

(1958) 08 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 2359 and 2360 to 2364 of 1957

Ram Prashad

APPELLANT

Vs

The Regional Transport Authority, Agra Region, Agra and
Others

RESPONDENT

Date of Decision : 25-08-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 44(2), 47, 47(2), 68F
Uttar Pradesh Motor Vehicles Rules, 1940 — Rule 49

Citation : AIR 1959 All 197

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Tandon, J.—This and five other writ petitions, Nos. 2360, 2361, 2362, 2363 and 2364 all of 1957, have similar facts and raise identical questions of law. They have also been heard together and can be disposed of by a single judgment.

2. I shall, therefore reproduce here the facts in writ petition No. 2359 of 1957 and shall if need be refer to any extra fact in the sister writ petitions should it be necessary in disposing it.

3. Ram Prasad the petitioner in writ No. 2359 of 1957, held road permit No. 116 A for a stage carriage on Agra Shamshabad-Tula road. The last permit granted to him was in 1954 which was valid upto 12-8-1957. On 11-6-1951, the State Government nationalised the above route and made the declaration u/s 3 of the U. P. State Road Transport Act, 1951. that the stage carriages by the State shall be run on it to the exclusion of the petitioner. Subsequently in pursuance of a scheme prepared under the Act, the petitioner was served with a notice that his permit shall stand cancelled with effect from 11-11- 1952.

As a result of this notice the applicant moved this Court against the validity of the notice and constitutionality of the U. P. State Transport Act, 1951. This Act was ultimately on 13-10-1954, held to be ultra vires by the Supreme Court. Ram Prasad, however, continued to ply the stage carriage on the route during this interval in view of the stay granted by this Court and the Supreme Court. The State Legislature then passed the U. P. Road Transport Services (Development) Act, 1955 and like its predecessor Act this too made provision for State road transport services on the lines contained in the Act of 1951.

On 25-6-1956 the petitioner was served with a fresh notice under the provisions of the Act of 1955 that the stage carriage vide permit No. 116A shall in pursuance of the scheme made thereunder cease to ply on the above route and shall be transferred to Etah-Sikohabad route. There is a provision in the Act of 1955 which authorised the transfer of permit from one route to another.

The transference was apparently done under this provision. The petitioner once again moved this Court by a writ petition challenging the validity of the Act of 1955 and of the scheme framed thereunder including the order of transfer. This was writ petition No. 1578 of 1956. He also obtained an interim stay order wherefore he continued to ply his stage carriage. This writ was, however, dismissed by a Division Bench which held that the Act etc. were valid. Against that decision the petitioner asked a certificate of fitness for appeal to the Supreme Court which was granted.

Along with it the Court also made a stay order, relevant portions of which may usefully be reproduced here.

"For the reasons given above we are of the opinion that we should, as we do, direct, that the petitioner should not be restrained from running his bus on such route on which he was entitled to run his bus under the permit obtained by him under the Motor Vehicles Act. The petitioner will be entitled to run his bus only for the period for which he held valid permit.

This order of ours will, however, not be considered to mean that the State will not have a right to put more of their buses on this route on which the petitioner operates, if the State so desires and have the power under the provisions of the U. P. Road Transport Services (Development) Act, 1955. This order of stay will be operative till the petitioner lodges his appeal in the Supreme Court.

We wish to make it clear that if the permit of the petitioner in the meanwhile expired or may expire during the period during which the stay order granted by us is operative then the petitioner will have the right to apply for renewal of his permit and it will not be a valid ground for the authority dealing with the renewals to say that since the U. P. Road Transport Service (Development) Act 1955 had been held to be intra vires of the Constitution and since that Act is held to be operative the permits will not be renewed. Applications for renewals of permit will be considered by the authority entitled to make the renewal on grounds laid down under the Motor Vehicles Act."

Although the certificate of fitness was granted long ago it does not appear, at least a contrary statement has not been made in the respondents' affidavit either, that an appeal has till now been lodged in the Supreme Court.

4. The validity of the petitioner's permit was, as stated earlier also, unto 12-8-1957. On 4-6-1957 he, therefore, made an application to the Regional Transport Authority concerned for renewal of his permit. There was, according to the petitioner, intentional delay in considering the renewal application with the result that he had to approach once again this, Court for a direction to the Regional Transport Authority to take up its consideration.

