

**(1976) 09 MAD CK 0038**

**In the Madras High Court**

**Case No :** Write Petition No. 4240 etc. of 1975 etc.

M.N. Sivakumar and Others

APPELLANT

Vs

The Regional Transport Authority and Others

RESPONDENT

**Date of Decision :** 22-09-1976

**Acts Referred:**

Constitution of India, 1950 — Article 19(6)

Motor Vehicles Act, 1988 — Section 45, 47, 47(1), 58(2), 68

Tamil Nadu Motor Vehicles Rules, 1989 — Rule 155A, 155A(2), 155A(3), 155A(3)(D)

**Citation :** (1977) ILR (Mad) 215

**Hon'ble Judges :** P.S. Kailasam, C.J.; Balasubrahmanyam, J

**Bench :** Division Bench

**Advocate :** M. Kalyanasundaram and Janaki Krishnan, Md. Nainuddin and K. Thiruvengkatachari, for S. Srinivasan, V. Subrahmanyam, A.R. Ramanathan, M.N. Krishnamani, M.N. Rangachari, S. Srinivasan, M. Krrishnappan, R. Shanmugham, S. Parthasarathy, V.C. Palaniswamy, S.C. Palaniswami, M. Gopalakrishnan, A.R. Ramanathan, P. Sukumar, R. Natesan, P. Vedavalli, for V.T. Gopalan and Radhagopalan, M. Venkatakalapathy, V.A. Sadagopan, S. Varadachari, C.S. Prakasa Rao, P. Navaneetham, D. Raju and R.S. Ramanujam, for the Appellant; Adv.-General assisted by Government Pleader, N.G. Krishna Ayyangar and L. Subrahmanyam, for the Respondent

## Judgement

P.S. Kailasam, C.J.—The main question that arises for consideration in this batch of Writ Appeals and Writ Petitions is whether Rule 155A of the Tamil Nadu Motor Vehicles Rules is valid, or is beyond the rule making powers of the Government.

2. The facts in one of the write appeals are given to facilitate discussion. Writ Appeal No. 260 of 1976, which was argued as the main writ appeal, is against the order of Mohan, J. in Writ Petition No. 260 of 1975. The Appellant, Parasurama Pillai, is a bus operator in Erode. He prayed for the issue of a writ of mandamus directing the State Transport Appellate Tribunal to consider his appeal against the rejection of his application for renewal of his permit on the route Salem to Erode without taking into account the provisions of Rule 155 A of the Tamil Nadu Motor Vehicles Rules, hereinafter referred to as the Rules. The permit

of his bus on the route was to expire on 13th September, 1974. He applied for the renewed of permit under the provisions of Section 58(2) of the Motor Vehicles Act, hereinafter referred to as the Act. The third Respondent herein, which is a State Transport Undertaking, objected to the renewal of the permit on the ground that it was entitled to preference as a State Transport Undertaking. The Regional Transport Authority, Salem, entertained the application of the State Transport Undertaking and preferred it for the grant of the permit mainly on the ground of its securing higher marks under-rule 155A. The Appellant's application for, renewal and grant of the permit was rejected. The Appellant preferred an appeal against the order of the Regional Transport Authority, Salem, dated 30th August, 1974 to the State Transport Appellate Tribunal. The Appellate Tribunal entertained the appeal and permitted the Appellant and the third Respondent to operate their buses on the route pending disposal of the appeal, which was numbered as Appeal No. 517 of 1974. Apprehending that the Appellate Tribunal would consider his application on the basis of Rule 155A, the Appellant filed a writ petition on the file of this Court for a direction that, the appeal before the Tribunal should be disposed of without taking into account the provisions of Rule 155A and adding five marks to the State Transport Undertaking. Mohan, J., who heard the writ petition, negatived the contentions of the Appellant and dismissed his writ petition. Hence this writ appeal.

3. Mr. V. K. Thiruvengkatachari, learned Counsel for the Appellant, raised two contentions. He submitted that Rule 155A awarding five marks to the State Transport Undertaking is beyond the rule making powers of the Government. Secondly he submitted that, in any event, the amendment of the proviso to Section 47(i) of the Act by substituting the words any State Transport Undertaking or a co-operative Society for the words a co-operative society, would impliedly repeal Rule 155A of the rules.

