

(1959) 12 GAU CK 0006

In the Gauhati High Court

Case No : Civil Writ Applications Nos. 4 to 8 and 10 to 13 of 1958

Haomom Ibomcha Singh

APPELLANT

Vs

Manipur State Transport Authority at Imphal

RESPONDENT

Date of Decision : 03-12-1959

Acts Referred:

Motor Vehicles Act, 1939 — Section 44(2), 44(2), 47, 47, 57(5)

Citation : AIR 1960 Manipur 36

Hon'ble Judges : T.N.R.Tirumalpad, J

Bench : Single Bench

Advocate : N.Ibotombi Singh, A.Ibopishak Singh, Advocates appearing for Parties

Judgement

1. These are writ applications tiled by certain owners of Buses for the issue of a writ of certiorari quashing the orders of respondents 1 and 2, the Manipur State Transport Authority and the Chief Commissioner of Manipur, dated 2561957 and 2121957 respectively granting permits to ply Buses in various routes in the State of Manipur to respondents 3 onwards in the respective writ applications. Their complaint is that the petitioners in the various writ applications were refused permits and permits were issued to the Respondents arbitrarily and in violation of statutory provisions.

(2) I may state briefly the circumstances under which these writ applications came to be tiled. It would appear that the permits issued to ply Buses in various routes in Manipur were due to expire on .80657. On 6557, the State Transport Authority, Manipur, issued a notice (Ext. 1) calling for applications in the prescribed form for Stage Carriage permits for a period of three years and 9 months for the 20 routes mentioned in the notice. The applications were to be filed before 25557. The 9th petitioner herein filed applications for various routes. The petitioner in Writ Case No. 4 of 1958 applied for permit for the ImphalChurachandpur road, petitioner in Writ case No. 5 of 1958 for the ImphalSugnj road, the petitioner in Writ Case No. 13 of 1958 for the ImphalMao

road, while the petitioners in the rest of the applications applied for the ImphalDimapur road.

(3) After the receipt of the applications, there was another notice by the State Transport Authority on 1761957 (Ext. 2) stating that all written representations and objections for permits must be received in the Office of the State Transport Authority within 21 days from that date. In this notice, the names of all the applicants for the various routes were given for the information of all the applicants so that each of them may make the necessary representations and objections in respect of tile various applications. It was also mentioned in the notice that the applications will be considered at the meeting to be notified later on.

As per this notice, the applicants had time till 771957 to make their representations and objections and they were entitled to expect that the date of the meeting at which these objections and representations were to be considered will be duly notified to them, so that they could be present at the meeting. But without notifying any date for the meeting and without waiting for the 21 days within which the applicants were entitled to make their representations and objections, the State Transport Authority met on the 24th and 25th June, 1957 and decided as to which of the applicants shall have permits in the various routes. Evidently, the State Transport Authority must have felt that if they waited for the representations and objections till 7757, the period of the permits in existence would have expired on 30657.

Their eyes must have opened to this fact only subsequent to the issue of the notice dated 17657. At the meeting on the 24th and 25th June, the State Transport Authority resolved that the Manipur State Transport Authority which is a concern run by the State, shall have the exclusive permits 15 in number for the ImphalDimapur road and two permits in the ImphalMao Road. With regard to the remaining 67 permits, Stage Carriage permits were distributed as shown in Appendix " A" to the proceedings of the meeting of the State Transport Authority dated 25657. In the said list, the names of the petitioners are, of course, not seen and hence they were aggrieved.

(4) The proceedings of the State Transport Authority dated 25657 do not show any reason why they granted permits to the persons shown in Appendix "A"" nor does it show why the applications of the remaining persons were rejected. There is nothing to show from the proceedings that any representations and objections except that of the Manipur State Transport were received by that time as only a week had elapsed from the date of the notice given under section 57(3) of the Motor Vehicles Act nor is there anything to show that any such representations and objections were considered at the said meeting. Again, the proceedings do not show that there was a public hearing as required under section 57 (5) at which the applicants and the persons making the representations were given an opportunity of being heard either in person or by a duly authorised representative.

