

(2006) 02 KL CK 0004
In the High Court Of Kerala

Binu Chacko

APPELLANT

Vs

Regional Transport Authority and Another

RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 90

Citation : (2007) 2 ACC 279

Hon'ble Judges : M.N. Krishnan, J;M. Ramachandran, J;K.K. Denesan, J

Bench : Full Bench

Judgement

K.K. Denesan, J.—Two writ petitions raising a common question have been referred to the Full Bench for decision. A learned Judge of this Court (Thottathil Radhakrishnan, J.) while considering W.P. (C) 4828/05 felt the need for the resolution of the apparent conflict between two Bench decisions on the point. Accordingly, the matter came up before the Division Bench. Learned Judges of the Division Bench ordered the cases to be referred for determination by the Full Bench. Reference order passed by the learned Single Judge brings to focus the point for consideration succinctly and the same may be usefully extracted below:

The petitioner challenges Ext. P1 by which regular permit has been granted to the 2nd respondent subject to settlement of timings. An order granting permit is a revisable order u/s 90 of the Motor Vehicles Act, 1988, However, even for that, the petitioner has to succeed a test as to his standing, thereby his entitlement to challenge the grant of permit in favour of the 2nd respondent.

(2) By the decision of the Apex Court in *Mithilesh Garg, Vs. Union of India* and others etc. etc., , Their Lordships surveyed the 1988 Act in contradistinction with the relevant provisions of the 1939 Act and spoke on the legislative policy behind the changes made. It was noticed that a healthy competition in private sector was also one of the concepts that had weighed with the legislation of the new Act.

(3) Following the decision in *Mithilesh Garg's* case (supra) in *C.T.R.B.T. Co-op. Society v. Mathew* Job 1992 (1) K LT 297, a Division Bench of this Court, after

adverting to different earlier decisions of this Court, found that the decision in Kunhikrishnan Nair v. R.T.O. 1991 (2) K LT 266 was no more good, in view of the ratio in Mithilesh Garg's case.

(4) If the said decision of the Division Bench in The Secretary, Changanacherry Taluk Road Bus Thozhlali Co-operative Society Ltd. Vs. Mathew Job and Others, is to be followed, the writ petitioner has to be non-suited by holding that he is not entitled to challenge Ext. PI grant and thereby, does not have the locus to file either a statutory revision u/s 90 of the Act or to file this writ petition. I say so because, the Division Bench in C.T.R.B.T, Co-op. Society's case (supra) had categorically found that the existing operators have no right to object to the grant of permit to other stage carriage operators. Thereby it followed an earlier Division Bench decision in Girija Devi v. K.T. Mathew 1991 (1) K LT 53.

(5) Placed in this situation, the learned Counsel for the petitioner attempted to point out that the decision of the Apex Court in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , referred to in Mithilesh Garg's case (supra), has been watered down by the subsequent view in Jayaraj v. Commissioner of Excise 2000 (3) K LT 820. However, what is considered in Jayaraj's case is a piece of law relatable to the privilege of vending liquor, whereas the matters relating to Motor Vehicles Act stand on a different footing and Mithilesh Garg's case is one decided under the Motor Vehicles Act, 1988 itself, of which statute, we are now concerned with.

(6) Be that as it may, the learned Counsel for the petitioner referred to a decision of the Division Bench of this Court in Maim Kurikkal v. R.T.A. Malappuram 1999 (2) K LJ 461, rendered much later than in C.T.R.B.T. Co-op. Society's case (supra) referred to above. Maim Kurikkal's case has been decided without reference to C.T.R.B.T. Co-op. Society's case (supra) however, holding in para 12 that an operator, who is operating under the provisions of the Act, has got a right to insist that the provision of the statute is complied with. It was accordingly observed that the objection as to locus raised in that case was overruled. In doing so, the Division Bench has relied on a decision of the Division Bench in P. K. Transport v. Calicut Wynad Motor Service (P) Ltd. 1967 K LT 650 which, obviously, was a decision rendered under the old Act. The learned Counsel for the petitioner also refers to D.L. Sadashiva Reddy Vs. P. Lala Sheriff and Others, wherein it is stated that the decision of this Court in C.T.R.B.T. Co-op. Society's case (supra) has not been followed. It appears that there is an apparent conflict between Manu Kurikkal's case (supra) and C.T.R.B.T. Co-op. Society's case (supra), both rendered under the new Act.

