
(1977) 07 BOM CK 0039

In the Bombay High Court

Case No : Special Civil Application No. 1913 of 1976

Kunjilal Hanumanlala Jaiswal

APPELLANT

Vs

B.C. Deo

RESPONDENT

Date of Decision : 18-07-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Road Transport Corporations Act, 1950 — Section 20

Citation : (1978) 80 BOMLR 599 : (1978) MhLj 462

Hon'ble Judges : Sapre, J;Deshmukh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deshmukh, J.—These petitions arise out of proceedings u/s 47 of the Motor Vehicles Act, 1939 before the State Transport Authority, Bombay, and also the appellate proceedings before the Appellate Tribunal. Since both the applications arise out of the same original proceedings, we have heard them together and this common judgment will dispose of both these petitions.

2. The facts giving rise to this dispute may now be noted. The inter-State route Nagpur-Indore via Amravati and Dharni is the subject-matter of grant of regular permit for which there were four competitors. It is not in dispute that there has been inter-State agreement between the State Governments of Madhya Pradesh and Maharashtra. According to the terms of that agreement on the Nagpur-Indore inter-State route the primary permit is to be issued by the State Transport Authorities of Maharashtra and it is to be counter-signed by their counterpart in Madhya Pradesh.

3. Between October 1974 and December 1974 the State Transport Authority (hereinafter referred to as the "S.T.A.") received four different applications. One was from the Maharashtra State Road Transport Corporation, Maharashtra State Undertaking (hereinafter referred to as "M.S.R.T.C."). The other was from one Kunjilal Hanumanlala Jaiswal (hereinafter referred to as "Jaiswal"). The third was

from M/s. S.H. Motor Transport Co., a partnership firm, and the fourth was from one Ramkrishna Marotirao Kolhatkar (hereinafter referred to as "Kolhatkar"). When these applications were invited, the parties put in their claims as well as objections to other claimants. None except the four claimants entered the arena either to claim a permit or to raise the objections to the granting of permits to either of them.

4. One of the technical objections raised against the M.S.R.T.C. by the other claimants was that before applying for such a permit, the Corporation had to comply with the provisions of Section 20 of the Road Transport Corporations Act, 1950. This objection was disposed of in the course of two previous hearings ending on December 15, 1975. The objection was over-ruled by an order which said that non-compliance of the provisions of Section 20 of the Road Transport Corporations Act, 1950 does not debar the Corporation from applying altogether. However, the Corporation having subsequently complied with the provisions of Section 20 of the said Road Transport Corporation Act, 1950, before the application became ripe for hearing there was no technical infirmity which stood in their way. The S.T.A. therefore decided to consider the application of the M.S.R.T.C. on merits along with others.

5. On December 15, 1975 the S.T.A. made one more query with all the four claimants and the query was this. The maximum rate which was permissible earlier not only for this route but for all routes in Maharashtra was 27 P. per stage of 6 km. or a part thereof. Services were in fact being run on the basis of that rate. The M.S.R.T.C. made some representations earlier which resulted in the State Government acceding to a higher rate of 36 P. per stage of 6 km. or a part thereof. This new rate was made effective from November 20, 1975. The S.T.A. asked all the four competitors whether they were willing to run their services at the old rate of 27 P. per stage or they want to claim any higher rate in view of the Government notification.

6. The three private operators told the S.T.A. that they were willing to operate the services at the old maximum rate of 27 P. per stage. However, on behalf of the M.S.R.T.C. the counsel stated that they would run their services if the permit is granted to them at the newly sanctioned rate of 36 P. per stage. The S.T.A. then asked the counsel to amend the petition of the Corporation to incorporate that rate. The counsel stated that it was neither necessary nor obligatory to do that as the services would be run on the basis of the new rate fixed by the Government which would be available to any operator. In view of this submission the S.T.A. decided to consider the application of M.S.R.T.C. on the footing that the application states the rate of 27 P. per stage but the actual fare that would be charged would be 36 P. per stage, if permit is granted to them.

7. After some adjournment and after hearing the parties, the S.T.A. decided the proceedings before it on January 2, 1976. By a speaking order of that day, the S.T.A. awarded a regular permit for a period of three years effective from February 1, 1976 to M/s. S.H. Motor Transport Co. and rejected the applications

of the three other claimants. Aggrieved by that order, all the three other claimants filed their respective appeals Nos. 14, 15 and 16 of 1976 before the State Transport Appellate Tribunal, Maharashtra State, Bombay. By its order dated March 12, 1976 the Appellate Tribunal confirmed the order of the S.T.A. and dismissed all the three appeals. Being aggrieved by this order of the authorities under the Motor Vehicles Act, Jaiswal has filed his Special Civil Application No. 1913 of 1976 and the M.S.R.T.C. have filed their Special Civil Application No. 2466 of 1976. Mr. Kolhatkar is out of the race though he is made a party by Jaiswal in his application.

8. On behalf of the two petitioners, technical objections as also objections on merits are raised and it would be appropriate to first dispose of the technical objection before we deal with the rest of the merits of the matter. So far as the M.S.R.T.C. is concerned, it is alleged that their present application for obtaining a permit is itself incompetent. Admittedly the provisions of Section 20 of the Road Transport Corporations Act, 1950 were not complied with by the Corporation. The present route is one which is partly situated within another State and as such the provisions of Section 20 are attracted. It becomes necessary for the Corporation to negotiate with the Government of the other State with of course the permission of the State of Maharashtra to propose the extension of the route in that State. Once that is done by the other State, the Corporation is to prepare a scheme and forward the scheme to the other Government for its consent. After such consent is received, the Corporation may with the previous approval of the State Government, the Maharashtra State Government, sanction the scheme. These are the provisions of Sub-section (1) and (2) of Section 20.

