

(1985) 03 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No's. 58 and 59 of 1984

Laxmi Motor Service

APPELLANT

Vs

Regional Transport Authority for Goa, Panaji and Others

RESPONDENT

Date of Decision : 18-03-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 43, 44(2), 44(3), 47

Citation : AIR 1985 Bom 436 : (1985) ILR (Bom) 1978

Hon'ble Judges : Paunikar, J; Couto, J

Bench : Division Bench

Advocate : S.K. Kakodkar, for the Appellant; P. Mulgaocar and S.G. Dessai, for the Respondent

Judgement

Couto, J.—These Writ Petitions, both directed against a Resolution passed on 29th November, 1983 by the Regional Transport Authority for Goa declining to grant several Inter-State stage carriage permits to the petitioners give rise to the same questions of law. Hence, they will be disposed of by a common judgment.

2. Petitioners are a firm registered under the Partnership Act, 1932 and they carry on the business of providing motor transport to the public. Their experience in such kind of business extends for over 15 years and they maintain an up-to-date garage and booking offices. They are also financially solvent and hold stage carriage permits on the Panjim-Bombay and Panjim-Poona routes. In addition, they hold permits under S. 63(7) of the Motor Vehicles Act, 1939. By a notice published in the local newspapers on 1st December, 1982, the Directorate of Transport invited applications for grant of stage carriage permits, inter alia, on the Panjim-Belgaum route, Panjim-Bangalore route and Panjim-Mangalore route. Petitioners applied for permits on all such routes. However, the Regional Transport Authority for Goa, in its meeting held on 29th November, 1983, granted all such permits to the 7th respondent, Kadamba Transport Corporation Ltd.

3. It is this decision of the Regional Transport Authority granting permits to the 7th respondent that is being challenged in these writ petitions.

4. Petitioners assail the said Resolution granting the permits to the 7th respondent on four grounds, namely : -

(a) The Regional Transport Authority has no jurisdiction to consider the applications to grant the stage carriage permits in view of the Resolution of the State Transport Authority taken in its meeting dated 20th August, 1982;

(b) The Chairman of the Regional Transport Authority, Shri U. D. Sharma, happens also to be the Law Secretary to the Government of Goa, Daman and Diu and, therefore, he ought to have declined to consider the applications when the 7th respondent, a Government company, was one of the applicants;

(c) The said permits could not, in any event have been granted to the 7th respondent since at the relevant time of their grant, the 7th respondent had no buses available for the routes; and

(d) The mark system adopted by the Regional Transport Authority is capricious inasmuch as there is no reasonable ground for the difference in the marks given.

We will, therefore, address ourselves to each of the above grounds of challenge.

5. As regards the first ground, namely the jurisdiction of the Regional Transport Authority to consider the applications to grant the stage carriage permits in challenge, Mr. S. K. Kakodkar, learned counsel appearing for the petitioners, submitted that by its Resolution dated 20th August, 1982, the State Transport Authority has specifically decided, in the exercise of the powers vested in it by S. 44(3)(b) of the Motor Vehicles Act and with effect from the approval of the Resolution, that the State Transport Authority itself would grant all types of permits/ renewals/ transfers, etc. on Inter-Regional or inter-State routes including national permits and in respect of routes and/or permits should perform all the duties to be performed by the Regional Transport Authority constituted under the Notification No.6/27/82-HD(G) for Goa region. Now, the learned counsel contended, once the State Transport Authority has found it fit to pass the aforesaid Resolution and decide to grant itself all types of permits/renewals/ transfers on Inter-Regional or inter-State routes including national permits, it necessarily follows that the Regional Transport Authority created under the aforesaid Notification had ceased to have any power therefor.

