether under the Constitution, an order of the Minister could be held to be an order of the Government.

43. The rules framed by the Governor under Article 166(2) and (3) are entitled 'The Madras Government Business Rules and Secretariat Instructions'. Among these, the relevant ones are the following:

Rule 4. - The business of the Government shall be transacted in the departments specified in the First Schedule, and shall be classified and distributed between those departments as laid down therein.

44. The first schedule distributes the items relating to the Administration under the Motor Vehicles Act under which the power exercised in the present case falls, to the Home Department of the Government.

Rule 5. - The Governor shall on the advice of the Chief Minister allot the business of the Government among the Ministers by assigning one or more departments to the charge of a Minister:

Provided that nothing in this rule shall prevent the assigning of one department to the charge of more than one Minister.

Note. - In cases where orders allotting business have to issue urgently, the allotment may be made by the Chief Minister and the cases circulated to the Governor after issue of orders.

45. There is no dispute that in accordance with this rule the Ministers who actually passed the orders on the files as set out in the counter affidavits were allotted this business.

Rule 6. - Each department of the Secretariat shall consist of a Secretary to the Government, who shall be the official head of that department, and of such other officers, and servants subordinate to him as the State Government may determine:

Provided that-

(a) more than one department may be placed in charge of the same Secretary;

(b) the work of a department may be divided between two or more Secretaries.

46. Collective responsibility of the Council of Ministers, notwithstanding the allocation of portfolios and departments to individual Ministers, is emphasised and provided for in Rule 7, which runs:

The Council shall be collectively responsible for all executive orders issued in the name of the Governor in accordance with these rules, whether such orders are authorised by an individual Minister on a matter appertaining to his portfolio or as the result of discussion at a meeting of the Council or otherwise.

47. Rule 8 makes provision for matters which should ordinarily be brought up before the Council of Ministers and not dealt with by individual Ministers, and it reads:

Subject to the orders of the Chief Minister under Rule 14, all case referred to in the Second Schedule shall be brought before the Council in accordance with the provisions of the rules contained in Schedule II:

Provided that no case in regard to which the Finance Department is required to be consulted under Rule 10 shall, save in exceptional circumstances under the directions of the Chief Minister, be discussed by the Council unless the Finance Minister has had an opportunity for considering it.

48. It is admitted that the administration of the Motor Vehicles Act is not one of the subjects in that schedule and, therefore, is not a matter which was to be normally brought before the Council of Ministers under this Rule.

Rule 9. - Without prejudice to the provisions of Rule 7, the Minister in charge of a department shall be primarily responsible for the disposal of the business appertaining to that department.

Rule 11. - All orders or instruments made or executed by or on behalf of the Government of the State shall be expressed to be made or executed in the name of the Governor.

Rule 12. - Every order or instrument of the Government of the State shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary to the Government of the State or such other officer as may be specially empowered in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument.

49. We shall refer to the effect of Rules, 7, 9, n and 12 after setting out the other relevant provisions.

50. The procedure by which matters are brought up for discussion before the Council of Ministers and that which takes place when these are so brought up are set out in a group of rules beginning with Rule 13 with which Section 11 starts. Though the decisions in the several petitions arising under the Motor Vehicles Act have not, as we have already pointed out, necessarily to be brought up before the Council, some of the rules in this section throw light on the question now at issue. This is set out in Rule 15(1) and it reads thus:

The Chief Minister may direct that any case referred to in the Second Schedule may, instead of being brought up for discussion at a meeting of the Council, be circulated to the Ministers for opinion and if all the Ministers are unanimous and the Chief Minister thinks that a discussion at a meeting of the Council, is unnecessary, the case shall be decided without such discussion. If the Ministers are not unanimous or if the Chief Minister thinks that a discussion at a meeting is necessary, the case shall be discussed at a meeting of the Council.

51. The use of the expression 'opinion of the Ministers' and the cases being decided without discussion and without circulation of the papers to the Governor might be noticed.

