

(1986) 03 KAR CK 0061
In the Karnataka High Court
Case No : Writ Petition No's. 858 of 1984 etc.

P. Tej Raj Sharma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 10-03-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19 (1), 19 (1) (g)
Motor Vehicles Act, 1939 — Section 49, 50, 51, 63, 63 (7)

Citation : (1986) ILR (Kar) 2701 : (1986) 2 KarLJ 24

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : H.B. Datar, for C. Narasimhachar and K.S. Desai, M.R.V. Achar, S.V. Krishnaswamy, M. Rangaswamy, K. Prabhakar, R.S. Hegde, H.G. Balakrishna, G. Lingappa, P.R. Srirangaiah, C.S. Shanthamallappa, B. Thilak Hegde and P.R. Ramesh, A.S. Viswanath, B.R.S. Gupta, D.T. Sundar and D. Narayana Bhatta, for the Appellant; Rajendra Babu, Government Advocate, K. Shivashankar Bhat, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—In these Writ Petitions presented against the order of the Karnataka State Transport Appellate Tribunal ("the Tribunal" for short) allowing a batch of appeals, partly and modifying the order of the State Transport Authority regarding the grant of All India Tourist Vehicle Permits ("T.V. Permits" for short) under Sub-section (7) of Section 63 of the Motor Vehicles Act ("the Act" for short) two questions concerning the constitutional validity and the interpretation of the proviso to Sub-section (7) of Section 63 of the Act arise for consideration.

2. The said sub-section reads :

"Notwithstanding anything contained in Sub-section (1) but subject to any rules that may be made under this Act, any State Transport Authority may, for the purpose of promoting tourism, grant permits valid for the whole or any part of India, in respect of such number of tourist vehicles as the Central Government

may, in respect of that State specify in this behalf, and the provisions of Sections 49, 50, 51, 57, 58, 59A, 60, 61 and 64 shall, as far as may be. apply in relation to such permits :

Provided that preference shall be given to applications for permits from--

- (i) the India Tourism Development Corporation ;
- (ii) A State Tourism Development Corporation ;
- (iii) A State Tourist Department ;
- (iv) Such operators of tourist cars, or such travel agents, as may be approved in this behalf by the Ministry of the Central Government dealing in tourism."

The two questions are :

- (i) Whether the proviso to Sub-section (7) of Section 63 of the Act, which provides that preference shall be given to the applications for grant of All India Tourist Vehicle permits made by the persons specified in Clause (i) to (iv) of the proviso, or at least the Clause (iv) thereof, is void as offending Articles 14 and 19(1)(g) of the Constitution ?

(Answer to this question is at paragraph 30)

- (2) If the answer to the first question is in the negative either in full or in part, whether the proviso requires that the consideration of the applications belonging to preferential category should be considered first and that if only, sufficient number of suitable applicants belonging to preferential category are not available, the applications of persons belonging to non-preferential category should be considered ?

(Answer to this question is at paragraph 38)

3. The facts of the case, in brief, are as follows : The Section empowers the Central Government to fix the number of tourist vehicles in respect of which All India Tourist Vehicles Permits could be granted by the Competent Authority in the respective States. In exercise of the power under the provision, the Central Government by its order dated 19th December, 1977 permitted the grant of T. V. Permits for 50 Omnibuses by the State Transport Authority of Karnataka (S.T.A. for short). The proviso to Section 63(7) was introduced by Act No. 47 of 1978. It came into force with effect from 4-5-1978. Prior to the introduction of the proviso into Sub-section (7) of Section 63, 34 T.V. permits were granted by the S.T.A. on consideration of all the pending applications. After 4-5-1978 two more permits were granted in favour of private operators. The resultant position was only 14 permits remained for being disposed of by the S.T.A. Applications were invited in respect of the 14 permits. Large number of persons made applications before the State Transport authority of this State between 1976 and 1984. On account of various Court proceedings instituted by persons interested in the matter, there had been inordinate delay in the disposal of the applications.

Ultimately, the Supreme Court by order dated 1-2-1984 directed that all the pending applications in respect of T.V. Permits should be disposed of before 30-4-1984. By 16-4-1984 the total number of applications had swelled to 495. Out of them, the number of applications coming under the preferential category were as below :

1)

Karnataka State Tourism Development Corporation (KSTDC for short)

....

14

2)

India Tourism Development Corporation (ITDC for short)

....

10

3)

The applications of the persons coming under Clause (iv) of the proviso to Section 63((SIC)).

....

5

29

All the 495 applications were taken up for consideration by the S.T.A. on 5th, 6th and 7th April, 1984. The relevant Rule applicable for the disposal of the above applications is sub-rule (4) of Rule 123A. The said sub-rule reads :

(4) "In granting or refusing to grant a permit, the State Transport Authority shall take into consideration the following, among other things, namely ;

(i) the experience of the applicant in operating tourist or contract carriage services ;

(ii) financial stability of the applicant as evidenced by production of solvency certificate to the value prescribed under rules 102 and income tax clearance certificate ;

(iii) other conditions being equal, the applicant with technical experience in motor transporter who has workshop and garage facilities to attend to the repairs of the vehicle efficiently shall be preferred."

4. The State Transport Authority took up for consideration all the 495 applications. The S.T A. excluded the five applications belonging to the (iv) preferential category by evolving a new criteria viz ; that the applicants who

have operated tourist omnibuses under pucca permits should be preferred. By order dated 30-4-1984 the State Transport Authority granted the permits, the particulars of which are as below :

1)

K.S.T.D.C

?

11 permits

2)

I.T.D.C.

?

1 permit

3)

Karnataka State Road Transport Corporation (KSRTC).

?

2 permits.

5. All the unsuccessful applicants preferred appeals against the order of the S.T.A. to the State Transport Appellate Tribunal ("the Tribunal" for short). Some of the material points raised by the Appellants were :

i) Having regard to the proviso to Sub-section (7) of Section 63, it was obligatory on the part of the State Transport Authority to have given priority to the applications of the persons in preferential category referred to in Clause (iv) of the proviso to Sub section (7) of Section 63 and therefore no permit could have been granted to the KSRTC ;

ii) The T.V. Permits could be granted to the applicants belonging to the preferential categories if only the applications of the applicants belonging to non-preferential and preferential categories were considered on merits and were found to be equal on merit and therefore the State Transport Authority was not justified in not granting permits to other applicants who were better than the KSTDC and ITDC ;

iii) The applications belonging to preferential category in Clause (iv) of the proviso to Sub-section (7) of Section 63 were rejected evolving an irrelevant criteria not only not found in Rule 123A but also which were in contravention of the Section itself.

6. The Tribunal was of the view that having regard to the object and purpose of the proviso to Sub-section (7) of Section 63, the applications falling under the preferential category created by the proviso should be given priority in the

matter of consideration for the grant of T.V. permits, in that, all the applications of the persons belonging to preferential category should be considered first and if only the applications belonging to the preferential category were rejected on valid grounds and/or sufficient number of applications belonging to preferential category were not available then only the applications of the other persons could be considered. On that view of the matter, the Appellate Tribunal proceeded to consider the following applications of persons belonging to preferential category :

i)

of KSTDC

--

14

ii)

of ITDC

--

10

iii)

of Tourist car operators or travel agents approved by the Central Government falling under Clause (iv) of the proviso.