6. Sec. 44(1) of the Motor Vehicles Act 1939 provides that the State Government shall, by Notification in the Official Gazette, constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in sub-sec. (3), and shall in like manner constitute Regional Transport Authority to exercise and discharge throughout such areas (in the Chapter referred to as regions) as may be specified in the Notification, in respect of each Regional Transport Authority the powers and functions conferred by/or under the Chapter on such authorities. In exercise of the powers conferred on it by Sec. 44(1), the

Administrator of Goa, Daman and Diu was pleased to issue the Notification No. 6/27/82-HG(G) dated 18th August, 1982 and published in the Official Gazette of Goa, Daman and Diu Series 11 No. 21 dated 19th August, 1982. By the said Notification, the Administrator of Goa, Daman and Diu has not only constituted the Regional Transport Authority for an area comprising the District of Goa, but has further given a direction that the said Regional Transport Authority shall throughout that area exercise and discharge the powers and functions conferred on it by or under the Motor Vehicles Act and that the State Transport Authority constituted by Notification No. HD/25-65/78HD(G) Vol. II dated 22nd June, 1982, would to that extent cease to exercise and discharge the said powers and functions in relation to the area comprising of Goa District. It would appear therefore, from the aforesaid Notification, that on the creation of the Regional Transport Authority for the region of Goa, the State Transport Authority which was exercising the powers under the Act in the territory of Goa had ceased to have jurisdiction to exercise and discharge the said powers and functions within the area under the jurisdiction of the Regional Transport Authority. However, sub-sec. (3) of S.44 provides that a State Transport Authority shall give effect to any directions issued under S.43 and subject to such direction and save as otherwise provided by or under the Act, shall exercise and discharge throughout the State the powers and functions mentioned in the said subsection. Clause (b), inter alia, says that the State Transport Authority can perform the duties of a Regional Transport Authority where there is no such authority and, if it thinks fit or if so required by a Regional Transport Authority, perform those duties in respect of any route common to two or more regions. It was argued by Mr. Kakodkar that an inter-State route is a common route common to two or more regions and therefore, the State Transport Authority, in exercise of the powers conferred by S. 44(3)(b) of the Act can, if it thinks fit, assume duties of a Regional Transport Authority. Thus, according to him, the Resolution taken by the State Transport Authority on 20th August, 1982 is entirely valid and as a result thereof, the Regional Transport Authority, Goa had ceased to have jurisdiction to grant inter alia, Inter-State permits. It was however contended by Mr. Mulgaocar and by Mr. Surendra Dessai, the learned counsel appearing for the respondents Nos. 1 to 6 and respondent No.7 respectively, that the enabling power given by S. 44(3)(b) of the Motor Vehicles Act was no more vested in the State Transport Authority of Goa. Daman and Diu, in view of the Notification dated 18th August, 1982, since a specific direction was inserted in the said Notification to the effect that the State Transport Authority would cease to exercise and discharge the powers and functions in the area comprised in the newly constituted Regional Transport Authority. In addition, they also contend that the expression "any route common to two or more regions" occurring in the aforesaid provision of law implies that the two or more routes should be within the territory of a particular State. Now, according to them, the territory of Goa was constituted in one region within the territory of Goa, Daman and Diu and therefore, any Inter-State route does not come within the meaning of any route common to two or more regions. As such, even if the State Transport Authority was empowered to pass the said Resolution,

the fact remains that the Resolution is bad inasmuch as two or more regions within this Union Territory are not crossed.