Rule 16(1). - In cases which are circulated for opinion under Rule 15, the Chief Minister may direct, if the matter be urgent, that, if any Minister fails to communicate his opinion to the Secretary to the Council by a date to be specified by him in the memorandum for circulation, it shall be assumed that he has accepted the recommendations contained therein.

(2) If the Ministers have accepted the recommendations contained in the memorandum for circulation or the

date by which they were required to communicate their opinion has expired, the Secretary to the Council shall submit the case to the Chief Minister. If the Chief Minister accepts the recommendations and if he has no observation to make, he shall return the case to the Secretary to the Council who will pass it on to the Secretary concerned who will thereafter take steps to issue the necessary orders.

52. The idea contained in Rule 15 is continued here, and what is of significance is the concluding portion of Rule 16(2), where it is stated 'who will thereafter take steps to issue the necessary orders ', which might be contrasted with 'the decisions 'or' opinions' the Ministers express on the file.

Rule 17. - When it has been decided to bring a case before the Council, the department to which the case belongs shall intimate the fact to the Secretary to the Council specifying the subject for discussion and unless the Chief Minister otherwise directs, prepare a memorandum indicating with sufficient precision the salient facts of the case and the points for decision. Such memorandum and such other papers as are necessary to enable the case to be disposed of shall be circulated to the Ministers. Copies of the Memorandum and other papers shall at the same time be sent to the Governor.

53. When the point is 'decided' the latter part of Section 16(2) will come into play, and 'an order will be issued'.

54. Rule 19 prescribes how the agenda for the meeting of the Council of Ministers is prepared and circulated, and Sub-rule (7) provides:

The Secretary to the Council shall attend all the meetings of the Council and shall prepare a record of the decisions. He shall forward a copy of such record to each of the Ministers including the Chief Minister and to the Governor. Copies of the record of decisions in the relevant cases should also be communicated to the Secretary or Secretaries in the department or departments concerned.

55. What results from the discussion of the Council of Ministers is merely a 'decision' and this is 'Recorded' by the Secretary. The further stage is to be found in Rule 20 which runs:

Rule 20(1): - When a case has been decided by the Council after discussion at a meeting, the Minister concerned shall take action to give effect to the decision. If, however, any deviation is proposed to be made from that decision, the case shall be submitted to the Chief Minister by the Minister concerned and further action on it will be taken according to any directions of the Chief Minister. The Secretary in the department concerned will in each such case cause to be supplied to the Secretary to the Council such documents as the latter may require to enable him to maintain his record of the case.

(2) The decision of the Council relating to each case shall be separately recorded and after approval by the Chief Minister or any other Minister presiding, shall be kept by the Secretary to the Council. An advance copy of the draft of the decisions and also of the approved draft shall be sent to the Governor.

56. The Departmental disposal of business is dealt with in Section 3 by the group of R. Nos. 21 to 33. Rule 21 provides,

Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may by means of standing orders give such direction as he thinks fit for the disposal of a case in the department. Copies of such standing orders shall be sent to the Governor and the Chief Minister.

57. Rule 22 enables each Minister, to whom any particular portfolio is assigned to arrange with the Secretary of the Department, matters that are to be brought to his personal notice. Rule 23 enjoins upon the Secretary to bring all matters not covered by the Standing Orders framed by the Minister in charge being brought up for his orders, the principle being that routine matters need not go higher up than the Secretary, but those which are not covered by the Standing Orders should be brought up to the Minister.

Rule 25. - When the subject of a case concerns more than one department, no order shall be issued nor shall the case be laid before the Council until it has been considered by all the departments concerned, unless the case is one of extreme, urgency.

58. The words 'No order shall be issued' which is directed to the Secretary and his subordinates, which is of significance, has to be read with the opening words of Rule 31(1) which provides:

The following clauses of cases shall be submitted to the Chief Minister before the issue of orders.

and the corresponding provision in Rule 31(2) 'before the issue of orders.