(5) On 31757, the petitioners were given in writing the reasons for the refusal of their applications. This is a rather interesting document and it is Ext. 3. The reasons given are the same to all the petitioners. They are that the total number of Stage Carriage permits to be issued was only 84 and that the permits were issued to other applicants having regard to (a) the interest of the members of the scheduled castes and tribes and backward classes, (b) the interest of Exservicemen, (c) the interest of political sufferers, (d) the interest of (the public generally, (e) the benefit for the localities where the vehicles are to ply, and (f) the other considerations as mentioned under S. 47 of the Motor Vehicles Act, 1939.

It has to be mentioned here that the proceedings of the State Transport Authority dated 25657 do not show that the applications of the petitioners were rejected for the reasons mentioned in Ext. i3. It does not show that any applicants were favoured for the reason that they were members of the scheduled castes and tribes or backward classes, or for the reason that they were exservicemen or political sufferers. It does not again show that the interest of the public or benefit for the localities where the vehicles were to ply were taken into consideration in fixing permits nor is there anything to show that any of the other considerations mentioned in section 47 were taken into account in granting the permits.

(6) The petitioners and some of the other applicants whose applications were rejected filed appeals to the Chief Commissioner, who was the Appellate authority against the order refusing to grant them permits. In some of those appeals the grantees of the permits in the particular routes were not originally made parties. They were impleaded subsequently after the limitation period for filing the appeals was over. The Appellate authority dismissed the appeals of the petitioners and all the other applicants except one by a common order dated 21257.

The one appeal which was allowed was for die reason that in the particular route for which the said appellant had claimed a permit there was a vacancy and hence the issue of a permit to him was ordered. We are not concerned with that appellant in the present writs. In dismissing the appeals, the appellate authority has given various reasons with all of which we are not concerned in the writ applications. It is sufficient to say that the Appellate Authority attempted to do the work which the State Transport Authority had failed to do.

It proceeded to take into consideration the matters referred to in section 47 of the Motor Vehicles Act which the State Transport Authority had failed to do in its meetings held on 24657 and

125657. In other words, it tried to find out arguments of its own to support the said order. The Appellate authority failed to see that the State Transport Authority was not in a position to consider those matters as it had not received representations and objections or given notice of the date, time and place of the meeting

at which the representations will be considered as required under section 57(3) and as it had failed to give an opportunity to the applicants of being heard at the said meeting as required in Sec. 57(5).

The Appellate Authority was dealing with those matters on the representations made before it at the time of the appeal. By such means the Appellate Authority sought to justify the order of the State Transport Authority.

(7) With regard to the objection raised before it that the State Transport Authority acted in contravention of section 57 in rejecting the applications and in granting the permits the Appellate Authority observed as follows:

"** 6. The appellants have also argued that under section 57(3) of the M. V. Act, the State Transport Authority was bound to allow 30 days time before hearing and disposing of the application and (that since, in the present case, only a shorter period was allowed, the proceedings in respect of which the present appeal is filed are illegal. It may be noted in the first place that this contention was not raised before the State Transport Authority on the date of hearing of which the authority had published a notice. Secondly, the representations referred to in section 57(3) are either for the applications or against the application. The present order appealed against is the order of rejection of the appellant's applications, and therefore want of time for representation against the application could not have affected the outcome. If the appellant's case is that there was not sufficient time for representation in favour of the application, it may be replied that proving his case is his own duty, and that if on the facts he urged before the State Transport Authority and on any additional facts he is free to produce in the present proceedings, it is still found that he has no case, it is not obligatory or desirable to order a fresh disposal of the case by the State Transport Authority even if the irregularities alleged may make the orders liable to be set aside, if the appellate authority considers it not necessary or expedient to do so."

I have given the above observations of the Appellate Authority in extenso as this is one of the matters which will have to be considered in the present writs.

(8) The Appellate Authority refused to implead the grantees of the permits in some of the appeals on the ground that the applications to implead them were timebarred and he dismissed the appeals as stated above. Having failed to obtain relief, the petitioners have come forward with these writs.

(9) The main point advanced in the writs is that; the State Transport Authority acted in contravention of sections 57(3) and 57(5) in disposing of the applications and in granting permits and thereby violated the mandatory provisions of law and the principles of natural justice with the result that the petitioners were deprived of the opportunity to have their applications considered on their merits and again of the opportunity to state their objections in respect of the other applicants and that the granting of the permits took place arbitrarily accordingly the whims and fancies of the State Transport authority and not in

accordance with the provision contained in section 47 of the Act.

