

(1968) 09 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Special Appeal No"s. 33 to 36 of 1968

Dwarka Das and Sons and Others

APPELLANT

Vs

Regional Transport Authority, Jaipur and Others

RESPONDENT

Date of Decision : 10-09-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1939 — Section 45, 47(1), 48(1), 57(3), 60(1)

Citation : AIR 1969 Raj 173

Hon'ble Judges : V.P. Tyagi, J;C.M. Lodha, J

Bench : Division Bench

Advocate : R.K. Rastogi, J.S. Rastogi, R.R. Vyas, in No. 33/68, R.R. Vyas, in No. 34/68, D.P. Gupta, H.C. Rastogi, M.L. Panwar and M.M. Vyas, A.A.G in No. 36/68, for the Appellant; J.P. Jain, N.K. Jain, U.C. Jain and L.R. Bhansali for (Martin hail Ex-Servicemen Co-operative Transport Society Ltd., Khetri (Rajasthan)), M.M. Vyas, A.A.G. for Respondent No. 1 (in Appeals Nos. 33, 34 and 35 of 1968), for the Respondent

Final Decision : Partly Allowed

Judgement

Lodha, J.—These four special appeals filed u/s 18(1) of the Rajasthan High Court Ordinance No. 15 of 1949 are directed against the judgment of Hon"ble Kansingh J dated 11-7-68 by which the learned Judge allowed the writ application filed by M/s. Martin hail Ex-Service-men Cooperative Transport Society Ltd., Khetri (which is the only contesting respondent before us) and which will be referred to as "Society" hereinafter for the sake of brevity). The resolution of the Regional Transport Authority, Jaipur Region, Jaipur (Item No. 2/109) dated 22/23rd December, 1967, has been set aside and the permits for stage carriage granted to the appellants in appeals Nos. 33, 34 and 35 on Jaipur-Khetri route have been cancelled by the judgment under appeal, and the Regional Transport Authority has been further directed "to decide the application of the Society, as also of other applicants like the Society, if pending, along with the applications of the appellants and others like them. Appeal No. 36 of 1968 has been preferred by

the Regional Transport Authority, but the parties, who are really aggrieved and who in fact are adversely affected by the judgment under appeal are the appellants in appeals Nos. 33, 34 and 35 of 1963 and as such these parties to whom the permits have been granted will be referred to as "appellants" in this judgment for the sake of brevity.

2. The Society is an existing operator along with 19 others on Jhunihunu-Nim-ka-Thana route, 64 miles in length. All the operators provide 12 return services. It appears that all of them applied for extension of their route from Neem-ka-Thana to Jaipur via Kanwat, Sri Madhopur, Ringas, Govindgarh and Chomu. Their applications were published in Rajasthan Rajpatra dated 21-4-66 under notification dated 2-2-66. Some new applicants including the appellants also applied for grant of fresh permits on Jaipur-Khetri Copper Mines route, which overlap the Society's route by 30 miles. These applications were also published. By its resolution No. 30 (item No. 2/31) dated 16-9-67 the Regional Transport Authority resolved that the applications for extension of the route Jhunjhunu-Nim-ka-Thana to Jaipur as well as those for grant of fresh permits on Jaipur-Khetri route would be considered together. Again by a subsequent resolution dated 20-10-67 the Regional Transport Authority directed that "all the applications (for different vias of Jaipur-Khetri Copper Project route) may be sorted out and put up along with item No. 109 of the Agenda listed for the Regional Transport Authority meeting to be held on 6th, 7th and 8th November, 1967," In the meeting held on 8-11-67 it was observed that all the items after item No. 2/105 would be taken up in the next meeting of 21-12-67 and the meeting was adjourned to the next day, i. e. 9-11-67. On 9-11-67 it was again observed that the applications for

(1) Extension of Jaipur Sikar amalgamated route from Sri Madhopur to Khetri Mines (item No. 8/1);

(2) Extension of Jhunjhunu-Nim-ka-Thana route upto Jaipur (item No. 8/2); and

(3) Grant of fresh permits over Jaipur-Khetri Copper Mines route (item No. 2/41)

may be decided along with item No. 2/109 on 21-12-67. On 21-12-67, the meeting of the Regional Transport Authority could not be held for want of quorum and was adjourned to 22-12-67, In the meeting held on 22/23-12-67 the Regional Transport Authority considered the applications of the appellants as also of other persons, who had applied for permit on Jaipur-Khetri Copper Mines route and granted 18 permits to non-petitioners Nos. 2 to 19 in the writ application and postponed the consideration of the Society's application as well as the applications of other operators for extension and resolved that the routes from Jaipur to Jhunjhunu via Chomu, Ringas, Sri Madhopur, Nim-ka-Thana, and Jaipur, -- Jhunjhunu via Chomu-Kingas-Kharidela-Udaipurwati Guda Badgaon be first surveyed. The Society's case is that the impugned resolution of the Regional Transport Authority granting permits to the appellants is bad inasmuch as the Regional Transport Authority was bound to consider the application of the Society

along with the applications of the appellants inasmuch as the Society, it is alleged, was a candidate for extension of its permit over the same route for which the appellants had applied. It was contended that according to several pronouncements of this Court, the Regional Transport Authority committed a patent illegality in granting permits to the appellants while keeping the Society's application pending, so as to give advantage to the appellants over the Society,