(7) So much so, I am of the considered view that an authoritative pronouncement by the Division Bench is appropriate in the matter and, therefore, I adjourn this case to be considered by the Division Bench.

The office will place the papers before the Hon'ble Chief Justice for necessary orders.

The Division Bench passed the order of reference on 7.6.2005 stating as follows:

A learned Single Judge on the opinion that there is apparent conflict between the two Division Bench decisions of this Court in *Secretary, C.T.R.B.T. Co-operative Society v. Mathew Job* 1992 (1) K LT 297 and *O.V. Manu Kurikkal Vs. The Secretary, Regional Transport Authority, Malappuram and Others*, had referred the matter to a Division Bench for an authoritative pronouncement of the law.

The learned Single Judge has further pointed out that a Division Bench of Karnataka High Court in *D.L. Sadashiv Reddy v. P. Lala Sheriff* AIR 1999 Kant 5 had expressed an opinion that the decision in *Mathew Job*'s case required a reconsideration.

We have heard the Counsel on both sides. It may not be appropriate for us to support one view or deny the decision rendered by another Division Bench, though we find considerable force in the submission of the Counsel that the latter decision has decided the issue correctly. As the question is of general importance, we are of the view that the same requires to be looked into by a Full Bench. Place the papers in the above two cases before the Hon'ble Chief Justice for appropriate orders.

2. Petitioners are stage carriage operators. In W.P. (C) No. 4828/05 petitioner has sought for a writ of certiorari to quash the proceedings dated 29.12.2004 of the Secretary. RTA, Pathanamthitta by which the 2nd respondent has been granted regular permit on the route Thiruvalla-Changanacherry, subject to time settlement. In W.P. (C) No. 6548/05 petitioner has sought for the issuance of a writ of certiorari to quash the judgment dated 28.1.2005 passed by the State Transport Appellate Tribunal (STAT) in M.V.A.A. No. 58 of 2005 by which the R.T.A. Kollam was directed to grant regular permit in favour of the 2nd respondent on the route Kottiyam-Asramam ESI.

3. We have heard the learned Counsel appearing for the petitioners, the learned Counsel for respondents 2 and 3 and the learned Government Pleader for the State.

4. The issue for consideration is whether an existing operator has the locus standi to challenge the grant of permit to a rival operator invoking Section 90 of the Motor Vehicles Act (Act 59 of 1988) or resorting to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

5. The Motor Vehicles Act, 1988 (hereinafter called, for short, the Act only) has replaced the Motor Vehicles Act, 1939 (the old Act, for short). A liberal policy for the grant of permits to those who intend to enter the motor transport business is the hallmark of this new enactment passed by the Parliament. Upholding the liberal policy, the Apex Court in *Mithilesh Garg, Vs. Union of India* and others etc. etc., , rejected the contention that Sections 80 and 88 of the Act have the potential to take away the right of the existing operators or violate their fundamental rights under Articles 14 and 19(1)(g) of the Constitution of India.

After making a comparative study of the provisions of the above two enactments, Supreme Court expressed the view that the procedure for grant of permits under the Act has been liberalised to such an extent that an intended operator can get a permit for asking, irrespective of the number of operators already in the field. For the effective implementation of the liberal policy vital changes have been brought about in the Act.

6. Under the old Act an existing operator had the opportunity to participate in the decision-making process pertaining to the grant of permit. The Regional Transport Authority was obliged to take into consideration representations/objections preferred by an existing operator in the matter of grant of permit to a rival operator or a new entrant into the field. (See Section 47(1) of the old Act). As per Section 57(3) of the said Act, the R.T.A. was entrusted with the duty to make the application for a stage carriage permit or a public carrier permit open for inspection at the office of the authority and also to publish in the manner prescribed, so as to enable interested existing operators to file their representations/objections. R.T.A. was required, as per Section 57(5) to dispose of the application for stage carriage permit at a public hearing after affording an opportunity of being heard to the applicant and the existing operators who had raised objections under Sub-section (3) of Section 57 of the old Act. A statutory right of appeal u/s 64(1)(f) was guaranteed to every person who having opposed the grant of a permit u/s 57, felt aggrieved by the grant thereof. The State Transport Appellate Tribunal was competent u/s 64A of the old Act to exercise the power of revision against the orders of Regional Transport Authorities and the State Transport Authority either on its own motion or on application made to it by a person aggrieved.