They further say that the Appellate Authority failed to consider this objection raised by the petitioners and dismissed it mainly on the ground that the appeals filed before him were not against the order dated 25657 granting the permits, but against the order dated 31757 refusing to grant permits to the petitioners. Hence they had no other go but to come before this Court by way of writs under Article 226 of the Constitution.

(10) Now the question will be whether the State Transport Authority dealt with the applications in accordance with the provisions of sections 47; and 57. I may straightway say that the Govt. Advocate confessed at the very outset that there has been violation of section 57(3) in dealing with the applications by the State Transport Authority. But his argument was that the provisions of section 57 (3) were not mandatory but directory and hence noncompliance with the said provision will not vitiate the order of the State Transport Authority.

He also pointed out that to set aside the order of the State Transport Authority at this stage would mean that the permits issued with effect from 1757 would be rendered nugatory and complications were likely to arise. He further points out that even if the State Transport Authority did not receive the representations or hear them as required under Sec. 57(3) and (5) the Appellate Authority who had coextensive powers with the Transport Authority had heard the objections and representations of the petitioners and other applicants on their merits and passed the order dismissing the said appeals and hence even if the State Transport Authority had failed to act in accordance with section 57(3) and (5), the Appellate Authority has corrected the said mistake and hence it was not necessary or desirable that the extraordinary remedy by way of writ should be exercised by this Court.

(11) Section 57(3) and (5) provides as follows:

XXX X

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the Office of the authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations, received will be considered;

x x x x x

(5) When any representation such as is referred to in subsection (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised

representative.

The section would show that on receipt of applications for such Stage Carriage permits, the Transport Authority had to publish the applications or their substance together with a notice of the date before which representations in connection therewith may be submitted. We may take it that in the present case, this part of the section has been complied with by Ext/2 dated 17657. The names of all the applicants with the number of permits applied for and the capacity of the vehicles proposed along with the particular routes for which the conditions have been made have all been published and the date for making written representations has been fixed as 21 days from the date of Ext/2. So far there has been no mistake.

(12) But Sec. 57(3) further states that the date, time & place at which the applications & representations received will be considered should also be notified in the publication. This was not done in Ext/2. Instead, it was stated that applications for permits will be considered at a meeting to be notified later on. This is the first mistake committed. But we need not take it as a serious mistake as the intention of the Legislature was that the date, time and place of the meeting should be notified and not that it should be done in the same publication.

If therefore, the State Transport Authority had subsequently notified the date, time and place to the applicants and to the public there would have been really no mistake. But that was not done. Nor was provision in Sec. 53(3) that the date for the meeting shall be not less than 30 days from the date of the publication, namely, the date of Ext/2 complied with. The meeting should not have been held prior to 16757. The Legislature intended that the period should be not less than 30 days, so that the applicants and the persons intending to make representations should have the necessary time to make enquiries about the various applications before the date of the meeting. It goes without saying that a reasonable time has to be allowed for the purpose which the Legislature in its wisdom fixed as not less than 30 days.

If the Transport Authority had given some reasonable time and published the date, time and place of the meeting in the same manner in which (they had published Ext/2, we may have held that it was substantial compliance, even it was a little less than 30 days. But no time, at all was given to the applicants in the instant case not only for the hearing of the applications, but even for filing their representations. Though Ext/3 gave a period of 21 days for making the representations from 17657, the Transport Authority did not wait for the 21 days to hold their meeting. Even before receiving the representations for which the applicants had time till 7757, they held the meeting on 24657 & 25657. There can be no doubt that the Transport Authority did not have the power to do so, because it was imperative under the statute that they received the representations and considered the said representations before finally deciding as to who shall get the permits.

(13) Then again, since they had mentioned in Ext/2, that the date, time and place will be notified later, it was necessary that the said date, was subsequent to 7757 till which date the parties could file their representations. It was also necessary that "the said meeting was published just as Ext/2 was published. There was nothing to show that similar publicity was given to the alleged meeting said to have been held on 24657 and 25657. In any case, it was not published in the Manipur Gazette as the notice Ext/2 was published. In the counterstatement of respondents 1 and 2 it is mentioned that on 18657, a notice was hung up in the Motor Vehicles Office that the hearing of the applications would be held on 24657 and similar notice was circulated to all the important Motor Associations" to that effect, giving thereby full opportunity to all concerned and further that in the meeting held on 24657 and 25657, the applications were duly considered on merits.