3. In the reply filed before the learned single Judge on behalf of the appellants it was pleaded that the Society was not an applicant for permit over the same route for which the appellants had applied and that the route for which the appellants had been granted permits was distinct from the route for which the Society had applied for extension. It was, therefore, urged on behalf of the appellants that the principle laid down in some of the decided cases of this court, relied upon by the Society had no application to the facts and circumstances of the present case. It was also urged that the Society had indulged in several mis-statements in the writ application and. therefore, the writ application should be dismissed. It was further pleaded that since the Society had not filed objections to the applications filed by the appellants, it had no locus standi to challenge the permits granted to them.

4. The learned single Judge held that the route for which the appellants have been granted permits and the route for which the society had applied for extension lie on a common highway and one of the two terminii of the two routes is also common. He also held that if extension of the permit of the Society had been allowed it would have provided service between Jaipur and Khetri for which permits had been granted to the appellants. He further found that the distance between Jaipur and Khetri was 110 miles. In such circumstances, according to learned Judge, there could be no difficulty in coming to the conclusion that if one set of applications are taken up and decided in advance of the others then the remaining applications are bound to be affected. In this view of the matter, the learned Judge held that even though the cases previously decided by this court were in respect of the same route between the same two terminii. the principle laid down in those cases would apply to the present case also. The learned Judge, therefore, came to the conclusion that the Regional Transport Authority was in error in deciding the applications of the appellants by the impugned resolution and. therefore, he quashed the impugned resolution of the Regional Transport Authority and also cancelled the permits granted to the appellants.

5. Before considering the arguments addressed to us by the learned counsel for the parties it would be convenient to state that the finding of the learned Single Judge that both the routes, that is, one for which the appellants had applied for fresh permit and the other for which the society had applied by way of extension, have only one common terminus that is Jaipur, has not been challenged before us. It is also beyond dispute that both the routes lie on a common highway. Mr. Rastogi, counsel for the appellants in appeal No. 33/68, who has advanced the leading argument in the case, has vehemently contended that the learned single

Judge erred in applying to the present case the principle laid down in the earlier decisions of this court (to which detailed reference will be made hereafter) regarding simultaneous disposal of all the applications pertaining to the same route between the two common termini. He has urged that the matters of the two sets of applications namely those filed by the appellants for grant of fresh permits on Jaipur-Khetri route and those made by the existing operators including the Society for extension of their permits from Nim-ka-Thana to Jaipur were quite distinct, and that the Regional Transport Authority had not committed any error of jurisdiction or a patent error of law in deciding the applications of the appellants first so as to justify interference by the issue of a writ of certiorari. In support of his contention he has placed strong reliance on an unreported decision of their Lordships of Supreme Court in Civil Appeal No. 762 of 1963, *Purshottam Bhai Punam Bhal v. State Transport Appellate Authority, Madhya Pradesh*, decided on 14th April 1964 (SC).

6. On the other hand the learned counsel for the Society has pressed with equal vehemence that the principle of simultaneous consideration and disposal of all the applications for the same route laid down in the earlier cases decided by this court applies fully to the present case and no just exception can be taken to the view taken by the learned single Judge.

7. For the correct appraisal of the competing claims made by the learned counsel for the parties it would be necessary to refer in some detail to the decisions of this court on which strong reliance has been placed by the learned counsel for the Society.

