
(1965) 11 RAJ CK 0003
In the Rajasthan High Court
Case No : Full Bench Reference No. 1 of 1965

Jagdish Prasad

APPELLANT

Vs

The Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 15-11-1965

Acts Referred:

Motor Vehicles Act, 1939 — Section 43, 43(1), 44(3), 54(3), 68G

Citation : AIR 1966 Raj 127 : (1966) RLW 1

Hon'ble Judges : L.N. Chhangani, J; Jagat Narayan, J; D.M. Bhandari, J

Bench : Full Bench

Advocate : M.M. Tiwari, M.M. Vyas Government Advocate, for the Appellant;
R.R. Vyas, for the Respondent

Final Decision : Allowed

Judgement

Chhangani, J.—S.S. Civil Writ Petition No. 64 of 1965 has come up before this Court on a reference by Hon'ble Jagat Narayan J.

2. The facts leading to the reference and the circumstances under which the reference has been made may be briefly stated as follows :

Petitioner Jagdish Prasad applied for grant of a fresh Permit on the Beawar Bijaiaingar via Sheopura Ghata route on 30th July, 1962. This application was published in the Rajasthan Rajpatra of 30th August, 1962, and objections were invited u/s 57(3) of the Motor Vehicles Act. Respondent No. 3 Tarachand Tak, who was one of the eight existing operators of Beawar-Bijainagar via Sheopura Ghata route, filed objections against the grant of permit to the petitioner.

3. It may be mentioned here that on 20th June, 1962, the State Transport Authority exercising its powers u/s 54 Sub-section (3) of the Motor Vehicles Act, 1939, issued certain directions which run as follows :

"The State Transport Authority, Rajasthan, in its meeting held on 2-6-62, have resolved vide resolution No. 3 as under :

Resolved that in pursuance of the power conferred u/s 44 (3) of the M. V. Act, 1939, the S. T. A. Rajasthan, Jaipur hereby directs all the RTAs in Rajasthan to desist from granting fresh stage carriage permits on any "A" class routes in their respective regions (except those routes lying in Bikaner Region) in order to offer alternative routes to the displaced as well as would be displaced operators in view of Nationalisation of a number of routes in the State. The above directions shall continue to operate till the displaced as well as would be displaced persons in due process of law are rehabilitated.

Provided that if the displaced or the would be displaced operators do not accept the alternative routes offered to them and the bus routes which fall short of adequate service due to scope for more services, applications from other interested operators be considered after giving due preference to the displaced as well as would be displaced operators.

Provided further that RTAs would grant alternative routes to the displaced or would be displaced operators in their respective region only :

The above directions shall however not govern cases for renewals.

This supersedes all previous directions issued in this regard from time to time.

The proceedings of the meeting will be sent to you in due course of time and in the meanwhile I am directed to request you to please take necessary action in the matter."

The petitioner's application was considered by the respondent No. 2 at its meeting held in October 1963 and was kept pending` on the ground that "the route in question being "A" class route no action can be taken and that the case of Shri Jagdish Prasad be kept pending till the route has been first offered to the displaced operators in compliance of the STA resolution dated 2-6-62 and applications, if any, received in response thereto had been disposed of."

4. Subsequently, the respondent No. 2 published a notice in the Rajasthan Rajpatra dated 30th October, 1964 notifying for the information of all concerned "that the meeting of the Regional Transport Authority will be held on 9th, 10th and 11th November, 1964 in the meeting hall of the Government Hostel, Jaipur from 9.00 A. M. for consideration of the cases" detailed in that notification. Item No. 3 of the notification mentions at page 24 cases regarding the grant of renewal alternative and fresh stage carriage permits on Beawar-Bijainagar via Sheopura Ghata route. At this meeting the Regional Transport Authority granted a fresh permit to the petitioner by its resolution No. 93. Another permit was granted to Automobile Transport, Rajasthan Private Limited, Ajmer.

5. It may be usefully pointed out at this stage as found by the Transport Appellate Tribunal that one Syed Usuf Ali Shah, a displaced operator, had also applied for a permit for alternative route and that his application had been published in the Rajasthan Rajpatra dated 27th October, 1964 and was pending in the office of the Regional Transport Authority for disposal. The Regional

Transport Authority, however, in its Resolution No. 93 whereby the petitioner was granted permit, took no notice of this application. Syed Usuf AH Shah was not present before the Regional Transport Authority nor his presence or absence was indicated. Syed Usuf AH Shah, however, made no grievance of any kind on this score and filed no appeal.

6. The respondent No. 3, however, felt aggrieved by the resolution of the Regional Transport Authority and filed an appeal before the Transport Appellate Tribunal and took various objections. The objections relevant for the purposes of the present writ application may be stated as follows :

1. That the respondent No. 3 had no notice of the Regional Transport Authorities meeting held on 9/10th November, 1984 and the decision of the Regional Transport Authority without giving any opportunity to him was illegal.

2. That the Regional Transport Authority had fixed the scope of six permits for the route by resolution No. 426 dated 31st December, 1960, and the grant of permit to the petitioner was in excess of the scope and was, therefore, invalid.

3. That the route in question is "A" class route and no fresh permit could have been granted in view of the directions of the State Transport Authority dated 2nd June, 1962.

7. The Transport Appellate Tribunal overruled the various pleas including the first two but the objection stated last was accepted by it and it held that the grant of permit to the petitioner was in contravention of the directions issued by the State Transport Authority on 20th June, 1962 inasmuch as the application of a displaced operator Syed Usuf Ali Shan was pending with the Regional Transport Authority when the permit in question was granted. The Transport Appellate Tribunal, therefore, set aside the resolution of the Regional Transport Authority No. 93 granting permit to the petitioner and cancelled the permit.