59. Rule 26 provides for a case where the Secretary of the Department does not agree with the Minister, and in that case the Minister is to take the matter to the Chief Minister. The rule as to collective responsibility embodied in Rule 7 is brought about by the provision in Rule 27, of which 27(3) reads thus:

A Minister may send for any paper from any department for his information provided that, if he is of opinion that any further action should be taken on them, he shall communicate his views to the Minister in charge of the department concerned and, in case of disagreement, may submit the case to the Chief Minister with a request that the matter be laid before the Council. No further notes shall be recorded in the case before the papers are so laid before the Council;

Provided that if the paper is of a secret nature, it shall be sent to the Minister only under the orders of the Minister in charge of the department to which it belongs;

Provided further that no paper under disposal shall be sent to any Minister until it has been seen by the Minister in charge of the department to which it belongs.

60. Similar power is also vested with the Chief Minister under Sub-rule (4)(a) to Rule 27. This provides the necessary co-ordination between the several departments with the Chief Minister as the apex of the administration under the Council of Ministers.

61. That the Governor is the head of the State, and in fact, the spear point of the executive, is brought out by Rules 32 and 33:

Rule 33. - Where in any case the Governor considers that any further action should be taken or that action should be taken otherwise than in accordance with the orders passed by the Minister in charge, the Governor may require the case to be laid before the Council for consideration, whereupon the case shall be so laid:

Provided that the notes, minutes or comments of the Governor in any such case shall not be brought on the Secretariat record unless the Governor so directs.

Rule 33. - The Chief Minister shall-

(a) cause to be furnished to the Governor such papers, records, or information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(b) If the Governor so requires, submit for the consideration of the Council any matter on which a decision has been taker by a Minister but which has not been considered by the Council.

62. The distinction between decisions of Ministers and the issue of orders is also brought out by paragraph 1 of Rule 34:

The Finance Department shall be consulted before the issue of orders upon all proposals which affect the finances of the State and in particular.

63. Rule 54, enables the Governor to issue supplementary instructions, and the set of rules entitled

'Secretariat Instructions' embody these. These are subsidiary to the Government Business Rules, but they bring out prominently the main features which underlie the administration of the Executive Government. A few of these, which have an intimate bearing upon the subject of the present discussion, we shall set out.

64. Instruction 3(2) provides:

It shall be open to the Minister in charge of a department to direct that any case in his department shall be submitted to him for orders and the Secretary in the department shall submit the case to him accordingly.

3(3) - Subject to the provisions of Clauses (1) and (2) the Secretary in each department shall ordinarily dispose of cases which do not involve the adoption of any new policy or principle or are not of such importance or special interest as to require the orders of the Minister in charge, provided that the concurrence of the Finance and any other department concerned has been obtained if financial or other implications are involved. If the case concerns two or more departments and the Secretaries of the Departments do not agree as to its disposal, the case shall be. circulated to the Ministers in charge of the departments concerned.

7. Where a Minister passes orders contrary to the orders suggested in the noting, further circulation shall invariably be interrupted and the file sent to the Chief Secretary or the Secretary to the department concerned, as the case may be.

8(1). - The Secretary in a department is a Secretary to the Government and not to the Minister in charge of the department. It is the duty of the Secretary to see that the policy of the Government in the department with which he is concerned is carried out. The Secretary shall have the right to tender the necessary advice to the Minister either orally or in a written note at any time before the Minister passes final orders on a case. It shall also be the duty of the Secretary to draw the attention of the Minister to the fact that any proposed course of action is contrary to the provisions of any rule or law or is at variance with the previous policy adopted by Government.

(2) Where a Secretary observes any errors of facts in a Minister's note he shall return the case to the Minister with a note.

23. A Secretary may, without submitting the draft to any Minister or to the Governor direct the issue of any despatch, letter, order or reference in any case on which orders have been duly passed in accordance with these instructions.