While this petition by him was being considered an order, probably a consent order was made by the Court that temporary permit shall be granted to the petitioner from the date on which his permit expired, i.e., 12-8-1957 to be valid till the date on which his application for renewal of his permit has been considered by the Regional Transport Authority. He thereupon got the necessary temporary permit. On 17-8-1957, petitioner's application for renewal was published for objection u/s 57 of the Motor Vehicles Act inviting objections but admittedly no representation in writing was made against it by any one.

The Regional Transport Authority then took up petitioner's application for consideration in its meeting of 19-9-1957 and rejected it. The order made by it and which is the subject matter of controversy is as under :

"It was argued that the case of renewal u/s 58 should not be considered like new cases and the procedure prescribed in Section 57 should not apply. The applicant relied on the High Court's observation in *Makhan Lal Vs. State of Uttar Pradesh and Others*, but failed to show any portion of the judgment confirming the view advanced by the applicant. On the other Hand, Section 58 specifically prescribes that an application made for renewal should be disposed of as it were an application for permit.

Principles which are to be applied in dealing with these cases are enunciated in Section 47. The Regional Transport Authority has to consider the interest of the public generally, advantages to the public of the services provided and the adequacy of the other transport services operating on the route. In the light of these the case was examined.

On this route the number of buses of the roadways plying is seven. The buses of the roadways are definitely more comfortable and roomy for the passengers and therefore, they provide better services for the public. The number of buses thus provided is adequate and in view of the provisions of Section 47 the Regional Transport Authority is satisfied that the renewal should be refused.

5. The meeting of the Regional Transport Authority dated 19th September was attended by the District Magistrate of Agra, as Chairman, the Regional Transport Officer, as Secretary member, and two non-official members of the Regional Transport Authority. Sub-section (2) of Section 44 of the Motor Vehicles Act has

provided :

"That a Regional Transport Authority shall consist of a Chairman who had judicial experience and such other official and non-officials not being less than two as the State Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a State or Regional Transport Authority."

There is a proviso also which provides that nothing in the section shall be construed as debarring an official other than an official connected directly with the management or operation of a transport undertaking, from being appointed as or continuing as a member of any such authority merely by reason of the fact that the Government employing the official has or acquires any financial interest in a transport undertaking.

The petitioner has challenged the due constitution of the Regional Transport Authority at its meeting of 19-9-1957 and his allegation is firstly, that the District Magistrate, who presided as Chairman, has had no judicial experience, and, secondly, that the Regional Transport Officer, who participated as Secretary was an official who was interested in the State transport undertaking which facts according to him, rendered the constitution invalid.

The petitioner's allegation also is that the Regional Transport Authority is subordinate to the State Transport Authority of which the Transport Commissioner is the Chairman. And the Transport Commissioner as head of the State Transport undertaking, indeed, according to the petitioner, gave directions to the Regional Transport Authority not to renew any permits on routes taken over by the State transport undertaking. The refusal to renew is thus said to have been made in the above circumstances. His contention also is that the Regional Transport Authority acts quasi judicially while considering the application for grant of permits and for their renewals.

There was no material before it to come to the conclusion, as it purported to do, that the State Transport buses were more convenient or that the interest of general public required the refusal" of the renewal of petitioner's permit. In this connection he has relied on the fact that his vehicles had been running on this route for the last over six or seven years along with the vehicles belonging to the State transport undertaking which showed the necessity of the continuance of the services provided by them. He has also claimed that the vehicles provided by him are more comfortable and are better liked by the travelling public.

In this connection he has also relied on the fact that his carriage also conformed to the requirements in that behalf provided under the Motor Vehicles Act. In brief he has urged that the Regional Transport Authority acted mala fide in refusing the permit and even though it may have professed to have acted u/s 47 of the Motor Vehicles Act its motive was to favour the State Transport undertaking in this manner. It was thus a clear contravention of the order made by this Court

which required that the application for renewal of the permit shall be considered in accordance with the provisions in that behalf contained in the Motor Vehicles Act.

