
(1959) 08 BOM CK 0022

In the Bombay High Court

Case No : Special Civil Appln No's. 15, 33 and 3673/58 of 1959

Parbhani Transport Co-operative Society Limited

APPELLANT

Vs

G.V. Bedekar and Others

RESPONDENT

Date of Decision : 24-08-1959

Acts Referred:

Bombay Motor Vehicles Tax Rules, 1940 — Rule 76, 76(1A)
Constitution of India, 1950 — Article 19, 19(6)
Motor Vehicles Act, 1939 — Section 47, 47(1), 64, 68B, 68C

Citation : AIR 1960 Bom 278 : (1959) 61 BOMLR 1572

Hon'ble Judges : Patel, J;Mudholkar, J

Bench : Division Bench

Advocate : C.K. Jaishinghani, H.C. Subnani and S.A., Hegde, for the Appellant; R.L. Agarwal and N.A. Mody, instructed by Little and Co. Attorneys and R.J. Joshi, Public Prosecutor Khambata, instructed by Crawford Laley and Co. Attorneys, for the Respondent

Judgement

Amudholkar, J.

(1) This is a petition under Artt. 226 of the constitution and is directed against the order of the appellate committee of the State transport Authority. The relevant facts are as follows. The petitioner is a co operative society registered under the Hyderabad co operative Societies Act, XVI of 1952 and is carrying on the business of plying stage Carriage BusService in the Parbhani District (marathwada) of Bombay State, since December 1954. From 2.10.1955 the petitioner has been plying the stage carriage service on four routs. 1. Parbhani to Jintoor, 2. Jintoor to Saily via Mantha, 3. Aundhi to Hingoli,. 4. Jinotoor to Aundh, under susbtantial permits granted to it by the State Transport Authority of the former Huderabad State. These permits werefor a period of three years and expired on 1-10-1958.

(2) On or about 19-5-1958, the divisional controller of the State Transport, Marathwada who is respondent No. 14 to this petition. made an application to

the Regional Transport Authority, Marathwada, for the grant of fresh stage carriage permits for the following three routes: 1. Jintur to Parbhani, 2. Jintur to Sailu and 3. Amundh to Hingoli, that is over the routes where the petitioner is already operating its stage carriage service on substantive permits. The application of the respondent No. 14 was published on 29-5-58 in the manner provided under the Act. The petitioner, after coming to know of this, filed its objections on 25-6-58 to the grant of the application of the respondent No. 14.

(3) On 27-5-58 the petitioner also filed an application for renewal of its permits which were due to expire on 1-10-58. This application was published by the R. T. A. on 8-7-58.

(4) The application of the respondent No. 14 came up for consideration before the R. T.A. A along with the petitioners objections on 4.7.58, At that meeting it was brought to the notice of the R. T.A. that the petitioner had filed an application for renewal of its permits and that that application should be heard along with that of the respondent No. 14. The R.T.A., however, proceeded with the hearing of the application made by the respondent No. 14, but deferred its decisions thereon till such time as the petitioner's application became ready for being considered. Both the applications came up for hearing on 13-8-58. Some of the members of the R.T.A. who were present at the earlier meeting were not present at the second meeting. One person, the respondent No. 9 who was not present at the meeting of 4.7.58 was present at the meeting of 13-8-58 and took part in the deliberations. According to the petitioner, the R.T.A. granted the application of the respondent No. 14 without hearing any fresh arguments. Thereafter the petitioner's application was taken up for consideration, but it was rejected because the R.T.A. had decided to ground was stated by the R. T.A. in this connection.

(5) The petitioner thereupon preferred an appeal before the Appellate Committee of the State Transport Authority. The appellate Committee observed that the R.T.A. decided the question in the light of the provisions of s.47 of the Motor Vehicles Act, that the R.T.A. had further come to the conclusion that permits should be granted to the respondent No. 14 in preference to the petitioner, because it was in the public interest to do so, and that the appellate committee did not see any reason to interfere with the decision of the R.T.A. Thereupon the petitioner has come to this court under Art. 226 of the constitution.