Provided that-

(a) if a Minister or the Governor has desired that any draft should be sent to him before issue it shall be so sent;

(b) no reference shall be issued from any department on the suggestion of a Minister not in charge of the department without the knowledge of the Minister in charge of it;

(c) Where three or more Ministers, to whom a case has been circulated, express views on it which are at variance with one another, the order in the case shall be drafted in accordance with the views of the majority; but it shall not be issued until the Minister or Ministers in the majority have seen the draft order;

(d) Where two or more Ministers, to whom a case has been circulated, express views on it without being at variance with one another, deal with different points the views of the Ministers shall, as far as possible, be incorporated in the order.

(e) if a draft is to be sent to a Minister not in charge of the department, it shall be sent first to the Minister in charge of the department, then to any other Minister who is to see the draft and afterwards again to the Minister in charge, if any alteration in the draft is suggested by other Minister.

77(2). - Notes written by a Minister or by the Governor shall not be communicated to any officer outside the Secretariat without the permission of the Minister or the Governor, as the case may be. Such permission will, however, not be necessary where the notes are of a routine character and do not contain an expression of opinion by the Minister or the Governor.

78. - Orders and notes by the Governor and the Ministers shall be initialled only and shall form part of the record in the case.

79. When an order is drafted as the result of a decision of the council of Ministers in regard to a matter which has not been subjected to inter-departmental circulation, the draft order shall be circulated for acceptance to all the departments of the Secretariat concerned. If the matter is of extreme urgency, the draft may be circulated after issue.

81. Orders and proceedings of Government shall be authenticated in the manner prescribed in Rules 11 and 12 of the Madras Government Business Rules. Copies of such orders and proceedings may be authenticated by the Superintendent in the department concerned as follows:

'By order of His Excellency the Governor

A.B.C.,

Secretary to Government.

65. We shall summarise the position as it emerges from a consideration of these provisions. The Governor is the head and symbol of the executive administration, and it is an order issued by or under his authority that constitutes an order of' the Government. No doubt, these functions he discharges with the aid and advice of his Ministers who are collectively responsible for the advice they tender (Rule 7); There is an allocation of business among the Ministers and each Minister is assigned some department, in regard to which he takes a primary responsibility for the advice (Rules 9 and 21). The 'advice' that is tendered and the 'decision' that is taken by the Minister will not amount to an order of the Government, and it acquires this quality only when it is embodied in a formal order issued on the authority of the Governor. The Secretaries of the departments are directed by the rules to carry out the orders of the Ministers, and in that sense there is a delegation of the functions of the Governor, so that when the advice is followed by the issue of an order by a Secretary, it receives, so to speak, the authorisation of the Governor and becomes an order of the State Government. The form of this order is laid down by Article 166(1) namely, that it shall be expressed to be taken in the name of the Governor. This is emphasised and made part of the rules by rule 11 and instruction 81. This is in line with Article 154(1), which vests the executive power in the Governor, and also in line with the definition of State Government in the General Clauses Act in Section 3(60)(b), where it is defined as 'In a Part A State the Governor '. Article 166 (1) having defined the form of that order, Article 166 (2) provides how these orders so expressed shall be authenticated. Rule 12 of the Business Rules enacts what shall be that order. It is an order signed by the Secretary or other officers named in that rule that is an order or instrument of the Government of the State. Read in the context of the Constitution and the position of the Governor as the head of the State, this provision in Rule 12 indicates the manner in which the sanction of the Governor is attached to the aid and advice received by him in the shape of the disposal by the Minister on the file. When the Minister passes his order, it is an instruction to the Secretary to issue such an order, which when issued by him or under his authority or by his authorised subordinate officials becomes a Government Order. The order of the Minister is not final, for, another Minister may call for the file and bring up the matter before the Council, for he is entitled to do so, as every Minister assumes responsibility for that order. Again, the Secretary might disagree with that order and have the matter brought up for reconsideration by the Minister. This is according to Rule 8(2) of the Secretariat Instructions. Lastly, under the Rules 32 and 33, (Business Rules) the Governor may call for the file and have the matter brought up before the Council of Ministers. All these matters might take place before the stage of finality is reached at the ministerial level, and it is only when the Secretary of the department or those under him named in Rule 12 affix their signatures to the order, that the Governor's