9. The opening words of Sub-section (3) of Section 20 of the Constitution does not act as an appellate authority over the decisions of S.T. Authorities under the Motor Vehicles Act. The interference by the High Court is always limited. If the law is erroneously applied, the High Court will lay down the correct law and rectify the mistake. If certain factual aspects are not taken into consideration at all or evidence is so misread as to amount to non-application of mind, the High Court may again rectify the mistake. What form that rectification will take place depends upon the nature of the order which the High Court is considering. Normally, coming to certain conclusions of fact falls under the exclusive jurisdiction of the authorities under the Motor Vehicles Act. The High Court when satisfied that the law has not been properly interpreted and the facts have not been properly evaluated, while pronouncing the law, would ordinarily send down the matter for reconsideration in the light of principles of law enunciated in the High Court's order.

42. When we consider the present matter from that point of, view, we are satisfied that all evidence has been taken into consideration by the authorities below and they have come to the conclusion which cannot be described as either perverse or originating in non-application of mind. It is not, therefore, possible for us to interfere with the order passed by the authorities below. This being our

view both the writ petitions fail and will be dismissed. The order granting permit to M/s. S.H. Motor Transport Co. is thus confirmed.

43. Mr. Jaisinghani had applied for the amendment of Special Civil Application No. 1913 of 1976. However, he is not pressing that application. He is allowed to withdraw Civil Application No. 249 of 1977 in Special Civil Application No. 1913 of 1976.

44. We thus reject both the writ petitions and direct that each of the petitioner will pay costs in one set to respondent M/s. S.H. Motor Transport Co. The rest of the respondents will bear their respective costs.

45. At this stage Mr. Hegde for the petitioner in Special Civil Application No. 2466 of 1976 applies for leave to appeal to the Supreme Court, which is refused.

CORPORATIONS ACT, 1950 now become extremely relevant. That sub-section says that after the scheme has been so sanctioned, it shall be competent for the Corporation to extend the operation of its road transport service to such route or area and when the operation of such service is so extended, the Corporation shall operate the service on that route or in that area subject to the provisions of any law in force in the other State within which such route or area is situated. Sub-section (4) permits the Corporation to further extend the scheme or to supplement it. However, the procedure stated above has to be again gone through.

10. With this clear language of Sub-section (3) of Section 20, we have hardly any doubt that the only requirement of this section is that the scheme ought to have been sanctioned before the service is extended to route falling in the area of inter-State. It is not a condition precedent to the making of an application to the State Transport Authorities which is unavailable for any operator who wants to run a stage carriage service. When the application is processed and is being heard, the sanctioning authority is bound to ask question to the Corporation whether it has complied with the provisions of Section 20 by sanctioning a scheme for extension of the route to inter-State in accordance with the provisions of Sub-sections (1) and (2) of Section 20. If the Corporation is able to answer in the affirmative, there is no infirmity in the way of the Corporation from extending the operation of its road transport service to such a route beyond the State of Maharashtra in the adjoining territory of any other State. We do not see any objection to the application being made by the Corporation though the absence of sanctioned scheme would undoubtedly have prevented the Corporation from extending operation of the services if the Corporation were not in a position to extend the service, needless to add a permit would not be given to such an operator by the S.T.A. This point is therefore without any substance and must be rejected.

11. Mr. Jaisinghani also urged that M/s. S.H. Motor Transport Co. is also incompetent to apply, as it is an unregistered firm. Mr. Manohar, counsel for the S.H. Motor Transport Co. says that this is an incorrect statement of fact. The

partnership is undoubtedly registered when it was originally formed. Subsequently there have been some changes in the composition of partners and they have not been notified to the Registrar of Firms, as it required to be done. This does not render the partnership as unregistered partnership. Apart from this factual reply, which is given by the company, we asked Mr. Jaisinghani under what provisions of law it was incompetent for the unregistered partnership firm to do any business. If unregistered partnership could undertake the transport business without any objection in law, we wonder whether their application for getting certain permit under the Motor Vehicles Act could be an application by unauthorised person. Mr. Jaisinghani was unable to point out the provisions of any law whatsoever which require a prior registration by firm before it can commence business or apply for a permit with a view to do the transport business. Mr. Jaisinghani referred us to a judgment of the Calcutta High Court in the case of Kali Kinkar Kundu Vs. Sadhan Chandra Dey and Others, This is a judgment where the applicant who was a company had never existed in fact on the date of the application. It was therefore held by the learned Judges of the Calcutta High Court that a non-existing company cannot apply for a licence. We fail to understand how this judgment can be of any assistance to Mr. Jaisinghani. He, however, argued that by an analogy he would like to argue that unregistered partnership would be a non-existent entity in the eyes of law and as such the principles of that judgment may be useful. We then asked him directly whether it makes any difference in law where a group of persons is registered in some form or a registration of partnership give any separate legal status to the group of persons. He was unable to give any reply. We are thus satisfied that this point has no substance and must also be rejected.