7. The question as to whether or not the expression "any route common to two or more regions" covers only Intra-State routes, or Inter-State routes as well, fell for consideration of a single Judge of the Rajasthan High Court in the case of *Ratanlal Vs. The Chairman, Regional Transport Authority, Bikaner Region, Bikaner and Others*, Dealing with the problem, the learned Judge held the view that it is clear that in sub-sec. (3) of S.44 of the Act, the Legislature has not confined the term "region" or "regions" only to regions lying within one State. Therefore, according to him, it is legitimate to infer that in S. 44(3), when it is said that the State Transport Authority may perform the duties of the Regional Transport Authority in respect of any route common to two or more regions, the State Transport Authority is entitled to discharge the functions of the Regional Transport Authority in relation to a route which lies in two regions lying in different States as well. He observed that the term "any" occurring before the term "route" in S. 44(3)(b) signifies that the power is exercisable in respect of any route which runs into two or more regions, the word "any" being descriptive of the term "route" and its purpose being to embrace all kinds of routes, be they of any class whatsoever. The same view was held by the Orissa High Court in *N. P. Shaw & Sons v. State Transport Authority*. ILR (1973) Cut 944. In the said case a Division Bench of the Orissa High Court, after considering the matter at length and several authorities on the point. has observed that on a plain reading of S. 44(3)(b), the expression "any route common to two or more regions", includes intra-State route as well as inter-State routes. It was further observed that "route" has been defined in S. 2(28-A) of the Act as meaning "a line of travel which specified the highway which may be traversed by a motor vehicle between one terminus and another and since S. 44(3)(b) refers to any route common to two or more regions, but does not expressly restrict it to a route where both its termini must lie within the two or more regions of the same State, it follows that the regions mentioned therein may lie also in different States. We already said that S. 44(3)(b) permits the State Transport Authority to perform the duties of a Regional Transport Authority where there is no such authority and, if it thinks fit, or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions. It is no doubt true that S. 44(1) provides that the State Government may constitute a Regional Transport Authority to exercise and discharge, throughout such areas as may be specified in the Notification, the powers and functions conferred by or under the Chapter to such authority. Such areas are called regions and it would appear, therefore, that since a State has jurisdiction only within its territory, the regions mentioned in sub-sec. (3)(b) are regions within the same State. However, we may point out that under S. 45, the Regional Transport Authority may grant a permit for a route which traverses two or more regions lying in different States. Thus, even though the Regional Transport Authority of a particular State is created with jurisdiction within a particular State, nevertheless it may grant a permit covering a route

which traverses two or more regions lying in different States. Then, "route" is defined in S. 2(28-A) as meaning "a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another". It is not specified in S. 44(3)(b) that the termini of the route common to two or more routes should be within the same State and as such, we find ourselves in entire "agreement with the view taken by the Rajasthan and Orissa High Courts in the cases referred to above. Therefore, we are unable to accept the submission of the learned counsel appearing for the respondents that the expression "any route common to two or more regions" occurring in sub-sec. (3) (b) of S.44 of the Act. is only a route crossing two or more regions within the same State. Thus, in our view. it is not possible to hold that on that ground alone the Resolution passed by the State Transport Authority of Goa, Daman and Diu of 20th August, 1982, is invalid.

8. We already said that the learned counsel for the respondents also contended that, in the Notification dated 18th August, 1982. a clear direction was given by the Administrator of this Union Territory to the effect that the State Transport Authority shall cease to exercise and discharge the powers and functions in relation to the area comprising in the Goa District. They submitted that the aforesaid direction is entirely lawful and therefore, once the said direction was issued, the State Transport Authority has no more jurisdiction to exercise any powers under the said Chapter of the Motor Vehicles Act. They placed reliance in this regard on the decision of the Supreme Court in the case of State of Rajasthan and Others Vs. Shri Noor Mohammad, It will therefore be profitable to advert to the aforesaid Notification. It reads as under :-

NOTIFICATION

No. 6/27/82-RD (G)

"In exercise of the powers conferred by sub-sec. (I) of S.44 of the Motor Vehicles Act, 1939 (Central Act 4 of 1939), the Administrator of Goa, Daman & Diu hereby constitutes that Regional Transport Authority as specified in Schedule appended hereto, for the area, comprising of Goa District. The said Regional Transport Authority shall throughout that area exercise and discharge the powers and functions conferred on it by or under the said Act and to that extent the State Transport Authority constituted vide Notification No. HD/23-65/78-HD (G) Vol. II dated the 26th June, 1982 shall cease to exercise and discharge the said powers and functions in relation to area comprising of the Goa District".