--

5

Total :

--

29

7. The Tribunal was of the view that having regard to the fact that KSTDC was an instrumentality of the State established solely for promoting tourism and as it had the financial capacity and other facilities like well equipped garage and workshops as also a group of hotels called "Mayura Hotel" at several places of tourist importance, it was entitled to grant of greater number of permits. Similarly, it was of the view that being an instrumentality of the Central Government, established solely for promoting tourism having the capacity to operate tourist vehicles throughout India, it was entitled to get more permits than granted by the S.T.A. The view taken by the S.T.A. that as ITDC was entitled to apply for T.V. Permits in all the States under preferential category whereas KSTDC could not, and therefore grant of one permit to ITDC was sufficient, was found to be unsustainable by the Tribunal. It pointed out if such a view were to be taken by all the S.T.A. the ITDC would be left high and dry. The

Tribunal was of the view that grant of eight permits to KSTDC was justified and sufficient and that three permits should be granted to ITDC. As far as the grant of T.V. permits to KSRTC is concerned, in view of the interpretation of the proviso to Sub-section (7) of Section 63 by the Tribunal, it was of the view that, as the KSRTC did not fall under any one of the preferential categories and as there were sufficient number of applications belonging to preferential categories, there was no justification for the grant of the permits to the KSRTC. Therefore, the grant of two permits to the KSRTC made by the S.T.A. was set aside.

8. Coming to the five applications falling under Clause (ii) category, the Tribunal found that three applications were by the same person, and two applications were by two others and that all the three persons satisfied the conditions of eligibility for grant of permit under the said preferential category as each of them had secured approval in terms of Clause (iv) of the proviso from the Department of Tourism, Government of India. The Tribunal was of the view that the grant of one permit to each of the persons was justified.

9. Aggrieved by the order of the Tribunal, these Writ Petitions have been presented. The nature of challenge to the order of the Tribunal are as below :

(1) In W.P.Nos. 4053 to 4056 of 1985 presented by the K.S.T.D.C. reduction of 11 permits to eight and the grant of two permits to ITDC and three T.V permits to the persons belonging to Clause (iv) of preferential category are challenged.

(2) In W.P. Numbers 8420 to 8426 of 1985 presented by I.T.D.C., it is aggrieved by the grant of only three T.V. Permits to it as against eight to K.S.T.D.C. as also by the grant of three permits to others.

(3) In W.P. Nos. 3895 to 3898 of 1985 presented by the K.S.R.T.C., it is aggrieved by the cancellation of the two T.V. permits granted to it.

(4) In W.P. No. 7061 and 7082/1985 the Petitioner is aggrieved by the grant of only one permit to him though he had applied for three.

(5) In W.P.No. 5404 of 1985 the Petitioner is aggrieved on the ground that his application was not considered under Clause (iv) of the preferential categories.

(6) In all other Writ Petitions, they challenge the constitutional validity of the proviso, as also the correctness of the interpretation of the proviso to Section 63(7), by the Tribunal.

10. Learned Counsel for the Petitioners in all the Petitions, the Petitioner in W.P.No. 4660 of 1985 as also learned Counsel for Respondents and Respondent No. 6 appearing in person, have addressed elaborate arguments on the various pleas and contentions raised in support of the Petitions and in opposition thereto by the concerned parties.

11. On the basis of the arguments addressed before us, the two questions set out in the second paragraph of this order as also the following question arise for consideration.

Whether the order of the STA in full or in part liable to be set aside on the ground that it suffers from patent error of law ?

FIRST QUESTION- The Constitutional Validity :

12. The submissions made on behalf of the petitioners on this question may be summarised as follows : All the persons who intend to secure T.V. permits and apply to the concerned State Transport Authority are similarly situated. Having regard to the right to equality guaranteed under Article 14 of the Constitution as also the fundamental right to do business guaranteed under Clause (g) of Article 19(1) of the Constitution of India all the applicants are entitled to similar treatment in the matter of consideration of their applications for the grant of T.V. permits u/s 63(7). There is no rational basis for creating the preferences specified in the proviso. Therefore, the proviso is void as being discriminatory and unreasonable.

(ii) Even on the basis that the preference granted in favour of the first three categories namely, ITDC and KSTDC and the Tourist Department of the concerned State, being instrumentalities of the States or the State itself is valid, there is no justification to grant preference in favour of persons i.e., private individuals specified in Clause (iv) of the proviso. In any event Clause (iv) of the proviso which provides for the grant of approval for being placed in preferential category only in respect of operators of tourist cars is patently discriminatory as against such of the petitioners who have been operating tourist omnibuses. If a person who has operated tourist car for some time is regarded as entitled to preferential treatment in the matter of grant of T.V. Permits on his securing approval from the Department of Tourism, Government of India, the same reason applies with greater force to persons who have operated tourist omnibuses as the capacity of buses would be 7 to 10 times the capacity of the Tourist cars. Therefore, Clause (iv) is liable to be struck down as violative of Article 14 and Article 19(1)(g) of the Constitution of India.

13. As against the above submission, Sri Shivashankar Bhat, Senior Central Government Standing Counsel and other Counsel appearing for other contesting respondents submitted as follows : A reading of Sub-section (7) of Section 63 of the Act, would indicate that the object of the provision is to promote tourism, in whole of India, or any part of India, without insisting on the securing of the counter-signature of Regional Transport or State Transport Authority of each of the States in India. In other words, permit granted by the State Transport Authority of one State under Sub-section (7) of Section 63 of the Act is rendered valid for whole of India or part of India, as specified in the permit so as to allow movement of Tourist passengers in vehicles holding T.V. Permits without the necessity for the owner of T.V. Vehicles approaching the authorities of each of the States and to comply with the conditions imposed by each of the State, which might render movement of Tourist vehicles, more difficult. The Parliament has also considered that grant of permits in favour of ITDC which is an instrumentality of Union of India and STDC which is an instrumentality of the

concerned State as also a State Tourist Department of the concerned State where a separate Tourism Development Corporation is not established, as also persons who have been operating tourist cars by securing permits under Sections 49, 50 and 51 of the M.V. Act for some time and on the basis of the said expedience have secured approval of the Central Government, Department of Tourism, as persons who are in a better position to achieve the objects of the Section i.e., promoting tourism. The classification of persons falling in the four categories specified in the proviso and those left out of the proviso is obviously reasonable. Further the classification has a direct nexus to the object sought to be achieved.

14. The principle or the test to be applied to decide as to whether a provision is violative of Article 14 of the Constitution of India are well settled. In this behalf it is sufficient to refer to the relevant principles set out in the Judgment of the Supreme Court in *Re: The Special Courts Bill 1978*, *In Re: The Special Courts Bill, 1978*, . They read :

"The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian Territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.

The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act "

(underlining by us)

The two cumulative tests which a provision must pass in order to be not violative of Article 14 are (1) the classification made for subjecting certain persons or

things for special treatment must be reasonable; (2) even if the classification is reasonable it must have a reasonable nexus to the object sought to be achieved.

The wording of Section 63(7) of the Act at once indicates that the object of Legislation is to promote tourism in whole of India or part of India. It is not confined to any particular State which is taken care of by Sections 49 to 51 of the Act. "For achieving this purpose the Parliament has considered that the grant of preference in the matter of grant of T.V. Permits, the preference should be given to the following persons, viz., (i) the India Tourism Development Corporation; (ii) a State Tourism Development Corporation; (iii) a State Tourist Department, and (iv) such operators of tourist cars, or such travel against as may be approved in this behalf by the Ministry of the Central Government dealing in tourism.

15. In our opinion, reasonableness of the classification of persons in whose favour the preference is created in that provision and those left out is discernible from the very specification of persons in the four clauses. The persons specified are those who are directly engaged in tourism. The ITDC STDC, are instrumentalities of the Union and the States established specially to promote tourism. Similarly the persons coming under Clause (iv) are those who have already acquired experience in the field of tourism by either operating tourist cars or by working as travel agents and who on the basis of their special experience have secured the approval of the Department of Tourism of Government of India. The classification is therefore reasonable.

16. It has also nexus to the object sought to be achieved, namely, promoting tourism. There can be no doubt that I, T. D. C. and K. S. T. D. C, as also Tourist Department financed by the State would, with better organisation and net-work, be in a position to provide better vehicles and comforts to the tourist passengers, and attract more and more tourists. They would also be in a position wherever necessary to substitute a vehicle, avoiding inconvenience to the passengers. Similarly persons who, by operating tourist cars or acting as travel agents, have acquired considerable experience, and earned good reputation in the field, and have secured approval of Government of India, Department of Tourism, which could/would be granted on the basis of the record of their performance as tourist car operators/ travel agents, would, in comparison with those who are new to the field, or those who have not established their capacity and efficiency in the field, be better placed and equipped to promote tourism.