(6) A large number of contentions have been raised by the petitioner in the petition before us; but the contentions which were pressed before us in argument by Mr. Jaisingani on behalf of the petitioner are as follows: 1. That the provisions of Chapter IVA would alone be resorted to by a state Transport undertaking, if it was desirous of operating a stage carriage service in any area, and that it was not open to the State Transport to make an application for grant of a permit under S. 47 of the Motor Vehicles Act, which section falls in chapter IV of the Act; 2. While deciding the question as to who should be granted a

permit the R. T.A and the Appellate Committee of the S.T.A must confine themselves to the considerations set out in S.47 of the Act, and that it is not open to any authority exercising its powers under the Motor Vehicles Act to grant a p[ermit to a State Transport because of the policy of nationalisation, which is accepted by three State, or because of any iunstruction given to it by circulars received from the Government 3. That the R.T.A erred in dealing with the applications of the petitioner and that of the respondent no. 14 separately even though at its earlier meeting it had decided to hear both the applications simultaneously.

(7) Along with the petition we also heard to other Spl. C.A. 3673/58 and Spl. C.A. 15/59 . In both these petitions permits have been granted to the B. E.s.T Undertaking for establishing its services along certain routes within the limits of Greater Bombay. the petitioners in these two petitioners had also applied for permits to operate the services along the same routes. It may be mentioned that each of the petitioners was operating these services at the date of his application and that each of them is operating those services even now, by virtue of them an injunction issued by this court. The only point raised in these petitions by Mr.Hedge is that the B. E.S.t. Undertaking was incompetent to apply for permits under S./ 47 of the motor vehicles Act, and that unless it prepared a scheme under the provisions of chapter IVA of the Act and such scheme had been approved by the Government, it could not seek to obtain permits nor could it be granted permits by the R.T.A.

(8) The argument that the State Transport as well as the B. E.S.T Undertaking will be incompetent to make an application under S. 47 of the Motor Vehicles Act is based on the fact that by Act 100 of 1956 the Motor Vehicles Act was considerably amended. Amongst other things. special provisions relating to State Transport Undertaking were incorporated therein by the addition of chapter IVA Mr. Jhasingani contended strenuously that the legislature has clearly exclude the operation of the provisions of chapter IV of the Act in so far as the State Transport and Municipal Undertaking are concerned, and in this connection he relied upon the provisions of S. 68 B of the Act. He also relied upon the general principle that where a statute makes a special provisions regarding a particular matter, then the general provisions contained therein must give way to those special provisions.

(9) Mr. Hedge contended that where only one object is intended to be secured to a person by any law,the provisions of that law must not be construed in such a way as to entitle that person to achieve that object in two ways. He further contended that the word otherwise occurring in S. 68 C after the words whether to the exclusion, complete or partial, of three persons or clearly shows that an application of the State Transport Corporation for a permit, even in circumstances not involving the creation merely wants to establish is service along a particular route, it can resort to provisions of S. 47 and that it is not necessary for it to obtain such a permit under Chapter IVA of the Act.

(10) We may refer at the outset to the history of the legislation regarding the operation of transport services of the States and nationalisation of the government of Bombay had contemplated nationalisation of all transport services. With a view to achieve it, instructions were given to the Regional Transport Authorities, as has been pointed out by Chagala, C. J. in Special Civil Application no. 631 of 1951. to intimate all private operators of buses who held regular permits that such permits will not be renewed, but only temporary permits would be issued from time to time. The object of this was to ensure that at a given point of time to time the whole motor transport in the State of Bombay would be nationalized. That policy was abandoned, and a new policy was formed. that policy was to create a State Corporation, and leave it to that corporations to apply for permits to the R.t.a. in the same manner as other operators. This corporation was to have the backing of the government, and its function was to co ordinate all transport services in the State. Such a corporation was set up in the year 1949. But this court held that the corporation was not validly constituted. That was in October the enactment of the Road Transport Corporations Act, 1950, which received the assent of the President on 4.12.1950.