7. As against the above provisions in the old Act, Sections 57, 64, 71, 80 and 90 of the Act have been designed in such a manner that the power of the authority to refuse permit to the applicant has been substantially curtailed. And to effectuate the above purpose the right of the rival operator to raise objections against the application for the grant of permit has been taken away. Section 80 of the Act which deals with the procedure for making applications for the grant of permits mandates that the STA/RTA shall not ordinarily refuse to grant an application for permit of any kind made at any time under the Act. Section 71 of the Act makes it clear that the Legislature wanted to exclude the existing or rival operators from participating in the decision-making process. One of the objects of the Act is simplification of procedure and liberalisation in the matter of grant of permits. Sub-clause (1) of Section 71 of the Act mandates that the R.T.A. shall, while considering an application for a stage carriage permit, have regard to the objects of the Act. Another important change brought about by the Act is exclusion of a provision similar to the one contained in Sub-section (5) of Section 57 of the old Act. The absence of a provision similar to Sub-section (5) of Section 57 of the old Act makes the intention of the Legislature clear. A similar intention can be spelt from the absence of provisions similar to those in Clause (f) of Sub-Section (1) of Section 64 of the old Act.

8. Section 90 of the Act confers the revisional power on the State Transport Appellate Tribunal. The corresponding provision in the old Act was Section 64-A. The old and the new provisions are extracted below for easy reading and comparison:

64A. Revision.--The State Transport Appellate Tribunal may, either on its own motion or on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass a order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

90. Revision--The State Transport Appellate Tribunal may, on an application made to it call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

Unlike Section 64A of the old Act, Section 90 of the Act, does not authorise the STAT to exercise the revisional power suo motu. STAT can exercise jurisdiction only on application made by a person aggrieved by an order of the STA/RTA, against which no appeal lies.

9. Learned Counsel for the petitioners raised following issues for our consideration--(1) Whether absence of a statutory right to file objection/representation before the Regional Transport Authority, and absence of a statutory right to be heard in the matter of grant of permit to a rival operator would disentitle an existing operator to invoke the supervisory discretionary jurisdiction of the STAT u/s 90 of the Act to impugn an order of the R.T.A. granting permit on the ground that the order of the R.T.A. is illegal and rendered overlooking relevant provisions of the regulatory statute? (2) Whether a competitor/rival in trade can be said to be a person aggrieved by an illegal and improper grant of permit/licence to another person in contravention of the provisions of the statute? and (3) Whether the question of locus standi be considered in the abstract or as a preliminary issue without considering the merits of the contentions touching the legality and propriety of the order, in a given fact-situation?

10. Before we proceed to deal with the above issues it would be appropriate to refer to the decisions of this Court as well as the decisions of other High Courts cited before us.

11. In *The Secretary, Regional Transport Authority, Guntur and another Vs. E. Rama Rao and Others*, , a Full Bench of the Andhra Pradesh High Court while disposing of a batch of referred writ appeals, considered the question whether existing holders of stage carriage permits were entitled to submit representations and to be heard before the R.T.A. when fresh applications filed after 1.7.1989 u/s 70 read with Sections 71, 72 and 80 of the Act were taken up. After taking note of the changes brought about by the Act the Full Bench of the Andhra Pradesh High Court held that whenever fresh applications are filed u/s 72 read with Sections 70, 71 and 80 of the Act, existing operators have no legal right to file representations before the R.T.A. The above decision was rendered after taking note of the provisions of the Act vis-a-vis the old Act and the decisions of the Supreme Court in *Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others*, ; *Rameshwar Prasad and Others Vs. State of Uttar Pradesh and Others*, ; *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, and *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, . The High Court did not, however, deal with the right of existing operators to challenge orders of the STA or RTA in regard to the grant of permits to another applicant by filing revision u/s 90 of the Act or a writ petition under Article 226 of the Constitution of India.

12. In *Girija Devi v. K.T. Mathew* 1991 (1) K LT 353 a Division Bench of this Court set aside the direction issued by the Single Bench to implead the rival stage carriage operator as a party and to hear him before a decision was taken on

merits regarding grant of the permit to the applicant and held that the question of hearing the rival operator would not arise under any circumstance and that the only grievance he may make is about the timings and that has to be taken care of by the Secretary to the Regional Transport Authority to assign timings after holding a timing conference for that purpose wherein all parties will have a right to place their respective cases before the Secretary of the R.T.A. finally assigning timings.