8. Aggrieved by this order of the Transport Appellate Tribunal, the petitioner presented a writ application under Articles 226 and 227 of the Constitution in this Court for quashing the decision of the Transport Appellate Tribunal.

9. The writ application came before Hon"ble Jagat Narayan J. Before him, it was contended that A the grant of stage carriage permit is a quasi-judicial matter for which provision has been made in sections 46, 47, 48 and 57 of the Motor Vehicles Act and that Section 44 (3) does not contemplate the issuing of directions in matters covered by these sections. Reliance was placed on a decision of the Supreme Court reported in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, . After referring to the various observations of the Supreme Court in that case, he held that the observations of the Supreme Court are applicable to the impugned directions with greater force and consequently, he felt inclined to treat the directions invalid. Noticing further that the decision of the Transport Appellate Tribunal proceeded on an assumption that both the Appellate Authority and the Transport Authority were bound by the

impugned directions, he considered the decision of the Transport Appellate Tribunal vitiated.

He, however, referred to some observations made by a Division Bench of this Court in *Bhog Singh v. Transport Appellate Tribunal*, Civil Misc. Writ petn. No. 255 of 1962 D/- 14-5-1965 (Raj.), where the validity of similar directions D/- 15th Jan. 1961 was affirmed and observing that the Supreme Court decision in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, was not brought to the notice of the Bench of this Court and noticing contrariety in the observations in the decision of the Bench of this Court and the Supreme Court decision, he thought it proper to refer the case to a larger Bench. This is how, the matter has come before us in the Full Bench.

10. At the outset it will be convenient and useful to advert to the Supreme Court decision in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, for the principles that should guide the disposal of the present case.

11. The Supreme Court in that case considered the validity of a general order No. 1298 issued by the Government of Madras on April 28, 1956 in the exercise of its powers conferred by Section 43-A of the Motor Vehicles Act, 1939 inserted by the Madras Amending Act, 20 of 1948. This order had figured in many cases before the High Court and also in the Supreme Court and both had occasion to deal with the impugned order, its character, its scope and its effect, but the validity of the order was questioned for the first time in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, In considering the question, his Lordship the Chief Justice who delivered the judgment of the Court, referred to the scheme of the Act in general and the scheme of Chapter IV in particular and observed:--

"(1) It is well settled that Sections 47, 48, 57, 60, 64 and 64-A deal with quasi-judicial powers and functions;"

"(2) That the field covered by Section 43A like that covered by Sections 42, 43 and 44 is administrative and does not include the area which is the subject matter of the exercise of quasi-judicial authority by the relevant Tribunal."

This was considered as one relevant consideration for treating Section 43-A as also covering the administrative field.

12. Referring to yet another consideration for interpreting Section 43A in the above manner, his Lordship made the following significant observations:--

"In interpreting Section 43A, we think it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law that in exercising their authority and in discharging their quasi-judicial function the Tribunal constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or

administrative wing of the State. If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the principles which have to be followed by the Tribunals in dealing with the said matters. The scope of the jurisdiction of the Tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the constitution. But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders. This position is so well established that we are reluctant to hold that in enacting Section 43A the Madras Legislature intended to confer power on the State Government to invade the domain of the exercise of judicial power."

His Lordship also observed that the validity of Section 43A was maintained by the Madras High Court by expressly observing that what Section 43A purported to do was to clothe the Government with authority to issue directions of an administrative character and nothing more. At a later stage, it was further observed,

"We cannot overlook the fact that the validity of the Act particularly in reference to its provisions prescribing the grant and refusal of permits, has been sustained substantially because this important function has been left to the decision of the Tribunals constituted by the Act and these Tribunals are required to function fairly and objectively with a view to exercise their powers quasi-judicially, and so any attempt to trespass on the jurisdiction of these Tribunals must be held to be outside the purview of Section 43A."

Relying upon the principles laid down, it was contended by Mr. Tiwari for the petitioner that the impugned directions clearly interfered with the exercise of function by the quasi-Judicial Tribunals and constitute an undue encroachment and, therefore, must be held invalid on the principles authoritatively laid down by the Supreme Court. He also added that these directions deprive the applications for fresh permits of their rights to have their claims adjudicated in accordance with the law and will have the effect of suspending the operation of Chapter IV. It was also urged that they affect the fundamental rights to ply the bus subject to the provisions of the Motor Vehicles Act.

13. Opposing the writ application, the Government Advocate contended that the impugned directions were not intended to nor do they interfere with the exercise of quasi-judicial functions. He contended that on a proper construction of the various provisions of Chapter IV-A the direction should be treated as purely of an administrative nature. His arguments may be summarised as follows:--

The learned Government Advocate pointed out:--

(1) Section 68B in Chapter IV-A of the Act provides that the provisions of the chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV of this Act or in any other law for the time being in force or in any instrument;

(2) that Section 68-G (2) provides for the offer of permit for an alternative route or area in lieu of monetary compensation payable on account of cancellation of existing terms or modifications of the terms thereof;

(3) that u/s 43 (1) (iii) of the Act added and substituted by Act 300 of 1956, State Government may having regard to the circumstances mentioned in Section 43 from time to time by notification in the official gazette, issue directions to the State Transport Authority regarding the grant of permits for alternative routes or areas, to persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercise of the powers conferred by Clause (b) or Clause (c) of Sub-section (2) of Section 68F;

and contended that the directions for the grant of permits for alternative routes or areas should be considered an administrative act. Reliance was placed upon the observations of a Bench decision of this Court in Abdul Gafoor and Others Vs. State of Rajasthan and Others, where the granting of permits for alternative routes or areas u/s 43 (1) (iii) was treated as valid and a more suitable method. In this connection it was also suggested that the State Government can issue directions in connection with the grant of permits for alternative routes or areas under this provision irrespective of the controversy whether the grant of permits for alternative routes or areas is a quasi-judicial function or an administrative function. For the same reasons it was submitted that the State Transport Authority should also be held competent to issue such directions u/s 44 (3) (a) of the Act for co-ordinating and regulating the activities and policies of the Regional Transport Authority,