8. The first case to which we might refer is D. B. Civil writ petition No. 199 of 1956 *Brothers Transport Service, Nathdwara v. Regional Transport Authority, Udaipur* decided on 12th August 1957 (Raj). The applicants in that case had applied for permits on five routes namely Kankroli-Desuri, Nathwara-Kankroli-Bhilwara, Kankroli-Gangapur, Kankroli-Thoriya, Ghata-Kelwara, and Nathdwara-Gaogura routes. Opposite party No. 2 namely Rajasthan Transport Corporation, Nathdwara, had also applied, though some time later, for permits on these five routes. The applications filed by the opposite party No. 2 even though made later, were published while no publication was made of the applications filed by the applicants. The applicants, therefore, made representations to the Regional Transport Authority to publish their applications also, but the Regional Transport Authority did not do so and fixed its meeting on 29th December, 1966 for considering the applications filed by the opposite party No. 2. In these circumstances Hon^{ble} Mr. K. N. Wanchoo, the then Chief Justice, speaking for the court, observed as follows:--

"At the same time, it is equally obvious that if there are a large number of applications for permits on a particular day before the Regional Transport Authority, it is its duty to publish all these applications together so that all of them may be considered at one sitting. The reason for publishing all applications together is that the number of vehicles permitted on a particular route is always

limited. Generally speaking, there are many more applications than the number of vehicles permitted on a route and the Regional Transport Authority has to Choose between a large number of applications and give the permits to the best out of them. The procedure provided u/s 57 requires, however, that the Regional Transport Authority should publish an application for permit and invite objections of those concerned before deciding whether a permit should be granted or not. Now, if the Regional Transport Authority has, for example, twenty applications for permits at a particular moment and published only one, and the number of permits to be granted is one, it may happen that it may grant a permit to the one person, whose application has been published, on the ground that there is no other application before it and refuse to consider his case in comparison with the cases of nineteen others whose applications were pending at the same time before the Regional Transport Authority, but were not published by it. Thus, by withholding publication of other applications pending before it, the Regional Transport Authority can show favouritism to one person as against the others."

9. The next case is D. B. Civil Writ Case No. 85 of 1958, M/s. Taxi Motor Association, Kankroli v. Regional Transport Authority, Udaipur, decided on 11-9-1958 (Raj). It was held in that case that the Regional Transport Authority had acted illegally in giving permits to non-petitioners Nos. 2 to 17 without publishing the petitioners' application u/s 57 (3) and taking the same into consideration before deciding the applications of others. The non-petitioners in that case, it so appears, tried to justify the action of the Regional Transport Authority by saying that the petitioner No. 1 had applied only for extension of route and not for permits on the new route. But the finding of the court was that the petitioner wanted new permits for the new route. Thus, following the decision in Brothers Transport Service, Nathdwara's case, Civil Writ Petn. No. 199 of 1956, D/- 12-8-1957 (Raj) (supra) the learned judges held that all the applications for Udaipur-Bhilwara route should have been considered together.

10. Then we come to another Bench decision of this court Shyam Singh v. Regional Transport Authority, Udaipur Region, Udaipur, ILR (1960) 10 Raj 1669. In this case too the petitioner Shyam Singh had moved for issue of a writ against the Regional Transport Authority restraining the latter from considering applications for grant of a permit on the Udaipur-Bhilwara route without duly publishing the petitioner's application. After making a detailed reference to the case of Brothers Transport Service Nathdwara, Civil Writ Petn. No. 199 of 1956, D/- 12-8-1957 (Raj) (supra) it was held that all the applications for permits on this route should have been decided together.

11. The next case on which considerable emphasis has been laid by the learned counsel for the Society is Bhonrilal v. Regional Transport Authority, Jaipur, 1967 RLW 481. The route in question in this case was Jaipur-Pilani and both the termini were the same. The petitioner's contention was that the petitioner's application made in 1960 for issue of permit for the route in question, was not published and was consequently not considered along with the applications of the

respondents. The learned single Judge dismissed the writ application holding that the petitioner had applied for extension of his permit on the Jaipur-Sikar amalgamated route up to Pilani and not for fresh permit on the Jaipur-Pilani route and, therefore, the principle of considering all the applications together, as laid down in the earlier decision of this Court, had no application. The Division Bench in disagreement from the learned single Judge came to the conclusion that the petitioner applied for grant of permit for the Jaipur-Pilani route and based its decision on the footing that the applications of the petitioner and the opposite party were for the permits on the same route lying between the same two termini, and in this view of the matter the learned Judges held that the principle laid down in *Brothers Transport Service, Nathdwara's case*, Civil Writ Petn. No. 199 of 1956, D/- 12-8-1957 (Raj) had full application, and, therefore, they set aside the order of the learned single Judge and directed the Regional Transport Authority to publish all the applications for grant of permit on Jaipur-Pilani route and then to decide them together. It may, thus, be noted that the finding was that the route for which the permits had been applied for by the contesting parties lay between the same two termini, namely, Jaipur and Pilani.