6. It appeared that the vehicles belonging to the State Transport undertaking do not obtain permits from the appropriate authority under the Motor Vehicles Act, 1939. The petitioner's contention with respect to this matter is that the State vehicles are plying on the road in contravention of the Act and without authority of law,

7. The facts in the other petitions in so far as, they differ from Writ Petition No. 2359 of 1957, are as under :

8. In Writ Petition No. 2360 of 1957 the petitioner is Deep Chand who held a permit No. 118-A for a stage carriage on Agra-Janger-Tantpur route. It was valid upto 15-8-1957. Eleven stage carriages belonging to the State and one to Deep Chand had been plying on it for the last seven years. The nationalisation scheme in respect of this route has provided 15 services.

9. In Writ Petition No. 2361 of 1957 Niranjan Singh is the petitioner and held permit No. 7-A for a stage carriage on Mathura-Raya-Nazhil route. It was valid upto 5-8-1957. In the nationalisation scheme in respect of this route the number of services provided is 17.

10. In Writ Petition No. 2362 of 1957 the petitioners are Messrs. Hari Shankar Shyam and Jagdish Prasad and they held permit No. 119-A on Agra-Jagner-Tantpnr route. This was valid upto 24-8-1957. In the nationalisation scheme 15 services are provided on this route.

11. In Writ Petition No. 2363 of 1957 the Jain Transport and General Trading Company are the petitioners and they held two permits Nos. 8A and 9A for stage carriages on Aligarh-Iglas-Mathura route and they were valid upto 5-8-1957. Again there are 15 services provided on this route under the nationalisation scheme. Twelve stage carriages are said to be running on this route by the State exclusive of two by the petitioners

12. In Writ Petition No. 2364 of 1957 Messrs. Brahma Lal Singh Brahmchari Singh are the petitioners and hold permit No. 117 A on. Agra-Shamsabad-Tula route. It was valid upto 27-7-1957. The nationalisation scheme in respect of this route has made provision for 13 services. It is said that at present live stage carriages by the State and one by the applicants have been plying. It is not clear how many services are provided by these vehicles.

13. It would be noticed from the above details about the other routes that there is no substantial difference in these six cases except that they relate to different permits for different routes but the subject-matter is otherwise more or less identical.

14. The grounds urged against the order of the-Regional Transport Authority

refusing to renew the permits accordingly are these.

15. Firstly that the refusal by the Regional Transport Authority to renew the permits is in contravention of the order passed by this Court, dated 18-1-1957 and is actually inconsistent with it. The Regional Transport Authority also imported irrelevant and foreign consideration outside the provision of Section 58 of the Motor Vehicles Act.

16. Secondly, that the Regional Transport Authority was not duly constituted and they also-acted mala fide.

17. Thirdly, that inasmuch as no representation had been made by any person against the renewal of the petitioner's permit it was not open to the Regional Transport Authority not to renew it. Further there was no material before it to enable it to arrive at the conclusion about the vehicles of the State transport undertaking being more comfortable and convenient.

18. Fourthly, that the Regional Transport Authority failed to allow the petitioner an opportunity to show cause against the above facts regarding the vehicles belonging to the State transport undertaking being more convenient.

19. Fifthly, that inasmuch as the petitioner's vehicles also conformed to the requirements laid down in that behalf under the Motor Vehicles Rules, any question about the State transport vehicles being more comfortable was irrelevant, and

20. Lastly, that the Regional Transport Authority acted in a partisan spirit under the directions of the Transport Commissioner.

21. The respondents are challenging the several grounds urged on behalf of the petitioners. They have also denied that the Regional Transport Authority acted mala fide or that the order refusing renewal of permits was made by it at the instance or direction of the Transport Commissioner. Besides contesting in this manner the petition on merits, they also urged that the same should be dismissed on the ground of existence of an adequate alternative remedy. Admittedly, the petitioners failed to appeal against the order passed by the Regional Transport Authority refusing to renew their permits as, however, was open to them under Clause (e) of Section 64 of the Motor Vehicles Act. Failure on their part to appeal against the said order is said to bar the present petitions.

22. Before the various grounds are discussed reference may be made to some of the relevant provisions of the Motor Vehicles Act, 1939, and of the Rules made thereunder :

23. Section 58 of the Act makes provision for renewal of permits. Sub-section (2) provides that a permit may be renewed on an application made and disposed of as if it were an application for a permit. The second proviso under this Sub-section requires that other conditions being equal an application for renewal shall be given preference over new application for permit. Applications for renewal of

permits were undoubtedly made in these cases.