(11) After the formation of the corporation, the Regional Transport Authorities in the State started granting what is known as temporary permits for four months to a number of operators on those routes which were intended to be taken over the State Transport corporation. Similar things were done in other States. A number of operators in the U.P had challenged the right of the State to operate its services. It was also contended on their behalf that the Regional Transport Authorities were being used by Government as a machine for giving effect to their policy of nationalisation, and that since the enforcement of that policy infringed the rights of the citizen conferred by Art. 19(1)(g) of the constitution, the actions of the R.T.A. were unconstitutional. The whole question came up for consideration before a Full Bench of the Allahabad High court in *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, . It was pointed out there that the State has a right to carry on a trade or business as an ordinary incident of its governmental functions but that in exercising that right it could not act contrary to law or infringe the rights of citizens. It was further pointed out that nationalisation has two implications. 1. The State will carry on the business, and 2. that no one else will be allowed to carry it on. Where nationalisation took away from a citizen the right of carry on a business, there was infringement of the right of the citizen guaranteed by Art. 19(1)(g) of the constitution. It was further pointed out that although an executive act of the State Government may not be authorised by a legislative enactment, it will nevertheless be within the executive powers of the state if (1) it is not an act which has been assigned in the constitution of India to other authorities, (2) it is not contrary to the provisions of any law, and (3) it does not encroach upon or otherwise infringe legal right of any member. The learned Judges also pointed out that the mere fact that the Government. launched upon the policy of nationalisation of motor transport services and had put its own buses in the

field to achieve that end is not a valid consideration for the R.T.A. in determining an application under S. 47.

(12) The question as to the extent of rights considered by the supreme court in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, there it was held that no one is entitled to a permit as of right even if he has satisfied all conditions prescribed in the Motor Vehicles Act, and that the grant of a permit is entirely within the discretion of the Transport Authority, and depends upon several other circumstances which should be taken into account.

It may be mentioned that according to the full Bench of the Allahabad High court the right of a citizen to use of a highway for running stage carriages for profit of the subject of course to his complying with the provisions of the Motor Vehicles act or any other law for the time being in force cannot be abrogated by an executive action, even though that action was actuated by a desire to nationalise road transports. The legislature therefore stepped in and amended clause (6) of Art. 19. Clause (6) of Art. 19 prior to its amendment was as follows:

Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the state from making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.

This has now been substituted by the following:

Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents, the State from making any law imposing, in the interests of the general public reasonable restrictions on the exercise of the right conferred by the said sub clause and, in particular, nothing, in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the state from making any law relating to -

(I) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) 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 of otherwise.

Now, by virtue of this amendment, two things are made clear; one is, the right of the State or of a Corporation owned or controlled by the State, to carry on of a trade, business, industry or service, and the other thing is, the right of the state to carry on the said trade, business, industry or service even to the exclusion of the other citizens. In other words, this provision now entitles the legislature to

make an appropriate law for creation of State monopolies. Now, since clause (6) of is a limitation on sub clause (g) of Art. 19, it follows that the right of a citizen guaranteed by the sub clause is subordinated to the right of the state to create a monopoly in its own favour.

(13) Finally, we would refer to the decision of the Supreme court is Saghir Ahmad Vs. The State of U.P. and Others, . In that case their Lordships were dealing with the provisions of the U.P. Road Transport Act of 1951, which was enacted prior to the amendment of clause (6) of Art. 19. Their Lordships laid down the following propositions in that case: 1. All public streets and roads vest in the State but the State holds them as trustees on behalf of the public, 2. the members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. (3) The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally, but subject to such limitations the right of a citizen to carry on business in transport vehicles on public pathways cannot be denied to him on the ground that the state owns the highways. 4. Within the limits imposed by State regulations any member of the public can ply motor vehicles on a public road. To that extent he can also carry on the business of transporting passengers with the aid of vehicles. 5. The guarantee in Art. 19(1)(g) is attracted to the carrying on of the trade or business by the State, and a citizen can legitimately complain if any legislation takes away or curtails that right any more than is permissible under clause (6) of that Article. (6) Article 19(6) as the result of the constitution (First Amendment) Act, 1951, enables the State to carry on any trade or business either by itself or through corporation owned or controlled by the State to the exclusion of private citizens wholly or in part. (7) This amendment does not, however, affect the validity of the provisions of the U.P. Road Transport Act, 1951, because it was passed prior to the amendment and must therefore be regarded as unconstitutional when it was so passed.