assent to the issue of that order is taken to be signified, so that it is only then that it becomes an order of the Government. Under Rule 12 of the Business Rules read in conjunction with Article 166(2), the signatures of the Secretary or that of any of the other officers designated under the rules serve a double purpose (1) of substance and (2) of proof. The signature of the Secretary in the first instance embodies the consent of the Governor and indicates to the outside world the acceptance of the advice tendered by the Minister. Secondly, it authenticates and provides evidence that the pre-requisites for the emergence of an order of Government have been complied with. The production of that order is conclusive proof that the formalities for emergence of that order have been complied with and no further investigation is possible or is permitted to the Court.

66. The constitutional changes which have taken place in the set-up of the Government and the establishment of a democratic Government fully responsible to the legislature have made no difference to what constitutes, for a legal purpose, the Government or an order of that Government. These changes have not eliminated the Governor from being the constitutional head and the apex of the State Government, and the requirement of his association in what could be termed a formal act of the Government. Sections 46, 49 and 52 of the Government of India Act, 1919, were substantially reproduced by Sections 49, 50 and 59, respectively, of the Government of India Act, 1935. These were in terms re-enacted by Articles 154, 163 and 166 of the Constitution. The legal requirements, therefore, of an 'order of Government' have undergone little modification from what it was before the Constitution.

67. We might in this connection refer to the observations of Lord Haldane, in Mackay v. Attorney-General of British Columbia L.R. (1922) IndApC. 457. The case arose out of a petition of right based on an agreement stated to have been made between the King, in right of the Province acting by the Minister of Public Works and that the appellant, the Provincial Government repudiated this transaction on the basis, that there was no Order in Council to enter into the contract so as to satisfy the provisions of the relevant statute. Dealing with the contention that as the Minister for the time being had expressed concurrence with the agreement it was binding on the Government the learned Lord said:

Mere assent of the Ministers of the Department to the contract could not as has already been pointed out under the Constitution such as that of British Columbia, make a contract legally binding one.

68. The Constitution of British Columbia referred to here was described

As a type of responsible Government in the British Empire which requires the Sovereign or his representative to act on the advice of the ministers responsible to the Parliament.

69. In regard to the interpretation of Article 166(2) learned Counsel for the respondents placed some reliance on the decision of the Federal Court in G.K. Gas Plant . v. King-Emperor (1947) F.L.J. 71 : (1947) 2 M.L.J. 402 : 1947 F.C.R. 141 . The question that arose for consideration before the Federal Court was the scope and effect of Section 40 of the Government of India Act, 1915, which ran thus:

40. Business of the Governor-General in Council. - (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor General in Council, and shall be signed by a Secretary to the Government of India, or otherwise as the Governor-General in Council may direct, and, when so signed shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his Executive Council, and every order made or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

70. The Iron and Steel (Control of Distribution) Order, 1941, for the contravention of the provisions of which a prosecution, whose validity was challenged, was launched purported, on the face of it, to be made by 'the Central Government' and was signed by a Secretary to the Government of India. The argument before the

Federal Court was that, while the condition as to signature was fulfilled, the condition about the order 'being expressed to be made by the Governor-General in Council' had not been complied with. On that ground a contention was raised, that the Control Order was not validly enacted, and that the prosecution for its contravention could not be sustained. The Federal Court held that the provisions which were stated to have been violated were directory in their nature and that, even if there was no strict compliance with the terms of this provision, it did not affect the validity of the legislation. The learned Chief Justice Sir Patrick Spens who delivered the judgment of the Court said:

First, would the whole aim and object of the Legislature in constituting the Governor-General in Council and conferring the far-reaching powers which have by Statute been conferred on the Governor-General in Council be plainly defeated if the provisions of Section 40(1) were not held to imply a prohibition to allow validity to orders of the Governor-General in Council expressed otherwise than as provided in Sub-section (1) of Section 40?