17. For these reasons we hold that the classification has nexus to the object of Sub-section (7) of Section 63 of the Act.

18. The Learned Counsel for such of the petitioners, who were operators of Tourist Omnibuses, contended that even on the basis that granting preference in favour of the persons who are already engaged in business of tourism has nexus to the object sought to be achieved, the operators of tourist omnibuses were in a better position to promote tourism and therefore Clause (iv) which grants

preference in favour of operators of tourist cars was discriminatory against them. There can be no doubt that if the expression "tourist car" means only tourist motor cabs and does not include "tourist omnibuses", the criticism that Clause (iv) would come into conflict with Article 14 has force for, in making classification, the State cannot pick up a section among persons who are all similarly situated for special treatment, omitting the other section who are similarly situated, and who, having regard to the object sought to be achieved, have the same nexus. This principle flowing from Article 14 is expounded by the Supreme Court in *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, . It reads:

"53. A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is : what does the phrase "similarly situated" mean ? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good.

54. A classification is under inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under (sic) exclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. A classification is over inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would some day bring about his downfall employed such a classification."

(underlining by us)

Therefore, if the expression "tourist cars" were to mean only tourist motor cars/ cabs and not omnibuses, the provision would be patently violative of the Article for, operators of a tourist omnibus in which 35 to 50 passengers are carried at a time as against only 5 passengers in a tourist motorcar/ cab, who have greater operational experience and efficiency, stand excluded from securing the preference and therefore discriminatory.

19. But the question, however, is what does the word cars" or "tourist cars" used in Clause (iv) of the proviso mean. The expressions are not defined in the Act. In order to understand the meaning, it is necessary to look into certain words defined in the Act. They read :

"2(3) "Contract Carriage" means a motor vehicle which carries a passenger or

passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum-

(i) on a time basis whether or not with reference to any route or distance; or

(ii) from one point to another, and in either case without stopping to pick up or set down along the line of route passengers not included in the contract ; and includes a motor cab notwithstanding that the passengers may pay separate fares ;

xx xx xx xx

(15) "motor car" means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward ;

(16) "motorcar" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage ;

xx xx xx xx

(18A) "omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver ;

xx xx xx xx

(29-A) "tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as the State Government may, by notification in the Official Gazette, specify in this behalf."

It may be seen from the definitions, a motor car and omnibus are Motor Vehicles. The omnibus is a motor vehicle constructed to carry more than six persons. A Motor Car is a motor vehicle other than a transport vehicle, omnibus, road roller, tractor, motor cycle or invalid carriage. A motor car becomes a motor cab if it is adapted/used to carry not more than six passengers excluding the driver for hire or reward. Both a Motor Cab and an omnibus fall under the definition of "contract carriage" if they are designed and used to carry passengers for hire or reward, under a contract expressed or implied. Sections 49, 50 and 51 of the Act regulate the grant of contract carriage permit both for omnibuses and motor cabs. Every contract carriage whether a motor cab or omnibus falls within the definition of "tourist vehicle" given in Section 2(29-A), if it is constructed and equipped and maintained in accordance with the specification as set out in the notification issued by the concerned State Government.

20. Similarly a motor car which is used as a motor cab for carrying passengers under a contract expressed or implied as well as an omnibus used to carry passengers for hire under a contract expressed or implied as distinct from a stage carriage in respect of which T.V. permit is granted under the proviso to Section 63(7) to which Sections 49, 50 & 51 apply mutatis mutandis would fall within the expression of "contract carriage" and such vehicle would also fall within the definition of "tourist-vehicle" if such contract carriage is adopted,

equipped and maintained in accordance with the specifications set out in the notification issued by the Central Government in the Official Gazette as provided in Section 63(10) of the Act.

21. We shall now proceed to consider as to what is the meaning to be given to the word "car" used in Clause (iv) of the proviso to Section 63(7) as the word is not defined. Out of the several meanings of the word "car" given in Websters International Dictionary, Volume-I, the meaning relevant to the context, is "vehicle moving on wheels". (See also Words and Phrases, Permanent Edition published by West Publishing Company, Volume-VI, at pages 227-228 at which similar meaning is given.) In Volume-III of the same dictionary, the meaning of the word "tourist car" is given as a railway car equipped with Less Commodious and Lower Priced Sleeping accommodation than standard Pullman cars. This meaning does not suit to the context. Thus it may be seen that the word "car" in the present context may be taken to mean an automobile vehicle moving on wheels and not merely car as understood at common parlance i.e., Ambassador car, Fiat car, etc. If the word "car" used in Clause (iv) of the proviso is understood to mean a vehicle, then the Clause (iv) would take in all "contract carriages" whether omnibuses or motor cabs which conform to the requirements of "tourist vehicle". When so understood, every tourist vehicle operator whether an operator of tourist motor cab or a tourist omnibus is eligible to apply to the Ministry of Central Government, Department of Tourism and every such operator having secured approval would be entitled to preference in the matter of consideration of applications for grant of T.V. permit. After giving careful consideration to the matter, we are of the view that in the context in which the word "car" is used after the word "tourist" in Clause (iv) of the proviso, it is reasonable to understand the word as vehicle i.e., the words "tourist car" as tourist Vehicle and so understood the vice of discrimination pointed out for the Petitioners does not exist.

22. It is also well settled principle of construction of statutes that if there are two plausible constructions of 4 provision, one of them coming into conflict with the provisions of the Constitution and the other not - the latter should be preferred and the former should be eschewed. Applying this principle, we hold that the word "car" used in Clause (iv) of the proviso to Sub-section (7) of Section 63 is capable of being and should be construed as "vehicle" and if so construed, the basis on which the provision is attacked on the ground of its being violative of Article 14 of the Constitution ceases to exist. Sri. K Shivshankar Bhat, Learned Senior Standing Counsel for the Central Government also submitted that if the Court were to be of the view that if the word "car" in Clause (iv) is understood to mean only motor cabs used as contract carriages, it would bring the proviso into conflict with Article 14 of the Constitution, it would be appropriate to construe the word "cars" to mean vehicles moving on wheels which covers both omnibuses and motor cabs, which removes the vice of discrimination.

23. Sri Narayana Bhatta, petitioner in person submitted that the word "cars"

used in Clause (iv) of the proviso meant and was being interpreted by the Central Government only to mean a motor cab as was evident from the endorsement issued by the Department of Tourism on his application seeking the approval of the Central Government under Clause (iv) of the proviso on the ground that he has been operating tourist omnibuses on special permits granted u/s 63(6) of the Act. He submitted that the endorsement was received by him just today. We allowed him to produce the said document. It reads:

"Government of India Tourist Office, K.F.C. Building, Church St., Bangalore-I

Ref: Trav/11/Misc. 85 Date 10-3-1986 Sri S. Narayana Bhatta, Proprietor, Sri Sathya Sai Tourists, "Sathya Jothi", No. 342, 36 "A" Cross, X Main, V Block, Jayanagar, Bangalore-11.

Sir,

Please refer to your application SSST/38/85-86 dated March 7, 1986 regarding grant of recognition as the Tourist Transport Operator of Tourist Omnibuses in India. We regret to inform you that there is no provision to recognise an operator of tourist omnibuses in India by the Department of Tourism, Government of India. However, your application has been referred to the head of the Department for a suitable reply in this regard. You will be informed immediately on receipt of the reply from Department.

Yours truly Sd/- R. A. Stanislaus, Manager."