14. Alternatively, it was contended that the initial offer to the holders of the existing permits for alternative route or area under 9 (g) of the Rajasthan State Road Transport Service (Development) Rules, 1960, is at any rate, an administrative act and that consequently, the State Transport Authority is quite competent to issue directions for making such initial offers of permits for alternative routes or areas. Pointing out in this connection that the rules 9 (d), (e), (f) and (g) merely envisage and provide for the consideration of the opposition by the existing members to the grant of permits for alternative routes or areas in pursuance of the initial offers and not by applicants for fresh permits u/s 57 and consequently, the State Transport Authority should be held competent to issue further consequential directions to restrain the grant of fresh permits so as to implement the offer of permits for alternative routes or areas to displaced operators. It was contended that in this back-ground the impugned direction are sustainable.

15. Mr. D.P. Gupta appearing as intervener and supporting the stand taken by the Government Advocate addressed the following arguments :

He contended that u/s 47 (1), the Regional Transport Authority shall have regard amongst various matters to the interest of the public generally. The interest of the public generally, he pointed out, is a very elastic concept and in many matters opposite views may be expressed as to the interest of the public generally. He emphasised the need of certain guiding principles for determination of the public interest generally for achieving uniformity in the decisions of the Regional Transport Authorities and sought to justify the impugned directions on this consideration.

16. The counsel for respondent No. 3 Mr. Mohammad Fasihuddin submitted that even if the order of the Transport Appellate Tribunal in so far as it is based upon an assumption of the binding nature of the impugned directions ; be treated as erroneous, still the decision of the Transport Appellate Tribunal on the respondent No. 3's contentions shown as 1 and 2 earlier should be held incorrect and this Court may be pleased to set aside the decision of Transport Appellate Tribunal on these contentions and issue appropriate orders.

17. After the conclusion of his arguments (when Mr. Tiwari was summing up his arguments) he referred to a Bench decision of this Court reported in General Motor Bus Service, Jaipur Vs. Regional Transport Authority, Jaipur and Another, holding that the directions issued by the State Transport Authority requiring the Regional Transport Authority to postpone the consideration of grant of permits on the routes proposed to be nationalised were valid and that there was no conflict between the directions and the provisions of Sections 47 and 57 of the Act. On the basis of this decision, he sought to sustain the validity of the impugned directions.

18. In the circumstances of the case, I consider the proper approach will be to examine the arguments of the Government Advocate and the counsel for the other respondents to see whether the impugned directions can be sustained.

19. Taking up the first argument of the Government Advocate, it may be stated that the Rajasthan State Road Transport Services. (Development) Rules, 1960, as amended by Notification dated 20th November, 1962, provide the procedure which has to be followed in connection with the grant or refusal of permits for alternative routes or areas in pursuance of Section 68G (2). Rule 9 (c) provides for the issue of a notice to the holder of existing terms specifying the alternative routes which is so offered to them and requiring them to convey their acceptance thereof within a period of fortnight of the service of the notices on them. Under Rule 9 (f) the Regional Transport Authority is also required to publish a copy of the notice in the official Gazette calling upon the holders of the existing permits for the proposed alternative routes to make representations in writing within 15 days of its publication, if any, in respect of the proposed offer.

The Regional Transport Authority taken may pass proper orders after taking into

consideration the representations received from the existing operators. It is true that these rules do not envisage a competition from applicants for fresh permits but all the same the functions exercisable by the Regional Transport Authority in accordance with the rules cannot be considered purely administrative acts. The rules contemplate the determination of the rights between the existing operators and the displaced operators to whom permits for alternative routes are offered. Even *Abdul Gafoor and Others Vs. State of Rajasthan and Others*, on which the learned Government Advocate has relied, does not support him on this point. In that case certain displaced operators were introduced on Bikaner-Jaipur route. The existing operators challenged the introduction of the displaced persons on the route inasmuch as they were not given an opportunity to oppose their introduction and they approached this Court by writ petitions. The applications were opposed on the ground that the order u/s 68-G (2) was merely an administrative function. Repelling the contention, it was observed that:

"section 68-G (a) nowhere authorises the Regional Transport Authority to issue permit forthwith without hearing other parties who are not before it and whose rights are bound to be affected thereby. It cannot be argued that the procedure of giving notice to the parties affected and hearing their objections, if any, before granting permits on an alternative route, is in any manner inconsistent with the provisions of Section 68-G (2) of the Statute. Since the grant of an alternative route affects the interest of persons already plying their buses on the route, we are not prepared to assume that the grant is merely an administrative act."

It was further observed that:

"the displaced persons cannot be so inducted on the alternative route to the prejudice of the rights of persons already operating on that route; apart from public interest in regulating transport on a route, it also affects private rights of individuals already operating on it. Consequently, it must be held that where third parties are affected, both on principles of natural justice as also under the provisions of law, their objections have to be heard before any alternative route can be granted to others."

20. In view of the above observations as also subsequent observations in the decisions the contention of the learned Government Advocate that the grant of permits for alternative routes is in the nature of an executive or administrative function cannot be accepted and must be rejected.

21. In this connection, a question may arise whether u/s 43 (1) (iii) the State Government is empowered to issue necessary directions for the grant of permit for alternative routes or the areas, etc. This Court no doubt in *Abdul Gafoor and Others Vs. State of Rajasthan and Others*, held that such directions can be issued and in fact even went to the extent of observing that this was probably a more suitable method. The Court treated the function as quasi-judicial function. The decision holding the issue of directions u/s 43(1) (iii) as quasi-judicial function appears contrary to the decision taken by the Supreme Court in *B. Rajagopala*

Naidu Vs. State Transport Appellate Tribunal and Others, In that case, it was held generally that Sections 42, 43 and 44 merely cover the administrative field. As in the present case there is no notification issued by the State Government u/s 43 (1)(iii), I consider it unnecessary to enter into the controversy whether under that section the State Government can exercise functions by issuing directions for granting permits for alternative routes or areas to displaced persons. Whatever may be the position under this section, it cannot be accepted that the State Transport Authority can issue directions for regulating the grant of permits for alternative routes or areas to displaced persons u/s 44 (3) (a).