12. In *Surendra Kumar Sharma v. Regional Transport Authority, Jaipur Region, Jaipur*, Civil Writ Petn. No. 460 of 1967 = *Surendra Kumar Sharma Vs. Regional Transport Authority, Jaipur Region and Others*, decided by one of us sitting singly on 20th Dec. 1967, the Regional Transport Authority was directed to consider the application of the petitioner for grant of permit on Beawar-Todgarh route along with the application of the opposite party Chelaram. In this case also the route was the same and it lay between the same two termini that is Beawar and Todgarh. It was held in this case that if more than one applications are pending and are ripe for consideration, then there is no reason for the Regional Transport Authority to consider only one application and postpone the rest. It was further held that this principle would apply to all such applications which are ripe for consideration even though some of them may have been made after the application of one of such applicants had been remanded by the Transport Appellate Tribunal for fresh consideration.

13. The last case on this point relied upon by Society is *Shiv Charan Lal v. Regional Transport Authority, Jaipur Region, Jaipur* (Civil Writ Petn. No. 657 of 1967) decided on 16th April, 1968 (Raj). The writ application filed in this case pertained to Alwar-Pahadi route and there was no dispute between the parties regarding the route and the two termini being exactly the same in respect of the permits they had sought. The grievance of the petitioner was that although his application had become ripe for consideration, the Regional Transport Authority did not consider it along with the applications of the opposite parties Nos. 2 and 3 and leaving out his application granted one permit each to the opposite parties Nos. 2 and 3. The petitioner's case was resisted on the ground that the opposite parties had made their applications earlier to those made by the petitioner and the Regional Transport Authority was, therefore, justified in taking up and disposing of the earlier applications filed by the opposite parties. The learned

Single Judge, however, held that, --

"If all the applications that are ripe for hearing at the time the meeting of the Regional Transport Authority is proposed to be convened are considered together, then everyone is likely to have a fair deal."

In this view of the matter, the impugned resolution of the Regional Transport Authority granting permits to the opposite parties Nos. 2 and 3 was quashed and the Regional Transport Authority was directed to dispose of all pending applications on the Alwar-Pahadi route.

14. It may be convenient here to deal with the judgment of their Lordships of the Supreme Court in Purshottam Bhai Punam Bhai Patel's case, Civil Appeal No. 762 of 1963 D/- 14-4-1964 (SC) (supra) on which the learned Counsel for the appellants has mainly rested his case. The facts of this case are these: In January 1958, the Malwa etc. Co-operative Society (to which we shall refer as the "Society"), and certain other Motor Transport operators applied to the Regional Transport Authority for grant of a permit for Burhanpur-Indore route. While these applications were pending, Purshottam Bhai Patel and Babulal also applied to the same authority on 30th May, 1958, for grant of a permit on the route Burhanpur to Ujjain via Indore. These two routes were identical upto a long distance overlapping in so far as they were between Burhanpur to Indore. The Society did not oppose the grant of permits for this route; but was granted permits on the route Burhanpur to Indore on 29th November, 1958. The applications of Purshottam Bhai Patel and Babulal for the route Burhanpur to Ujjain were dismissed by the Regional Transport Authority on 29th December, 1959. Purshottam Bhai Patel and Babulal filed appeals before the Appellate Tribunal. While their appeals were pending the Society also filed an application on 2nd November, 1960, for extension of their route Burhanpur-Indore to Ujjain. Patel and Babulal opposed this application for extension. But before the Society's application for extension could be decided, the appeals filed by Patel and Babulal were decided by the Tribunal and their cases were remanded to the Regional Transport Authority to issue permits for the route Burhanpur to Ujjain to both Patel and Babulal, if there was scope for two, and if there was scope for one only, then one permit to be given to either Patel or Babulal whomsoever the Authority thought fit. By its order dated 28th April, 1961, the Regional Transport Authority held that one permit was sufficient on this through route and the permit was directed to be shared equally by Patel and Babulal. In making this order the Authority noted that the consideration of the applications of the operators including the Society for extension of permits on the route Burhanpur-Indore upto Ujjain be deferred. Patel and Babulal filed appeal from the order of the Regional Transport Authority and obtained an injunction from the Tribunal restraining the Transport Authority from dealing with the application of the Society for extension of the route. Then on 6th October, 1962 the Tribunal allowed the appeal filed by Patel and Babulal and granted each of them a full permit on Burhanpur-Ujjain route. It was legality of this order of the Tribunal that

was challenged by the Society by a writ petition before the High Court. The High Court set aside the order of the Tribunal and hence the Society filed appeal to the Supreme Court by special leave.

15. Their Lordships of the Supreme Court held that the Tribunal cannot be said to have ignored consideration of the terms of Section 47 (1) (c) in making the impugned order. It was observed, --

"The possibility of this order (impugned order of the Tribunal) prejudging or prejudicing the consideration of the application of the society for the grant of an extension of route, ought not, in our opinion, to weigh with us in considering the legality of the impugned order of the Tribunal. "The matters raised by the two sets of applications were really distinct, and we consider that there was no error of jurisdiction, or a patent error of law in the order of the tribunal to justify interference by the High Court by the issue of a writ of certiorari".