12. This brings us to the consideration of an important point raised by Shri Hegde on behalf of the M.S.R.T.C. He says that the question which he is raising about the exclusive right of the Corporation to operate an inter-State route like the present type is arising in several pending matters at the level of S.T.A. or the Motor Vehicles Appellate Tribunal. The Corporation is advised that it alone has the right to get permit on such routes in view of the scheme prepared and sanctioned under chap. IVA of the Motor Vehicles Act, 1939. He, therefore, wants an authoritative interpretation of the scheme and the right of the Corporation in relation to inter-State routes of the present type.

13. There is no doubt that the provisions of chap. IVA of the Motor Vehicles Act over-ride the provisions of chap. IV. If the scheme prepared under that Chapter covers any route or area and the Corporation makes an application for obtaining a permit for running a stage carriage service no one else can get permit for that route but a permit in favour of the Corporation must be issued. Mr. Manohar for the grantee of the present permit M/s. S.H. Motor Transport Co. concedes that the provisions of chap. IVA undoubtedly over-ride the provisions of chap. IV. He further concedes that if a scheme is made and sanctioned to the total exclusion of any other operator, the State undertaking alone will have the monopoly to run a stage carriage service. He does not challenge the legal position.

14. What is being stated in reply is that the present scheme is not a scheme to the total exclusion of all operators in relation to all types of stage carriage-services nor does the Scheme cover the inter-State route like the present one. Since the claimants want to run a Stage carriage passenger service on an inter-State route, viz. Nagpur-Indore via Amravati, Dharni, and since the scheme of the Corporation does not cover this route but specifically excludes this route, it is open to any operator to compete with the Corporation on merits and obtain a permit if the Motor Vehicles Act Authorities are satisfied about the superiority of their claims.

15. Reference may be made to the provisions of Section 68F falling under chap. IVA of the Motor Vehicles Act, 1939. According to that section, where, in pursuance of an approved scheme any state transport undertaking applies in such manner as may be prescribed by the State Government in this behalf 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 State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case, shall issue such permit to the State Transport undertaking, notwithstanding anything to the contrary contained in chap. IV. It is therefore amply clear that the provisions of chap. IVA clearly supersede the provisions of chap IV, and in the circumstances detailed above the moment the State undertaking applies the permit must be issued to that undertaking alone by the appropriate authority mentioned in that section.

16. The provisions of chap. IVA do not merely lay down the positive right of the State undertaking but also lay down a prohibition against the issue of a permit in respect of any notified area or route. Section 68FF lays down that where the scheme has been published under Sub-section (5) of Section 68D in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme. There is a proviso which suggests that where no application for a permit has been made by the State Transport Undertaking in respect of any notified area or notified route in pursuance of an approved scheme the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permit to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State Transport Undertaking in respect of that area or route.

17. It may now be noted that the scheme is to be prepared u/s 68C and has to be approved and published in the Official Gazette by the State Government under the provisions of Section 68D. However, the proviso to Sub-section (3) of Section 68D lays down that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government. It is, therefore, clear that the State transport undertaking has a right to prepare a

scheme not only covering the area and the routes within the State but can comprise within the scheme inter-State routes. However the sanction of the State Government is not enough for such a scheme. In order that it should be approved scheme for the purpose of the inter-State routes, previous approval of the Central Government has to be obtained before such a scheme is published. If this is done the scheme will be one which covers the inter-State routes also which are covered by it.

18. With this legal position let us examine now the scheme which the M.S.R.T.C. has prepared. The draft scheme was published u/s 68C on May 25, 1973 and the final approved scheme came to be published u/s 68D on November 29, 1973. Item (1) gives the full name of the Undertaking and Item (2) its address. Item (3) of the scheme is as follows:

(3) Route(s) or area covered by the scheme.-he scheme covers the entire area of the State of Maharashtra including the routes shown under Column 2 of the Appendix "A".

There is therefore no doubt that this scheme covers the entire area of the Maharashtra State and also covers the 7000 and odd routes which are shown in Appendix "A". The main title of item (4) is again important and it reads as under:

(4) The Undertaking will operate stage carriage and contract carriage services in the entire area of the State of Maharashtra and on all routes and portions thereof falling within the said area to the complete exclusion of all other persons, except:

(i) ...

(ii) holders of duly countersigned permits on Inter-State routes save those falling under the second proviso to Section 63(1) of the Motor Vehicles Act, 1939;...

19. Prima facie the above item (4) of the scheme shows that it is not a scheme which totally excludes every other operator from the field. The above clause shows that though the routes and the entire area of the State of Maharashtra is covered by the scheme, certain exceptions are carved out which in fact are seven in number. To the extent of those services which can fall under Sub-items (i) to (vii) of the above item (4), the scheme is not made at all or is non-operative. In other words if it could be shown that an inter-State route like the present Nagpur-Indore route via Amravati-Dharni falls within any of the exceptions under above item (4) the scheme is not made at all in law in respect of that route. The language of chap. IVA is very clear and permits forming of the scheme area-wise or route-wise or both. It is entirely the choice of the State undertaking to prepare a scheme which it thinks is desirable in the interest of appropriate transport service to the members of the public. That is the intention of chap, IVA by which nationalisation of the public transport service is to be introduced in the manner provided by that Chapter and for availing better travel facilities to the members of the public.