4. Mr. V. K. Thiruvengkatachari, at the out-set, made it clear that he is not questioning the constitutional validity or the legislative competence in enacting the Motor Vehicles Act, or Section 47 and its amendment. He submitted that the contention, he is raising is that Rule 155A of the Rules is beyond the rule making powers of the Government and that, in any event, the rule should be deemed to have been repealed by the amendment of Section 47(1) by Act XI VIII of 1974.

5. Chapter IV of the Motor Vehicles Act deals with control of transport vehicles and the necessity for permits for running them. Section 45 is the general provisions as to applications for permits and Section 46 provides for making an application for a stage carriage permit. Section 47 is the provision with which we, are concerned. It prescribes the procedure of Regional Transport Authority in considering applications for stage carriage permit. The provisions of Section 47(1) are relevant for our purpose and may be set-out in full:

A Regional Transport Authority shall, in considering an application for a stage carriage permit have regard to the following matters, namely:

- (a) the interests of the public generally;
- (b) the advantages to the public of the service to be provided including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;
- (c) the publication of scheme u/s 68-C in respect of service of stage carriages;
- (d) the benefit to any particular locality of localities likely to be afforded by the service ;
- (e) the operation by the applicant of other transport services, including those in respect of which applications-from him for permits are pending;
- (f) the condition of the roads included in the proposed route or area;

and shall also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provisions of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies;

provided that other conditions being equal, an application for a stage carriage permit from any State Transport Undertaking or a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, as far as may be given preference over applications from individual owners.

may be noted, a relevant factor to be taken into account, among other things, is the interests of the public generally. Section 68 empowers a State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV, without prejudice to the generality of the power conferred u/s 68(1). Rules u/s 68 can be made with respect to all or any of the matters mentioned in Clauses (a) to (aa) of Sub-section (2) of Section 68. In pursuance of the rule making power, the impugned Rule 155A was framed.

6. Rule 155A classifies the routes as short, medium and long routes and Rule 155A(2) requires the transport authority to screen the applicants, who are unsuited on one or more of the grounds mentioned in the rule and disqualify them giving reasons for such disqualification. Rule 155A (3) was amended by G.O. Ms. No. 2327, Home, dated 30th August, 1973. It provides that marks shall be awarded for assessing the different qualifications of the remaining applications for the grant of permit in the manner prescribed. There are five heads under which marks are allotted. The first head (A) is residence and two marks are to be awarded to the applicant who has his principal place of business or permanent residence, at either terminus or on the route. The explanation of the word "principal place of business" makes it clear that only the registered head-quarters of the company and not the residence of the Managing Director or any other

Director of the Company will be considered as the principal place of business. The second head (B) relates to technical qualification for the owner or the Managing Director. Two marks are awarded to the applicant if the owner or the Managing Director of the organisation has technical qualification which may be useful to run the transport service efficiently. The third head (C) is workshop facilities. Under this head, two marks are awarded to the applicant who is in possession of workshop facilities. Under the head (d)(i), which is under challenge, five marks are to be awarded to the applicant, if it is the State Government, Central Government or any Corporation or Company owned by the Central Government or State Government. Under D (ii) aa applicant operating one to three buses is awarded four marks four to six buses three marks, and an applicant operating seven to nine buses two marks. The proviso states that "if a new entrant has made an implication for a short route other than town service route, no marks shall be awarded to any applicant under Clauses (B),(C) and (D) (ii)". Under the head (E) co-operative societies formed by the workers retrenched on account of fixing a ceiling on the number of buses are given two marks. The question for consideration is whether the allotting of five marks (D) (i) to the State Government, Central Government, or any Corporation or company owned by the Central Government or State Government is within the scope of the rule making power of the Government.