There is no doubt whatsoever that a plain reading of the aforesaid Notification makes it clear that after constituting a Regional Transport Authority for the area comprising the Goa District. an unequivocal declaration was made to the effect that the State Transport Authority constituted under Notification dated 26th June, 1982 would cease to exercise and discharge the powers and functions vested in the Regional Transport Authority in relation to the area comprising the Goa District. Now the question that falls for consideration is whether such declaration

amounts to a direction given by the State Government. Mr. Kakodkar contends that the portion of the Notification wherein it is declared that the State Transport Authority shall cease to exercise and discharge the powers and functions of the Regional Transport Authority in relation to the area comprising the Goa District is redundant and superfluous, since it is obvious that by creating the Regional Transport Authority, automatically; the same authority has been vested with the powers under the Act. Now, according to the learned counsel, the powers of the State Transport Authority are those which are specified in sub-sec. (3) of S.44, namely to give effect to any direction issued under S.43 and to co-ordinate and regulate activities and policies of the Regional Transport Authority, to settle all disputes and decide all matters on which differences of opinion arise between the Regional Transport Authorities, to discharge such other functions as may be prescribed and finally to perform the duties of a Regional Transport Authority where there is no such transport authority and, if it thinks fit or if so required by a Regional Transport Authority to perform those duties in respect of any route common to two or more regions. These duties, according to the learned counsel, are entirely different from the specific duties vested in the Regional Transport Authority under Chapter IV. S. 44(1) specifically lays down that the State Government may constitute a Regional Transport Authority to exercise and discharge, throughout the area specified in the Notification, the powers and functions conferred by and under Chapter IV. Thus, it is clear, according to the learned counsel, that the duties of the State Transport Authority and the Regional Transport Authority are completely different. Then, according to him, once the Regional Transport Authority is constituted in exercise of the powers under S. 44(1), it necessarily follows that all the powers under the said Chapter IV of the Motor Vehicles Act are vested in such authority. Consequently there was no need to specifically declare, in the Notification dated 18th August, 1962, that the State Transport Authority" would cease to exercise powers and functions of a Regional Transport Authority within the area of Goa District and as such, that part of the Notification is manifestly superfluous and unnecessary. It is no doubt true in view of the provision of S. 44(1) of the Motor Vehicles Act that the State Transport Authority is constituted to exercise and discharge the powers and functions specified in its sub-sec. (3) and a Regional Transport Authority constituted will exercise and discharge the powers and functions conferred by and under Chapter IV on it. Now, sub-sec. (3) provides that the State Transport Authority shall give effect to any directions issued under S. 43 and subject to such directions and save as otherwise provided by and under the Act, shall exercise and discharge throughout the State the powers mentioned in Clauses (a) to (d). The powers and functions mentioned in Clauses (a) to (d) are mainly of co-ordination and supervision and under Clause (b), the State Transport Authority will be entitled to perform the specific duties vested in a Regional Transport Authority under Chapter IV only in three circumstances, namely :-

(a) where no Regional Transport Authority has been constituted;

(b) when it thinks fit to perform those duties in respect of any route common to

two or more regions; and (c) if so required by the Regional Transport Authority to perform those duties in respect of any region common to two or more regions. This being the position of the law, it would appear that the submission of Mr. Kakodkar is well-founded. It was however contended by the learned counsel appearing for the respondents, that, undoubtedly, a direction was given to the State Transport Authority in the Notification itself, and therefore, it was not open to the State Transport Authority to exercise the powers of the Regional Transport Authority under S. 44(3)(b) of the Act. Reliance was placed in this respect on the decision of the Supreme Court in *State of Rajasthan v. Noor Mohammad* (supra). This contention of the learned counsel for the respondents brings us to the question as to whether the said declaration can be said to be a direction under S.43 of the Act, since it is only under the said S.43 that the State Government can give a direction to the State Transport Authority. S.43 of the Act provides that a State Government, having regard to the advantages offered to the public trade and industry by the development of motor transport, and the desirability of co-ordinating road and rail transport, of preventing the deterioration of the road system and of preventing uneconomic competition among motor vehicles may, from time to time, issue directions to the State Transport Authority. Such directions as specified in the said provision of law are regarding the fixing of fares and freights, the prohibition or restriction of conveying of long distance goods traffic generally, or of specified classes of goods by private or public carriers, grant of permits for alternative routes or areas to persons in whose cases the existing permits are not renewed and finally, regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its co-ordination with other means of transport and to conveying of long distance goods traffic. It would thus appear from the above provisions of S. 43 of the Act that the declaration made in the Notification dated 18th August, 1982 to the effect that the State Transport Authority would cease to exercise and discharge the powers and functions of the Regional Transport Authority under Chapter IV of the Act, was not made under S.43 and therefore, the same declaration cannot be construed as a direction under the said section of law. Be it as it may, however, we may point out that as contended by Mr. Mulgaokar, the petitioners herein admittedly, did not challenge the aforesaid Notification dated 18th August, 1982. Thus, having failed to challenge the said Notification, in our view it is not open to the petitioners to raise now the said question of the validity of the said Notification in this Writ Petition.