20. We have only quoted Clause (ii) of Item (4) which excludes the holders of

duly counter-signed permits, on inter-State routes, save those falling under the second proviso to Section 63(1) of the Motor Vehicles Act, i.e. the limited inter-State routes which is not relevant for the present route Nagpur-Indore. Where a particular route originates in one State passes through another State by covering a distance of less than 16 km. and again enters the parent State for reaching a certain destination, the route is treated as a domestic route of the State and it is not treated as an inter-State route. We are not concerned with such a route in the present case. The present inter-State route has a length of 364 miles, out of this about 193 miles are within the area of the Maharashtra State and 171 miles fall in the area of Madhya Pradesh. Prima facie therefore a holder of a duly countersigned permit in relation to such a route would fall under Clause (ii) of Item (4) of the scheme and would be outside the purview of the scheme itself.

21. Mr. Hegde tried to argue that the scheme covers not only routes but part of the routes as also the entire area of the Maharashtra State. Even though, therefore, the Nagpur-Indore route as such may not fully fall within the purview of the scheme, the major portion of this route covering about 193 miles in the State of Maharashtra from Nagpur to Dharni undoubtedly falls within the area of the Maharashtra State. He admits that within the State of Maharashtra the routes shown in col. 2 of appendix "A" of the scheme do not refer to any such route as Nagpur to Dharni via Amravati. However, between Nagpur to Amravati and between Amravati to Dharni there are other routes of the scheme for which the Corporation is the actual permit holder. If not a whole route at least a portion of it is covered by other routes of the Corporation and without any difficulty it could be argued that the entire area of the State having been covered by the scheme, a major portion of this inter-State route falls within the purview of the scheme. He has also argued that in case this does not appeal to the Court, he would insist upon the holders of the duly counter-signed permits admittedly being excluded from the operation of the scheme provided they were so holding a valid permit on the day the scheme was approved and published in the Gazette, In other words, the language of Clause (ii) of item (4) quoted above means, according to Mr. Hegde, the existing holder on the date of the notification of the scheme, and not persons who would subsequently become holders of a valid permit. Mr. Manohar referred us to the language of the various clauses of item (4) of the scheme as they appear at the stage of the draft scheme and as they now appear as the finally approved scheme.

22. So far as the language of items (ii) to (vi) is concerned, there is no change either in the draft scheme or in the final scheme, In all these clauses the opening words are "holders of" a certain type of permit. In the case of Clause (vii) of that item the proposed scheme contained the words "existing holders of contract carriage permits" of a certain description. While sanctioning the scheme the State Government disapproved the clause as proposed and modified it under the powers vested in them u/s 68D and what they sanctioned is a clause identical in language with the other Clauses Nos. (ii) to (vi). Clause (vii) of item (4) of the sanctioned scheme now reads "holders of contract carriage permits granted to

them exclusively..." for certain purposes. It is therefore clear that the State Government approved the scheme with this modification with a view to give same meaning to Clause (vii) as is carried by the language of Clauses (ii) to (vi) of item (4). Each one of the clauses deals with the holder of a certain permit. For instance Clause (iii) refers to holders of contract carriage permits for operation of motor cabs. When this was referred to by Mr. Manohar, Mr. Hegde argued that it was not the intention of the Corporation to run any contract carriage service involving motor cabs. That is made clear by, item (8) of the scheme which refers to the type or types of vehicles proposed to be used on the services and approximate seating capacity. The only vehicles which are proposed to be used are those other than motor cabs and they are single deckers with sitting capacity ranging from ten to fifty-five seats per vehicle excluding the driver. This would be according to the requirement of the routes and trips. Mr. Hegde therefore says that it was never the intention of the Corporation to introduce motor cab as a vehicle for the contract carriage service. In fact he went to the length of telling us in the enthusiasm of his argument that a contract carriage service with the use of taxi cab is not covered at all by the scheme but is excluded by item (8). We fail to understand why an item like one should appear as Clause (8) by way of exception, if the original scheme did not think of such carriage service, Mr. Hegde is clearly wrong as the words of item (4) of the scheme which we have quoted above cover not only stage carriage but also contract carriage service. A taxi cab is a kind of contract carriage service and there is no other nomenclature used for that kind of service in the Motor Vehicles Act.

23. The above discussion will clearly show that all holders of permits which answer the description of Clauses (ii) to (vii) of item (4) are specifically excluded by way of exception and therefore in spite of the initial coverage of the entire area of the State of Maharashtra on all the routes notified in Appendix "A" the services on routes which would be covered by Clauses (ii) to (vii) of item (4) are outside the purview of the scheme. In other words for these services and for those routes which fall under this description there is no approved scheme of the Corporation at all in existence. In our view the holder of a permit duly countersigned would only mean a person who is able to obtain such a permission in relation to inter-State route. It is not necessary that he must be so holding a permit on the date of the approval of the scheme by the State Government.

24. Some judgments were cited before us by Mr. Hegde in support of his argument. He relied upon D.M. Thippeswamy v. Mysore Appellate Tribunal AIR[1972] S.C. 1940 where the words "existing permit holders" were interpreted by the Supreme Court. We will at once point out that this judgment cannot assist Mr. Hegde for two reasons. In the first place it deals with a scheme which was a scheme to the complete exclusion of other persons except in regard to certain portions of inter-district routes lying outside Bellary district. It again deals with a scheme which specifically refers to the existing permits of inter-State routes who were permitted to continue to operate such inter-State routes subject to the condition that their permit shall be rendered ineffective by the competent

authority for the overlapping portion in the district of Bellary. When the scheme itself ousts the operation of a permit holder even in relation to an inter-State route with regard to the operation of the route falling within the State or District and that intention is clearly apparent from the language of the scheme sanctioned, the situation entirely changes and is not comparable to the situation with which we are dealing. He also referred us to another judgment of the Supreme Court in Mysore State Road Transport Corporation Vs. Mysore State Transport Appellate Tribunal, . This was also a case of a total scheme which excluded every other holder and was essentially of different type than the one before us.