(14) It is in the light of this history that we must examine the provisions of chapter IVA. The argument on behalf of the respondents is that the sole object of enacting the provisions of chapter IVA was to deal with an application for grant of a permit by a State corporation in pursuance of the scheme of nationalisation of road transport. where the State Transport corporation wants merely introduce a stage carriage service along a particular route and nothing more, it is not necessary for the corporation to resort to the provisions of chapter IVA and that it can make its application under S. 47 as it was used to prior to the enactment of the provisions contained in Chapter IVA. It is pointed out on behalf of the respondents that S. 47 is wide in its terms and enables the State or a state owned corporation to make an application for grant of a permit under the R.T.A and that if it was the intention of the legislature, when it enacted the provisions of chapter IVA, to restrict the provisions of intention by making an appropriate amendment to S. 47 when it enacted the provisions of chapter IVA. In particular,

a reference was made to the fact that S. 47 itself was amended in regard to one matter, and nothing was easier for the legislature than to contain in it what will not apply to state Transport corporation.

18th February 1959.

(15) Where a legislature amends a statute it may either abrogate or modify certain provisions therein or may add to them whether it has done one or the other must necessarily be ascertained in the first instance from the new provisions in the background of the old ones. If there become doubt about the matter, the court will have to resort to the usual canons of construction.

(16) The heading of chapter IVA is Special provisions relating to State Transport Undertakings." It is contended before us on behalf of the petitioners that the provisions contained in Chapter IVA are the only ones which govern the granting of permits to state Transport Undertakings. It seems to us that such an inference does not follow from the title given to the chapter. That title does not indicate that these are the only provisions which govern the grant of permits to state Transport undertakings. It is true that the provisions of this chapter are limited to state Transport Undertakings, that is to say, they would apply only to State Transport Undertaking and to no other. But it is one thing to say this and another to say that the legislature by so describing the provisions intended that these are the only provisions which were to govern the grant of the permits to state Transport Undertakings. These are as the heading would indicate, only additional provisions which relate to State Transport undertaking and are not the only ones which apply to such undertakings. Section. 68B clearly supports this conclusion. That section reads thus.

"68B Chapter IVA to override Chapter IV and other laws: The provisions of this chapter and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in chapter IV of this act or in any other law of the time being in force or in any instrument having effect by virtue of any such law.

Now, if the legislature had intended that the provisions of chapter IVA could alone govern applications for permits made by State Undertakings S. 68B would not have been worded in this manner. What it does say is that the provisions in chapter IV or any other law which are inconsistent with the provisions of Chapter IVA. Therefore, it is clear that the provisions of chapter IV and also any other law for the time being in force are kept intact, but they are over ridden in their application to State Transport Undertaking only to the extent of inconsistency between them and the provisions of chapter IV.

(17) A consideration of the provisions of S. 68C does, in our opinion, indicate that those provisions govern a matter which does not clearly fall within the ambit of S. 47 we may quote that section here in extends.

68C Preparation and publication of scheme of road transport service of state

Transport undertaking. Where Any state Transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co ordinate road transport service, it is necessary in the public interest that road transport service in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking may prepare a scheme giving particulars of three nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the official Gazette and also in such other manner as the State Government may direct.

The marginal note to this section shows that this section applied only to a scheme prepared by a State transport undertaking. Now, a scheme is something quite different from a mere application. for grant of permit, Before resorting to the provisions of chapter IVA, the State transport undertaking has to form an opinion that for the purpose of providing an efficient, adequate, economical, and properly co ordinate road transport service, it is necessary in the public interest that a scheme should be prepared. Now, forming an opinion of this kind is not a pre requisite for making and application under S. 47 of that Act. This is sufficient to show that Ss. 47 and 68 C apply to different circumstances and not to identical ones. Mr. Hedge however argued that so far as road transport corporation of the State is concerned, it must always form an opinion of the kind which is referred to in S. 68C because of the objects set out in S. 3 of the road Transport corporations Act. According to him a State road transport corporation can be constituted only for carrying on the objects which are set out in S. 3 of the Road Transport Corporations Act, 1950. These objects are identical with the matters regarding which an opinion is required to be formed by the terms of S. 68C. He further said that a State Transport Corporation can be formed as set out in S. 3 are as follows Section 3 of the Act provides that the State, having regard to

(a) the advantages offered to the public, trade and industry by the development of road transport

(b) the desirability of co ordination any form of road transport with any other form of transport.