9. In *State of Rajasthan and Others Vs. Shri Noor Mohammad*, the Supreme Court has held the view that the State Transport Authority is entitled to perform the duties and exercise the functions of the Regional Transport Authority in three cases, namely (1) where there is no such authority; (2) when the State Transport Authority thinks it fit to perform the duties of the Regional Transport Authority in

respect of any route common to two or more regions; and (3) where the State Transport Authority is required by the Regional Transport Authority to perform those duties in respect of any route common to two or more regions. It was further held that the expression, "save as otherwise provided by or under the Act", occurring in S. 44(3) must be construed in a harmonious manner so that Cl. (b) of S. 44(3) is not reduced to nullity. Thus, the Supreme Court held that the said expression in the context would mean, "save as otherwise expressly barred by or under the Act". The Court further observed that there is no express provision in the Act which bars the performance by the State Transport Authority of the duties referred to in Clause (b). However, the Supreme Court further held that a direction can be given to the State Transport Authority under S.43 of the Act and if such direction exists, the State Transport Authority will actually be barred from performing the said duties under Clause (b). We already said that undoubtedly, in the Notification dated 18th August, 1982, a clear declaration was made to the effect that the State Transport Authority would cease to exercise and discharge the duties of a Regional Transport Authority in relation to the area comprising the Goa District. Undoubtedly, this declaration is in the form of a direction given to the State Transport Authority to cease to exercise and discharge the powers of the Regional Transport Authority within the area of Goa. In our view, manifestly, such direction was not given by the Administrator of Goa, Daman and Diu under S. 43 of the Act, since none of the contingencies regulated in the latter Section of law had been mentioned in the Notification. However, as rightly pointed out by Mr. Mulgaokar, the petitioner had not challenged the aforesaid Notification and in the circumstances therefore, it is not open to them to say that the impugned decision of the Regional Transport Authority taken in the meeting held on 29th November, 1983 is, on that count, invalid. Mr. S. K. Kakodkar however, relying on the decision of the Supreme Court in the case of Pioneer Traders and Others Vs. Chief Controller of Imports and Exports Pondicherry, urged that it is not so. In the said case, their Lordships of the Supreme Court had observed that where an authority, whether judicial or quasi-judicial, has in law no jurisdiction to make an order, the omission by a party to raise before the authority the relevant facts for deciding that question cannot clothe it with jurisdiction. In our view, these observations of the Supreme Court do not advance the case of the petitioners, since the Notification was not issued by the Administrator of Goa, Daman and Diu in discharge of any judicial or quasi-judicial functions. Thus, we are of the opinion that the petitioners, if aggrieved by the said Notification, ought to have raised the question of the jurisdiction of the Regional Transport Authority to deal with the matter before the said authority itself and ought to have challenged the legality of the Notification dated 18th August, 1982. In this view of the matter, we find no force in the first ground of attack advanced by the petitioners against the impugned decision of the Regional Transport Authority.