13. In *Kunhikrishnan Nair v. R.T.O. Malappuram* 1991 (2) K LT 266, a Division Bench of this Court after referring to *Girija Devi's* case expressed the opinion that the said decision cannot be understood to lay down a broad proposition that in no case an existing operator on the route in regard to which an extension or variation is sought has a right to be present and make representation at the Regional Transport Authority meeting and held that the right of representation cannot be restricted in relation to timings only. It is pertinent to note that the judgment in *Kunhikrislman Nair* was rendered on 15.7.1991, i.e. a few months before the Judgment of the Supreme Court in *Mithilesh Garg v. Union of India* (supra).

14. A subsequent decision of the Division Bench of this Court in *Secretary, Changanacherry T.R.B.T. Co-op. Society Ltd. v. Mathew Job* 1992 (1) K LJ 262, considered the correctness of the decision in *Kunhikrislman Nair* in the light of the decision of the Supreme Court in *Mithilesh Garg* (supra) and expressed the view that the statement of law made in *Kunhikrishnan Nair's* case cannot be accepted as laying down the correct proposition of law. In paragraph 8 of the judgment in *CTRDT Co-op. Society's* case the Division Bench speaking through *Jagannadha Rao, C.J.* (as he then was) held as follows:

In our view, the above said decision of the Supreme Court in *Mithilesh Garg's* case (supra) clearly lays down that the existing operators have no right to object to the grant of a permit to a new operator under the new Act, 1988.

15. We think, to have a clear idea about the views of the Division Bench in *C.T.R.B.T. Co-op. Society's* case, the above portion extracted from that judgment has to be read along with what the Division Bench said in paragraph 9 which reads as follows:

The learned Counsel for the appellant relied upon yet another decision of the Division Bench of this Court in *Thomas Lucka v. Secretary RTA* 1991 (2) K LT 229. In that case it was only held after a reference to Sections 70, 71 and 72(1) of the Motor Vehicles Act, 1988 that the existing operators who may be adversely affected by the timings given in an application for a permit or timings proposed to be fixed, have a right to have an opportunity to make a representation before a decision is taken u/s 72(1), as to the timings. Insofar as the said decision stated that the existing operators have a right to make a representation in respect of the timings to be granted for a new operator, we are in entire agreement with the said decision. If the said decision as contended by the

respondents, intended to lay down that the existing operators have a right to object even to the grant of a permit to a new operator, after the commencement of the new Act, we cannot agree with it.

(Emphasis supplied)

16. It was contended before the learned Judges of the Division Bench that u/s 90 of the Act, a revision lay to State Transport Appellate Tribunal against any order and that, therefore, a revision could be filed even against an order of grant of permit and that this would necessarily mean that, at the pre-grant period the existing operator must be deemed to have a right to object to the grant of permit to another operator. It was also argued that the Supreme Court did not advert to Section 90 expressly. The above contention was answered by the Division Bench in C.T.R.B.T. Co-op. Society's case, in the following words (Para 14):

In our view, after the clear pronouncement of the law in Mithilesh Garg's case by the Supreme Court stating that the existing operator has no right to object to the grant of permit to another operator, it is not open to the petitioner to contend that Section 90 of the new Act was not considered by the Supreme Court. We, however, do not decide whether Section 90 implies a right of revision to object to grant of permit to another operator for that question does not arise in this case. All that we say is that the omission by the Supreme Court to refer to Section 90 of the new Act, makes no difference so far as the ratio of the decision is concerned.

17. According to the learned Counsel for the petitioners the view expressed by the Division Bench in C.T.R.B.T. Co-op. Society's case can be accepted as correct only to the extent it speaks about the proceedings of the R.T.A. prior to the grant of the permit but not good law to the extent it takes away the right of a rival operator, who comes within the purview of the expression "person aggrieved" to question the validity of the order of the R.T.A. or the S.T.A. including the grant of permit, by invoking the revisional jurisdiction of the S.T.A.T. It is contended that the Supreme Court in Mithilesh Garg had no occasion to consider the standing of a rival operator to challenge improper and illegal orders of the R.T.A. or the S.T.A. by invoking the right to file application u/s 90 of the Act or a writ petition to quash the proceedings by the issuance of a writ of certiorari or other writs or directions.