This averment would mean that on the very next day after Ext/2 was issued, on 1761957 it was decided to hold the meeting on the 24657 and 25657 when according to Ext/2, time for filing representations was given till 771957. It was not enough publication to hang up such a notice in the Motor Vehicles office or to circulate to the important Motor Associations. Every applicant was entitled to notice. Even the public were entitled to know of the meeting, as they can also make representations. I am sure that if sufficient notice of the meeting had been given, there would have been protests from the applicants that the meeting was in violation of the notice given in Ext/2. The further statement that all the applications were duly considered on merits in the meeting held on 24657 and 25657 showed that the Transport Authority were not alive to the provision in Sec. 57(3) which states that the applications and representations received shall be considered at the meeting.

(14) It was very important that the representations should be considered before, the Transport Authority decided as to who shall have the permits. This is clear from section 57(5) which states that when any representations referred to in subsection 3 have been made, the Transport Authority shall dispose of the applications at a public hearing at which the applicants and the persons making representations shall have an opportunity of being heard. Thus any consideration of the applications without giving an opportunity to file the representations and without hearing the persons making the representations is in gross violation of section 57(3) and 57(5).

Without hearing the said representations, there is no doubt that the Transport Authority will not be in a position to judge the applications on their merits. The applicants naturally make all sorts of claims about their capacity to run Stage Carriages. Their real capacity can be judged only when other persons who have made opposing claims and who have made enquiries about their opponents are heard by the Transport Authority with regard to the claims made by the applicants. In order to judge the respective claims of the various applicants, it is imperative that such representations must be heard.

It is for this reason that the Legislature has deliberately provided in Sec. 57(3) and (5) that time for making representations shall be given and the persons making the representations shall be heard before disposing of the applications. Thus if a Transport Authority fails to give the time to file the representations and fails to notify the time, place and date of the meeting when such applications and representations will be considered and finally disposes of the applications without hearing the representations, their action has to be characterised as arbitrary and without jurisdiction. The Transport Authority is a creature of the Motor Vehicles Act and they derive their jurisdiction under the provisions of the said Act. The same Act has prescribed in section 57, the procedure in applying for and in granting permits and in Sec. 47 the procedure in considering the applications for Stage Carriage permits. In both the sections, it is provided that representations shall be received and shall be heard before disposing of the applications.

It follows that the Transport Authority has no jurisdiction to grant permits without receiving the representations and without hearing the persons making the representations. For reasons already stated, the said provisions cannot be treated as merely directory. A provision of law which has to be complied with before a statutory body gets the jurisdiction to perform its functions cannot be treated as merely directory. There is no doubt that it has to be treated as mandatory. The action of the Transport Authority in the present case in granting the permits is in gross violation of the terms of the statute and the order is without jurisdiction and hence cannot be sustained.

(15) When we turn to Sec. 47 we again find that representations made by persons already providing transport facilities along or near the proposed route or area or by any Association representing persons interested in the provision of road transport facilities or by any local authority or Police authority within whose jurisdiction any part of the proposed route or area lie have to be taken into consideration by the Transport Authority. The proceedings of the said Authority dated 25.6.57 do not show that any such representations by any person or body of persons were considered by them. Many of the petitioners are persons who are already providing passenger transport facilities in the roads for which permits were to be granted. One of them is a Co-Operative Society, namely, the M.D.U. Co-Operative Society. Under the proviso to Sec. 47(1) such a Co-Operative Society had to be preferred, other conditions being equal.

The proceedings do not show whether this matter was considered by the Transport Authority. Then again Sec. 47(1) shows what matters have to be considered by the Transport Authority in issuing permits. The proceedings again do not show that the said questions were considered at all. It has been held that the Transport Authority is a quasijudicial body. An appeal has been provided against their decision under Sec. 64 of the Act. It is imperative therefore that their order issuing the permits to some and refusing permits to others should clearly show that they have complied with the provisions of the Act, given an opportunity to make representations, considered the representations at a public

hearing, and taken into account such representations in considering the matters referred to in Sec. 47 clause (a) to (f).

Their order must give reasons for preferring the applicants for whom permits were granted and for rejecting the applicants to whom permits were not granted. The proceedings dated 25657 showed none of these things.