10. For the same reason also, the second ground of challenge fails as otherwise fails on merits. In fact, the petitioners say that the impugned decision of the

Regional Transport Authority is vitiated because the Chairman of the Regional Transport Authority. Shri U. D. Sharma, who is the Law Secretary to the Government should have declined to consider the applications when the seventh respondent. Kadamba Transport Corporation Ltd., was one of the applicants since the said Kadamba Transport Corporation Ltd., is a Government company. Mr. S. K. Kakodkar, elaborating this ground, contended that Shri Sharma, being the Law Secretary to the Government of Goa, Dam and Diu, ought not to have intervened in the decision of the Regional Transport Authority where one of the candidates for permits was the Kadamba Transport Corporation Ltd., since the Kadamba Transport Corporation Ltd., is a Government company and therefore, in all probability, the said Shri Sharma would be biased in favour of the said respondent No.7. Reliance was placed in support of this submission on the decision of the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, It was however contended by Mr. Surendra Dessai that there was no bar for the Law Secretary to take part in the decision of the Regional Transport Authority when applications of the Kadamba Transport Corporation Ltd., were being considered. He submitted that as held in Dosa Satyanarayanamurthy etc. Vs. The Andhra Pradesh State Road Transport Corporation, it would have been necessary to establish that Shri Sharma has a personal bias" so as to disqualify him from taking part in the said decision. He also placed reliance on the ruling of the Supreme Court in T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, . In his turn, Mr. Mulgaocar, learned counsel appearing for the respondents Nos. 1 to 6, contended that a real likelihood of bias must be shown in order to disqualify a person from acting in a judicial or quasi-judicial capacity on the ground of interest and therefore, the fact that Shri Sharma happens to be the Law Secretary, per se, did not justify a disqualification for his taking part in the impugned decision. He further submitted that the possibility of an unfair decision, even if he had any interest in the case, was out of the question, since the State Transport Authority is constituted of more than four members and it was not likely, in the circumstances of the case, that any interest of Shri Sharma would prejudice the other candidates. In our view, the decision of the Supreme Court in Kraipak's case is not attracted at all to the facts and circumstances of our case. In fact, in Kraipak's case, a person who was in the list of selection, had himself sat on the board of selection. In this set of circumstances, the Supreme Court held that the decision taken by the said board of selection, even though he had not taken part in the decision, was vitiated, since it was likely that the other members of the selection board would be influenced by the fact that he was one of the candidates to be selected and at the same time, members of the selection board. In our case, it is not shown that Shri Sharma has any financial or other interest in the Kadamba Transport Corporation Ltd., and in addition, it is specifically stated in the affidavit-in reply of respondent No. 16 on behalf of the fire respondent that by Notification No. 14/3/78-S. A. & C. dated 1st November, 1,983, issued by the Administrator of Goa, Daman and Diu in exercise of the powers conferred under the proviso to Rules 3 and 5 of the Business of Government of Goa, Daman & Diu (Allocation)