(The underlining (here in " ") is ours).

16. It may, here, be pointed out that two main contentions were advanced in this case before the Supreme Court. The first was, that the order of the Tribunal was correct having regard to the history of the proceedings and in any event the Tribunal had not committed any error of jurisdiction. The second contention was that on a proper consideration of the relevant provisions of the Motor Vehicles Act the two sets of applications -- the one for extension of the route from Indore to Ujjain and the other for grant of permit on the through route from Burhanpur to Ujjain were distinct matters, which ought to be considered separately. While deciding the first contention their Lordships have observed, as would be clear from the underlined (here in " ") sentence in the passage from their Lordships' judgment, which we have extracted above, that their Lordships came to the conclusion that the application of the Society for extension of its permit from Indore to Ujjain was a distinct matter from the applications made by Patel and Babulal for grant of fresh permits on the route Burhanpur to Ujjain. Mr. Rastogi, learned Counsel for the appellants, contends that their Lordships' decision in Purshottam Bhai Punam Bhai Patel's case. Civil Appeal No. 762 of 1963, D/- 14-4-1964 (SC) (supra) is on all fours with the present case.

17. It appears, that it was argued before the learned Single Judge that the view taken by this Court in the cases referred to above is no longer good law in view of the pronouncement of their Lordships of the Supreme Court in Purshottam Bhai Punam Bhai Patel's case, Civil Appeal No. 762 of 1963, D/- 14-4-1964 (SC). The learned Single Judge repelled this contention on two grounds, firstly that Bhonrilal's case 1967 Raj LW 481 (supra), was decided by a Division Bench of this Court on 17-1-67, whereas the Supreme Court judgment is dated 14th April, 1964. In the second place the learned Single Judge also held that their Lordships had declined to decide the question that applications by different parties -- one for smaller portion of a route and the other for the entire route--should be considered and dealt with separately and in this connection reference was made

to the following passage of their Lordships judgment:--

"The second submission of Mr. Sen was that each application for the grant of a permit constituted a separate proceeding which had to be dealt with in isolation and without regard to other applications for the same, or related routes which might be pending at the time, any one application was heard and disposed of by the Transport Authority u/s 57 (5). In other words the argument was that on the scheme of the Act, it would have been an error on the part of Transport Authorities to have considered such pending applications for permits and the possibility of their being granted, while making orders on applications being heard and decided u/s 57 (5). In view of our conclusion on the first of the arguments we prefer not to express any final opinion on this submission and hence are not setting out the provisions of the Act on which reliance was placed by the learned Counsel as leading to the result he urged us to adopt. We might, however, observe that having regard to the terms of Section 47 (1) (c) of the Act we are unable as at present advised to accept the submission in the absolute form, he presented. Without further and careful examination of the various provisions to which learned Counsel invited our attention and consideration of the various situations which might arise, it would not be possible to lay down in precise terms the degree of relevance which should attach to other applications pending at the time when another set of them is being considered. This for the reasons already stated, we do not consider it necessary to undertake to dispose of in this appeal."

18. The learned Counsel for the appellants has not argued before us that the view taken in Bhonrilal's case, 1967 Raj LW 481 is no longer good law in view of the pronouncement of their Lordships of the Supreme Court in Purshottam Bhai Punam Bhai Patel's case, Civil Appeal No. 762 of 1963, D/- 14-4-1964 (SC) (supra). We, therefore, need express no opinion on this point, as we think, that it is not necessary for us to do so for the decision of this case. All that we can say is that Purshottam Bhai Punam Bhai Patel's case. Civil Appeal No. 762 of 1963, D/- 14-4-1964 (SC) was not brought to the notice of the learned Judges who decided Bhonri Lal's case. 1967 Raj LW 481 and, therefore, the impact of Purshottam Rhai's case, Civil Appeal No. 762 of 1963. D/- 14-4-1964 (SC) on the earlier decisions of this Court was not examined. We would, therefore, leave this question to be decided in an appropriate case. But we cannot fail to observe that there is some similarity between the facts of the case in hand and Purshottam Bhai Punam Bhai Patel's case. Civil Appeal No. 762 of 1963, D/- 14-4-1964 (SC) and we are of opinion that the view expressed by their Lordships in this case has direct bearing on the point at issue before us. It does appear to us that some earlier portions of the Supreme Court's judgment escaped the notice of the learned Single Judge. At one place the learned Single Judge has observed in his judgment,--

"What is more important is: if by grant of one set of applications over the same highway the fate of the other set of applications over the same highway though

for a longer or shorter distance is to be sealed or materially affected, then in such a case it will be the bounden duty of the Regional Transport Authority to decide all such applications together at one hearing, provided of course they are all ripe. However, if the fate of the applications of one set is not likely to be affected by deciding applications of the other set, then the Regional Transport Authority may not think it proper to decide them together."