On the basis of the above document, the petitioner submitted that it was clear that the operators of tourist omnibuses were not eligible for approval under Clause (iv) of the proviso to Sub-section (7) of Section 63 of the Act. As seen earlier, on an interpretation of the word "cars" used in the proviso, we have come to the conclusion that the said word in the context means "vehicle" and when so understood, there was no discrimination as against operators of tourist omnibuses. Any understanding by the petitioner or other private operators or even by the Central Government to the contrary, is no ground for this Court to interpret the Section in the manner in which it is understood by them. As far as the endorsement is concerned, it should be pointed out that it is issued on an application dated 7-3-1986 presented by the petitioner to the local Officer of the department, after the arguments, these cases were almost over. It is issued by the Local Officer and not by the Central Government. Moreover in the endorsement itself it is stated that the application of the petitioner has already been referred to the Government of India. The Government of India is yet to consider that application and in doing so the Central Government has to consider the application under Clause (iv) of the proviso as interpreted in this order.

24. The next point for consideration is whether the proviso in its entirety or atleast Clause (iv) is violative of Article 19(1)(g) on the ground that it puts unreasonable restriction on the fundamental right of persons not falling under any one of the clauses to do business of operating tourist motor cabs or

omnibuses. There is no doubt that the right to carry on such business fails within the fundamental right under Article 19(1)(g). The criteria to be applied for adjudicating whether a provision is or is not violative of Article 19 has been indicated by the Supreme Court in the case of *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, thus:

"(5) Before we scrutinize the provisions of the Act, the law on the subject may be briefly noticed. Under Article 19(1)(g) of the Constitution of India all persons have the right to practise any profession, or to carry on any occupation, trade or business. Clause (6) of that Article enables the State to make any law imposing in the interest of general public reasonable restrictions on the exercise of the right conferred by Sub-clause (g) of Clause (1). It has been held that in order to be reasonable, a restriction must have a rational relation to the object which the Legislature seeks to achieve and must not go in excess of that object (See *Chintaman Rao Vs. The State of Madhya Pradesh*, . The mode of approach to ascertain the reasonableness of restriction has been succinctly stated by Patanjali Sastry C.J., in *State of Madras Vs. V.G. Row*, thus:

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

25. In the present case, the object sought to be achieved at once discernible from the language of Section 63(7) is to promote tourism in the whole country or part of it but in more than one State. The first three categories of persons named in the provision for the grant of preference to ITDC and STDC, institutions of Union of India and the State concerned respectively and the Department of Tourism of any State, all of which are established at the expense of Public Finance for promoting Tourism in the country as a whole which is undoubtedly in public interest, for being the instrumentalities or departments of States, they would be in a better position to serve the object of the provision. Sub-clause (ii) of Clause (b) of Article 19 recognises the fact that even creation of monopoly in favour of the Department or instrumentalities of the State in respect of any trade or business is in public interest. Therefore, giving preference to these persons is in public interest and amounts to a reasonable restriction.

26. As far as persons coming under Clause (iv) of the proviso to Section 63(7) of the Act are concerned, it gives preference to persons who have rendered service in the field of tourism and have secured considerable experience which is certified to by the Department of Tourism, Government of India.

27. The learned Counsel for the Petitioners contended that Clause (iv) would amount to creation of monopoly in favour of private individuals who had already

secured All India T.V. Permits and therefore amounts to unreasonable restrictions as no new person desirous of entering this field of business is eligible to enter this field of business for, no person can get the eligibility for preference without the approval of the Department of Tourism, Government of India and no person can apply for approval unless he had an All India T.V. Permit and had secured experience after operating tourist vehicle under such permit.

28. The above submission is made on the wrong assumption that except under a permit granted u/s 63(7), no one can become an operator of a tourist motor cab or omnibus. Section 63(7) is a special provision for grant of All India Tourist Vehicle Permits by a State Transport Authority of any State subject to the maximum fixed by the Central Government, under which a tourist vehicle can ply throughout India without the counter-signature by any other State which is required to promote tourism in the whole Country. It removes the wall of counter-signature preventing the movement of tourist vehicles from one State to another. But as far as a person desirous of doing business as an operator of tourist vehicle within a State is concerned, the Act enables him to do so by taking a contract carriage permit u/s 51. Section 49 regulates the making of an application for grant of contract carriage permit and Section 50 prescribes the procedure. "Contract Carriage" is defined in Section 2(3) to mean a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum --

"(i) on a time basis whether or not with reference to any route or distance, or

(ii) from one point to another, and in either case without stopping to pick up or set down along the line of route passengers not included in the contract ; and includes a motor cab notwithstanding that the passengers may pay separate fares ; "

xxx xxx xxx

"Tourist vehicle" is defined in Section 2(29-A) to mean a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as the State Government may, by notification in the Official Gazette, specify in this behalf.

Therefore, a person, by securing a contract carriage permit u/s 51 and by constructing his vehicle so as to conform to the specifications laid down by the Government concerned u/s 2(29-A) can do the business of a tourist vehicle operator. Thereafter, he is at liberty to apply for approval under Clause (iv) of the proviso to the Department of tourism. Thus it may be seen that a combined reading of Sections 49, 50 and 51 and Section 63(7), show that there are two kinds of tourist vehicle operators--(1) All India Tourist Vehicle Operators securing permits granted by a State Transport Authority of any State in India u/s 63(7) and operating a vehicle which is constructed so as to conform to the specifications prescribed by the Government of India u/s 63(10); and (2) Tourist

Vehicle Operators who have secured contract carriage permit u/s 51 and who own/operate a tourist vehicle built in conformity with the specifications prescribed by the concerned State Government u/s 2(29-A) of the Act either in whole or part of the area of the State concerned as the case may be. Therefore, the contention that Clause (iv) of the proviso to Section 63(7) bars new persons securing preferential eligibility is untenable. The clause only prescribes a reasonable condition of eligibility namely the previous experience as a tourist operator which can be secured by anyone by taking a contract carriage permit u/s 51, and this is a reasonable restriction in public interest having due regard to the object of Section 63(7) i.e., promoting tourism in whole or part of the country so that All India Tourists get better service at the hands of efficient and experienced operators. Therefore, we find that the preference accorded in Clause (iv) of the proviso to Section 63(7) is not violative of the fundamental right of the petitioners under Article 19 of the Constitution.

29. Learned Counsel for the petitioners submitted that on and after the promulgation of Karnataka Contract Carriages Acquisition Act, 1976 (hereinafter called the Act of 1976), private operators in the State were debarred from securing contract carriage permits for omnibuses. It is so. But that is a situation brought about by a State amendment and constitutes no ground to hold that the proviso to Section 63(7) imposes an unreasonable restriction. Further, after that Act also there is no bar for securing contract carriage permits for motor cabs and operating them as tourist vehicles and on that basis to apply for approval to Government of India and secure the approval. In fact, two of the grantees Sri D.T. Sundar and the Mangalore Tourist Corporation have been operating only tourist motor cabs and have secured the eligibility. Therefore, these petitioners were equally at liberty to secure contract carriage permit for operating motor cabs, to operate them as tourist vehicles and to secure the approval of Government of India.

30. For these reasons, we answer the first question as follows:

"The proviso to Sub-section (7) of Section 63 of the Act which provides that preference shall be given to the applications for grant of All India Tourist Vehicle Permits made by the categories specified in Clause (i) to (iv) of the proviso or even Clause (iv) thereof is not violative of Articles 14 and 19(1)(g) of the Constitution."

31. INTERPRETATION OF Section 63(7) PROVISIO:

The next question is about the interpretation of the proviso to Section 63(7) i.e., whether the applications of all persons belonging to preferential category should be considered first as contended by the Learned Counsel for I.T.D.C., K.S.T.D.C., and other three respondents falling under Clause (iv) of the proviso or whether all the applications should be considered on merits and if only the applicants in the preferential category are found equal to them on merits then only they should be given preference and if, on the other hand, an applicant not falling

under the preferential category is found to be more merited, he should be selected as contended for the petitioners whose applications have been rejected. In support of their contentions, the Learned Counsel for these petitioners relied on the Judgment of the Supreme Court in *Sher Singh Vs. Union of India (UOI) and Others*, . The relevant portion of the Judgment is found at paragraphs 5 and 6. They read

"5. The first contention raised on behalf of the petitioner was that the State Transport Undertaking must either take recourse to provision in Chapter IV-A or otherwise if it wants to compete without recourse to Chapter IV-A, it must stand in competition with other applicants for stage carriage permit and any preference that it may enjoy in respect of inter-State route under Sub-section (1-H) of Section 47 is violative of Article 14 and is denial of fundamental freedom to carry on trade guaranteed to petitioners by Article 19(1)(g).