22. Examining "the alternative argument, I feel inclined to agree with the Government Advocate that the initial act of making an offer u/s 68-G and Rule 9 (e) to displaced operators is an administrative act. The offer at that stage is tentative and without prejudice to the rights of the existing operators. The Regional Transport Authority at a later stage after considering the representations if received from the existing operators, may grant permit for alternative route or may reject it. The eventual determination and grant of permit will no doubt be a quasi-judicial function but the initial offer in the very nature of things is an administrative act. Mr. Tiwari contended that the Regional Transport Authority may have to take into consideration various factors before making the initial offer. It may have to consider what routes are available, which of the many displaced operators should be offered permits for alternative areas and on what route and consequently, the initial act should also be treated as a quasi-judicial function. I cannot agree with him. The Regional Transport Authority may take these factors into account but while making an initial offer it does not determine the rights of the parties. The argument of Mr. Tiwari therefore on this point cannot be accepted.

23. It follows that when the initial act of offer of permit for alternative route is an administrative act, the State Transport Authority should be certainly competent to issue directions to the Regional Transport Authority to make offers of permits for alternative routes or areas to displaced persons. This will mean only a direction to regulate the activities of the Regional Transport Authority in the matter of making offers u/s 68-G (2). It is, however, very clear that while making such directions the State Transport Authority must remain within its limits and should not assume the authority to regulate or interfere with the exercise of any quasi-judicial functions. As soon as the directions appear to interfere with the exercise of quasi-judicial function, they must be treated invalid.

24. It is in the light of this principle that the impugned directions deserve to be examined.

25. A critical analysis of the directions show that the State Transport Authority did not directly enjoin upon the Regional Transport Authorities to make offers to the displaced persons although such offers were contemplated. On the other hand, the directions proceeded from the commencement to restrain the Regional Transport Authorities from granting fresh stage carriage permits on "A" class

routes in the respective regions in order to offer alternative routes to the displaced persons in view of the nationalisation of the number of routes in the State. The Regional Transport Authorities are required to desist from granting permits irrespective of the fact whether the offers have been made and are pending or have yet to be made in future. The function of the Regional Transport Authority in the matter of grant of fresh permits are admittedly quasi-judicial functions and I cannot but hold that the directions so worded do constitute interference with the exercise of quasi-judicial functions.

Similarly, the first proviso directs that the Regional Transport Authorities while considering the cases of the displaced operators and other interested operators should give due preference to the displaced as well as would be displaced operators. This is also an interference with the exercise of quasi-judicial functions of the Regional Transport Authorities. In this view of the matter, these directions so widely worded are hit by the principles laid down by the Supreme Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, and deserve to be declared invalid. It would have been a different matter had the State Transport Authority issued merely instructions to the Regional Transport Authorities to make initial offers to the displaced persons or would-be displaced persons.

26. In this context, it will be proper to consider certain difficulties which can arise in concrete cases.

27. A case may be imagined where the Regional Transport Authority offers permits for alternative routes or areas to displaced persons and also issues notices to the existing operators inviting representations, if any. The representations are received but before the final disposal of the case the Regional Transport Authority receives applications for fresh permits u/s 57 of the Act. A question will arise whether the Regional Transport Authority should postpone the consideration of the offers made to displaced persons and the representations received against the grant of permits to displaced persons and adopt the necessary formalities in connection with the disposal of applications for fresh permits and then decide all matters simultaneously. Even when such matters are to be considered and decided simultaneously in the given or any other case, a question as to the proper mode of approach in connection with the priorities must arise.

28. Another case may be imagined where the Regional Transport Authority receives applications for fresh permits u/s 57, publishes the applications, invites objections and also notifies the date of hearing. A few days before the date of the hearing, the Regional Transport Authority makes offer of permits for alternative routes or areas to displaced persons. A question arises whether the consideration of the applications for fresh permits should be postponed till the Regional Transport Authority becomes in a position to consider the offers and representations if received in that connection and decide all matters simultaneously. The further question as to the mode of approach to the two kinds

of matters will also arise.

29. It may be observed that the Regional Transport Authorities should ordinarily and normally not delay consideration of offers and the representations in that connection on account of the institution of applications for fresh permits in the first case, and that the Regional Transport Authorities should postpone the consideration of applications for fresh permits in the second case in consideration of the policy embodied in Section 68-G (ii) and the Rules and the following considerations :--

(1) That the displaced person owns and possesses the bus and has sufficient experience.

(2) That he had a permit which had been cancelled or the condition of which had been modified in consequence of the scheme of nationalisation.

(3) That the liability of the State Transport Authority undertaking to pay compensation is to be reduced by offer of permit for an alternative route or area. Similarly, the State and State Transport Authority may expect from Regional Transport Authorities preference for displaced operators in cases of simultaneous disposal of cases. The State Transport Authority may also have reasonable apprehension that Regional Transport Authorities may not always act on these lines in the exercise of their discretion and may, therefore, be very anxious to see that the Regional Transport Authorities may function uniformly on these lines.

30. But, I am unable to hold that the State Transport Authority can be permitted to issue directions regulating the manner in which the Transport Authorities should discharge their quasi-judicial functions and to attempt to fetter the exercise of the discretion by them. If regulation of quasi-judicial functions is considered necessary for securing uniform decisions by the Regional Transport Authorities, the remedy as suggested by the Supreme Court is by having recourse to legislation : (i) primary--by introducing statutory provisions or (ii) subordinate--by framing necessary rules. In the light of these discussions, the administrative instructions under challenge cannot be justified.