From this passage it appears that one of the foremost considerations before the learned Single Judge for taking the view which he did, was -- the possibility of prejudice to some of the applicants, whose applications would be postponed. But this factor of likely prejudice, did not weigh with their Lordships of the Supreme Court as would be clear from the passage of their Lordships' judgment which we have extracted above. There is also no gain-saying the fact that according to the view expressed by their Lordships of the Supreme Court the matters raised by the two sets of applications, namely, applications of the appellants and that of the Society were really distinct, as one was for a fresh permit on Jaipur-Khetri route and the other was for extension of the existing permit by inclusion of a new route. In these circumstances the question arises whether the principle laid down in the earlier decisions of this Court referred to above should be extended to the present case also where the matters raised by the two sets of applications are distinct.

19. It is agreed by the Counsel on both the sides that the only relevant provision of law, which can be said to have bearing on the question of simultaneous consideration of applications on a particular route is Section 47 (1) (c). It would be proper at this stage to refer to the provisions of Section 47 (1) (c).

"47(1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely,--

(c) that adequacy of other passenger transport services operating or likely to operate in near future, whether by road or other means, between the places to be served,"

From its bare perusal, it would be clear that the section requires that in considering an application for stage carriage permit the Regional Transport Authority shall have regard inter alia to the adequacy of the passenger services operating or likely to operate in the near future, whether by road or other means, between the places to be served. In other words the Transport Authority must be alive to adequacy of the other transport services operating or likely to operate between the places, to be served. The words "between the places to be served" in our opinion refer to the two termini which are not the same in the present case. Moreover, in the impugned resolution the Regional Transport Authority has clearly stated that in respect of Jaipur-Jhunjhunu route, which is a through route, it would be necessary first to get a survey report before deciding the question of grant of permit on this route, and, therefore, applications of the Society and such other applicants, who are already holding permits from

Jhunjhunu to Nim-ka-thana, were postponed till the survey report was received and it was further directed that this matter may be taken along with Item No 2/107, which pertains to Jaipur-Sikar amalgamated route. Thus the Regional Transport Authority was not oblivious of the fact that it was granting permits" to the appellants on a partly over-lapping intermediary route and that there were applications of the existing operators pending for extension of their permits from Nim-ka-Thana to Jaipur. This gives a clear indication that the Transport Authority considered that the grant of 18 permits to the appellants and a few others, (respondents Nos. 2 to 19, in the writ application), would not shut out the due and proper consideration of the application of the Society and those of other applicants like the Society for extension of the route. Thus the view of the Transport Authority cannot be said to be patently erroneous, because in the case of extension of permits or in other words, inclusion of a new route in permits, different considerations may apply and the survey of traffic may be necessary. For instance in the present case it was decided as far back as in 1965 that the route between Jhunjhunu and Jaipur should be surveyed. We are also of the view that different considerations may apply at the time of granting permits for through or direct service from Jhunjhunu to Jaipur by different vias. In these circumstances the postponement of the applications by way of extension so as to provide a direct service from Jhunjhunu to Jaipur by whichever vias, cannot be said to be a patent illegality nor can it be said that the Transport Authority exceeded its jurisdiction in deciding the applications for permits from Khetri to Jaipur, while postponing consideration of applications of the Society and other applicants like the Society. We are, therefore, of opinion that the Regional Transport Authority did not commit any error of jurisdiction nor did it commit any patent illegality in granting permits to the appellants for Jaipur-Khetri route while postponing the decision of the Society's application for extension of its permit from Nim-ka-Thana to Jaipur.

20. Learned Counsel for the Society was at pains to submit that the route for which the Society as well as the appellants had applied was the same route and in this connection our attention was invited to a few authorities, viz., Nilkanth Prasad and Others Vs. State of Bihar, and C.P.C. Motor Service, Mysore Vs. The State of Mysore and Another, He also made reference to words "Area", "Route", or "Portion of the routes" in Ss. 58-C (68-C?), 68-D, 68-F (2) and Section 45. The learned Single Judge was of the opinion that "it is not the two termini of the routes that alone would be determinative of certain routes being the same or being different and distinct from each other." We do not think it necessary to enter into the discussion of the question as to what are the implications of the term "route" and whether the application of the Society and the applications of the appellants were for the same route or different routes. It cannot be denied that all the cases of this Court relied upon by the learned Counsel for the Society relate to the same route in the sense that the applicants wanted permits for the routes falling between the same two termini on the same highway. Even according to the learned Single Judge this distinguishing feature in the present

case was there, but in his opinion "the rationale of those decisions and the thought underlying them" would apply to the present case also, because to hold otherwise, according to him, would result in prejudice to the Society and to adopt any other course would not be in consonance with justice and fair-play. As we have already observed above the question of prejudice according to the view taken by their Lordships of the Supreme Court is not at all a material consideration.