6. At the outset it is necessary to bear in mind the legal position of a State Transport Undertaking when dealt with under Chapter IV-A and Chapter-IV of the Act. If an approved scheme in respect of a notified area or a notified route is in force, State Transport Undertaking alone is entitled to operate vehicles and therefore is entitled to obtain stage carriage permits both regular and temporary depending upon whether the scheme provides for total or partial exclusion of private operators. However, when an application for a permit is made under Chapter - IV, the Undertaking has to compete with private operators who may as well make an application for permit. When the Undertaking applies for permit under Chapter IV, it must satisfy the Regional Transport Authority that it is better suited than the private operator to render transport facility to the travelling public. Section 47(1-H) however, provides that in the case of inter-State route, the Undertaking will have preference in the matter of stage carriage permit. Does preference of this nature deny equality guaranteed by Article 14 ? The expression "preference" amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other ? It signifies that other things being equal, one will have preference over the others. When an application for a stage carriage permit is being processed as required by Section 47, the application of the Undertaking for an inter-State route shall be examined as application of any other private operator. Their merits and demerits must be ascertained keeping in view the requirements of (a) to (f) of Section 47(1) and after comparing the merits and demerits of both, not with the yardstick of mathematical accuracy, but other things being equal, the application of the Undertaking will have preference over others. Qualitative and quantitative comparison on broad features of passenger transport facility such as fleet, facilities to travelling public and other relevant consideration may be undertaken and after balancing these factors other things being equal, the application of the Undertaking shall be given preference over other applicants. There is no question of eliminating private operators merely because the Undertaking applies for a stage carriage permit under Chapter-IV. That situation is catered to under Chapter IV-A. In an application under Chapter IV, Corporation has to enter, the

arena like any other applicant, face the competition and come-up to the level of other private operators intending to obtain stage carriage permits and then in respect of the route in question claim preference. Would this statutory provision violate equality guaranteed by Article 14 ? The answer is obviously in the negative. Competition is the essence of improved commercial service. After ensuring competition in matter of rendering mere efficient transport service a public sector Undertaking is assured statutory preference, remember no monopoly, there is no denial of equality guaranteed by Article 14. A similar argument when the vires of the provisions contained in Chapter IV-A. were questioned in Dosa Satyanarayanamurthy etc. Vs. The Andhra Pradesh State Road Transport Corporation, did not commend to the Constitution Bench when it repelled the challenge observing as under :

"Ordinarily a State Transport Undertaking should be in a better position than others to carry on the said services for the ; benefit of the public ; administratively, financially and technically it can be expected to be in a far better position than others. It can provide more well equipped buses, give better amenities to the travelling public, keep regular timings, repair or replace the buses in emergencies. It may also employ efficient supervisory staff to keep things going at an appreciably high standard."

This would apply mutatis mutandis to the present situation. But let it be made clear that while considering the application for stage carriage permit u/s 47, the private operator has an equal chance to get a permit even on inter-State route if it shows that the Undertaking is either unable to provide efficient and economical service or that the private operator is better equipped to render the same. Preference in this context would mean that other things generally appearing to be qualitatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking. Viewed from the perspective the provision contained in Section 47(1-H) would not deny equality before law and hence would not offend Article 14."

(underlining is ours)

32. The learned Counsel pointed out that the Supreme Court interpreted the word "preference" used u/s 47(1-H) of the Act which gives preference to the applications made by State Transport Undertaking as against private operators in the matter of granting permits for an inter-state route and held that preference could be granted in favour of the State Transport Undertaking only if other things were found to be equal and preference granted therein did not exclude consideration of the applications of private operator on merits, when there was an application by State Transport Undertaking in respect of an inter-State route.

33. The Learned Counsel appearing for K.S.T.D.C. and ITDC and other contesting respondents per contra submitted as follows:-

In Sher Singh's case⁴, the Supreme Court read the word "preference" in Section 47(1-H) as preference only when other things were equal on a comparison of the

provisions under Chapter-IV and IV-A of the Act.

Under Chapter IV-A (vide Section 68-F 1(A) & 1(C), a permit granting authority is required to grant an application made by the State Transport Undertaking if it had made an application and could proceed to consider the application of the private operators only in the absence of an application by the State Transport Undertaking, whereas u/s 47(1-H) of the Act, the State Transport Undertaking has to compete with others in the matter of permit on an inter State route and, in particular, in view of the proviso, the State Transport Undertaking must satisfy the concerned Transport Authority that it had fulfilled its obligation of running stage carriages in respect of notified routes. It was in this context the Supreme Court pointed out that Section 47(1-H) cannot be construed as giving preference to a State Transport Undertaking to the exclusion of the other operators as such an interpretation would wipe out the difference between Chapter-IV and Chapter-IV-A which was not the legislative intention and therefore it was reasonable to construe the word "preference" used in Section 47(1-H) as giving preference only when, on merits, the applications of the State Transport Undertaking and of private operators were considered equal on merits and not otherwise.

34. In support of their submission, they relied upon a Division Bench decision of the Bombay High Court in the case of Theodosio Luciano Fernandes Vs. Jagdish Sagar and Others, in which the Bombay High Court has taken the view that, the preference granted under the proviso to Sub-section (7) of Section 63 was exclusive in nature in that the applications of the persons belonging to the preferential category should be considered first and it was only when sufficient number of applications in that category were not available or even if available their applications were rejected on other valid grounds, the authority could proceed to consider the applications of the persons belonging to the non-preferential category. The relevant portion of the Judgment on which they relied is :

"3. The provisions of Section 63(7) of the Act if taken into account along with the proviso which is part of that subsection leaves no manner of doubt that such submission cannot be accepted. It is clear that the provisions of Sub-section (7) deal with the permits of special type for the purpose of promoting tourism and the proviso carves out a preferred class of the applicants by a device of nominating the categories mentioned in Clauses (i) to (iv). It is ample to observe that Clauses (i) to (iii) deal with Government or State Operators or the Corporations established by the Government for the purpose of promoting tourism. Clause (iv) permits besides all those who have been recognized or approved by the Ministry of the Central Government dealing with tourism and that includes any operator of tourist cars as well as travel agents. In other words, the proviso defines statutorily a preferential category of applicants who are engaged in promoting tourism. In the light of this proviso it is obvious that what is enacted by the proviso is a general exception to the main class of applicants and as such a distinct preferential category of applications for permits.

Under sub-section(7) the State Transport Authority is enabled to grant permit to any applicant for the purpose of promoting tourism subject to the satisfaction and compliance of the provisions as are mentioned in the body of that section. Having done so with regard to the applications of the four nominated classes, the proviso has been enacted with a direction that the applications of those who are within the proviso shall have the preference. That class consists of State Agencies as well as the approved private operators who are operating the transport activity for the purpose of promoting tourism.