Rules, 1983, the business of the Government has been allocated among the Secretaries to the Government in the manner specified in the Schedule annexed to the said Notification. It is further averred that according to the said Schedule, only the subjects of legal advice and drafting and establishment of the Law Department have been allocated to the Law Secretary, whereas the subject of transport has been allocated to the Revenue Secretary. This averment made in the affidavit-in-reply has not been denied by the petitioners, and therefore, it has to be held that, in the circumstances, Shri Sharma as Law Secretary is not administratively concerned with the subject of transport. In the circumstances, it is impossible to hold that he could have been influenced, in any manner, favourably towards the respondent No.7 for the purposes of granting a permit to it. Thus, it cannot be said that he ought not to have taken part in the decision to grant permits, since he could have been biased in favour of the seventh respondent. In this respect, we are supported to some extent by the rulings of the Supreme Court in the cases of *Mudaliar and Kondala Rao (supra)*. We are also supported by the view taken by the Patna High Court in *Sarju Prasad Singh Vs. South Bihar Regional Transport Authority and Others*, In the said case, the Patna High Court held that the words "financial interest" occurring in Clause (2) of S.44 mean that if an employee personally has any financial interest in any transport undertaking, he shall not be appointed as or continued as a member of the Regional Transport Authority. Such words do not mean however, that if the employer of the members concerned has a financial interest, his employee will also be considered to have financial interest in the transport undertaking even though personally he has none. In the case before the Patna High Court, the State Government have acquired financial interest in a transport undertaking and the Court held that this circumstance would not mean that all the employees of the State Government had financial interest in the said undertaking. The Court also held the view that a real likelihood of bias must be shown in order to disqualify a person from acting in a judicial or quasi-judicial capacity on the ground of interest. and further that the mere fact that he was the administrative head of the aforesaid transport undertaking would not establish the existence of a real bias in him against the petitioner. After having so held, the Patna High Court added that where a tribunal consists of more than four members and, one of them is interested in one way or the other, this fact is not likely to cause any prejudice to other parties since such single person would not be likely to influence the majority decision of the tribunal. This decision of the Patna High Court applies on all fours to the case before us. In fact, not only the petitioners had not established a real bias in Shri Sharma against them, but also it is clear that he has no financial interest in the Kadamba Transport Corporation Ltd., and further, the Regional Transport Authority is constituted by more than one member. We fall, therefore, to agree with the petitioners when they say that the impugned decision of the Regional Transport Authority is vitiated because Shri Sharma, being the Law Secretary, took part in the said decision.

11. We may now turn to the other grounds of challenge advanced by the

petitioners. According to them, the marks assigned to each criterion laid down in the Regional Transport Authority's decision dated 10-12-1982 are arbitrary, capricious and perverse and therefore, a decision to grant permit based on such criteria is substantially vitiated. It will be necessary to see what was the criterion laid down in the said meeting dated 10-12-82 by the Regional Transport Authority. It is stated that considering the factors mentioned in S. 47 of the Motor Vehicles Act and the guidelines given by the Supreme Court and the various High Courts, the Regional Transport Authority has decided to adopt a marking system for consideration of the applications for grant of stage carriage permits, as under : -

"1. Model of the Vehicle - The applicant offering the latest model of the vehicle of the year in which the application is considered will get 10 marks. The models of the years preceding with year will get 8, 6, 4, 3, 2 and 1 marks in their descending order.

2. Experience : -

(i) Operation on Inter-State Route:-

(a) On the same route for which the application pertains : -

(i) more than 10 years - 3 marks

(ii) between 6 to 10 years - 2 marks

(iii) between 1 to 3 years - 1 mark

(iv) Other things being equal, additional marks for other Inter-State Route will be given as below :-

(i) 1 to 5 permits - 1 mark

(ii) 6 and above permits - 2 marks.

(iii) Other things being equal, additional marks for Intra-State Routes

(i) 1 to 5 routes - 1 mark

(ii) 6 and above routes - 2 marks.

3. Financial Position - 2 marks.

4. Facility of well equipped workshop - 2 marks

5. Availability of stand by vehicle of his own-1 mark

6. Well equipped office telephone facilities etc. - 1 mark

7. Arrangement of office with other parties - 1/2 mark

8. Past performance - is to be assessed on the basis of penalties and offences by the operator and marks will be given as below -