(c) the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein.

May establish a Road Transport Corporation. Indeed s. 19 of the Act, which is not necessary to refer. This section clearly confers an unrestricted power on the State Transport corporation to operate road transport services in the State, and that power is exerciseable by the corporation not merely in the limited cases which are dealt within S. 68C but in all other case.

(18) It was then contended by Mr. Hedge that the provisions of chapter IVA, and in particular those of S. 68C must be implication be deemed to exclude the

provisions of S. 47, because these provisions are special provisions; while those of S. 47 are general provisions. No doubt, the law is that where there are two sets of provisions dealing with some public matter, one section being unqualified and the other containing a qualification, effect must be given to those provisions containing qualifications. But for this principle to apply the general and the special provisions must be applicable to the same set of circumstances. Where the general principle deal with one set of circumstance and the special provisions deal with another set of circumstance, the latter provisions will apply only where those they circumstances exist. Now, I have already stated that S. 68 C contemplates the preparation of a scheme by the corporation, and it is only when such a scheme is decided upon that the provisions of that section apply. Where the corporation does not prepare a scheme clearly the provisions of S. 68C cannot be availed of. In those circumstances, the provisions of S. 47 which are wide and general in their terms could certainly be availed of by the corporation.

(19) It is however contended that S. 68C makes it obligatory upon the state corporation, wherever in thinks of establishing a road transport service, the prepare to scheme, and that therefore only the provisions of S. 68C are available to the corporation and those of S. 47. We cannot, however lose sight of the fact that for the application of S. 68c a certain opinion has to be formed by the State Transport Undertaking. Now, s. 68C does not in terms make it obligatory upon the corporation to form the necessary opinion every time in intends to start a bus service. This is clear from the fact that the word used in S. 68 C is may and not shall. The Section Says;

Where any state transport undertaking is to opinionthe state transport undertaking may prepare a scheme.....

Now, the word may is used in the permissive sense, and not imperative one and therefore we cannot accede to the argument that every time a state transport undertaking contemplates starting a road transport service, I is bound to prepare a scheme. After all a scheme is something which is general elaborate and intricate. It takes time to prepare a scheme, and then the sanction of the Government has to be obtained as referred to. Objections are invited from persons affected by this scheme, and it is only after considering these objections that the Government sanctions the scheme. he procedure prescribed in Chapter IVA being in itself elaborate, we cannot assume that the legislature intended that such a procedure has to be followed in each and every case where the State transport undertaking desires to start a bus service.

(20) Mr. Hedge,. then referred us to the use of the word otherwise in S. 68C after the words whether to the exclusion, complete or partial of other persons or and said that the word otherwise is used to cover a case of an application made by a State transport undertaking for running a bus service without excluding any other operator, In other words, his argument is that even where the State transport undertaking did not seek a monopoly over a route, it had to comply with the provisions of s. 68C. In our opinion, the word otherwise as used to cover

a case which did not seek the exclusion of any other person either completely or partially as a result of the operation of the scheme prepared by the state road transport undertaking and that it was not intended to cover a case of the kind indicated by Mr. Hedge. We can conceive of a case where a State transport undertaking has prepared a scheme for co-ordinated road transport service in a territory where no road transport service at all exists. In such a case the scheme may see to exclude other persons, either wholly or partly, or it may not want to exclude them at all. Now, a case of the latter kind could not be covered by the expression whether to the exclusion, complete or partial, of other persons to cover such a case it was necessary to add the word otherwise. As we have pointed out, this expression is similar to that which has been used by the legislature in the amended clause (6) of Art 19. and has probably been copied therefrom by the legislature by way of caution.