(16) It is a blank order containing a resolution by the Transport Authority. The first resolution shows that 15 Stage Carriage permits for DimapurImphal Road, and 2 stage carriage permits for ImphalMao road are reserved for the Manipur State Transport. Two reasons are mentioned for the said reservation. One is that the Manipur State Transport has a proposal to run exclusively in four routes in Manipur. One fails to see how this is a reason for reserving certain permits to them on two routes, One is inclined to think from this being mentioned as a reason that because Manipur State Transport is a Government concern, the reservation has been made in their favour.

The second reason is that the Manipur State Transport has applied for the full number of Bus permits for which the authority has invited applications in respect of the ImphalDimapur road. This again is not a reason for reserving the ImphalDimapur road exclusively for the Manipur State Transport, without giving an opportunity to other applicants to make representations. The reasons betray that only the representations made by the Manipur State Transport were considered by them.

I am aware of the reasons given by the Appellate authority in paragraph 5 of its order for giving such preference to the Manipur State Transport. They are, no doubt, weighty reasons. But the proceedings of the Transport Authority do not show that they had all these reasons in mind in preferring the Manipur State Transport. The postfacto attempt by the Appellate authority to justify the order of "the Transport Authority does not validate the of the Transport Authority.

(17) The second resolution of the Transport Authority in the proceedings is that for the remaining 67 routes Stage Carriage permits are distributed as shown in Appendix "A". No reasons are given why those persons were preferred to the petitioners and other applicants and there is nothing to show that any representations were considered except that of the Manipur State Transport. One is inclined to think that the action of the Transport Authority is to some extent mala fide as stated by the petitioners.

(18) In the previous paragraph, I have referred to the proceedings of the Transport Authority dated 25657. But the actual order Ext/3 granting the permits which was issued on 25657 does not even mention the reasons which I have dealt with above, but simply states that the following Stage Carriage permits have been issued for 3 years and "S months with effect from 1757. It is this order alone which is available to the parties affected by the order.

The proceedings are not issued to them. They were produced by the Government

Advocate at the fame of hearing. The order Ext/3 did not show the reasons for the rejection of the other application nor do the proceedings as stated already show the said reasons. The reasons were, subsequently given to the parties on 31757. It is Ext/4. I have already dealt with this in stating the facts. It is indeed telltale that these reasons should have been given more than a month after the order of the Transport Authority granting the permits. Are we to take it that these reasons were subsequently decided upon or that they were the real reasons which impelled the Transport Authority to reject those applications? In any case, there is nothing to show either from the proceedings or from the subsequent order Ext/3 that these were the reasons for rejecting those applications. The reasons have been subsequently given, because Sec. 57(7) provided that the reasons for the rejection shall be given to the applicants.

L (19), Now if we look into those reasons mentioned " in Ext/4, it will be seen that reasons "a" to "c" therein are not matters to be taken into consideration under Sec. 47(1). No doubt the reasons (d) and (e) come within section 47(1). But the further reason namely, "other considerations as mentioned under Sec. 47 of the Motor Vehicles Act 1939 in Ext/4 would only betray that the Transport Authority themselves were not sure which of the reasons given in Sec. 47(1) would apply to the rejected applications.

In any case, these reasons have not been dealt with in the order Ext/3 or in the proceedings of the Transport Authority dated 25657. Such conduct again only goes to show that the action of the Transport Authority has been highly irregular and arbitrary and that the reasons in Ext/4 have been mentioned just to come within the provisions of Sec. 57(7).

(20) Two decisions have been cited before me for the petitioners which hold that the provisions of Sec. 57 are mandatory. One is Shiv Narain v. Regional Transport Authority, Jaipur Region, Jaipur, 1953 Raj 1. In that decision it was held that it mandatory under Sec. 57(3) that an application under Manipur D.F./3(2) & 4(1) which was presented as required by subsection (1) of that section should be published. It is in connection with that very publication that section 57(3) provides that the date not being less than 30 days from such publication on which and the time and place at which the applications and any representations, received will be considered should also be published.

Thus if the publishing of the application is mandatory, the publishing of the date, time and place not being less than 30 days from the publication is also equally mandatory. In the same publication, the date, before which representations in connection with the application are to be submitted has also to be published which makes it clear that it is equally mandatory to give an opportunity for filing the representations.

(21) Another decision cited was Baghat Transport Service Ltd. v. State of Himachal Pradesh, AIR 1951 Him Pra 36 which .holds that the provision relating to the hearing of representation against the grant of renewal of a contract

carriage permit contained in section 57(6) is mandatory. Now section 57(6) relating to contract carriage permit only provides that the Regional Transport Authority may take any such steps as it considered appropriate for the hearing of the representations in the presence of any persons likely to be affected thereby.