4. That being the plain position of the section itself, it is not possible to accept the submission that notwithstanding the enactment of the proviso, even the preferential classes which are nominated by the Statute will have to stand along with those who do not form part of the class covered by the proviso. The very purpose of this type of permit is to provide the facility for the purpose of promoting tourism and the proviso is enacted to further that statutory scheme. These provisions clearly have three-fold specific scheme. It is not the general class of permit with which Sub-section (7) of Section 63 is concerned. It is firstly and fore mostly specific permits for the purpose of encouraging tourism that is the subject matter. No doubt under it everyone is entitled to seek such a permit subject to satisfaction of other conditions. Secondly for the purpose of seeking such permits, the applicants are required to comply with the provisions as far as may be of several Sections viz., Sections 49, 50, 51, 57, 58, 59, 59-A, 60, 61 and 64 as are enumerated in the body of the Section itself. Thus having made available the opportunity or facility for seeking such a permit the third factor is enacted by proviso in that, preferential class of applicants are recognised. Those are such who have known objective to further tourism. All those who are within the terms of this category thus constitute a special class having statutory preference over others. Once the application is within that class, it will have to be preferentially considered as compared to those which are out of that class. No doubt even those which are within the class will have to satisfy the other conditions which are the part of main subsection. But nonetheless they would form a. special class for consideration by reason of statutory preference carved out by the proviso appended to the sub-section."

They pointed out that the view taken by the Division Bench after considering the ratio of the judgment in Sher Singh's case⁴ supported their submission and pleaded that, that interpretation might be accepted by us.

35. In order to appreciate the rival submissions, it is necessary to refer to several provisions of the Act in which the word "preference" has been used. They are :

(1) Section 47(1) :

"Provided that other conditions being equal, an application for a stage carriage permit from a en-operative society registered or deemed to have been registered under any enactment in force for the time being and an application for a stage

carriage permit from a person who has a valid licence for driving transport vehicles shall as far as may be, be given preference over applications from individual owners."

Under the proviso preference is required to be given to an application filed by a co-operative society and by a person who has a valid license for driving a transport vehicle over other individual owners when other conditions are equal.

(2) Section 58 :

"Duration and renewal of permits :

xxx xxx xxx

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit.

Provided further that other conditions being equal, an application for renewal shall be given preference over new applications for permits."

Under the above provision as between a fresh application for grant of a stage carriage permit and a renewal application, the application for renewal is required to be given preference when other conditions are equal.

(3) Section 55(1-B)

"The Government of a State may, having regard to the extent to which persons belonging to economically weaker sections of the community have been granted public carrier's permits in that State --

(a) reserve in that State such percentage of carrier's permits as may be prescribed for persons belonging to economically weaker sections of the community ; or

(b) notwithstanding anything contained in the proviso to Subsection (1) give preference, in such manner as may be prescribed to applications for public carrier's permits from such persons--"

The above provision requires the giving of preference for grant of public carrier's permit to persons belonging to economically weaker Section of the community in such manner as may be prescribed by the Government.

(4) Section 63(11-B) :

"The Government of a State, may, having regard to the extent to which person belonging to economically weaker sections of the community have been granted national permits in that State --

(a) reserve in that State such percentage of national permits, as may be prescribed, for persons belonging to economically weaker section of the community ; or

(b) notwithstanding anything contained in Clause (b) of Subsection (12) give preference in such manner as may be prescribed to applications for national permits from such persons."

The above provision provides for giving preference in the matter of grant of national permits for plying vehicles for carriage of goods to the applications of persons belonging to economically weaker sections, but the preference is required to be given in such manner as may be prescribed.

(5) Section 63(12) :

"63(12)(b) : other conditions being equal, preference shall be given to the applicants who are ex-army personnel and who have valid licences for driving transport vehicles."

Under Sub-clause (b) of the sub-section, in the matter of grant of national permits, for carriers of goods preference is required to be given to the ex-army personnel and drivers when other conditions are equal.

35. Thus, it may be seen wherever the Legislature considered that the preference must be given only when other conditions were equal, it has expressly stated so. Similarly wherever the Legislature considered that preference should be given to certain categories of applicants in the manner prescribed in the Rules to be framed by the Government, it has said so. It is only in Section 47(1-H) and Section 63(7) the word "preference" is used without imposing any condition, namely, that the preference should be given when other conditions were equal or that the preference should be given in the manner in which it is prescribed under the Rules. The Supreme Court in *Sher Singh*'s case⁴ also observed that unless the preference required to be given to the application of a State Transport Undertaking in Section 47(1-H) was interpreted as preference only when other conditions were equal, the Section would be violative of Article 14 of the Constitution.

36. As far Section 63(7) proviso is concerned, as held earlier, even on the basis that the preference required to be given under it is the first preference, that is, to the exclusion of the applications belonging to non-preferential category, the Section does not infringe either Article 14 or Article 19(1)(g). Further, having regard to the object and purpose with which the preference is given in the matter of grant of All-India tourist vehicle permits in favour of the four categories of persons specified in the proviso, it appears to us that the proviso requires the authorities concerned to consider the applications of persons belonging to the preferential category in the first instance and to grant permits if they are found suitable for the grant of permit having regard to the other relevant considerations required to be applied under the provisions of the Act and the Rules framed thereunder. If the number of applications found suitable fall short of the required number of permits to be granted, then only the question of considering the applications of persons not belonging to the four categories would arise. In fact, as analysed earlier under the proviso not only the

instrumentalities of the Union Government and the State Government and a. Department of the State Government specially brought into existence for promoting tourism, but also persons included in the fourth category, are those who have acquired efficiency and experience in the matter of running tourist vehicles. This means practically every person who has the necessary, experience and efficiency comes within the (iv) clause. Persons who do not come under the (iv) clause are those who want to enter the field afresh or those not having necessary experience or efficiency meriting the approval of the Central Government.

37. A careful reading of the Judgment in Sher Singh's case⁴ would show that the Supreme Court was interpreting the provisions of Section 47(1-H) incorporated in Chapter-IV of the Act in the light of the special provisions in favour of the State Transport Undertaking incorporated in Chapter IV-A and also the proviso incorporated below Section 47(1-H). The Supreme Court held that when provisions for giving preference to a State Transport Undertaking to the exclusion of the others was provided in Chapter-IV (vide different clauses of Section 68 of the Act), the same result should not be brought about even u/s 47(1-H) in which a State Transport Undertaking was required to compete with other applicants. Further, the Supreme Court pointed out that the proviso u/s 47(1-H) also indicated that an application of a private individual for grant of an inter-state permit could be granted rejecting the application of the State Transport Undertaking for the same route if it had failed to fulfil its obligation of running stage carriages in the notified area on notified routes. It is in this context the Supreme Court held that the State Transport Undertaking would be entitled to preference over the other applicants for grant of permits on an inter-state route if "only on consideration on merits of the applications of both, they were found equal in other respects but not in a case in which a private applicant is found to be more merited. The Supreme Court therefore held that the word "preference" used in Section 47(1-H) could not be understood as preference to the exclusion of private operators and that it could be understood as preference only if other things are equal and further if an interpretation was given to Section 47(1-H) as giving preference to the State Transport Undertaking over private operators, it would come into conflict with Article 14 of the Constitution in that not only there would be a total preference in favour of the State Transport Undertaking ;under Chapter IV-A but also under Chapter-IV even if its case did not merit the giving of preference over the other applicants as that would be without any rational nexus to the object sought to be achieved.

38. But as far as the proviso to Section 63(7) is concerned, even on the basis it gives first preference to the persons belonging to the four categories "specified therein, as held earlier by us, it is not violative of Articles 14 or 19 of the Constitution as it has been incorporated with a specific purpose, viz., for promoting tourism in a better manner in the Country as a whole and the preference given has nexus to the object sought to be achieved and is also a reasonable restriction. Sub-section (7) was introduced into the Act from 2-10-70.