71. Dealing with this his Lordship expressed himself thus:

It is to our minds inconceivable that if such overriding, if not vital, importance was intended by Parliament to be put upon the manner and form in which orders of the Governor-General in Council were to be expressed to be made, the provisions of Section 40(1) would not have been enacted originally in the old Constitution Act and in the transitional provisions of the Constitution Act in more absolute and emphatic terms and reinforced by clear enactments, as to the complete invalidity of orders not strictly complying with the requirements of Section 40(1).

72. He continued:.it must be noticed, dealing with Sub-section (1) of Section 40 alone that the provision that all orders of the Governor-General in Council are to be expressed to be made by the Governor-General in Council does not define how orders are to be made but only how they are to be expressed. It appears to imply that the process of making an order precedes, or is something different from the expression of it. It does not say that orders can only be made by 'being' or 'if' expressed to be made by the Governor-General in Council. Thirdly there is the addition of the provision relating to the signature by a Secretary to the Government of India or other persons indicated, which clearly indicates that it is a provision as to the manner in which a previously made order should be embodied in publishable form. Lastly, there is the result indicated in the last words of the subsection, that if the previous directions, either both the directions as to the expressing of orders and proceedings and that as to signature of the latter as to signature only (whichever be the true construction) are complied with, the orders and proceedings shall not be called into question in a Court of Law on one ground only. All these points in the sub-section itself indicate that it is not a sub-section prescribing a manner and form in which orders of the Governor-General must be made to be valid.

73. Reliance was placed upon these passages, and they were sought to be construed as indicative that the signature of the Secretary was nothing less than an authentication, and if so, it posited a previous existence of a valid order, which in the present case threw one back to the order of the Minister. We are, however, unable to accept this construction. Responsible government no doubt implies an obligation on the part of the Governor to accept the advice tendered. It is the order of the Governor though it be that it is the result of a previous decision by a Minister or Ministers or Council of Ministers which he is constitutionally bound to accept, subject to his rights to make his views known to them before a final decision is reached, that constitutes an order of Government. It is in this context that we find that the General Clauses Act gives full effect to and brings out prominently the basis and the seat of the executive power in a State under the Constitution.

74. The decision of the Supreme Court in Dattatreya Moreshwar Pangarkar v. State of Bombay : 1952CriLJ955 , which is another decision relied on by learned Counsel for the respondents does not carry him further. The case was in regard to an application for the issue of a writ of habeas corpus. Section 11 of the Preventive Detention Act, IV of 1950, enacted that the appropriate Government might confirm the detention order where

the Advisory Board had reported that there was sufficient cause for the detention of a person. The confirmation was contained in a communication to the District Magistrate and signed by an officer for the Secretary to the Government of Bombay, Home Department, and the information conveyed was that the Government had confirmed the detention order, and that District Magistrate was instructed to inform the detenu and continue the detention. The argument urged on behalf of the person detained was, that the order to the District Magistrate did not purport to be in the name of the Governor and did not satisfy the requirements of Article 166(1) of the Constitution, and therefore, the order confirming the detention was not validly issued. Dealing with this, his Lordship Das, J., said at page 242:

The learned Attorney-General points out that there is a distinction between the taking of an executive decision and giving formal expression to the decision so taken. Usually executive decision is taken on the office files by way of notings or endorsements made by the appropriate Minister or officer. If every executive decision has to be given a formal expression, the whole governmental machinery, he contends, will be brought to a standstill. I agree that every executive decision need not be formally expressed and this is particularly so when one superior officer directs his subordinate to act or forbear from acting in a particular way, but when the executive decision affects an outsider or is required to be officially notified or to be communicated it should normally be expressed in the form mentioned in Article 166(1), i.e., in the name of the Governor. Learned Attorney-General then falls back upon the plea that an omission to make and authenticate an executive decision in the form mentioned in Article 166 does not make the decision itself illegal, for the provisions of that Article like their counterpart in the Government of India Act, are merely directory and not mandatory as held in, J.K. Gas Plant Manufacturing Co. (Rampur) v. The King-Emperor (1947) F.L.J. 71 : (1947) 2 M.L.J. 402 : 1947 F.C.R. 141 . In my opinion this contention of the learned Attorney-General must prevail.... The considerations which weighed with their Lordships of the Federal Court in the case referred to above appear to me to apply with equal cogency to Article 166 of the Constitution. The fact that the old provisions have been split up into two clauses in Article 166 does not appear to me to make any difference in the meaning of the Article. Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot he challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. Article 166 directs alt executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not under Section 11(1). That such a decision has been in fact taken by the appropriate Government has been amply proved on the record.

75. The decision in Dattatreya Moreshwar Pangarkar v. State of Bombay : 1952CriLJ955 , was followed and applied by the same Court in P. Joseph John v. The State of Trvancore : (1956)ILLJ235SC . But this does not advance the position, since here their Lordships merely held that an order signed by the Chief Secretary was a sufficient compliance with the terms of Article 166.

76. These do not help the respondents, for, what has to be established is that there has been a decision taken or an order issued by the State Government, and the noting by a Minister on the file is not a decision of the Government or an order of the Government in the sense in which the words are used in the Constitution.

77. Mr. Bashyam Ayyangar, learned Counsel for the respondents, further urged that Rule 21 of the Business Rules which provides for cases being disposed of under the authority of the Minister, rendered the direction of a Minister on the file an order of the State Government. We are wholly unable to accept this argument, which is at variance with the very term of the rule on which he relies. That rule itself renders it subject to the provisions of other rules, and any such construction would be in conflict with the right of the Secretary to bring up the case before the Ministers for other matters being looked into, and with the powers of the Governor and the Chief Minister under Rules 32 and 33, and would also be contrary to Rule 12, which provides the manner in which the Governor gets associated in the process of making a Government order by

the signature of an officer of the permanent service. It is in this context that instruction 8 of the instructions issued by the Governor under Rule 54 assumes significance, for it clearly states that the Secretary in a department is a Secretary to the Government, that is, the Governor, acting on the aid and advice of his Ministers, and not to the Minister in charge. It is the same idea that is brought out by the conception of the Governor as the head of the Government of the State. Even under the democratic system under which States are functioning under the Constitution, the Government is made up not of the Ministers alone but of the Governor aided and advised by his Ministers. He is thus an integral part of the Government, and the argument of learned Counsel for the respondents would wholly eliminate him from this position and would be in the teeth of the express provisions of the Constitution. His position as a part of the Government is brought out by the form of the order, which alone might be treated as an act of the Government. The business rules provide for his intimate contact in the business of administration and Rule 12 is only an expression of the manner in which that association is indicated, and in fact is a substitute for his personal concurrence in and signature to every order of the Government which ought to issue in his name. The result, therefore, is that instead of signing each order himself the rules make provision for the signature of the officers named in Rule 12 as his nominees. It is, therefore, that signature which renders the advice of the Minister an act of the Government and clothes the 'advice' with the character of an order of Government. Under the Constitution, no Minister can issue an order which could be treated as an order of Government. What he could issue is only a direction to the Secretary, and it would of course be carried out under the Business Rules, subject to the exceptions laid down there; but it is only when the Secretary or those under him carry out this duty that an order of Government results, and it is only then that the terms of Rule 64-A of the Motor Vehicles Act would be satisfied.

78. The result is that the proceedings which are the subject-matter of the several writ petitions must be held to have been pending before the Government on 1st January, 1956 and that these stood automatically transferred to the new Tribunal under Section 5 of Act XXXIX of 1954, and that Government had no jurisdiction to pass any order in relation to them at the time when the impugned orders were issued.

79. The writ petitions succeed, the rule is made absolute and the orders of Government in the several petitions are quashed.

80. In the circumstances of the case there will be no order as to costs.