31. The argument of Mr. Gupta that the instructions may be justified in order to secure uniformity of decisions by Regional Transport Authorities in connection with interpretation of the expression "the interest of the public generally" appearing in Section 47 of the Act is also not tenable in view of the reasons advanced in connection with the Government advocate's arguments.

32. It now remains to consider the two cases--one relied upon by Mr. Mohd. Fasihuddin counsel for respondent No. 3 i. e. General Motor Bus Service, Jaipur Vs. Regional Transport Authority, Jaipur and Another, and the other mentioned in the order of reference that is, decision in Civil Writ No. 327 of 1962, D/-14-5-1965 (Raj.). In the first case a Bench of this Court to which Jagat Narayan J. was a party, held that the directions of the State Transport Authority directing the Regional Transport Authority, Jaipur not to issue non-temporary permits

along a route pending the consideration of a proposal to nationalise the route, was held valid and it was observed that there was no conflict between the directions issued by the State Transport Authority and the provisions of Sections 47 and 57 of the Act.

In the other case a Bench of this Court to which Bhandari J. was a party, affirmed the validity of directions dated 15th January, 1961 issued by the State Transport Authority directing all the Regional Transport Authorities in Rajasthan to desist from granting fresh stage carriage permits on any route in their respective regions and furnish lists of routes (within a period of two weeks) where there is scope for more fresh permits to the Secretary, Regional Transport Authority, Jaipur who has to offer alternative routes to displaced operators in view of the nationalisation of a number of routes in the said region. It will be sufficient to observe in this connection that the important and weighty considerations in connection with the discharge of quasi-judicial functions without any kind of interference or regulation by executive authorities were not brought before the Benches which decided those cases, and they were not called upon to adjudicate the controversy in the precise and pointed manner in which it was raised before the Supreme Court and in this Court in the present case.

The case ILR (1959) 9 Raj 598 : General Motor Bus Service, Jaipur Vs. Regional Transport Authority, Jaipur and Another, was decided much before the decision of the Supreme Court case in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, The Supreme Court's judgment in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, was not brought to the notice of the Judges who decided the latter case Civil Misc. Writ Petn. No. 255 of 1962 and Civil Writ No. 327 of 1962, D/- 14-5-1965 (Raj). In my opinion, in view of the authoritative pronouncement of the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, the decisions and observations in the two cases of this Court relating to issue of directions have become ineffective and cannot have binding force and cannot stand in the way of declaring the impugned directions invalid. Now, since the decision of the Transport Appellate Tribunal proceeded on an assumption that both the Appellate Authority and the Regional Transport Appellate Authority were bound by the impugned directions, I hold that the decision of the Transport Appellate Tribunal stands vitiated and deserves to be quashed.

33. The decision of the Transport Appellate Tribunal on this point is not sustainable even on an additional ground. The grievance of the respondent before the Tribunal was that since an application of Syed Usuf Ali Shah--a displaced operator--was pending before the Regional Transport Authority, the Regional Transport Authority was not competent to grant permits to other persons. Assuming that Syed Usuf Ali Shah's application was pending, he put in no appearance before the Regional Transport Authority in the meeting when the resolution granting permit to the petitioner was passed. He did not feel aggrieved by the resolution of the Regional Transport Authority ignoring his application and

filed no appeal. It was not open to the respondent to question the grant of permit to the petitioner on the ground that Syed Usuf Ali Shah's application was not considered by the Regional Transport Authority, in view of the principle laid down in a Full Bench decision of this Court reported in *Ashoka Bus Transport Corporation, Bhilwara and Others Vs. The Appellate Tribunal of State Transport Authority and Others*,

34. Proceeding to examine the challenge of the respondent No. 3's counsel to the decision of the Transport Appellate Tribunal on two other contentions the respondent No. 3 raised before the Transport Appellate Tribunal, I find no force in them. The respondent's contention that he had no sufficient notice of the meeting of the Regional Transport Authority held on 9th, 10th and 11th November, 1964, was repelled by the Transport Appellate Tribunal on a finding that the general notice was duly published in the *Rajpatra* dated 30th October, 1964. Similarly, the Tribunal rejected the other contention based on absence of scope for grant of additional permits on the route with a definite finding that a scope for grant of more permits has been made out. The Tribunal referred to a number of facts in support of its conclusion. On both these contentions the findings of the Tribunal are purely findings of fact and I do not feel inclined to interfere with its finding in the exercise of extraordinary jurisdiction.

35. As a result of the various conclusions arrived at, I would allow the application and issue a writ of certiorari quashing the order of the Transport Appellate Tribunal dated 1st February, 1965. In the circumstances of the case, I leave the parties to bear their own costs.

Jagat Narayan, J.

: 36. I agree with my learned brother Chhangani J, that the writ petition should be allowed. I prefer to give my reasons separately.

37. The main question which arises in this reference is whether the directions issued by the State Transport Authority on 20-6-62 in paras 1 and 2 are invalid inasmuch as they relate to matters which are to be determined by the Regional Transport Authorities in the exercise of their quasi-judicial powers and in the discharge of their quasi-judicial functions. It is not disputed that if they are of such a nature they are invalid in view of the decision of their Lordships of the Supreme Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, These directions run as follows :

1. "Resolved that in pursuance of the power conferred u/s 44 (3) of the Motor Vehicles Act, 1939, the S. T. A, Rajasthan, Jaipur, hereby directs all the Regional Transport Authorities in Rajasthan to desist from granting fresh stage carriage permits on any "A" class routes in their respective region (except those routes lying in Bikaner Region) in order to offer alternative routes to the displaced as well as would-be displaced operators in view of nationalisation of a number of routes in the State. The above directions shall continue to operate till the displaced as well as would be displaced persons in due process of law are

rehabilitated.