If such a provision is mandatory as held in that decision, then section 57(5) which lays down that the Regional Transport Authority shall dispose of the applications at which the applicants and the persons making the representations shall have an opportunity of being heard either in person or by duly authorised representative must certainly be mandatory.

(22) Now I shall allude to the argument of the Government Advocate that even if the Transport Authority has failed to act in accordance with the statutory provisions and failed to receive or consider the representations, the Appellate Authority has done so and given an opportunity to the petitioners to make their representations and has taken into account those representations before dismissing the appeals and hence the petitioners have no reasons to complain. It was also pointed out that the powers of the Appellate Authority are coextensive with those of the Regional Transport Authority. The short answer to this argument is that in a case where the Transport Authority has acted without jurisdiction, the defect cannot be cured by the Appellate Authority.

It was pointed out to the Appellate Authority that the proceedings before the Transport Authority were irregular on account of the noncompliance of the mandatory provisions of section 57(3) and a request was made to order fresh disposal of the case by a Transport Authority. But the Appellate Authority failed to do so, firstly, for the reason that this point was not raised before the Transport Authority by any of the petitioners on the date of the public hearing of which the Authority had published a notice. I have already held that the date of the public hearing was not notified in the manner provided in section 57(3).

Then again it is not necessary for the petitioners to point out the irregularity committed by the Transport Authority. It is for the Authority concerned to see that its actions are in accordance with the statutory provisions. Then again, the meeting having been held even before the time for filing the representations was over, I fail to see how the appellate authority can expect the petitioners to be present at the meeting, as the meeting was not held to consider the representations. Secondly, the Appellate authority said that the order appealed against was the order of rejection dated 31757 and not the order dated 25657 granting the permits and hence want of time for representations against the applications could not have affected the outcome. Thus the Appellate Authority felt that he was only concerned with Ext/4 and not with Ext/3.

In other words, he refused to consider the irregularity committed by the Transport Authority. He failed to see that the order granting the permits to some of the applicants cannot be passed without rejecting the permits to the rest of the applicants and that therefore both orders are part and parcel of the same

order though they were issued on different dates. Thus there has been a failure by the appellate Authority to consider the question of irregularity.

(23) The Appellate Authority proceeded to say that he has satisfied himself on the representations made before him that the petitioners and the other appellants had no case and hence it was not obligatory to order a fresh disposal of the case by the State Transport Authority. The Appellate Authority was thereby placing himself in the position of the Transport Authority. His duty in appeal was only to hear and dispose of the appeal on the material placed before the Transport Authority and not to take fresh evidence. There is nothing in section 64 of the Act which prescribes such a procedure in the hearing of the appeals.

The appeals are filed by individual applicants against the order of rejection of their applications. Under Sec. 64, the Appellate Authority has to give the appellant and the original authority an opportunity of being heard before passing orders. The Appellate Authority cannot therefore have before it the representations of all the applicants and of other persons interested in making representations in deciding the appeal. It may be that in this particular case, he heard all the appeals together. But still there may be some applicants who have not filed appeals and whose representations could not therefore be heard.

It is clear therefore that the powers of the Appellate Authority and the Transport Authority are not coextensive as argued by the Government Advocate. As pointed out by Subba Rao, J. in *V. Natesa Pillai v. Central Road Traffic Board, Egmore, Madras*, AIR 1952 Mad 39, a right of appeal can only be conferred by a statute and the scope of that appeal is also confined to the limits prescribed by the statute. I am therefore of opinion that the irregularities committed by the Transport Authority cannot be cured by whatever the Appellate Authority may do at the hearing of the appeals.

(24) Another argument advanced before me for the petitioners was that the State Transport Authority has not been constituted as provided under Sec. 44 of the Motor Vehicles Act and that therefore every order passed by that authority is void ab initio. It was pointed out that the Chairman of the Transport Authority must have had judicial experience as provided under Sec. 44(2), but that Mr. U. N. Sharma, Deputy Commissioner, Manipur, who was the Chairman of the State Transport Authority, Manipur, was not a person with judicial experience. For the respondents, it was pointed out that the Deputy Commissioner, Manipur, was and is invested with the powers of the District Magistrate and have the powers under the Assam Land and Revenue Manual as a Deputy Commissioner and that he therefore possessed the requisite qualification to be the Chairman.