24. Section 57 lays down the procedure to be followed in applying for and granting of permits. Sub-sections (1.) and (2) are not very material. Subsection (3) which is so, provides that on receipt of an application for a stage carriage permit the Regional Transport Authority shall make the application available for inspection in the office of the authority and shall publish it or its substance with a notice of the date before which representations in connection therewith may be submitted. The time and place at which the application and the representation made, if any, shall be considered is also published along with the notice.

Sub-section (4) lays down that no representation shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making the representation. Sub-section (5), which again is very important, is that when any representation is made the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

As this provision is, a duty is cast on the Regional Transport Authority to dispose of the application at a public hearing in those cases where any representation is made against it in pursuance of the notice under Sub-section (3). No obligation is placed by the Sub-section on the Regional Transport Authority to consider the application at a public hearing where no representation has been made against it. Sub-section (6) also relates to cases where a representation is made against an application. Sub-section (7) requires that where an application is refused by the Regional Transport Authority it shall give to the applicant in writing its reasons for the refusal.

25. Section 48 confers power on the Regional Transport Authority to grant or refuse to grant a stage carriage permit. The power, however, is subject to Section 47.

26. Section 47 in its turn provides that a Regional Transport Authority shall in considering an application for a stage carriage permit have regard to the following matters namely :

- (a) the interests of the public generally;
- (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;
- (c). the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served;
- (d) the benefit to any particular locality or localities likely to be afforded by the

service;

(e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;

(f) the condition of the roads included in the proposed route or area.

It further provides that the Regional Transport Authority shall take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies.

Sub-sections (2) and (3) of this section are not directly relevant and need not be referred to. This section thus makes two-fold provision; firstly, that in considering an application for a stage carriage permit the Regional Transport Authority shall have regard to the matters enumerated in Clauses (a) to (f), and, secondly, that it shall also take into consideration any representation made by persons etc. mentioned above.

27. Rule 45 of Chap. IV of the U.P. Motor Vehicles Rules 1940, has made provision for the conduct of business by a Regional Transport Authority. Sub-rule (a) gives power to the Regional Transport Authority to make bye-laws to regulate the conduct of its business and provide that its business shall be conducted in accordance with those bye-laws under the direction of the Chairman. Sub-rule (b) makes the secretary responsible to lay before the authority the agenda to be considered at the meeting. Sub-rule (c), which is rather important, is that save in the case of the hearing of an objection to the grant of a stage carriages permit and in the case of the hearing of a representation under Sub-section (6) of Section 57 of the Act the Regional Transport Authority has discretion to decide any matter before it without holding a meeting by a majority of the votes of members recorded in writing and sent to the Secretary.

This procedure is referred to in the Rules by the expression "procedure by circulation." Sub-rule (d) requires the Secretary, whenever the procedure by circulation is adopted, to send to each member of the Authority such particulars of the matter as may be reasonably necessary in order to enable the member to arrive at a decision. He shall also specify the date by which the member has to forward his vote to the office of the Authority. After the votes of the members have been received, as aforesaid, the Secretary has to lay the papers before the Chairman who shall record the decision by endorsement on the form of application or other document according to the votes received and vote or votes cast by the Chairman.

The Sub-rule, however, provides that the record of the votes cast shall be kept by the Secretary and shall not be available for inspection by any person save by

a member of the Authority at a regularly constituted meeting of the Authority. Sub-rule (e) is not very relevant but Sub-rule (f) provides that the Regional Transport Authority may summon any applicant for a permit to appear before it and may decline to grant the permit until the applicant has so appeared either in person or by an agent authorised by him in writing.

Under Sub-rule (g) an absolute power has been given to the Regional Transport Authority to decide any matter upon procedure by circulation. Under Sub-rule (h) when a matter is decided by the votes of members present at a meeting of the Regional Transport Authority no person other than a member of the Authority shall be entitled to be present and no record of the voting shall be kept save of the number of votes cast on either side.

28. Rule 49 provides that when an application for any permit is considered at the meeting of the Regional Transport Authority and the applicant desires to be heard in support of his application or has been summoned to appear under the provisions of Sub-rule (f), Rule 45, he may either appear and conduct his case in person or may be represented by any person authorised by him in writing in this behalf, Sub-rules (b) and (c) of this rule make provision similarly for hearing in the case of representation made u/s 57 and the appearance at the hearing of the persons making the representation either in person or through an authorised person.