2. Provided that if the displaced or the would be displaced operators do not accept the alternative routes offered to them and the bus routes which fall short of adequate service due to scope for more services, applications from other interested operators be considered after giving due preference to the displaced as well as would-be displaced operators.

3. Provided further that Regional Transport Authority would grant alternative routes to the displaced or would be displaced operators in their respective region only."

Section 68-F (1) provides for the grant of a stage carriage permit to a State Transport Undertaking in respect of a route for which a scheme of road transport service of a State Transport Undertaking has been approved u/s 68-D.

38. Section 68-F (2) empowers the Regional Transport Authority, for giving effect to the approved scheme, to pass any one or more of the following orders :

(a) refuse to entertain any application for the renewal of any other permit,

(b) cancel any existing permit,

(c) modify the terms of any existing permit so as to-

(i) render the permit ineffective beyond a specified date;

(ii) reduce the number of vehicles authorised to be used under the permit;

(iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route.

Under Section 68-G (1) the holder of a permit which has been cancelled or modified under the above provision is entitled to compensation. Section 68-G (2) lays down that no such compensation shall be payable if a permit for an alternative route is offered by the Regional Transport Authority and accepted by the holder of the permit which has been cancelled or modified u/s 68-F (2). This sub-section runs as follows :--

"Notwithstanding anything contained in subsection (1), no compensation shall be payable on account of the cancellation of any existing permit or any modification of the terms thereof, when a permit for an alternative route or area in lieu thereof has been offered by the Regional Transport Authority and accepted by the holder of the permit." It was held by a Division Bench of this Court in *Abdul Gafoor and Others Vs. State of Rajasthan and Others*, that the above provision is only an enabling one, which does not authorise the R.T.A. to issue a permit forthwith without hearing other parties which are not before it and whose rights are bound to be affected thereby. It was observed-

"Since the grant of an alternative route affects the interest of persons already plying their buses on the route it cannot be assumed that the grant is an

administrative act. Where third parties are affected, a lis comes into play and both on principles of natural justice as also under the provisions of law their objections have to be heard before any alternative route can be granted to others."

In pursuance of the above judgment, the Rajasthan State Road Transport Services (Development) Rules 1960 were amended by notification No. F-1 (9) (20) HB. 1/62 dated November 20, 1982, published in the Rajasthan Gazette dated November 22, 1982, as follows :--

"After Clause (c) of Rule 9 of the said Rules, the following shall be inserted namely :--

(d) For the purpose of giving effect to the approved scheme, the Regional Transport Authority concerned shall forthwith cancel or modify or refuse to renew or make ineffective the existing permits in respect of the notified route or portion thereof and serve upon the holder of such permits notices to that effect.

(e) Simultaneously with, or subsequently to the issue of notices under Clause (d), the Regional Transport Authority concerned shall, if it considers it proper and decides to offer to the holders of existing permits, an alternative route within the meaning of Sub-section (2) of Section 68-G of the Act, in lieu of compensation payable under Sub-section (1) of the said section, issue another notice to the holder of existing permits, specifying the alternative route which is so offered to them and requiring them to convey their acceptance thereof within a period of fortnight of the service of the notices on them.

(f) In the case contemplated by Clause (c) the Regional Transport Authority shall also publish a copy of the notice in the official Gazette calling upon the holders of existing permits for the proposed alternative routes to make representations in writing within 15 days of its publication, if any, in respect of the proposed offer.

(g) Any representations received by the Regional Transport Authority in pursuance of Clause (f) within the time limit specified thereunder shall be taken into consideration by it and the authority may then pass such orders as it may deem fit.

(h) Nothing contained in Chapter IV of the Act or in the Rules made thereunder shall apply to the proceedings taken under these rules.

(i) All notices issued under Clauses (d) and (e) shall, subject to the provision contained in Clause (f), be served in the manner laid down in rule 10 as if they were orders made under Chapter IVA of the Act."

A perusal of Sections 68-F and 68-G and Rule 9 (e) of the Rajasthan State Road Transport Services (Development) Rules 1960 goes to show that an alternative permit can be offered by a Regional Transport Authority only to an existing operator who has become displaced on account of a nationalisation scheme implemented within its region. The Regional Transport Authority cannot offer an

alternative permit to a displaced operator of another region.

39. Displaced operators can thus be classified into two categories namely :

I. Operators displaced in the region of the transport authority concerned to whom an alternative permit can be offered u/s 68-G (2) in the manner provided under Rule 9 (e), and

II. Displaced operators of other regions to whom no such offer can be made and in whose favour no preferential treatment under any provision of Chapter IV-A or the rules made thereunder has been prescribed.

40. All that Section 68-B provides is that the provisions of Chapter IV-A and rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter IV. If any person makes an application for the grant of a permit u/s 46 the application has to be considered in the manner provided in Section 57 and has to be disposed of having regard to the considerations mentioned in Section 47. All these sections lie in Chapter IV. Nothing is contained in Section 68-B or in any other provision contained in Chapter IV-A or the rules made thereunder from which it can be inferred that the Regional Transport Authority is bound to postpone the consideration of an application for grant of a permit u/s 46 till displaced operators of the region have been granted alternative permits.

41. Coming now to the impugned directions issued by the State Transport Authority the meaning of the first paragraph is that the Regional Transport Authorities are prohibited from granting any fresh stage carriage permit on any A class route with the object of offering them to displaced or would-be displaced operators from their own regions. As I have shown above nothing contained in the Motor Vehicles Act or the Rules framed thereunder lays down that the Regional Transport Authority is bound to postpone the consideration of an application for grant of a fresh permit u/s 46 till all displaced operators of the region have been granted alternative permits. This direction therefore fetters the judicial discretion of the Regional Transport Authority in the matter of grant of permits under Chapter IV which is a quasi-judicial matter and is thus invalid.