18. Counsel for the petitioners then cited a Bench decision of the Allahabad High Court in Surendra Rao Vs. Regional Transport Authority, Gorakhpur Region, Gorakhpur and others, to contend for the position that an existing operator can maintain a revision u/s 90 of the Act against the order of the Transport Authorities granting permit. In Surendra Rao's case, the Allahabad High Court expressed the view that though it is true that under the Act the existing operator cannot claim any legal right to file representation or right for hearing at the stage of the grant of permit on his route, that cannot be the exclusive test for determining the locus standi of an operator to file a revision u/s 90 of the Act.

Referring to the decision of the Supreme Court in *Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another*, with regard to the scope of Section 64-A of the old Act, the Division Bench of the Allahabad High Court opined that the said provision is analogous to Section 90 of the Act and that the Apex Court had held the said provision as conferring right to existing operator to approach the Revisional Authority. In paragraph 6 of the judgment the High Court held:

As the order granting permits may affect the working of the route, the existing operator has locus standi being aggrieved person, to file a revision u/s 90 before the Appellate Tribunal.

19. One of the judgments that gave rise to the order of reference is *Manu Kurikkal v. R.T.A. Malappuram* 1999 (2) K LJ 461, wherein grant of permit by the Chairman, R.T.A. and consequential issue of permit by the Secretary, R.T.A. were under challenge in a writ petition under Article 226 of the Constitution. The learned Single Judge observed that as resort could be made to Section 90 of the Act, writ petition was not liable to be entertained. Aggrieved, petitioner had filed the writ appeal. During the course of examining the legal questions involved in the writ appeal filed by Manu Kurikkal, the Division Bench noticed that the case did not involve any factual dispute but only a question of jurisdiction and, therefore, writ petition challenging the grant of temporary permit was maintainable under Article 226 of the Constitution. In *Manu Kurikkal (supra)* the subject-matter was the grant of temporary permit for 4 months and the issue for consideration was whether order passed by the Secretary, R.T.A. issuing temporary permit on the direction of the Chairman, R.T.A. who has no jurisdiction to grant temporary permit was legal or without jurisdiction. The Division Bench found that the order granting permit was without Jurisdiction and held that a writ petition was maintainable even without exhausting statutory remedies. It was held that every operator operating under the provisions of the Act and Rules has got a right to insist that the statute is complied with so far as the other operators are concerned. According to the Division Bench which decided *Manu Kurikkal's* case (*supra*) the regulatory provision in the Act shall be applied equally to all persons concerned and violation thereof would infringe the right to operate in accordance with the provisions of the statute.

20. The above observations were made citing the decision of another Division Bench In *C.K. Transport, Calicut v. Calicut v. Wynad Motor Service (P) Ltd.* 1967 K LT 650. Here we cannot lose sight of the fact that the decision reported in 1967 K LT 650 was rendered in the context of the old Act. It is also pertinent to notice that neither *Mithilesh Garg's* case, nor *C.T.R.B.T. Co-op. Society's* case, has been referred to in *Manu Kurikkal's* case. The legislative policy doing away with the restricted licensing under the old Act and the incorporation of liberalised provisions in the Act to achieve that object have not been subjected to examination in *Manu Kurikkal's* case (*supra*). Nothing is discernible from the above decision that attempt was made to telescope the issue in a direction which would throw light on the scope and meaning of the words "person aggrieved".

The Division Bench that decided C.T.R.B.T. Co-op. Society's case and the Division Bench that decided Manu Kurikkal's case examined the issues before Court from two different angles and perspective. We think the approach made by the Division Bench that decided C.T.R.B.T. Co-op. Society's case is in the right direction as the learned Judges of the Division Bench have taken note of the scheme of the Act and the judgment of the Supreme Court in Mithilesh Garg. We are, however, conscious of the fact that neither C.T.R.B.T. Co-op. Society's case nor Manu Kurikkal's case did make any discussion about the standing of an existing operator to maintain a revision petition u/s 90 of the Act, for, such a question did not directly arise for consideration in those cases.