7. The plea on behalf of the operators is that if it is the intention of the Government to give any preference to a State Transport Undertaking, it will have to follow the provisions of Chapter 1V-A. But if it chooses to apply under Chapter IV, it will have to stand along with other applicants and no preference can be given to it by the rule making authority. It is pointed out that the proviso to Section 47(1), which states that other conditions being equal, an application for a stage carriage permit from any state Transport Undertaking or a co-operative society shall, as far as may be, be given preference over application from individual owner, can only be confined to cases where other conditions are equal. This, according to the learned Counsel for the operators, would mean that the operators should be treated equally, including the State Transport Undertaking and only if after such treatment, it is found that the conditions are equal, the preference under the proviso can be given. In other words, the plea is that the Government by its rule making powers cannot give any preference to the State Transport Undertaking. The learned Advocate-General, on the other hand, submitted that the very fact that a State transport Undertaking is providing transport to the public is public interest and would fall within the scope of the rule making power of the Government.

8. It is not deputed that under Article 19(6)(ii) of the Constitution the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business industry or service, whether to the exclusion complete or partial, of citizens or otherwise, cannot be questioned. The right of the State Transport Undertaking to run the transport service to the exclusion of others under certain conditions is not challenged as it falls under Article 19(6)(ii) of the Constitution.

Chapter 1V-A has also been placed under the 9th Schedule of the Constitution and therefore, is beyond challenge.

9. The challenge is confined only to the scope of the rule making power of the Government. The contention is that if the State Transport Undertaking applies under Chapter IV, it will have to stand on an equal footing along with others and no preference can be given by the rule making authority. Reliance was placed on behalf of the operators on the decision of the Supreme Court in *The Parbhani Transport Co-operative Society Ltd. Vs. The Regional Transport Authority, Aurangabad and Others*, where it has been held that the State Government can apply for permits under Chapter IV to ply stage carriages and that its right is not taken away because of the special provisions contained in Chapter 1V-A and that the Government can enter business in competition with private citizens. The Supreme Court observed that the Government would require permits as anyone else and when it chooses to apply under Chapter IV, it had to compete along with other applicants and secure permits to be able to run its buses. The Supreme Court proceeded to observe that there is nothing in Section 47 which leads to the conclusion that whenever the Government applies along with private citizens for permits, the Government must get them. The authority acting u/s 47 may think it fit to grant the permit to a private operator in preference to the Government and there is nothing in law to prevent the Government from entering a business in competition, with private citizens. Relying on this decision it was submitted that if the effect of Rule 155A(3) (d) (i) was to prefer a State Transport Undertaking by adding five marks the rule would be invalid.

10. This contention is challenged by the learned Advocate-General on behalf of the State. He relied on a decision of a Bench of this Court in Writ Appeal No. 365 of 1974, which was followed in two decisions of single Judges. But, on behalf of the operators, it was submitted that the above Bench decision could not be treated as binding authority as the decision of the Supreme Court in *The Parbhani Transport Co-operative Society Ltd. Vs. The Regional Transport Authority, Aurangabad and Others*, was not considered therein. In Writ Appeal No. 365 of 1974, a Bench of this Court held that Rule 155-A(3)(D) allotting 5 marks to the State Transport Undertaking is not ultra vires. The Court held that there is no provision in Section 47 which forbids any allotment of marks as provided in that rule and it cannot also be said that a classification as contemplated by Clause (D) (ii) (C) D1 of that rule is discriminatory. The Bench went on to observe thus:

In a welfare state which more and more sets into socioeconomic spheres unlike in olden days when Government was strictly confined to its governmental functions, it is understandable that these public bodies are classified under a certain heading and special treatment is accorded to them. In any case, there is nothing in Section 47 to control the discretion of the Regional Transport Authority in finally deciding as to who should get a permit.

It was submitted that the observation that in a welfare State public bodies should

be classified under certain heading and special treatment should be accorded to them was not in accordance with the above Supreme Court decision. The observation of the Bench that even if an applicant got the highest marks, still the authority would have to apply its mind to the considerations mentioned in-section 47 was also stated to be not in accordance with law. But the same view has been taken by the Supreme Court in *K. Balasubramania Chetty Vs. N.M. Sambandamoorthy Chetty*, where it has been held that the paramount consideration to be taken into account in determining as to which of the applicants should be selected for grant of a permit always is public interest that Clause (3) of Rule 155A undoubtedly provides for giving of marks to the rival applicants, but the matter of marks obtained by each applicant can only provide a guiding principle for the grant of permit and that it can never override the consideration of public interest which must dominate the selection in all cases. The Supreme Court observed that in fact Clause (4) of Rule 155A concedes that after the, applicants are ranked according to the total marks obtained by them, the applications shall be disposed of in accordance with the provisions of Section 47(1) While it is clear that the claims of the rival applicants cannot be decided solely by the marks they have secured, the obtaining of marks is important and the Petitioners are entitled to complain if any undue weightage beyond the rule making power is given to the State Transport Undertaking.