(21) It was contended by Mr. Hedge that the fact that S. 68F (2) confers discretion on the R.T.A. to refuse to entertain any application for renewal of any other permit, or to cancel the existing permit or to modify the terms of any existing permit, clearly shows that even an ordinary application by the State transport undertaking for grant of a permit to run its buses in a particular route must be made under Chapter IVA. In our opinion no such inference can be drawn from this provision. In the first place, as the opening words of sub sec (2) show, the R.T.A. is required to give effect to the approved scheme in respect of a notified area or a notified route. The powers given by clauses (a) (b) and (c) that sub section are intended to be used only in that connection. Sub sec (1) and of S. 68F provides that after scheme made by the State Transport undertaking is approved by the State Transport undertaking is approved by the State Government, the R.T.A. has no option but to issue a stage carriage permit to the State transport undertaking. the opening words of sub section (2) show that the R.T.A. is required to give effect to the approved scheme. Now, in the scheme as approved by the government, there may be a provision regarding the exclusion of other operators from the notified area or along notified route. In such a case, the R.T.A. which is bound to give full effect to the scheme, must refuse to entertain any application for renewal of any other permit, or cancel an existing permit, as the provisions of the scheme existing permit, as the provisions of the scheme may require where on the other hand, the scheme does not seek to exclude any other person, either wholly or partially, the R.T.A. may entertain other applications for renewal of permit or may modify the terms of an existing permit. It is to be borne in mind that this sub section does not refer to a new application made by any person for grant of a permit, and it, at least in this respect, does not overlap the provisions of S. 47.

(22) For all these reasons, we are of opinion that the provisions of Chapter IVA do not touch the same matter as is dealt with in S. 47.

(23) Now, under s.47 the state transport undertaking used to be granted permits before the enactment of chapter because the language of that section is wide

enough to enable a state transport undertaking to make an application thereunder. this section does not deal with schemes at all, where as chapter IVA does. It would follow therefrom that the amendment made by the legislature in the Motor vehicles act by enacting the provisions of chapter IVA merely added to the rights of a state transport undertaking. That right conferred by this chapter is to run bus services by excluding wholly or partially other operators. This right is quite distinct from the right of the State transport undertaking to institute its bus service in competition with other operators.

(24) It is argued by Mr. Hedge that if after the amendment of the Motor Vehicles act it was intended that S. 47 should also apply to a State transport undertaking, a provision would have been made therein for according preferential treatment to such an undertaking, viz, a viz and individual owner, as has been done in respect of co operative societies. It is true that the proviso to sub sec (1) of the S., 47 does accord a preferential treatment to the co operative society over an individual owner; but that may be because the legislature thought it fit to give encouragement to a co operative endeavor. It seems that the legislature did not think that in view of the provisions of chapter IVA, thereunder a State transport undertaking was enabled to secure a partial monopoly., there was any need to give it any further preferential treatment where it entered the field along with individual owners.

(25) Upon this view, we hold that the application for a permit made by the State Transport undertaking was maintainable. What we have said would also apply to the applications made by the B.E.S.T. Undertaking because that undertaking falls within the definition of State Transport Undertaking contained in s. 68A of the Motor Vehicles Act.

(26) Though the petitioners fail on this point, there are other grounds on which we must allow these petitions. Now, in regard to special C.A. No. 33 of 1959 we have already said that Mr. Jaisingani had contended that the application for a permit was rejected on a ground which does not arise out of the circumstances set out in S. 47 of the Act and that therefore his application for a permit should be granted and the permit granted to the respondent No. 14 should be cancelled. It may be remembered that the R.T.A. had decided at the meeting held on 4-7-1958 to deal with the application of the petitioner and of the respondent No. 14 together. Though both those applications were considered at the same meeting, they were not taken up simultaneously but one after the other. This was itself improper, because the comparative merits of the petitioner and the respondent No. 14 were not considered and indeed could not be considered by the R.T.A. fresh permits were granted to the respondent No. 14 on the following grounds.

Having regard to clauses (a)(b) (d) and (e) of S. 47 of the Motor Vehicles Act, 1939, it was decided unanimously to grant fresh permits to the State Transport. Mathawada to operate state Carriage services on the following routes valid from 2.10.1958.