29. Three facts clearly emerge from the above provisions in the rules :

30. Firstly, that the business of the Regional Transport Authority is regulated and conducted by the bye-laws framed by it.

31. Secondly, that the Regional Transport Authority is not obliged to hold its sitting and give a hearing to every applicant for a permit before it. It can even decide matters through "procedure by circulation." Its decision too can be arrived at on votes received in this manner and no person except a member of the authority can claim to be present at the time when the members record their decision.

32. Thirdly, that the Regional Transport Authority will allow hearing to an applicant in support of his application where he makes such a request or where he has been summoned by it under Sub-rule (f) of Rule 45. The right to appear before the Regional Transport Authority at the hearing has also been given to a person making the representation.

33. It will be necessary to refer to these provisions later when discussing the petitioner's objection regarding failure by the Regional Transport Authority to comply with the rules of natural justice.

34. As was noticed earlier also, one of the grounds relied upon by the petitioner is that the Regional Transport Authority was not properly constituted, Two facts were urged in this connection:

35. Firstly, that the District Magistrate of Agra, who was Chairman of the Regional Transport Authority, was not a person possessing judicial experience which was necessary in view of Sub-section (2) of Section 44.

36. The second ground was that the Regional Transport Officer, the Secretary of the Regional Transport Authority, was an official having financial interest in his capacity of an employee of the State Government in the State Transport undertaking. He too, therefore, was incapacitated to be a member of the Authority under the said provision.

37. It is not disputed that a District Magistrate is an officer possessing judicial experience in criminal matters. But the contention is that Sub-section (2) of Section 44 in making provision for judicial experience has intended that the experience should be on the civil side, i.e. the Chairman should be a person who has worked as a member of Civil (Judicial) Service. There is no such restriction so far as the provision in Sub-section (2) itself is contained. All that the Sub-section, has laid down is that the Chairman shall be a person) who has had judicial experience.

Experience in the decision of criminal cases is as much judicial experience as the experience acquired by a civil Judicial Officer in deciding civil disputes. The trial held by a Magistrate is a judicial trial. Consequently the experience that he thereby acquires is judicial experience. Merely because a Magistrate is not required to handle civil cases or does not belong to the Civil (Judicial) Service, it cannot be successfully urged that he is not possessed of judicial experience. This contention has, therefore, no force.

38. The second contention, too, must be rejected. A Regional Transport Officer is no doubt an official of the State Government which owns the State transport undertaking. But there is no material to point out that he is in any manner directly connected with the management or operation of the said undertaking, In the case of the Transport Commissioner the allegation undoubtedly is that he is at the head of the undertaking and is also responsible for its operation, but no such thing has been said in the case of the Regional Transport Officer.

Even the fact that the Regional Transport Officer may be subordinate to the Transport Commissioner, in the absence of any allegation that the former is in any manner connected directly with the management or operation of the said transport undertaking, cannot render him so. Under the proviso to Sub-section (2) of Section 47 an official other than an official connected directly with the management or operation of a transport undertaking is not debarred from being appointed as a member of the Regional Transport Authority. In view of this provision the appointment of the Regional Transport Officer as one of the members of the Regional Transport Authority did not render its constitution invalid.

39. These were the only two grounds urged against its constitution which have failed.

40. I, therefore, hold that it has not been shown that the Regional Transport Authority was not properly constituted in this case.

41. Reverting now to consider the effect of Section 47 of the U. P. Motor Vehicles Act and how far its provisions were obeyed in this case, it would at once appear that this section, as was observed earlier also, contemplated that the Regional Transport Authority shall have regard to the matters (a) to (f) mentioned in it and that it shall also take into consideration any representations made by persons or bodies therein described. The Regional Transport Authority acts quasi judicially in deciding the applications before it for grant or renewal of stage carriage permits.

This fact has not been disputed. Indeed, there are repeated authorities which have upheld this aspect of the proceedings before it. The petitioner's contention in this connection, therefore, is that it was necessary, in those circumstances, for the Regional Transport Authority to give the petitioner an opportunity to be heard and also place before it the material on which it proposed to act in deciding his application for renewal. There is no dispute that the petitioner was not heard.

In fact, he himself admits that he was given a hearing. His grievance is that the Regional Transport Authority had no material before it to hold--in any case, it was not placed before him (the petitioner)--that the vehicles of the State transport undertaking were more commodious, or comfortable or that better services were offered by it to the public; there was no material either to substantiate the conclusion recorded by the Regional Transport Authority that the number of services provided by the State Transport undertaking was adequate according to the requirements of the route.