25. In view of the above discussion, as we look at the provisions of the Motor Vehicles Act and take into account the language of the scheme which has been approved by the Government of Maharashtra, we have no doubt that the holders of duly counter-signed permits of inter-State routes are outside the purview of the scheme and it is enough that a person answers that description on the day he wants to operate the service. From the plain words used in the scheme and from the correction made by the State Government in Clause (vii) of item (4) we are satisfied that the exceptions to the scheme do not cover merely the existing permit holders on the day the scheme was approved but they also cover all holders of valid permits who are able to obtain them even after the scheme is approved. This is because the inter-State route of the present type is not a part and parcel of the scheme. The area of the State may be a part of the route or may be one of the nationalised routes under Appendix "A" to the scheme but so far as the concept of inter-State routes like Nagpur-Indore is concerned where a permit can be obtained, the holder becomes holder of an inter-State permit and therefore the route itself to that extent does answer the description of the inter-State route as outside the purview of the scheme. Mr. Hegde is not right when he says that there is also a monopoly in favour of the M.S.R.T.C. and that no one else is eligible even to apply for a permit for the Nagpur-Indore inter-State route via Amravati and Dharai.

26. The next important point that Mr. Hegde has raised for our consideration is that the authorities under the Motor Vehicles Act have taken into consideration irrelevant considerations in judging the comparative merits of the applicants for the permit. To be more explicit he says that the State Government sanctioned fare rise, which becomes operative from November 20, 1975. The previous rate of 27 P. was raised to 36 P. per stage of 6 km. or a part thereof. This according to him, was a fixed fare. However, the authorities under the Motor Vehicles Act treated this as a maximum limit of the fare. In that view it was assumed that the State Transport Authority had the right to negotiate and reduce the fare. In fact a question was asked on December 15, 1975 whether the Corporation was willing to continue the service at the same old rate of 27 P. The Corporation declined to do it on instructions, but notified its intention to claim 36 P. per stage as the fare notified by the State Government. All the other three private operators expressed their willingness to render services at the same old rate of 27 P. per stage of 6

km. This according to Mr. Hegde, is a consideration which has outweighed all other considerations of merits of the various applicants. The authorities felt that offering services on long routes like this at 9 P. less per stage was a substantial relief in favour of the travellers and was therefore in the public interest. This factor has basically affected the thinking of the authority and they have preferred a private operator in preference to a nationalised undertaking like the M.S.R.T.C. In spite of the fact that the M.S.R.T.C. by its long standing experience and the net work of services was in a much better position to offer facilities to the public, a private operator has been preferred. Since this factor has considerably influenced the authorities under the Act and since, according to him, this was an erroneous consideration in view of certain interpretation of the Government notification regarding fare, this Court ought to interfere, set aside the order and send back the proceedings for reassessment of comparative merits between the various operators.

27. Mr. Hegde's plain argument is that the language of the present notification dated November 17, 1975 making the new fare operative from November 20, 1975 is clear enough. Section 43 of the Motor Vehicles Act authorises the State Government to give direction from time to time by notification in the Official Gazette to the State Transport Authority" in regard to the matters mentioned therein. While giving these instructions the State Government has to bear in mind what is mentioned in Clauses (a) to (d) of Section 43(1) and bearing those matters in view, directions are to be issued in regard to matters mentioned in Clause (i) to (iv) of the same section. The matters enumerated in Clauses (a) to (d) of Sub-section (1) of Section 43 cover the advantages offered to public, trade and industry by the development of motor transport; the desirability of co-ordinating road and rail transport, the desirability of preventing the deterioration of the road system and the desirability of preventing uneconomic competition among motor vehicles. In order to achieve these objects, one of the matters on which directions could be given covered by Clause (i) is the fixing of fares and freights including the maximum and minimum in respect thereof for stage carriages, contract carriages and public carriages. The State Government is thus required to give directions regarding the fixing of fares and freights. This could be stated simpliciter on the maximum and minimum limits be indicated by the State Government leaving it to the S.T.A. to make it a condition of the licence under Clause (c) of Sub-section (3) of Section 59 of the said Act. He emphasised the fact that the words "minimum and maximum" were initially placed in Clause (c) of Sub-section (i) of Section 59 but they were removed from that clause with effect from March 2, 1970 and introduced in item (i) of Sub-section (1) of Section 43. While doing so instead of these two words, what is now introduced is "including the maximum and minimum in respect thereof." This according to him, authorises the State Government to fix the fares directly themselves or to indicate the minimum or maximum within which fare has to be fixed by the S.T.A. Against this background he wants us to consider the effect of the present notification, Barring the unessentials we would quote the relevant portion of the

notification dated November 17, 1975 below for ready reference:

With effect on and from the 20th day of November, 1975, the fares for stage carriages (inclusive of the amount of tax on passengers carried by road in stage carriages) plying in the areas and routes respectively specified in columns 1 and 2 of the Schedule hereto appended, shall be subject to the" maximum fares or the minimum fares, as the case may be, indicated against them in columns 3 and 4 of the said schedule:

SCHEDULE

	Maximum fares and minimum fares (if special classes	Maximum fares and minimum fares (if Area Routes any) inclusive of passenger tax. and services, inclusive of passengers tax.
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1	2	3	4
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1. All areas All routes 7.5 paise pe within the including passenger per limits of those extended kilometre or Municipal for the part thereof Corporations, benefit of for journeys Municipal the public upto 3 kilo- Councils to the near- metres with and Cantonment by places by a minimum fare Boards specific per- of 20 paise, constituted or mission of and 5 paise established under the Regional per passenger any law for the Transport per kilometre time being in Authority or part thereof force concerned for the extra distance for journeys exceeding 3 kilometres 2. All areas (a) all routes (a) 36 paise per ... in the other than passenger for State other than those falling each stage those falling under under Clause (b) of 6 kilometres entry 1 above, of this entry or part thereof.

28. According to Mr. Hegde, the notification now seeks to quote the language of Section 43 and accordingly indicates the maximum or the minimum fare as the case may be in the table that is supplied. The very expression used in the opening recitals that the fare shall be subject to the maximum fares or the minimum fares, as the case may be, shows that unless it is so indicated there shall not be a, maximum or a minimum. That being so, according to him, col. 3 of the table dealing with item 1 regarding the routes within the Municipal Council the fixed fare is 7.5 P. per passenger per kilometre or a part thereof for journeys upto 3 kilometres and 5 P. per passenger per kilometre or part thereof for the extra distance for journeys above 3 kilometres is the maximum fare; whereas 20 P. is the minimum fare as indicated by entry in col. No. 3. When we go to item No. 2 dealing with all areas of the State other than those falling under entry No. 1, the same col. 3 merely states 36 P. per passenger for each stage of 6 kilometres or part thereof. He also brings to our pointed notice the title of col. 3 which is maximum and minimum fares (if any) inclusive of passenger tax. He therefore argues that unless a minimum is indicated specifically by the entry itself, the fare would be a fixed fare already

decided upon by the State Government. In that case the fare of 36 P. per passenger for each stage of 6 km. is a fixed fare and nobody had the choice of varying. The act of S.T.A. in requiring the operators to state whether they will still run the services at lower rate was unlawful and beyond the provisions of the Act. The fare having been already fixed by the State, the S.T.A. had merely to consider the comparative merits of the operators and to choose one in the best public interest.

29. We are unable to agree with this argument. This argument runs counter to the scheme of fixing fares contemplated by Section 43 read with Section 48 and 59 of the Motor Vehicles Act, 1932. Originally the expression "maximum and minimum" fares appeared u/s 59(3)(c). That is a section dealing with the right of S.T.A. to lay down certain conditions as conditions of permit itself. Section 59 is a general section and deals with conditions to be attached to all permits. Section 48 is an additional section dealing with grant of stage carriage permits and contains specific directions regarding the conditions to be attached as enumerated in the various clauses of Sub-section (3) thereof.

30. So far as contract carriage permits are concerned, the relevant section for attaching conditions is Section 51. If this scheme of fixing the fares is taken into account as a whole whether before or after the amendment of Section 43, it was always the function of the State Government to issue mere directions regarding fixing fare having regard to certain factors enumerated in Clauses (a) to (d) of Sub-section (1) of Section 43. Accordingly actual fixing of fare was left to the S.T.A. The reason is obvious. To-day the situation may have slightly changed because the State Transport Undertaking has already made a scheme which is approved and to the extent and areas covered by the scheme a monopoly is created by ousting all private operators. However, when the S.T.A. whose duty it is to issue permits of various kinds was thinking in terms of fixing fare for passenger service, he would always consider the various regions in which the stage carriage service is being run. A variation of fare was always possible and therefore what the State Government did was merely to lay down the maximum and minimum, if any, and left it to the S.T.A. to arrive at a definite figure of fare and attach it as a condition of the permit.

31. Mr. Manohar took us through the legislative history and we are satisfied that whether the words "maximum or minimum" were placed in Sections 59 or 43, the intention of the Legislature is clear enough. The Legislature has vested the State Government with the power to decide the fare. It has always indicated how the State Government will do that. The State Government is merely to give direction consistent with the provisions of Sub-section (1) of Section 43 and the fixing of actual fare is left to the S.T.A.

32. We were shown a notification u/s 43 dated August 31, 1972. In the operative title instead of the wording which we have quoted earlier, the direction regarding fare read: "shall be subject to the maximum fares indicated against them in columns 3 and 4 of the said schedule." The title of the col. 3 of the Schedule was

again "maximum fare inclusive of passenger tax". It was only the entry below col. 3 opposite entry No. 1 that contains the maximum fare, apart from the other fare laid down for the stage carriage service. The entry below col. 3 of the schedule opposite entry No. 2 merely read "27 paise per passenger for each stage of 6 kilometers or part thereof". Since the title of col. 3 was that this was the maximum fare inclusive of passenger tax, Mr. Hegde has no difficulty in pointing out that this was the maximum fare contemplated and therefore alone could be charged. Mr. Manohar on the contrary points out that there was a modification of this notification by a further notification dated February 17, 1975 when the figure 33 was merely substituted with the figure 27 at the instance of the State Transport Undertaking. The Corporation has been charging the maximum indicated in col. 3 to all passengers on all their services in the State and when the modification was made they started charging 33 P. uniformly on all their routes. To-day they are charging uniformly on all nationalised routes 36 paise from November 25, 1975.