Subsequently, while amending the Act by Act No. 47 of 1978, the Legislature considered that tourism would be promoted if All India Tourist Vehicle Permits were to be granted to the I.T.D.C. which is an instrumentality of Union of India and S.T.D.C which is an instrumentality of the State as those organisations have been brought into existence by the Union of India or the State as the case may be only for the purpose of promotion of tourism and for the said purpose only a tourism department is created by the State. The persons belonging to the fourth category were also incorporated in the preferential category as they would be persons who have concentrated their attention in operating tourist vehicles or in connection with tourism as Travel Agents and therefore better suited to promote tourism in the whole Country. Therefore, in the context in which the expression "preference" is used in the proviso to Sub-section (7) of Section 63 and also a designed omission of the expression of the words "other things being equal" in the proviso though such words have been used by the Legislature in the other provisions of the Act as pointed out earlier including in other sub-sections of the same Section, it would be difficult to read those words into the proviso, when the Parliament has not chosen to incorporate, those words. Reading those words into the proviso, in our view, defeats the legislative intention of granting preference in favour of the four categories of persons specified in the proviso to achieve the object of promoting tourism in the Country as a whole. We are in respectful agreement with the interpretation of Section 63(7) proviso by the Division Bench of the Bombay High Court in the case of Fernandez⁵. For these reasons, we answer the second question as follows :

"The proviso to Section 63(7) requires that the consideration of the applications belonging to preferential category should be considered first and that if only, sufficient number of suitable applicants belonging to preferential category are not available, the applications of persons belonging to non-preferential category should be considered."

and hold that the view taken by the Tribunal is correct.

39. The learned Counsel appearing for the Karnataka State Road Transport Corporation, however, contended that the Corporation was also a Public Sector Undertaking constituted under the Road Transport Corporation Act, 1950 and therefore the application of the Corporation ought to have been considered on a preferential basis and when the STA had given such consideration and granted two permits, there was no justification for the Tribunal to interfere with the order of the STA.

40. While considering the second question, we have come to the conclusion that the preference granted under the proviso to Sub-section (7) of Section 63 is such as would require the authorities to consider all the applications belonging to the preferential category first and if only all or some of the applications are rejected for valid grounds and sufficient number of applications of persons belonging, to preferential category were not available for being granted, then only authorities were required to consider the application's of the persons belonging to the non-

preferential category. It is no doubt true that the KSRTC is a State owned Corporation established and controlled by the Government of Karnataka. The KSTDC is also a Corporation established by the State Government. The purpose for which the KSTDC and KSRTC are constituted is separate and distinct. The KSTDC is exclusively entrusted with the activity of promoting tourism whereas the KSRTC is constituted to cater to the needs of the regular passengers. Obviously the Parliament was of the view that the preference must go in favour of the Tourism Development Corporation or the Tourism Department of the concerned State in the matter of granting T.V. permits and therefore though the State Transport Undertakings are constituted under the Road Transport Corporation Act, the Parliament has not chosen to include them in the preferential category. Therefore, we find no merit in the contention advanced on behalf of the Corporation. The view taken by the Appellate Tribunal that having regard to the preference granted under Sub-section (7) of Section 63, the STA could not have proceeded to consider the application of the Corporation and granted permits to it as it did is correct. Therefore, the appellate Tribunal was right in setting aside the order of the STA to that extent.

III. Correctness of The Decision of The Tribunal Regarding Grant of Permits

41. The last question for consideration is about the case sought to be made out on behalf of the KSTDC and ITDC. The Learned Counsel for the KSTDC submitted as follows : When the State Transport Authority had granted 11 permits, there was no justification for the State Transport Appellate Tribunal to reduce the same to 8 permits and grant those permits to other applicants. When there were 29 applications belonging to the preferential category, the selection as among them should be on merits and having due regard to the provisions contained in Rule 123-A of the Rules extracted earlier. In view of the said Rule, operational efficiency, financial stability and also the garage facility possessed by each of the applicants should be considered and the permit should be granted in favour of the person who is adjudged better having regard to the material on record. Having regard to the financial soundness of the KSTDC for the reason that it is a State owned undertaking and also for the reason that it has established a good workshop and a garage for repair and upkeep of the vehicles and also having established a group of hotels called "Mayura Hotels" at places of tourists interest, they were entitled to all the permits on merits as the KSTDC was a better organisation. Such being the position, there was no justification for the State Transport Appellate Tribunal to reduce the number of permits from 11 to 8 and grant three permits in favour of the other applicants.

42. Sri A.S. Viswanath, Learned Counsel appearing for the ITDC per contra submitted that whereas KSTDC was only a Corporation established by the State for the purpose of tourism and therefore mainly concerned in operating to places of tourist interest in and nearby the State, the ITDC was an organisation sponsored by the Union of India for promoting tourism in the entire country and was the biggest foreign exchange earner and therefore more number of permits

compared to the number of permits granted to the KSTDC should have been granted to ITDC. He pointed out that the STA granted only one permit to the ITDC stating that ITDC had the opportunity of applying for permits in other Stages also, whereas the KSTDC had the opportunity of applying for permits only in the State of Karnataka which reasoning was found to be untenable by the Tribunal. He submitted more number of permits ought to have been granted to the I.T.D.C.

43. Sri Tilak Hegde, Learned Counsel for the Petitioner in W.P.No. 7061 and 7062/1985 submitted that the Petitioner was a Travel Agent with wide experience. He invited our attention to the documents at pages 112 to 136 of the paper book. These documents do indicate that the Petitioner is a well established and reputed travel agent. This fact is not seriously disputed by his opponents. In view of the extraordinary merit of his client, the learned Counsel contended that all the three applications presented by him should have been granted whereas only one application had been granted by the STA.

44. A reading of the order of the Tribunal would show that it has taken into account all the relevant factors concerning the merit of the applicants including those mentioned in Rule 123-A as also the public interest in arriving at its conclusion. Relevant part of the order reads :

"89. In my humble opinion, the said observations made in a different context can be equally applied while considering the scope and import of the preference clause inserted by adding the proviso to Section 63(7) of the Act. Applying the said test, applications received from the preferred category mentioned against Clauses (i), (ii) and (iv) will have to be considered first. Since the number of applications received from the 1st and 2nd categories is 24 there is no scope for considering the applications received from the non-preferred categories. As already mentioned above, ITDC has submitted 10 applications. KSTDC had submitted 15 applications and there were no applications from the State Tourist Department. It was made clear at the time of arguments that applications received from the fourth category of the preferential group are those of C. Das (appellant in A. No. 530/84), Agencies International (appellant in A. No. 531/84), D. T. Sundar (appellant in A. No. 535/84), International Travel service (appellant in A. No. 538/84) and Mangalore Tourist Service (Appellant in A. No. 550/84) and the remaining applicants do not satisfy the requirements of Clause (iv) of the proviso to Section 63(7) of the Act, Therefore, the number of applications received from the preferential categories mentioned in Clauses (i), (ii) & (iv) comes to 29. Of these, 3 applications are from C. Das in his own name and also in his capacity as proprietor of Agencies International and International Travel Services.

90. Hon"ble Supreme Court has also observed in its order dated 1-2-1984 in CMPs. 38533 to 38535 as. incorporated in paragraph 18 of the impugned proceedings that "the Transport Authority shall dispose of the applications in accordance with law keeping in view of the preference provided for in the Statute

irrespective of any orders to the contrary which may have been passed by the High Court of Karnataka in any cases pending before it." Therefore, I am of the view that the KSTA should have confined itself to the provisions of Section 63(7) of the Act and Rule 123-A of the Rules in disposing of the applications received by it without going into consideration of other extraneous matters. To that extent, the approach made by the KSTA and the ultimate decision arrived at by it are clearly erroneous. Points 7 to 9 and 11 are answered accordingly.

POINT No. 15

91. There is no clear indication in the proviso to Section 63(7) as to whether all the 4 preferential group applicants are entitled to be treated equally for grant of permits inter-se between them. In the absence of any such indication, discretion is given to the KSTA to decide the manner in which the permits are to be granted amongst the preferential group applicants having regard to their requirements with reference to the area of their operation. KSTA has chosen to consider the claims of the KSTDC and ITDC in paragraph 50.