42. The question will arise whether the Regional Transport Authority was obliged by any provision, either in the Motor Vehicles Act or in any rules framed thereunder, to furnish to the petitioner/ the material on which the Regional Transport Authority acted. The necessity provided in Section 47 for taking into consideration any representation made by any person or body against the grant or renewal of a permit cannot be used to support the contention as will no doubt be the case with the hearing of any such representation--that the Regional Transport Authority should give similar notice to the petitioner, where no such representation has been made and it is required to decide the application after considering "the matters (a) to (f) mentioned in the section.

No such considerations as are applicable to cases where representations are made can be import* ed while the Regional Transport Authority is dealing with an application in the context of the matters (a) to (f). Even the Rules framed in this connection under "the Motor Vehicles Act do not contemplate any such procedure, as claimed by the petitioner. Rule 49 requires the Regional Transport Authority to hear the petitioner in support of the application. This wasi done in this case. Clause (b) of this rule is not applicable and similarly Clause (c), as they apply to ? those cases only where a representation has been made as was not the position

here.

No other rule has been shown to me under which" the Regional Transport Authority had any duty to bring to the notice of the petitioner the material reflecting on matters (a) to (f) which might be before it. Learned counsel for the petitioner fully realised this difficulty. Accordingly his contention has been that the rules of natural justice demanded that the Regional Transport Authority should have done so. I do not think that this is correct. As was held by their Lordships of the Supreme Court in *The New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*,

"the question whether the rules of natural justice have been observed in a particular case must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the legislature and in that sense the rules themselves must vary."

There was nothing in Section 47 or in the rules governing the procedure to be followed by the Regional Transport Authority to make it incumbent upon it to hand over to the petitioner the material with reference to matters (a) to (f). On the contrary, the scheme of Section 47 has contemplated a similar necessity when a representation has been made. The right to obtain a permit or a renewal thereof is a right created by the Motor Vehicles Act which also prescribes the procedure regulating the grant and renewal.

The right must therefore be determined in accordance with the procedure contained in the Act or the rules made under it. However if this procedure has not required the particular material to be handed over to the petitioner for his information, the Regional Transport Authority was not bound either by the rules of natural justice or by anything in the Act itself to do so. Regional Transport Authority was not a tribunal in the sense of an ordinary Court of law. It had no doubt to act in a fair and just manner, but it cannot on that account be said that a duty was cast on it to convey the material to the petitioner which indeed was intended for forming its own opinion.

Section 47 has very clearly stated that the Regional Transport Authority shall have regard to matters (a) to (f) and the petitioner must be presumed to have known those facts and also pressed his claim as best as he could in their background, The matters were therefore fully within the notice of the petitioner. Unless, therefore, it can be said that the Regional Transport Authority in refusing to renew the permit acted on extraneous considerations, i.e. considerations not covered by Clauses (a) to (f) of Section 47, it was not possible to infer that the rules of natural justice had been transgressed.

43. Therefore, pausing for a moment to see the order of the Regional Transport Authority by which the various applications for renewal were dismissed one finds that two questions seem to have been canvassed before it; firstly, with regard to the procedure prescribed in Section 57 which is not very relevant here, and secondly, the requirements of Section 47 itself. The Regional Transport Authority

observed in regard to the latter section that

"Principles which are to be applied in dealing with these cases are enunciated in Section 47. The Regional Transport Authority has to consider the interest of the public generally, advantages to the public of the services provided and the adequacy of the other transport services operating on the route. In the light of these the case was examined."

It is not possible in the face of the above to accept that the Regional Transport Authority acted outside Section 47. In the next paragraph it actually pointed out that

"On this route the number of buses of the roadways plying is seven. The buses of the roadways are definitely more comfortable and roomy for the passengers and, therefore, they provide better services for the public. The number of buses thus provided is adequate and in view of the provisions of Section 47 the Regional Transport Authority is satisfied that the renewal should be refused."

It is not denied that the Regional Transport Authority was competent to reject the permit on the findings reached by it. The grounds otherwise also are covered by Clauses (a) to (f) of Section 47. The complaint, however, is that the Regional Transport Authority acted in a partisan spirit and reached its conclusions not upon considerations contained in Section 47 but with the desire to help the State transport undertaking.