21. True, it is, that their Lordships of the Supreme Court declined to decide the second submission made on behalf of the petitioner in that case that each application for the grant of a permit constituted a separate proceeding which had to be dealt with in isolation and without regard to the other applications for the same or related routes, which might be pending at the time any one application was heard and disposed of by the Transport Authority u/s 57 (5). In other words a very broad argument was made before their Lordships that it would be an error on the part of Transport Authorities to consider such pending applications for permits and the possibility of their being granted, while making orders on applications which are being heard and decided u/s 57 (5). Such a broad proposition is not being pressed upon us by Mr. Rastogi. The passage from their Lordships' judgment extracted by the learned Single Judge, however, does not lead to the conclusion that their Lordships were of the view that applications for grant of new permits overlapping intermediary existing route and for extension of the existing route of certain persons must be decided together. On the other hand their Lordships were pleased to hold that the matters raised by such two sets of applications are really distinct. In this connection their Lordships were further pleased to observe,--

"If it were held that immediately an application is made for a permit on a route which is the same as that for which applications are being considered by the Transport Authority u/s 57 (5) or which might have a material bearing on the grant of permits on that route, the Transport Authority would have to hold its hands and wait till all the applications could be considered together, then it would be apparent that if there are successive applications at intervals for these permits, the stage might never be reached when the applications could be considered and a permit granted. Once it is recognised that the grant of permits to transport operators to ply their carriages on specified route is primarily for the benefit of the travelling public, it would be seen that such a result would mean that the public would be deprived of a transport service for appreciable length of time and this could not have been contemplated by the Act."

In our humble opinion, the learned Single Judge was in error in not considering the effect of the judgment of their Lordships as a whole and in holding that this judgment of their Lordships had no application to the present case merely because their Lordships refrained from deciding the second submission, made by Mr. Sen, the learned Counsel for the petitioner.

22. In Purshottam Bhai Punam Bhai Patel's case. Civil Appeal No. 762 of 1983

D/- 14-4-1964 (SC) (supra) in the words of their Lordships of the Supreme Court,--

"The learned Judges (of the High Court) had quashed the order of the Tribunal for the reasons that the Tribunal had dealt with the applications of Patel and Babulal without considering the possibility of the application of the Society for extension of its route from Indore to Ujjain being granted and that such an order was, therefore, calculated to prejudice the grant of the extension under an application which was still pending."

Their Lordships expressed their dissent from this view of the High Court.

23. Thus a careful study of the judgment of their Lordships of the Supreme Court leads us to the conclusion that the permits granted to the appellants in the present case cannot be quashed on the ground that the Society's application and applications of other applicants for extension of their routes were postponed till the receipt of the survey report.

24. It was also argued on behalf of the Society that having once decided to consider all the applications together, vide its resolution dated 16-9-67, 20-10-67 and 19-11-67, the Regional Transport Authority acted mala fide in granting permits to the appellants and postponing the consideration of the Society's application as well as the applications of the other applicants for extension of their routes to Jaipur. This argument has no substance firstly because no allegations of fact, so as to enable us to draw inference of mala fides, were made by the Society in the writ application, and secondly because no case of mala fides has been made out even in the course of arguments. Decision for surveying the routes between Jhunjhunu to Jaipur had been taken by the Regional Transport Authority as far back as in 1965 and, therefore, if at the time of examining the matter more closely the Regional Transport Authority came to the decision that the Society's application could not be disposed of before getting the route surveyed, it cannot be said that the Regional Transport Authority acted mala fide.