92. It is mentioned in paragraph 50 that ITDC which is entitled to get permits from all the States from out of the quota made available by the Central Government, has already secured 42 All India Tourist Permits whereas KSTDC had been given only 1 permit although it was in possession of 35 already modern luxury buses which meet the specification laid down by the Government of India for All India Tourist Omni buses that it is an apex organisation of the State set up purely and exclusively for catering to tourism within the State and it is in a position to provide accommodation to the tourists in a chain of hotels popularly known as "Mayura Group" of hotels situated within the State and also outside the State and therefore it is entitled to 11 permits out of 12 permits earmarked by it for the preferential group applicants. On that reasoning, it has granted 11 permits to KSTDC and only 1 permit to the ITDC. It has granted the remaining 2 permits to the KSRTC by observing in paragraph 56 that it is the largest fleet owner in the State having more than 6 thousand buses with a well established reciprocal arrangements with all other States having a wide network of workshop and back facilities that is also the only agency to provide contract carriage buses to the public in the State and therefore the non-availability of tourist permit for the KSRTC was considered to be pathetic. The said approach of the KSTA is subject to scathing criticism by practically all the Learned Counsel for the appellants including the ITDC which is having grouse that it is granted only 1 permit although it is an organisation of All India Status and it is expected to cater to the requirements of the tourists all over the length and breadth of the country."

93. In my opinion, KSTA was not justified in granting 11 out of 14 permits to KSTDC and only 1 permit to ITDC which has to cater to the needs of tourists throughout the length and breadth of the Country. As rightly pointed out by Sri A S. Viswanath, if all the STAs go on treating the ITDC in the manner done by the KSTA, then it will have no chance of getting more than 25 permits from the STAs

of all the States and the Union Territories. However, having regard to the fact it is already having 42 permits whereas KSTDC was having only 1 permit on the date of the impugned order, I am of the opinion that KSTA was not justified in granting 11 permits out of 14 permits to KSTDC and one permit only to ITDC. In my view, it would be just and proper to grant 3 permits to applicants mentioned in Clause (iv) of the proviso to Section 63(7). Point No. 15 is answered accordingly."

It may be seen from the order that there were in all 29 applications belonging to the preferential category. They were : 14 applications of K.S.T.D.C, 10 applications of ITDC, 3 applications of C. Das the petitioner in W. P. No 7061 and 7062 of 1985 and respondent-4 in W. P. No. 4053 to 4056 of 1985, 1 application of D.T. Sundar and one application of Mangalore Tourist Service-respondents in W.P. Nos. 4053 to 4056 of 1985. The Appellate Tribunal considered all the relevant facts such as financial stability, garage facility, establishment of a group of hotels called "Mayura Hotels" and the capacity of the KSTDC to run efficient tourist buses and to promote tourism. The Appellate Tribunal also considered the fact that ITDC being an instrumentality of the Union of India constituted to promote tourism was having the financial stability and operational efficiency. It held that the view of the STA that there was scope for the ITDC to get permits in other States was, not correct for the reason that if in every State, the application of the ITDC were to be rejected on such a ground, it would be left high and dry. In the circumstances, having regard to the fact that only 14 permits were to be granted, the Appellate Tribunal has taken the view that granting of 8 permits in favour of the KSTDC, 3 permits in favour of ITDC and one permit in favour of each of the applicants falling under the fourth category was in public interest and accordingly it proceeded to grant the permits. The decision of the Appellate Tribunal is based upon the appreciation of the material on record and comparative merit of the applicants and its view that distribution of the number of permits among all the eligible and suitable applicants instead of granting all the applications of KSTDC or of ITDC was in public interest. Certainly such distribution promotes healthy competition and is in public interest. We find no patent error of law in the order of the Tribunal. Therefore, the order of the Tribunal cannot be interfered with.

45. One of the objections raised against the grant of permits in favour of KSTDC and ITDC is that they had not produced the Solvency Certificates and Income Tax Clearance Certificates. Rule 123A requires production of Solvency Certificate as provided under Rule 102 of the Rules. Rule 102 proviso exempts production of Solvency Certificates in the case of State Undertakings. Both KSTDC and ITDC are State and Central undertakings respectively and therefore they are exempted from producing the Solvency Certificates. Even on the basis that Rule 123A required that even the State Undertakings should produce the Solvency Certificates, it appears to us, the defect cannot be considered as fatal having regard to the fact that the two organisations are State undertakings and therefore their financial stability must be presumed and the Tribunal rightly did

so. Further, KSTDC had already produced Income Tax Clearance Certificate and the ITDC was given time by the Tribunal to produce the said certificate. As the certificates have already been produced as directed by the STAT, in our opinion, there has been sufficient compliance with the above provision.

46. Sri P.R. Srirangaiah, Learned Counsel for the petitioner in W.P. No. 5404 of 1985, contended that the petitioner had secured approval of the Central Government in terms of Clause (iv) of the proviso to Sub-section (7) of Section 63, But nevertheless the claim of the petitioner was not considered in the preferential category. We asked the Learned Counsel to refer that portion of the order of the STA and STAT where such a claim of the petitioner had been rejected. The Learned Counsel submitted that the petitioner had produced relevant documents in support of the eligibility under Clause (iv) of the proviso to Sub-section (7) of Section 63 before the STA but there was no reference to it. In the order of the STAT also, there is no reference to any such argument advanced by the Learned Counsel for the petitioner. He however submitted that he had taken a ground in the appeal memo and also argued in that behalf before the STAT. In the Writ Petition, except stating that the petitioner had secured the approval of the Central Government under Sub-section (7) of Section 63 of the Act, nowhere he has stated that such a claim was made before the Tribunal. The Learned Counsel appearing for the contesting Respondents submitted that no such plea was raised or argued by the petitioner either before the STA or the Tribunal, We asked the Learned Counsel whether he has produced copies of the documents which were according to to him produced before the lower authorities in support of his claim in the Writ Petition. The Learned Counsel submitted that no such documents have been produced along with the Writ Petition, At the time of arguments, the only document that was produced by him was a copy of a letter dated 25-3-1983 addressed to the petitioner. It reads :

"Dear Sirs,

With reference to your letter No. SGR/T/No. 28/83 dated 4th February 1983 the recognition granted to your firm as tour operator vide this Department's letter of even number dated 26th April, 1982 is extended further till 30th April, 1984.

Further this recognition is valid until 30th April, 1984, and will be expire automatically unless you apply for runway sixty days before the date of expiry.

Yours faithfully, Sd/- (Raghubir Singh), Director, Travel Trade."

It is not clear from the above letter that the said letter was an approval granted under Clause (iv) of the proviso to Sub-section (7) of Section 63. On a comparison of the approval granted in favour of Respondents 7 and 8 in the Writ Petition and the letter produced by the Petitioner, it is seen that the approval accorded in their favour uses the words "recognised as tourist car operator", whereas in the letter addressed to, the Petitioner the words "tour operator" are used. On the last date of hearing, we asked the Learned Counsel to produce the first document by which the approval was accorded as also the letter granting

extension of the approval on and after 30-4-1984. He was unable to produce them. Even today he did not produce them. As submitted by the Counsel for the contesting Respondents the recognition of this Petitioner as tourist operator might be in connection with excursions/the travelling of Government servants under Leave Travel Concession. Whatever that may be, we are convinced that the Petitioner had not made out a case before the lower authorities that he fell under fourth category. In fact, it is seen from the order of the STAT, it has categorically stated that at the time of arguments, it was submitted by all the persons before the Tribunal that there were only five applications belonging to the (iv) preferential category. Even before us the Petitioner has failed to make out that he has the approval of the Central Government and therefore falls under the (iv) preferential category. For these reasons, we do not find any merit in the contention.

47. In the result, we make the following order :

(i) All the Writ Petitions are dismissed.

(ii) Rule discharged.

(iii) With the dismissal of the Writ Petitions, the interim order staying the order of the Tribunal automatically stands dissolved.

Immediately after we dictated the order in open Court, the Learned Counsel for the KSTDC, the KSRTC and Sri Narayana Bhat, one of the petitioners, made oral application under Article 134A of the Constitution praying for grant of Certificate of Fitness to appeal to the Supreme Court under Article 133 of the Constitution. In our opinion, the matter does not involve any substantial question of law of general importance required to be considered by the Supreme Court. Therefore, the prayer is rejected.