In this connection he also points out, firstly, that there was no material to hold the State buses to be more comfortable and roomy and, secondly, that it could not be one of the considerations in rejecting the application. Whether the State buses are or are not more comfortable and roomy is a question of fact and this Court will not, in these proceedings, arrogate to itself the duty to scrutinise the conclusions about facts. It is not possible to accept the other contention, that the Regional Transport Authority had no material before it in that behalf.

Admittedly, State buses are operating on these routes for the last several years, Nationalisation schemes pertaining to these routes, too, have been framed and have been in operation. According to the schemes the State buses alone are to run on these routes but under an stay order from this Court the petitioners' buses were allowed to operate simultaneously with them during the currency of their permit.

To hold, therefore, that the Regional Transport Authority had not the necessary information before it is not tenable. No doubt, the petitioners have in their affidavit made an averment that there was no material before it, but, having regard to the entire circumstances including those mentioned above, I do not consider it to be correct. Obviously there was no representation by anyone against the petitioner's application for renewal. Therefore, the hearing which the Regional Transport Authority held must have been in the background of the State transport services operating on this route.

44. I may also refer to the order of this Court dated 18-1-1957 (Annexure A) by which the Regional Transport Authority had been directed to consider renewal application by the petitioner. Here again, it was laid down the State transport services were already running on this route and that they shall continue to so run. The Court also observed in it that its order will not be considered to mean that the State shall not have the right to put more of their buses on the route on which the petitioner operated, if it so desired and had the power under the provisions of the U. P. Road Transport Services (Development) Act 1955. The presence of the State buses on the route and the right of the State to put more vehicles on it, subject to the provisions of the U. P. Road Transport Services (Development) Act 1955 was clearly stressed in it. This contention therefore fails.

45. The second point also cannot help the petitioner. The vehicles have undoubtedly to comply with certain minimum requirements as to space etc. by the rules framed under the Motor Vehicles Act. But these rules are in their very nature intended to lay down the minimum requirements. They do not prohibit any operator from making the vehicles more comfortable and furnishing extra facilities. Again, the matters referred to in Section 47, particularly those referred to in Clauses (a) and (b) and even (c) entitled the Regional Transport Authority to pay regard to this aspect also.

If the State buses are better and afford comparatively greater comfort and advantage to the public --a question of fact which the Regional Transport Authority alone was competent to judge--it cannot successfully be urged that because the petitioner's vehicles also fulfilled the requirements as to space etc.: the Regional Transport Authority had no authority to reject his application on that ground.

46. In this very connection, I may further point out that the Regional Transport Authority was not bound to renew the permit in favour of the petitioner for the reason alone that his buses also had been operating along with the State buses in the past. In everyone of these the scheme framed under the U. P. Road Transport Services Development Act, 1955 provides for a large number of services which may run on the routes.

Clause (c) of Sub-section (1) of Section 47 entitled the Regional Transport Authority to have regard to this fact which says that the adequacy of other transport services operating or likely to operate in the near future can be taken into consideration. It was open to the Regional Transport Authority to take the above facts into consideration and if it was of the opinion, as it claimed to be that the State buses were more comfortable and roomy and provided better services it was fortified in its action by the above provision,

47. The question that still remains to be judged is whether the Regional Transport Authority acted mala fide and did not exercise its discretion honestly and freely. The allegations in this connection have already been noticed above. Neither the fact that the Transport Commissioner is at the head of the State

transport undertaking, nor the fact of subordination of any member thereof under the Transport Commissioner can be a valid ground for holding that it did not act independently. Regional Transport Authority has a statutory existence and its powers and duties are regulated by the relevant provisions of the Act.

It acts under and in accordance with those provisions. There is really nothing on which it can be said that it did not act independently. Learned counsel relied mainly on the history of the struggle going on between the State transport undertaking, on the one hand, and the private operators, on the other, during the last many years and he wanted to infer that the Regional Transport Authority, which is an Authority in the Transport Department, must have acted in that manner. While it may be a ground for scrutinising the action of the Authority with greater care and caution, one cannot impute motives to the Regional Transport Authority on that basis alone.