It was further stated that the provision for requisite qualification for being Chairman was only directory, nonobservance of which will not render the order of the Tribunal invalid. I cannot agree with the Government Advocate that the provision that the Chairman must have had judicial experience was only directory and not mandatory. The functions of the State Transport Authority are

quasijudicial in nature. Sec. 57 of the Act, shows that the Transport Authority has to receive representations and hold a public hearing and hear the applicants and the persons making representations before disposing of the application for permits. Sec. 47 shows the various matters to be taken into consideration.

The Legislature therefore thought it necessary .that the Chairman must possess judicial experience. In fact, I should think that the irregularities committed in the present case were because, the Transport Authority did not deal with the matter judicially as provided in Sees. 47 and 57 of the Act. When a statute lays down certain conditions for the constitution of the Transport Authority, the Government cannot shut its eyes to those conditions and choose persons directly in contravention of the said provisions. As pointed out in the decision *Amaravathi Motor Transport Co. v. State of Andhra*, AIE 1956 Andhra 232, in dealing with section 44(2) if the provisions of the main section are clear and unambiguous, they must be given effect to. Regarding the qualifications of the Chairman, Sec. 44(2} has expressed it in the clearest possible terms.

Hence only a person who has had judicial experience can be appointed the Chairman. It the respondents in their counterstatement had stated categorically that Mr. U. N. Sharma, has had judicial experience, it would have been unnecessary to consider the matter further. But their counterstatement is rather vague, particularly because they have added further that the provision regarding qualification is only directory. No doubt, they say that Mr. U. N. Sharma was and is vested with the powers (of District Magistrate. But they have not stated that the District Magistrate of Manipur exercises 4 or has exercised any judicial functions. As far as I know, there is an Additional District Magistrate for exercising judicial functions for Manipur.

It is open to question whether a Deputy Commissioner having power under the Assam Land and Revenue Manual can be called a person who has had judicial experience. However as the matter is not free from doubt and as it has not been clarified before me, I do not want to express any final opinion about the requisite qualification of Mr. U. N. Sharma to be Chairman. It is also not necessary tor the disposal of the present writs. It will be better if the Government acts in accordance with Sec. 44(2) in appointing the Chairman of the State Transport Authority.

(25) In view of what I have stated above, it is clear that the order of the State Transport Authority dated 25657 granting the permits to the respondents in the writ petitions and in rejecting the applications of the petitioners has been passed arbitrarily and in gross violation of Sees. 47 and 57 of the Motor Vehicles Act, and hence that the said order is passed without jurisdiction and has therefore to be set aside. The petitioners could have come to this Court for relief even without filing appeals to the Appellate Authority under Sec. 64, seeking relief under Article 226 of the Constitution as pointed out in AIR 1953 Raj 1.

The result has been that nearly 2Vz years have passed after the permits were

issued and the period of the permits is only 3 years 9 months. But still this Court has got to give the necessary relief to the petitioners. The question is whether the entire order of the State Transport Authority dated 25657 . granting permits for 20 routes has to be set aside. When the petitioners before me are applicants for only 4 of the routes, namely, ImphalChurachandpur Road, ImphalSugnu Road, ImphalMao Road and ImphalDimapur Road, this Court can grant relief only in so far as that portion of the order of the State Transport Authority, which is questioned before me in these writs.

The order of the State Transport Authority dated 25657 and the order of the Appellate Authority dated 21257 relating to the permits issued for the 4 routes mentioned above and relating to the rejection of the applications of the petitioners in the 9 writ applications is set aside and the Transport Authority is directed to act in accordance with the provisions contained in Sec. 57 of the Motor Vehicles Act in granting the permits. They shall publish, the application or substance thereof in respect of these 4 routes in the prescribed manner together with a notice of the date (before which representations in connection therewith may be submitted and the date not being less than 30 days from such publication on which, and the time and place at which the applications and any representations received will be considered.

They will also give an opportunity to the applicants and the persons making the representations of being heard either in person or by a duly authorised representative. They shall also have regard to the matters mentioned in Sec. 47(1) in considering the applications. The respective respondents in the " writ applications will pay the costs of the respective petitioners therein. Advocate fee shall be Rs. 50/in each of the writ applications. .