33. The main question is whether the change in the language makes any difference to the meaning of the direction given by the State Government. The operative title of the notification dated November 17, 1975 suggests in terms of the amended language of Section 43 that the fare shall be subject to a maximum or the minimum as the case may be indicated in cols. 3 and 4 of the schedule. The title of col. 3 again is maximum and minimum fares, if any, inclusive of passenger tax. The two authorities below have interpreted this entry to mean that whatever appears below in col. 3 is the maximum fare subject to an entry, if any, about the minimum fare. So read it becomes clear that in the case of the City service the maximum is 7.5 P. per kilometre for the first 3 kilometres and 5 P. per kilometre for the subsequent kilometres; whereas 20 P. is the minimum fare to be charged irrespective of distance. If in a city bus service within the first kilometre there are two or three stages and a passenger wants to cover only a distance of one stage, the minimum fare he will have to pay is 20 P. However, if he travels a longer distance the fare calculated at the rate, which is the maximum rate, alone could be charged. It also means that in a given case the S.T.A. can select an operator who is willing to charge something less than the maximum rate prescribed by the Government.

34. Likewise in the case of all other services in the State the entry means that 36 P. per passenger per each stage of 6 kilometres or a part thereof is the maximum fare that is chargeable. Against this entry there is no minimum fare indicated. The reason is obvious. Ordinarily where there is a city bus service, it will be availed of by a party for travelling within the city itself. We are told that so far as services outside the city are concerned, on each route there are definite stops which are fixed by the S.T.A. One has necessarily to travel from the city to the minimum distance of first stop indicated and not earlier. Depending upon the distance of the first stop which again would be consistent with the demands of the locality, the fare would be calculated at 36 P. per stage of 6 kilometres or less and the fare so charged is bound to be never less than 36 P. The State

Government has thought it fit not to lay down any minimum as the minimum fare would automatically work out from the distance of first stop that is provided outside the city. However, the upper limit has to be provided so that the S.T.A. within the delegated authority of fixing the actual fare can reach reasonable fare by negotiations with the competent operators so as to benefit the travelling public. The public interest therefore lies in having a reasonable fare, which will enable the operator to run his business on the basis of some reasonable profit consistent with the amenities that could be afforded to the travelling public. We are thus satisfied that even the present entry in the notification dated November 17, 1975 below col. 3 opposite entry No. 2 only relates to the maximum fare and not a fixed fare which has been decided by the State Government itself. If that is so the S.T.A. was within its right in making a query with the operators as to whether they are willing to operate the service at the same rate of 27 P. or want a rise in the fare. The Corporation opted for fare rise and the other three operators agreed to continue with the same old rate.

35. It may be incidentally noted that the S.T.A. was aware that the circumstances were fast changing and there would be a further rise in the fare. Taking that into account what is offered as a condition to the present disputed permit is that in spite of the rise in the fare that the Government may subsequently notify the fare to be charged by the permit holder shall be always less by 9 P. per stage of 6 kilometres or a part thereof. In other words, the present difference between 27 P. and 36 P. is to be permanently maintained until the S.T.A. is pleased to revise the conditions of the permit. In our view, therefore, the S.T.A. had not committed any error, nor did he act illegally in ascertaining the comparative fare that may be offered by operators before him. If that is so, then it cannot be said that the S.T.A. has taken into consideration irrelevant circumstances or that his decision has been influenced by considerations which are not relevant to the provisions of the Motor Vehicles Act. On the contrary it would appear that public interest requires that a good service is offered at as much less price as possible consistent with the efficiency thereof.

36. This now takes us to the considerations of the merits of the respective operators. In that behalf Mr. Jaisinghani, learned Counsel for Jaiswal, took particular pains to point out that the claims of his client were rejected on the ground that his previous history as a motor operator was not free from blemish. This one consideration outweighed all other considerations, and the relative merits of his client as an operator have not been taken into consideration at all. His second grievance was that the present grantee of the permit M/s. S.H. Motor Transport Co. have been treated as operator with a comparatively clean record by the S.T.A. At that stage Jaiswal was not aware that the said M/s. S.H. Motor Transport Co. had also committed certain offences under the Motor Vehicles Act and the Rules thereunder, and their record was not as clean as was supposed to be. In fact he told us that at the appellate stage his client made his best efforts to apply to the appellate authority for calling records of other proceedings which were pending before the appellate authority itself. In the case of granting All

India Tourist Permits, the same parties were applicants before the same authorities and in that behalf their past record was being examined by the authorities under the Act. His client was denied All India Tourist Permit on the same ground that his previous record as an operator was not clean. He then showed some notes of judgments of the M.P. High Court which suggested that it is the duty of the State Transport Authorities to collect information about the previous history of an operator.

37. Section 47 does not expect that only those objections which will be raised by some of the claimants alone need be taken into consideration. Since it is the statutory duty to find out best operator in the public interest, it is the authority under the Act who must voluntarily find out all previous antecedents of each operator. This is more particularly so when some information is placed before them by one of the contesting operators. According to Mr. Jaisinghani, his client did apply to the appellate Court for calling certain records. However, instead of doing so the appellate Court treated that application which was in the form of an affidavit as evidence of the so-called misdeeds of M/s. S.H. Motor Transport Co. The affidavit in reply given by one of the partners of M/s. S.H. Motor Transport Co. was being treated as a counter-affidavit explaining away the complaints made. That was, according to him, an erroneous approach. On this ground alone, according to him, the grant of permit deserves to be quashed and the entire matter needs to be reopened before the original authorities.