Out of the four persons who attended the meeting of the Regional Transport Authority only one belonged to the Transport Department, viz. the Regional Transport Officer. Neither the District Magistrate, nor the two non-officials who attended the meeting, belonged to the Transport Department I am unable to accept the suggestion that any direction or the like had been received by these persons from the Transport Commissioner much less that they acted upon it. I do not think that the order passed by the Regional Transport Authority can be said to be the result of mala fide action on their part.

48. Another objection taken by the petitioners has been that the State Government was bound, in view of the new provision contained in Section 68F of the Motor Vehicles Act, to obtain a permit in the case of their vehicles also which they have not. It is admitted that on the date the State Government filed its counter-affidavit no permits for these vehicles had been obtained u/s 68F. But it was stated that the matter was being examined and necessary action would be taken.

In the past, the practice was not to obtain any such permit in view of the provision in Section 42. Necessity for a permit in their case too has been provided now only by S, 68F. The petitioner's contention is that in the absence of a permit held by the State vehicles the State is not entitled to run them on the routes, they should not, therefore, have been taken into consideration either.

In the first place, it is not known whether permits have since been obtained or not. Secondly, Section 68F entitled the State transport undertaking to a permit for these vehicles automatically notwithstanding anything contained in Chap. IV of the Act in respect of a notified route. The Regional Transport Authority is bound under this provision to issue a permit to them. It is therefore a question of fulfilling a legal formality and does not affect the right of the State transport undertaking to ply its buses provided they are sanctioned by the scheme. This ground too therefore fails,

49. In regard to the plea of alternative remedy urged by the respondents, two-

fold arguments were urged in support. Admittedly the petitioner never appealed against the order made by the Regional Transport Authority as permitted by Section 64 of the Motor Vehicles Act; instead he soon after filed this petition. The other ground urged is that the petition raised questions of fact as to the bona fides of the Regional Transport Authority in making its order but these could not be adequately examined in these proceedings. It would need determination of certain disputed facts which cannot be done here.

50. The above plea by the respondents was not taken at the first opportunity but was done at the hearing. Accordingly the petitioner has opposed its entertainment at this late stage. On merits he points out that an appeal u/s 64 was not an adequate remedy in this case and in this connection he has relied on the history of the litigation between himself and other operators, on the one hand, and the Roadways Administration, on the other. Reference to these cases has been made in this judgment earlier also.

It is urged that in view of them the petitioner felt nervous whether he would succeed in getting his remedy from the appellate authority. It is also contended that the appellate authority holds its sittings at intervals. It was not sitting at the time the Regional Transport Authority made its order refusing to renew the permit, so that it was not possible for the petitioner to obtain immediate and interim relief without which irreparable loss was bound to occur. It was noticed earlier that the petitioner had been permitted by this Court by its order of 18-1-1957, to continue to ply his vehicles until the then existing permit was valid and also to apply for renewal of the same.

At the same time, the Regional Transport Authority too was directed to consider his application for renewal in the background of the provisions of the Motor Vehicles Act, 1939. In view of the above, it is urged that since the application for renewal had been made by the petitioner in furtherance of the Court's order it was but appropriate that the petitioner moved this Court against the action complained of by the Regional Transport Authority, And as to the objection that questions of fact required to be determined the petitioner's answer is that it is hardly so, as his allegation of mala fides, simply required to be inferred from facts which are not in dispute.

51. This Court no doubt refused to invoke its special jurisdiction under Article 228 of the Constitution where there are questions of fact on which there is serious dispute and which cannot be satisfactorily decided without taking evidence as was also held by the Supreme Court in *The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi*, It will also decline to grant relief under Article 226 if there is an alternative remedy and the relief that can be granted under Article 226 will not be complete.

In an appeal u/s 64 of the Act against the order of the Regional Transport Authority the tribunal is no doubt in a position not only to examine the correctness of the decisions about facts reached by the Regional Transport

Authority but also form its own opinion upon document's etc., which might be placed before it by the petitioners under Rule 73 of the U. P. Motor Vehicles Rules which confers on a party the right to file documentary evidence in appeal also. There does, in view of these facts appear considerable force in the objection by the State but as the petitions are failing on merits, a definite opinion need not be expressed on this ground.

52. In view of the above discussion and the failure of the petitioners to show that the impugned order of the Regional Transport Authority was vitiated on any of the grounds urged by them these petitions fail. They are accordingly dismissed with costs. The stay orders are discharged.