0 to 1 - 5 marks

2 to 5 - 3 - 4 marks

5 to 10 - 2 - 1 marks

above 10 - 0 mark

The marking system with the model and year of the manufacture of vehicle, experience of the operator in the transport trade or experience in running bus service on a particular route or any other route and the history sheet of the operator in regard to prosecution in respect of all his vehicles, had been subject to challenge in Writ Petn. No.2366 of 1983 *Ashok Mandrekar v. State Transport Authority of Goa, Daman & Diu* which was heard and decided along with Writ Petns. No. 2367 to 2369 of 1983. The said Writ Petitions were heard and disposed of by a judgment pronounced on 12th August, 1983 by a Division Bench of this Court (Chandurkar, Acting C. J. and Pendse, J.). In that case, the petitioners had contended that the aforesaid criterion based on the model and year of manufacture of the vehicle, experience and history sheet of the operator was contrary to the statute and was in violation of the relevant factors which are required to be considered under Ss. 46 and 47 of the Act. The Division Bench, dealing with this contention, observed that: "It is true that the rights of the applicants for such permits under the Act have to be determined on the basis of the relevant provisions of the said Act, but apart from the statutory provisions of the Act, it would be fully permissible for the State Transport Authority, which has to act in public interest and for the benefit of the commuters who avail of the transport facilities, to take into consideration the kind of vehicle which is available with the operator, the experience of the operator and his record which will indicate the nature of his performance and also whether he had violated any provisions of law". We are entirely in agreement with the view taken by the Division Bench in this regard, and therefore, we have no doubt whatsoever in holding that the mark system based on the model and year of manufacture of the vehicle offered, the experience of the operator and his financial experience etc. is entirely permissible and legal for the purpose of determining the rights of the applicants for permits in order to grant them. It is true that Mr. Kakodkar tried to draw a distinction by saying that the petitioners are not challenging the criteria adopted on the basis of the model and experience, but they are challenging only the reduction of quantum of marks given in accordance with the year of the vehicle's manufacture, and under other heads. Though the argument is, subtle, in our view, what Mr. Kakodkar challenges is, ultimately, the very criteria adopted by the Regional Transport Authority. We have no material before us in order to find whether or not the criterion adopted to award marks under each head is reasonable or merely arbitrary. In any case, we may also quote, in this regard with advantage the observations made by the same Division Bench in the aforesaid case of *Ashok Mandrekar*. It was observed that "evaluation of merit of each of the applicants is in exclusive jurisdiction of respondent No.1, and it will not be open for this Court under Art. 226 of the Constitution of India to go into the question as to why and how for one applicant 14 marks were given and for

other 14, 16 and 18". In other words it is not open, in the exercise of writ jurisdiction, for this Court to interfere with the evaluation on merits of each applicant made in exercise of its exclusive jurisdiction by the Regional Transport Authority. Hence, the third ground of challenge advanced by the petitioners also fails.

12. The last contention of Mr. Kakodkar is that, in any event, the decision of the Regional Transport Authority to grant permits to the 7th respondent is vitiated inasmuch as, at the relevant time, no bus was available with the said respondent, whereas the petitioners had offered ready vehicles. It was however contended by the learned counsel for the respondents that this submission of the learned counsel is not correct, because as can be seen from the Annexure I in the Writ Petition No. 59/84, the seventh respondent had offered the buses GDR-109 - K and GDR-I10 - K both of 1983 model. According to the Motor Vehicles Rules in force, the respondents were entitled to produce the said vehicles within a reasonable time as granted by the transport authorities. The seventh respondent had already duly registered the said buses in the Regional Transport Authority and only the bodies were being built at the relevant time the decision was taken, and the delivery was to be given within 7 days, as actually was given. In the circumstances therefore, according to the learned counsel appearing for the respondents, it cannot be said that no buses were available with the seventh respondent at the relevant time the decision was taken by the Regional Transport Authority. Thus, the decision of the Regional Transport Authority to grant permits to the seventh respondent is not vitiated. We find ourselves in agreement with the respondents. In fact, the aforesaid Annexure I shows that the seventh respondent has offered two vehicles namely GDR-109 - K and GDR-I 10 - K. The very fact that the said vehicles had been given" a registration number is sufficient to show that the seventh respondent had already the said vehicles in their possession and had presented them to the transport authorities. Besides, under the relevant rules, it is permissible in such circumstances to grant time to an operator to produce the vehicle within the time specified by the authorities. Of course, if the vehicle is not produced within such time, then, no permit can be issued to such applicants. It is not the case of the petitioners that the seventh respondent had not produced the buses within the time specified by the authorities at the time of the impugned decision of the Regional Transport Authority, and hence, it cannot be said that the said granting of permits in favour of the seventh respondent is vitiated.

13. In this view of the matter, these writ petitions fail and are consequently dismissed with costs. The rule in each petition stands, accordingly, discharged.

14. Petitions dismissed.