38. We have given our anxious consideration to the approach but we find that a proper reading of the affidavits which may be in fact application before the appellate authority, shows that whatever was known to Jaiswal was placed before the appellate authority. That affidavit contained one allegation of over-crowding the bus by the conductors and drivers, which is an incident before the grant of the present permit. The other incident of similar type was with regard to a period subsequent to the grant of permit. Mr. Manohar was right in telling us that assuming some more information was available to Jaiswal with regard to M/s. S.H. Motor Transport Co. he should have put in an affidavit in the present writ petition. Beyond reading what was stated in the affidavit, even to-day there is no allegation that there are other irregularities by M/s. S.H. Transport Co. To the extent of previous history or the irregularities committed, the appellate authority at any rate has taken them into account. Having seen the previous record of Jaiswal, we are satisfied that his claim was properly rejected by the S.T.A. Since Ram Kolhatkar has not pursued the remedy further by filing any writ petition, his claims need not be considered at all. Even otherwise we are satisfied that looking to the statements filed by Jaiswal and Kolhatkar about the facilities which they would give to the travelling public, the M.S.R.T.C. as well as M/s. S.H. Motor Transport Co. are undoubtedly superior and would deliver the goods better to the travelling public.

39. We may now consider the argument of Mr. Hegde that the comparative merits of the State Transport Corporation have not been properly evaluated by

the authorities below. We may point out that so far as the facilities which are being offered by the M.S.R.T.C. and M/s. S.H. Motor Transport Co. are concerned for the convenience of the travellers the schedules filed by the parties have been taken into consideration. Paragraphs 14 and 15 of the S.T.A.'s order are devoted to this subject. It is true that there is no item-wise comparison by considering the bus-stand or resting facilities en route, the provisions for repairs and replacement of buses in the event of break-down and such other facilities. However, para. 15 does take survey of these facilities with reference to the schedules to the applications filed by the parties. Having referred to the above facilities in the opening part of para. 15, the S.T.A. says by way of summary that all those are listed in the affidavit. After referring to them in this manner, the next sentence is "even, then taking all the factors into account we consider...". Having therefore applied his mind to the entire affidavit containing the various facilities which are being offered by the M.S.R.T.C. the S.T.A. thought that the interest of the public would be better served by granting permit to M/s. S.H. Motor Transport Co. Messieurs S.H. Motor Transport Co. has also listed the advantage which it can offer and the facilities already provided for on the routes. They have also referred to the workshop arrangements, break-down service, parking facilities etc. It is difficult to appreciate the argument that the superior claims of the M.S.R.T.C. on the basis of the various facilities offered are not considered by the S.T.A.

40. Going to the appellate order, we find that a similar discussion has been made with respect to each operator by taking into consideration his appeal separately. The appellate authority dealt with three different appeals filed by the M.S.R.T.C., Jaiswal and Ram Kolhatkar. In addition the appellate authority took into account the argument of Mr. Jaisinghani for Jaiswal that the previous bad record of M/s. S.H. Motor Transport Co. has not been considered by the S.T.A. Having thus again applied their mind to the list of facilities offered by the various parties, the authorities under the Motor Vehicles Act have given a finding of fact that the interest of public would be better served by preferring a private operator than granting permit to the M.S.R.T.C.

41. It is settled law that the High Court in its jurisdiction under Article 226 of the Constitution does not act as an appellate authority over the decisions of S.T. Authorities under the Motor Vehicles Act. The interference by the High Court is always limited. If the law is erroneously applied, the High Court will lay down the correct law and rectify the mistake. If certain factual aspects are not taken into consideration at all or evidence is so misread as to amount to non-application of mind, the High Court may again rectify the mistake. What form that rectification will take place depends upon the nature of the order which the High Court is considering. Normally, coming to certain conclusions of fact falls under the exclusive jurisdiction of the authorities under the Motor Vehicles Act. The High Court when satisfied that the law has not been properly interpreted and the facts have not been properly evaluated, while pronouncing the law, would ordinarily send down the matter for reconsideration in the light of principles of law

enunciated in the High Court's order.

42. When we consider the present matter from that point of view, we are satisfied that all evidence has been taken into consideration by the authorities below and they have come to the conclusion which cannot be described as either perverse or originating in non-application of mind. It is not, therefore, possible for us to interfere with the order passed by the authorities below. This being our view both the writ petitions fail and will be dismissed. The order granting permit to M/s. S.H. Motor Transport Co. is thus confirmed.

43. Mr. Jaisinghani had applied for the amendment of Special Civil Application No. 1913 of 1976. However, he is not pressing that application. He is allowed to withdraw Civil Application No. 249 of 1977 in Special Civil Application No. 1913 of 1976.

44. We thus reject both the writ petitions and direct that each of the petitioner will pay costs in one set to respondent M/s. S.H. Motor Transport Co. The rest of the respondents will bear their respective costs.

45. At this stage Mr. Hegde for the petitioner in Special Civil Application No. 2466 of 1976 applies for leave to appeal to the Supreme Court, which is refused.