42. The direction in the second paragraph means that in case the displaced or would-be displaced operators do not accept the alternative routes offered to them and there is scope for grant of further permits on the route, applications filed u/s 46 for grant of fresh permits may be considered, but due preference should be given to the displaced as well as would be displaced operators from other regions. There is nothing in Section 68-B or in any other provision contained in Chapter IV-A or the Rule made thereunder from which it can be inferred that in granting permits the R. T. A. is bound to give preference to displaced operators of other regions. This direction also interferes with the judicial discretion of the R. T. A. in the matter of grant of permits which is a quasi-judicial function and is thus invalid.

43. So far as the third paragraph of the impugned directions is concerned it only contains a statement of the law which is in accordance with the provisions of the Motor Vehicles Act and is unobjectionable.

Bhandari, J.

44. I agree with my learned brother Chhangani, J., that the present petition should be allowed on the ground that it was not open to the Transport Appellate Tribunal to set aside the grant of permit to the petitioner on the ground that Syed Yusuf Ali Shah's application was not "considered by "the Regional Transport Authority while granting permit to the petitioner. This ground by itself is sufficient for deciding the writ petition.

45. As the main argument before this Bench was with regard to the validity or invalidity of the directions contained in the resolution dated 2-6 1962 of the State Transport Authority to the various Regional Transport Authorities I express my opinion on this point also. This resolution has been quoted in full by my learned brothers. The important part of the directions is that the various Regional Transport Authorities in Rajasthan were to postpone the consideration of granting fresh stage carriage permits for any "A" Glass routes in their respective region (except those routes lying in Bikaner region) in order to offer alternative routes to the displaced as well as to would be displaced operators in view of the nationalisation of routes in a number of States. The aforesaid resolution contemplates that the various Regional Transport Authorities are to make offers of the alternative routes to the displaced or would be displaced operators in their respective regions, and in case such operators accept the offers, permits for the routes contemplated in the offers are to be granted to such operators. If the offers are not accepted and the bus routes stand in need of more services, applications from other interested persons may be then considered after giving preference to the displaced as well as to the would-be displaced operators.

46. Section 43 empowers the State Government to issue directions to the State Transport Authority in certain matters enumerated in Sub-section (1) of Section 43. This power is an administrative power, but in the matter of the exercise of the power conferred on the State Government under this section, certain safeguards have been provided so that the representatives of the interests affected may be given opportunity of being heard. It has also been provided that the directions should be published by notification in the official Gazette so that the directions of the State Government may be brought to the notice of the public.

47. u/s 44 of the Motor Vehicles Act, 1939, the State Government has been empowered to constitute a State Transport Authority and Regional Transport Authorities. The State Transport Authority is to exercise and discharge the powers and functions specified in Sub-section (3) of Section 44. The Regional Transport Authorities are to exercise and discharge throughout the region specified in the notification in respect of each Regional Transport Authority the

powers and functions conferred by or under Chapter IV of the Act on such Authority. These Authorities constituted under Sub-section (1) of Section 44 are basically administrative authorities. The Act, however, provides that these Authorities have to decide certain matters quasi-judicially.

48. In the instant case, we are concerned with the interpretation of Section 44, Sub-section (3), which empowers the State Transport Authority "to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State", subject to the direction issued by the State Government u/s 43 and save as otherwise provided under this Act.

49. Chapter IV-A inserted by Section 62 of the Motor Vehicles (Amendment) Act, 1956 (No. 100 of 1956) in the main Act makes certain special provisions relating to the grant of permits by a Regional Transport Authority. Sections 68-F and 68-G have made provisions for granting such permits. Section 68-F and the relevant provision of Section 68-G on this point are, as follows :

"68 F. Issue of permits to State Transport Undertakings.--(1) Where, in pursuance of an approved scheme, any State transport undertaking applies in the manner specified in Chap. IV for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the Regional Transport Authority shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter IV. .

(2) For the purpose of giving effect to the approved scheme in respect of a notified route, the Regional Transport Authority may, by order-

(a) refuse to entertain any application for the renewal of any other permit,

(b) cancel any existing permit,

(c) modify the terms of any existing permit so as to-

(i) render the permit ineffective beyond a specified date;

(ii) reduce the number of vehicles authorised to be used under the permit;

(iii) curtail the area or route covered by the permit in so far as such permit relates to the notified area or notified route.

3. For the removal of doubts, it is hereby declared that no appeal shall lie against any action taken, or order passed, by the Regional Transport Authority under Sub-section (1) or Sub section (2)."

"68-G. Principles and method of determining compensation.--(1) Where, in exercise of the powers conferred by Clause (b) or Clause (c) of Sub-section (2) of Section 68.F any existing permit is cancelled or the terms thereof are modified, there shall be paid by the State Transport Undertaking to the holder of the permit compensation the amount of which shall be determined in accordance with the provisions of subsection (4) or Sub-section (5), as the case may be.

2. Notwithstanding anything contained in Subsection (1), no compensation shall be payable on account of the cancellation of any existing permit or any modification of the terms thereof, when a permit for an alternative route or area in lieu thereof has been offered by "the Regional Transport Authority and accepted by the holder of the permit.

3. For the removal of doubts, it is hereby declared that no compensation shall be payable on account of the refusal to renew a permit under Clause (a) of Sub-section (2) of Section 68-F.

* * * * *

It is clear from these provisions that notwithstanding anything contained to the contrary in Chapter IV, the State Transport Undertaking is entitled to a permit if it applies in the manner specified in Chapter IV. The Regional Transport Authority has been empowered to refuse to entertain any application for the renewal of any other permit for the purpose of giving effect to the approved scheme in respect of a notified area or notified route, and even to cancel any existing permits or modify the terms of an existing permit.