21. In this context it is relevant to take notice of the Division Bench decision of the Karnataka High Court in D.L. Sadashiva Reddy Vs. P. Lala Sheriff and Others, . The question for consideration before the Division Bench was whether the rival operator has no right to challenge the assignment of timings by resorting to Section 90 of the Act. Incidentally the High Court of Karnataka examined the scope of the expression "person aggrieved" and came to the conclusion that u/s 90 of the Act a revision can be maintained by a rival, operator challenging a grant of the stage carriage permit or the timings assigned to a service. In paragraph 15 of the Bench decision, the Court held as follows:

A reading of Section 90 of the Act of 1988 makes it clear that any order of the Regional Transport Authority or the State Transport Authority, whether it be grant of a permit or assignment of timings, can be called in question by an aggrieved operator and the order can be demonstrated to be either illegal or improper. It follows that a rival operator on making allegations which prima facie demonstrates a grievance which calls for examination, is entitled to have his revision examined on merits in accordance with law and he cannot be thrown out at the threshold on the ground that he has no grievance. When once the Tribunal exercises the power to examine the order impugned, it is needless to state that it has to examine the order as to whether it is improper or illegal and has to decide the matter on merits.

In arriving at the above conclusion the Court took note of the views of the Allahabad High Court in Surendra Rao v. Regional Transport Authority Gorakhpur Region (supra) and found that the said decision concurs with the views of that High Court. What is pertinent to notice is that the decision of the Division Bench of this Court in C.T.R.B.T. Co-op. Society's case also came up for consideration before the High Court of Karnataka and it was held that the said decision cannot be regarded as an authority for the proposition that a rival operator cannot challenge the grant of a stage carriage permit on the grounds specified in Section 90 of the Act.

22. True it is, that the State Transport Appellate Tribunal has power u/s 90 of the Act on an application made to it by a person aggrieved to call for the record of any case in which an order has been made by the S.T.A. or R.T.A. against which no appeal lies and to pass appropriate orders if it appears to STAT that the said

order is improper or illegal. Under the Act the STAT does not enjoy the suo motu revisional power. Therefore, the STAT on its own motion will not examine whether an order suffers from the illegality or impropriety. Jurisdiction will be exercised only at the instance of a person aggrieved. It implies that a stranger or a meddlesome interloper will not be allowed to invoke the jurisdiction to impeach the order of the STA or RTA on the ground of impropriety or illegality. The challenge shall necessarily be by persons aggrieved. It is in this context the expression "person aggrieved" occurring in Section 90 assumes significance in determining the questions referred to us.

23. It is quite natural that any order favourable to a rival in business, trade, profession or occupation is likely to cause dissatisfaction in the mind of those who are in the same field. It is also likely that they would attempt to resist the entry of more persons in the field as it would invite greater competition among those engaged in similar activities. In common parlance rivals in business may be aggrieved persons but the same is not true in the eye of law. We are not oblivious of the fact that Courts have ascribed a narrow (strict) interpretation as well as liberal or generous interpretation to the meaning of the term "person aggrieved". In general, Courts have taken the view that to be legally aggrieved a person must be not merely dissatisfied with or even prejudicially affected by an act or decision, he must also have been deprived of or refused something to which he was legally entitled to or is subjected to a legal burden. In a broad sense, the words "person aggrieved" as held by Lord Denning in *A.G. of the Gambia v. N. Jie* (1961) 2 All ER 504 include a person who has a genuine grievance because an order has been made which prejudicially affects his interests. In *Arsenal Football Club Ltd. v. Smith* (1977) 2 All ER 267, the House of Lords opined that to be "aggrieved" a person must be affected by the matter of which he complains. In *Cook v. Southend Borough Council* (1990) 1 All ER 243, the Court of Appeal held that the term "person aggrieved" in Section 301 of the Public Health Act, 1936 was to be given its ordinary natural meaning rather than the narrow interpretation adopted in previous cases. Accordingly, since the interference of the Council had been prejudicially affected by the decision of the Magistrates, irrespective of the order for costs, the Council was a "person aggrieved" and was entitled to appeal to the Crown Court against the Magistrates' decision.