11. We will proceed on the basis, following the decision of the Supreme Court in *The Parbhani Transport Co-operative Society Ltd. Vs. The Regional Transport Authority, Aurangabad and Others*, that all the applicants, including the State Transport Undertaking, should be treated equally for the purpose of granting a permit under Chapter IV. The question will then arise whether by allotting five marks under-Rule 155(A) (3) the State Transport Undertaking is given any preference which is beyond the scope of the rule making power. The Supreme Court in the decision referred to has not held that giving of marks to co-operative societies in preference to individual owners is beyond the rule making power. So also, it has been held that allotment of marks under-rule 155A (3) (D) (ii) on the basis of a viable unit is valid. Under-rule 155A(3)(D)(ii) an applicant operating one to three buses is allotted four marks, an applicant operating four to six buses three marks and an applicant operating seven to nine buses two marks. The proviso also says that when a new entrant has made an application for a short route other than town service route, no marks shall be awarded to any applicant under Clauses (B), (C) and (D) (ii). For the short route a new entrant is given preference. A small operator, that is operating one to three buses is allotted four marks: The rule making authority had to consider the position of the State Transport Undertaking. It cannot be said that the Government was wrong in not treating the State Transport Undertaking, a fleet owner, on the same footing as a private fleet owner operating more than nine stage carriages, as the State Transport Undertaking is on an entirely different footing from that of a private fleet owner. While it may be desirable to exclude private fleet owners it would not be right to say that the State Transport Undertaking should also be excluded on

the ground that it operates more than nine buses. In the circumstances, the rulemaking authority would have to decide as to the number of marks the State Transport Undertaking should be given. It has been given one mark above a small operator, that is operating one to three buses two marks above. the person operating four to six buses and three marks above, the person operating seven to nine buses. It may also be noted that the State Transport Undertaking is operating in the entire State through seven or eight Corporations and in many cases, it cannot have the residence qualification and would not be entitled to two marks under that head. The principal place of business of the- undertaking in many cases will not be in either terminus or on the route. Equally in several cases the Managing Director of the Undertaking may not have the technical qualification. In the Circumstances, if the State Transport Undertaking is not given any marks at all under clause D(i), it would be at a great disadvantage. It cannot be said that marks were not given for the purpose of giving an equal opportunity to the State Transport Undertaking to compete with other operators applying for the permit. The allotment of five marks under this head by itself does not show that it is undue preference to the State Transport Undertaking, or that it was with a view to exclude private operators from the field. In this view we are unable to accept the contention that Rule 155A (3) gives an undue preference to the State Transport Undertaking. It therefore, follows that it is not beyond the scope of the rule making power of the Government.

12. This view derives support from two Bench decisions of this Court in Writ Appeal No. 52 of 1958 and in Writ Appeal No. 1 of 1958. The question that arose in these writ appeals was whether the mark allotted to the co-operative society under the rule could be taken into account in determining whether the society would be entitled to the benefit of the proviso to Section 47 (1) of the Act, which prefers an application by a society provided other conditions are equal. In Writ Appeal No. 52 of 1958, the first Respondent co-operative society was given 3/4th mark on account of its being a co-operative society. It was contended on behalf of a private operator that the 3/4th mark given to the co-operative society on the ground of its being a co-operative society should be excluded from consideration in applying the proviso to Section 47(1), as otherwise the conditions were not equal. This connotation was not accepted by Rajagopalan J., Rajamannar C.J., speaking for the Bench observed that the learned Advocate General for the Appellant was not able to persuade them to come to a different conclusion. The Bench observed that that proviso was introduced by a Central Act and it is intended to apply to the whole of India and that there is nothing to show that in enacting the proviso, the Central Legislature had in view the instructions contained in G.O. No. 1298 which promulgated the marking system. After referring to Section 47(1), Clauses (a) to (f) and G. O. No. 1298, the Bench agreed with Rajagopalan J., that the provision in G.O. No. 1298 for allotting marks on the ground of the applicant being a cooperative society is not in conflict with the spirit of the letter of the proviso and held that the Appellant not having challenged the adoption of the marking system both by the Regional Transport