25. A lot of argument was addressed from both the sides on the question whether the Society had locus standi to challenge the permits granted to the appellants by a writ application in view of the fact that the Society had not filed any objections to the applications submitted by the appellants. Reference was made in this connection to Ram Gopal Vs. Anant Prasad and Another, , Shashi Kant Rai Vs. Regional Transport Authority, Allahabad Region, Allahabad and Others, , Bhagsingh v. Transport Appellate Tribunal, Rajasthan 1966 RLW 66 and Sharma Roadways v. Sohanlal SoniILR (1965) Raj 804. The learned Single Judge held that it was not necessary for the Society to have filed a separate representation against the appellants and in this connection reliance was placed on Bhonrilal's case 1967 RLW 481. It was held by him that "the Society was not entering into a competition with the several respondents individually though as a group it was contending that no permits be granted on Jaipur-Khetri route to any of the appellants, but its own permits be extended as applied for." It was

observed in Bhonrilal's case 1967 RLW 481 that candidates for permits who were already in the arena and are competing against one another need not always file separate representations against the other rival applicants. It was further observed that once the applications of the candidates are published, it is sufficient notice for everybody including the rival applicants to be forewarned. They ought to bear in mind that the other applicants would plead as to how they deserve consideration in comparison to other applicants. In these circumstances in our opinion the learned Single Judge was correct in not throwing out the writ application filed by the Society merely on the ground that the society had not filed objections to the applications of the appellants.

26. Learned Counsel for the Society also directed his attack against four appellants individually. It was urged that the appellants Mohammed Yusuf and Saved Ahmed in Appeal No. 34 of 1968, have applied for a different route namely Jaipur to Khetri Copper Mines via Chomu-Sikar route. It is contended that this action on the part of the Regional Transport Authority was manifestly in breach of proviso to Section 43 (1) of the Motor Vehicles Act. This position is not controverted by Shri K. R. Vyas on behalf of Sayed Ahmed and Mohammed Yusuf. But all that is contended is that the Society is not entitled to raise such pleas inasmuch as it was neither a co-applicant on Jaipur-Khetri route nor did it file any objection against these appellants. Proviso to Section 48 Sub-section (1) runs as under,--

"Provided that no such permit shall be granted in respect of any route or area not specified in the application."

27. Thus the Regional Transport Authority had no jurisdiction to grant permit to the appellants Mohammed Yusuf and Saved Ahmed in respect of a route which they had not specified in their applications (Ex. 11 and Ex. 12). It has already been held above that the mere fact that no separate objection had been filed by the Society to the applications filed by the appellants is no ground for non-suiting the Society. Consequently there is no escape from the conclusion that the permits granted to the appellants Mohammed Yusuf and Sayed Ahmed in Appeal No. 34 of 1968 are without jurisdiction and are liable to be quashed.

28. Similar attack was directed against appellant Madan Singh in Appeal No. 33 of 1968 on the ground that one Man Singh had signed the application on behalf of Madan Singh, appellant No. 5. In case of M/s. Gram Transport Service, appellants in Appeal No. 33 of 1968, it is alleged that they got issued permit for vehicle No. RSL 6180, which was already employed by them on a different route namely Jaipur-Sikar amalgamated route. It is contended that this appellant got a permit by fraud and misrepresentation. The reply on behalf of M/s. Gram Transport Service is that they had got the permit issued on Jaipur-Khetri route after withdrawing the vehicle No. RSL 6180 from Jaipur-Sikar amalgamated route of which they had intimated the Regional Transport Authority in writing before obtaining the permit. In case of Madan Singh it is pleaded that the signature on the application was authenticated and a power of attorney in favour of Man Singh

had been filed. It is urged on their behalf that such grounds cannot be taken in this Court and if the society feels aggrieved of grant of permits to the said appellants on account of any fraud or misrepresentation, the remedy is provided by Section 60 (1) (c) of the Motor Vehicles Act under which it is open to the Society to approach the Transport Authority for cancelling or suspending the permits. The contention raised on behalf of the appellants is not without force. It is correct that u/s 60 (1) (d) of the Motor Vehicles Act. the Transport Authority which granted the permit may cancel the permit or may suspend it for such period as it thinks fit. if the holder of the permit has obtained the permit by fraud or misrepresentation. We are, therefore, not prepared to entertain this objection of the Society and leave it to pursue the remedy provided u/s 60 of the Act if so advised.

29. The net result of our findings is that the Appeals Nos. 33 of 1968 and 35 of 1968 are allowed and the judgment of the learned Single Judge dated 11-7-1968 is set aside qua these appellants and the writ application filed by the Society against these appellants is dismissed. The Appeal No. 34 of 1968 filed by the appellants Saved Ahmed and Mohammed Yusuf is dismissed and the order of the learned Single Judge cancelling the permits granted to these appellants is maintained, though for different reasons.

30. Appeal No. 36 of 1968 filed by the Regional Transport Authority, Jaipur Region. Jaipur is partly allowed and the judgment of the learned Single Judge is set aside except to the extent that the order of cancellation of the permits granted to Saved Ahmed and Mohammed Yusuf be maintained.

31. All the four appeals are disposed of accordingly. In the circumstances of the case we leave all the parties to bear their own costs.