24. Article 19(1)(g) of the Constitution of India guarantees to every citizen the right to carry on trade, business, profession etc. subject to restrictions imposed by the competent Legislature. The law thus made may confer right on the existing traders, professional etc. to raise objections against the grant of orders, permits, licence etc. in favour of new entrants. Legislature is also competent to lay down a policy depriving those already in the business field the right to prevent the entry of new applicants and provide that the authority empowered to grant licences or permits or other facilities to the new entrant need not listen to the grievance of existing rivals in the field against the grant of permits or licences. The Apex Court in *Mithilesh Garg* noticed that the Parliament in its

wisdom decided to translate the above policy into action while enacting the Motor Vehicles Act, 1988. We are of the opinion that having understood the object of the Act and the intention of the Legislature, the attempt of the Court shall be to construe and harmonise the provisions, as far as possible, consistent with that object and scheme of the statute unless a contrary intention is expressly discernible from the statutory provision. The words "person aggrieved" occurring in Section 90 of the Act will have to be understood in the above context. It is trite that the legislative intent has to be ascertained according to plain language used in the enactment and basic rule of statutory construction should be preferred which advances the purpose and object of a legislation. See *Baldev Singh Bajwa v. Monish Saini* 2005 (8) Supreme Today 240. Read in isolation, much difference may not be found between the language of Section 90 of the Act and the corresponding provision in the predecessor enactment. But that does not mean that the "new section shall be understood in all respects exactly as intonation of the repealed section. This is particularly so, with regard to the scope and meaning of the words "person aggrieved", for the meaning attributed to such expressions will vary according to the context in which they are found. The content of that expression is inter-linked with the scheme of the whole Act. What might have been a legal grievance in the past, need not be so under the present Act. That the Legislature made that much deviation is clear from Sections 71 and 80 of the Act.

25. Section 71 of the Act postulates the R.T.A. to bear in mind only two aspects in considering applications for stage carriage permits: (i) R.T.A. shall have regard to the broad objects of the Act, and (ii) must be satisfied that the time-table furnished does not contravene the provisions of the Act relating to the speed at which vehicles may be driven. Jurisdiction vested in the STAT to examine the correctness of orders passed refusing permit, etc. u/s 89 Is an appellate power whereas the jurisdiction vested In the same Tribunal u/s 90 to pass orders in respect of improper or illegal orders of STA and RTA is revisional, Appeal is available only to a person aggrieved by the retinal to grant a permit, or by any condition attached to a permit granted; the revocation of suspension of the permit, or any variation of the conditions thereof, the refusal to transfer the permit, etc, any vehicle or by any other order which may be prescribed, but there is no right of appeal against the grant of a permit, renewal of a permit, etc. Corresponding prevision in the old Act relating to right of appeal was Section 64. One Important legislative change which compels attention is the absence of provisions similar to Sections 64(1)(f), (h) and (hh), obviously in tune with the liberalised policy which is the redeeming feature of the Act. The correlation between an application made to STAT by a person aggrieved and the jurisdiction of the STAT to exercise the revisional power u/s 90 of the Act in respect of improper illegal orders has to be borne in mind. Section 90 does not confer power on the STAT to pass orders under that section merely for the reason that the order of the STA or RTA is improper or illegal. The jurisdiction will be exercised only when an application is filed by a person aggrieved. To hold

otherwise will be to render the words "person aggrieved" in Section 90 of the Act redundant and otiose."

26. In this context, we would like to point out the difference in approach permitted by law while exercising the power of revision under the statute and the power of judicial review under Article 226 of the Constitution of India. The scope of the expression "person aggrieved" occurring in Section 90 of the Act shall conform to the scheme of the enactment whereas for the purpose of judicial review a different yardstick may be warranted so as to meet the ends of justice.

27. Contentions raised at the instance of existing operators, even under the old Act were repelled by the Apex Court holding that "the fact that some others have also been enabled to obtain permits for running buses cannot constitute a violation of the appellants' rights under Article 19 of the Constitution and that the said provisions "were not intended to grant a kind of monopoly to a few bus operators to the exclusion of other eligible persons". The Apex Court in *Hans Raj Kehar v. State of U.P.* (supra), held in categorical terms as follows:

No right is guaranteed to any private party by Article 19 of carrying on trade and business without competition from other eligible persons.

Following the dictum in *Exp Sidebotham, re Sidebotham* (1880) 14 Chd 458 and the statement of law made in *Nagar Rice and Flour Mills v. N.T. Gowda* (supra), the Apex Court in *Jasbhai Motibhai Desai v. Roshan Kumar* (supra) held as follows:

In sum, the appellant (a rival in trade) has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore, he is not a "person aggrieved" and has no locus standi to challenge the grant of the no objection certificate.