Authority and the State Transport Appellate Tribunal, would not be entitled to demand a reconsideration of all applicants completely leaving out of account the G.O. This decision therefore, clearly supports the view that the marking system under the G.O. is totally independent and it is only after allotting marks according to the G.O., the proviso to Section 47(1) would apply.

13. In a later decision in Writ Appeal No. 1 of 1958. a Bench of this Court had to consider the question of allotment of marks to a co-operative society under the G.O. and applying the proviso to Section 47(1). There is one passage in the judgment to the following effect:

If the Appellant had managed to secure a total mark equal to the total mark obtained by St. Andrews, with out taking into consideration the qualification of being a co-operative enterprise under column 5, then certainly the Appellant would be entitled to the benefit of the proviso above referred to. This passage was strongly relied on by the learned Counsel for the Appellant in support of his contention that the five marks allotted could not be taken into account for determining Whether the applicants were on an equal footing or not for the application of the proviso to Section 47(1). On the facts of that case it was found that the State Transport Appellate Tribunal assigned St. Andrews eight marks and the co-opera tire society seven marks. The Court observed that it was unable to see how the Appellant co-operative society could obtain any order from the Court quashing the order of the State Transport Appellate Tribunal, when on any computation the Appellant would not be securing the highest mark or even a total mark equal to the total mark obtained by St. Andrews. Even after taking into account that it was a cooperative society and allotting marks to that on that basis it got lesser marks than the marks obtained by St. Andrews In this view the question as to whether the marks should be added before the application of the proviso to Section 47(1) or not did not arise in that (use. Agreeing with the Bench decision writ Appeal No. 52 of 1958 we held that she marks according to the rules should be allotted and their respective places should be determined before considering the question whether the provision to Section 47(1) should be applied or not.

14. After the present amended G.O. was passed allotting five marks to the State Transport Undertaking Ismail J. considered the attack on the validity of the rule and held in Writ Petition No. 5501 of 1973 that the allotment of marks was valid.

15. In this view, we do not consider it necessary to consider the point raised by the learned Advocate-General that in public interest the Government under its rule making power could validly give preference to the State Transport Undertaking. As we are of the view that the impugned rule does not give any preference to the State Transport Undertaking, the question whether the amended provision would impliedly repeal the rule would not arise. The effect of the amendment of the proviso to Section 47 will be that if after following the provisions of Rule 155A (3) and after ranking the applicants according to the total marks obtained by them, in disposing of the applications in accordance with



Section 47, it is found that the conditions are equal, the authority should prefer the application for a stage carriage permit from the State Transport Undertaking or a co-operative society, We, therefore, agree with the conclusion of Mohan, J., that, hence the allotment of five marks under Rule 155A(3)(D) (i) is valid and dismiss the writ appeals and the writ petitions. There will be no order as to costs.

16. It is represented that applications for renewal are pending before the Regional Transport Authority or the State Transport Tribunal, as the case may be. Pending these writ petitions and writ appeals, which raised the question of the legality of adding five marks to the State Transport Undertaking, these applications for renewal of permit, which were made by the operators in time as required by law have not been disposed of. As the period of the permit has expired before the notification of the draft scheme as contemplated under Chapter IV A of the Act, there is some difficulty, felt in their continuing to run their buses till their applications for renewal of permit are disposed of. Taking all the circumstances into account, it is only fair that till their applications for renewal of permit, which expired before the date of the draft notification, are disposed of, they should be allowed to run their bases. Accordingly they will be allowed to run their bases, for a period of one month from this date within which time the authorities will dispose of their applications for renewal.