(27) Now, it does not appear that when the R.T.A came to this conclusion it had considered in a position to satisfy the requirements of this very clause, and whether what the petitioner was able to do was something better or inferior to that which the respondent No. 14 was able to do. The petitioner's application was dismissed on the following grounds.

The application of the Parbhani Transport Co operative Society Ltd, for renewal of the permits held by them was rejected by a majority vote because it has been decided to grant permits to the state transport. Two of the members did not agree with the majority decision and desired it should be recorded that they were in favour of renewal of the permits held by the Parbhani Transport co operative Society, on the following grounds.

(1) As the co operative Transport societies in Saurashtra were being excluded from the scope of nationalisation of bus transport there should not be any discrimination against the Parbhani Transport co operative society in Marathwada, which like Saurashtra, had recently integrated with Bombay State.

(2) The Parbhani Transport co operative Society was established with the encouragement of government: their operation has so far been quite successful, satisfactory, and in accordance with the requirements of law.

(3) The society was rendering public service and it was therefore desirable that they should be afforded an opportunity to render greater public service.

It would thus appear that what was at the back of the mind of the R.T.A when he preferred the application of the respondent No. 14 to that of the petitioner was the policy of nationalisation of road transport which has been decided upon by the government, and that it was for this reason that the R.T.A. followed this peculiar procedure. The petitioner has stated in paragraph 7 of the petition:

In the said meeting (Meeting of 4-7-58) the Divisional Controller on behalf of the said State Transport Authority submitted that the permit be granted to the said State Transport in pursuance of the policy of extension of nationalised services. In the said meeting the Divisional controller on behalf of the said Transport further submitted that it was the policy of the government of Bombay that the State Transport undertakings societies from the date of expiry of the permit. The said controller further submitted that in the pre organised State of Bombay, the Regional Transport Authorities had cancelled permits to similar co operative societies and issued the same to the State Transport.

This statement has been accepted by Mr. Deshmukh in para 8 of his affidavit. We further find the following in Part II of the proceedings of the meeting of the R.T.A. dated 4.7.1958.

In arguing his case Shri Deshmukh stated that in pursuance of the policy of extension of nationalised services to areas not served by the State Transport the application for the grant of permits on the above routes, had been submitted.....He further argued that the respondent in this case happens

to be a co operative society should not be a but to the grant of permits to the State Transport in the pre organised State of Bombay, the Regional Transport authorities and cancelled permits issued to similar co operative societies and issued the same to the State Transport.

From all this and also from the fact that the application for permit made by the petitioner was rejected on th ground that the permit has already been granted to the respondent No,.14 only one conclusion emerges and that is that the petitioners application was rejected and that of the respondent No. 14 was granted solely with the object of giving effect to the policy of nationalisations. Now, that effect to the policy of nationalisation. Now, that is an object which is foreign to the provisions of chapter IV of the Motor Vehicles Act, and therefore that cannot be a ground for granting a permit to a State transport undertaking and refusing one to a private undertaking. the comparative merits of both had to be considered and the application for grant of permit had to be decided bearing the respective merits in mind.

(28) The Appellate Committee which confirmed the decision of R.T.A did no better, Before the Appellate Committee the argument based on the State policy of nationalisation was also advanced. There is nothing in the proceeding before as to show that this argument did not weight with the appellate committee The ppellate Committee has given no reasons for its decision, but has come to the following conclusion nly.

The appellate Committee observed that the R.T.A. decided the question in the light of the provisions of Section 47 of the M.V. Act. the R.T.A came to the conclusion to grant permits to the S. T. Marathwada unanimously and preferred the S.t. to the society, for the operation of services on the outes in question in the public interest. The Appellate committee,. therefore, did not see and reason to interfere with the decision of the R.T.A. and were pleased to pass the following decision; Decision Heard both the parties. The stary order is vacated and the appeal is rejected.

Now, is coming to this conclusion the Appeallate Committee has made two mistakes. In the first plact, the decision of the R.T.A was not unanimous with respect to the petitioners application. In the second place, the R.T.A. has not said that for any particular reasons it prferred the State Transport undertaking to the petitioner.