Under Sub-section (2) of Section 68-G the Regional Transport Authority has been empowered to offer a permit for an alternative route to the holder of a permit whose existing permit is cancelled, or the terms whereof are modified and if the holder of such a permit accepts the alternative route or area in lieu thereof he is not entitled to any compensation. This being the position, the making of an offer of a permit for an alternative route or area in lieu of the cancellation of an existing permit or any modification of the terms thereof is one of the functions of the Regional Transport Authority. In my mind, there is no doubt that this is an administrative function. Behind it is the policy that the State Transport Undertaking may be made free of its liability to pay compensation as provided in Section 68-G.

50. Under Sub-section (3) of Section 44, the State Transport Authority has the power to co-ordinate and regulate the activities and policies of the Regional Transport Authority of the State. In my opinion, in exercise of this power, the State Transport Authority can issue directions that the Regional Transport Authorities in the State shall offer alternative route or area to any permit holder whose existing permit has been cancelled or modified. It is of course true that the permit for an alternative route or area is to be granted in the manner provided under the rules made For this purpose which have been quoted in extenso by my learned brother Jagat Narayan J. But a general direction that the various Regional Transport Authorities in the State are to offer alternative permits cannot be said to be outside the scope of the power conferred on a State Transport Authority u/s 44, Sub-section (3) as such direction can reasonably be taken to be for the purpose of coordinating the policies of the various Regional Transport Authorities. This is also the view expressed by Chhangani J.

The question, however, arises whether a State Transport Authority cannot further

direct that permits in accordance with the provisions of Chapter IV shall not be granted to other persons till the cases of those persons whom the Regional Transport Authority has offered or contemplated to offer permits for an alternative route or area have not been disposed of. Chhangani J. has expressed the view that this is an encroachment on the exercise of quasi-judicial power of a Regional Transport Authority.

51. No administrative directions can be issued which in any way invade the domain of the exercise of judicial power by a Tribunal which has been empowered to exercise such power. Thus, no administrative directions may be issued directing a Tribunal exercising judicial power which might in any way amount to interference with the exercise of judicial power. In my humble opinion, this is the essence of the view expressed by the Supreme Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, It is, therefore, to be examined as to at which stage the Regional Transport Authority can be said to be acting in its judicial capacity in the matter of grant of permit under Chapter IV of the Act. The provisions relating to grant of permanent permits are contained in Sections 45 to 59.

Confining the discussion to the grant of stage carriage permit, the procedure is that a Regional Transport Authority may of itself invite applications for grant of permit for a particular route or area. This is purely an administrative act. The State Transport Authority can issue directions that the Regional Transport Authority in a particular area should not invite applications and if such directions had been issued for the purpose of co-ordinating and regulating the activities and policies of the Regional Transport Authorities of the State it is valid.

52. Even where a Regional Transport Authority has not invited applications for a route or area, any person may make an application for grant of such permit and the procedure provided in sub-sections (2) to (7) of Section 57 is to be followed. Under Sub-section (3) the Regional Transport Authority is to make the applications available for inspection at the office of the Authority and has further to publish the applications or the substance of the applications in the prescribed manner together with a notice of the date to which representations in connection therewith are to be submitted in all cases in which the proviso is not applicable. Then it is contemplated that the application and any representation received in connection therewith will be considered after granting 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 duly authorised representative.

In my opinion, all this is judicial function and no direction can be issued by the State Transport Authority which in any way affects the exercise of judicial function of the Regional Transport Authority in the matter of consideration of the applications and the representations. For example, it cannot be laid down by executive directions that the applications are to be Judged and disposed of in accordance with the criteria fixed by the State Transport Authority. The applications and representations are to be disposed of in accordance with the

provisions of law and rules made thereunder. This flows from the decision of their Lordships of the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, The directions issued in the instant case in a way invade the domain of the exercise of judicial powers by a Regional Transport Authority. The first direction is to desist from granting any fresh permit on any "A" Class route by any Regional Transport Authority in its region till the displaced persons or would be displaced persons are re-habilitated in due process. Had the direction been only to the extent that no fresh application should be invited by any Regional Transport Authority in respect of "A" Class routes in its region, the direction would have been proper, but the direction goes beyond this and prohibits any Regional Transport Authority to decide any application pending before it for grant of permit on "A" Class route in its region. Such a direction is invalid.

The first proviso to the resolution of the State Transport Authority contains another direction and that direction is to the effect that if the displaced or would be displaced operator does not accept the alternative route offered to him and the bus route falls short of adequate service due to scope for more services, applications from other interested operators would be considered after giving due preference to the displaced as well as to the would be displaced operators. The direction to give preference is a direct encroachment on the quasi-judicial power of a Regional Transport Authority and is therefore invalid. The second proviso says that the Regional Transport Authority would grant alternative routes to the displaced or would be displaced operators in their respective region. This direction only reiterates what the law is on the point and is not in any way invalid.

53. In Civil Misc. Writ No. 255 of 1962 and Civil Writ No. 327 of 1962, D/-14-5-1965 (Raj), I have taken the view that the directions issued by the State Transport Authority read as a whole amounted to a direction that the permit shall be issued only to a displaced person and to no other and that such a direction was not invalid "as with the advent of the schemes of nationalisation, the duty to regulate and co-ordinate cast upon it (State Transport Authority) made it necessary for that Authority to see that the buses of the existing operators may not remain unutilized." After re-consideration of the matter, I am of the opinion that what I have said in that case is not in consonance with the decision of the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, My views stand modified, as aforesaid.

54. By The Court :--The Writ petition is allowed and the order of the Transport Appellate Tribunal dated 1st February, 1965 is quashed. In the circumstances of the case, we leave the parties to bear their own costs.