Citing the decision of the Apex Court in *Jayaraj v. Commissioner of Excise* 2000 (3) K LT 820, it was contended by Counsel for the petitioner that the Apex Court has taken notice of the expanded concept of locus standi and has adopted the liberal approach so as to protect public interest. He also contended that the said liberal view accords with the views expressed by the House of Lords in *Arsenal Football Club Ltd.* and those by the Court of Appeal in *Cook v. Southend Borough Council* (supra). We are of the view that the statement of law in *Jayaraj v. Commissioner of Excise* (supra), cannot be made applicable to fact-situations arising under the Motor Vehicles Act. As rightly pointed out by the learned Judge in the Reference Order what is considered in the *Jayaraj*'s case is a piece of law relating to the privilege of vending liquor, whereas the matters relating to Motor Vehicles Act stand on a different footing. Though Counsel for the petitioners would contend that having regard to the expanded concept of locus standi the view expressed in *Jayaraj*'s case, may be preferred to that in *Jasbhai Motibhai*

Desai's case, we are not inclined to agree to that proposition. It is very pertinent to note that the Apex Court in *Mithilesh Garg* placed reliance on the dictum in *Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed* (supra), and quoting paragraphs 47, 49, 50 and 51 of that judgment held that a rival in the business has no right to complain against the liberalised policy for grant of permits under the Act. It is true that what was decided in *Mithilesh Garg* was the constitutional validity of certain provisions of the Act and what has been completely taken away by the Act is the right to participate in the decision-making process anterior to the grant of permit to a new entrant. However, the fact remains that the views expressed by the Apex Court in *Mithilesh Garg* throw light on the nature of grievance an existing operator is entitled to raise. It is a relevant criterion though not the sole test while invoking Section 90 of the Act or Article 226 of the Constitution of India.

28. We are of the view that the existing operator cannot invoke the revisional jurisdiction on the sole ground that the grant of permit to the opposite party prejudicially affects his rights. It is not as though he can impeach each and every order of the RTA or STA alleging illegality or impropriety. He can challenge only those orders against which he can have a legal grievance. He cannot be a person aggrieved in respect of every action or decision of RTA or STA. There are grievances which would give rise to a cause of action exclusively for the passengers only or sometimes to a local authority and the like. If the existing operator is given the right to challenge the very grant of permit or renewal of permit on the ground that he is aggrieved by such grant, it will amount to resurrecting a right which he was entitled to avail only under the old Act. It will be illogical and irrational to interpret the expression "person aggrieved" in Section 90 of the Act in such a manner as to take away the right given to a new entrant at the pre-permit stage to have a permit under the Act without obstruction from those already in the business, the very moment he is granted or issued a permit. Under normal circumstances, grievance of the existing operator shall be confined to disputes relating to settlement of timings and cannot be entertained against the grant of permit or renewal of permit as such. We are unable to concur with the reasoning and the final conclusion arrived at by the learned Judges in *D.L. Sadashiva Reddy v. P. Lala Sheriff* (supra). We agree with the views expressed by the Division Bench in *Girija Devi v. K.T. Mathew* (supra) and in *C.T.R.B.T. Co-op. Society's* case, that an existing operator will be a person aggrieved as far as settlement of timings is concerned. However, it may not be proper or expedient to restrict the scope of the words "person aggrieved" to settlement of timings only, though under the scheme of the Act, existing operators may have in the normal course, legal grievance against settlement of timings only. We, therefore, do not rule out any other grievance of a similar nature which would tilt the balance in favour of one operator and against another as a consequence of orders issued by R.T.A. or S.T.A. The applicant is required not only to establish that the order impugned suffers from illegality or impropriety of a substantial nature but also has to discharge the burden to

satisfy the Tribunal that he has a legal grievance against that order, therefore, is a person aggrieved. This exercise the STAT has to do by applying its mind to the facts and circumstances of each case and this implies that the Tribunal may not throw a revision petition overboard at the threshold.

29. In W.P. (C) No. 4828/05, the petitioner has challenged the grant of permit to the 2nd respondent on the ground that he did not specify the registration number or other particulars of the vehicle. In W.P. (C) No. 6548/05, the petitioner has challenged the grant of permit to the 2nd respondent on the ground that the route is not "town service", and further, that it overlaps a route within the exclusion scheme of the E.S.R.T.C.

Applying the above test to the facts of these cases we have no hesitation to hold that these writ petitions are liable to be dismissed. We do so.