(29) The petitioner in Sp. C.A. 3673/58 and 15/1959 each preferred Second appeal to the State Government but they were rejected by it. In our opinion, a second appeal did not at all lie to the State Government. These appeals were referred by the virtue of the provisions of Rule 76(1A) of the rules framed by the Bombay Government and notified on 26th August 1949. That rule no doubt provides that a second appeal shall lie to the State Government against any order made by the Appeallate Committee under sub rule (1) of R. 76 framed under the rule making power conferred on the State Government by Section 68

of the Motor vehicles Act. Under Sec., 68(2) (b) a State government is empowered to make rules for the conduct and hearing of appeals that may be preferred under chapter IV. the right of appeal is conferred by Section 64 which section as it stood at the date of the amendment read thus.

64. Appeals - Any person -

(a) Aggrieved by the refusal of the State of a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof or,

(c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of permit, or

(d) aggrieved by the refusal of the state or a regional Transport Authority to countersign a permit, or by any condition attached to such counter signature or

(e) aggrieved by the refusal of renewal of permit or,

(f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof by any condition attached thereto, or

(g) aggrieved by the refusal to grant permission under sub-sec (1) or sub sec (2) of section 59 or

(h) aggrieved by a reduction under Sub sec 1A) of Section 60 in the number of vehicles or area covered by a permit, or

(I) aggrieved by any other order which may be prescribed;

any, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority as opportunity of being heard.

It would appear from the section that only one appeal is contemplated by it, and that appeal is from the original order made by any authority referred to in Section 47. Therefore, the rules framed by the State Government u/s 68 had to confine themselves to the appeals contemplated by Section 64. It was clearly beyond the powers of the State Government to make a rule providing for a second appeal when the Act itself provided for one appeal only. Section 68 has since been amended, but since sub rule (1A) of the Rule 76 was made prior to whether a second appeal can be provided by the rules now. The amendment of sub rule (1A) when it was made was beyond the powers of the State Government, and therefore it never had any validity in law. What was invalid when made cannot be validated subsequently unless the legislature intends to do so expressly or by necessary implication. There is nothing to show that the legislature intended to do anything of the kind in regard to rule (1A). We therefore hold that the appeal to the State Government was incompetent. However, that

makes no difference to the case of the petitioner.

(30) The position therefore would be: In spl. C.A. No. 33/9 we quash the orders of the R.T.A. and the appellate committee and send the matters back to the R.T.A. with the direction that it should consider the applications of the petitioner as well as the respondent No. 14 simultaneously and decide them on merits.

(31) Now, as regards the other two petitioners, the position is that by virtue of the facts referred to by the petitioner before the State Government the matters are directed to go back to the R.T.A. since in our opinion on appeals lay to the state Government the orders made in appeal against both the petitioners in second appeal are in effect bad. We however agree with the petitioners that the comparative merits of the petitioners' claims and those of the B.E.S.T. undertaking have not been considered by the R.T.A. and that it is necessary for us to mention that the petitioners' applications were rejected by the R.T.A. and the petitioners' complaint is that the rejection of those applications was based on certain information which the R.T.A. had obtained from certain sources. Now, the petitioners' petitions were not heard with respect to this matter at all, when the R.T.A. decided to take that information into consideration. The petitioners' appeals from the decision of the R.T.A. were rejected by the appellate committee. Second appeals preferred by the petitioners against the decision of R.T.A. rejecting their applications are still pending with the state government. It is rather strange that though these second appeals were preferred by the petitioners long before their appeals against the order granting a permit to the B.E.S.T., the latter have been decided but the former have not been decided yet. It is however not necessary for us to make any directions regarding this as these appeals are not competent. We leave it open to the petitioners to make appropriate applications to this court, if so advised, by 23rd February. If the petitioners move this court within this time, we would consider the issue of further directions to the R.T.A. We quash the orders of the State Government, the appellate Committee and also the R.T.A. The costs of these petitioners will be borne by the respondents.

(32) Order accordingly.