

(1976) 09 CAL CK 0016
In the Calcutta High Court
Case No : F.M.A. No. 734 of 1975

Serampore Bandel Bus Association Route No. 2	APPELLANT
Vs	
Serampore Bandel Bus Association Route No. 3	RESPONDENT

Date of Decision : 06-09-1976

Acts Referred:

Motor Vehicles Act, 1939 — Section 44(4), 47, 47(1), 47(3), 48(3)
West Bengal Motor Vehicles Rules, 1989 — Rule 55A, 81

Citation : 81 CWN 322 : (1977) 1 ILR (Cal) 154

Hon'ble Judges : M.N. Roy, J;Anil K. Sen, J

Bench : Division Bench

Advocate : R.V. Deb, Saktinath Mukherjee and B.K. Banerjee, for the Appellant;R. Chowdhury and A.N. Basu and Moloy K. Basu, for Respondents Nos. 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Anil K. Sen, J.—This is an appeal under Clause 15 of the Letters Patent, it is directed against the judgment and order dated May 12, 1975, passed by Banerjee J. in C.R. 18724(W) of 1975. By that order the learned judge made absolute a Rule which was earlier obtained by the Respondents Nos. 1 and 2 on a writ petition disputing therein the validity of a resolution of the Regional Transport Authority, Hooghly, dated July 30, 1975 It will be necessary to refer to certain facts in the background to appreciate the dispute between the parties There, exists a stage carriage route from Bandel to Serampore numbered as Route No. 2 Forty stage carriages are plying on the said route and the present Appellant is the Association of the permit-holders on that route In the year 1973, the Regional Transport Authority, Hooghly, proposed to shift the Serampore terminus of the aforesaid Route No. 2 from Serampore to Mahesh at a distance of about two miles from its original destination It is not in dispute that when so Shifted it would overlap a part of another stage carriage route, viz Route No. 3 The said Route No. 3, as it stands at present, runs from Shyambazar to Serampore via Vivekananda Setu The Respondent No. 1 is the Association of the

permit-holders plying their stage carriages on Route No. 3 and the Respondent No. 3 is one of such permit-holders on that route. An objection having been raised to the aforesaid proposal or shifting the terminus of J. Route No. 2 from Serempore to Mahesh that was overruled and the terminus was shifted to Mahesh as a result whereof Route No. 2 got an extension of resolution dated March 12, 1973 of the R.T.A. Hooghly, which is the subject-matter of challenge in a Rule now pending in this Court, namely, C.R. No. 1382(W) of 1973.

2. About two years thereafter the R T A, on March 19, 1975, adopted a resolution to the following effect:.

Considered the proposal for shifting of terminal point of existing bus route.... Bandel to Mahesh from Mahesh to Bag Khal.

Resolved that the proposal be accepted since there is pressing public demand from the travelling public made in the shape of mass representation and the operators in Route No. 2 are pressing for shifting of their terminal point from Mahesh to Bag Khal for their facilities of parking of buses etc Secretary, R.T.A. be requested to invite representations, if any, u/s 47 of the M.V. Act by way of publication in the newspapers.

3. It is not in dispute and that has also been admitted by the, Appellant that the aforesaid decision was taken by the R.T.A. acting on two sets of representations one was by members of the public who in clear terms wanted an extension of Route No. 2 from Mahesh to Bag Khal, a distance of about 3 miles--admittedly, however, beyond the municipal limits of Serampore and the other by the permit-holders of Route No. 2 made through their Association, the Appellant before us. The permit-holders wanted that their existing terminal at Mahesh should be shifted to Bag Khal for various facilities of service made in their representation. It is on these representations that the R.T.A. moved and adopted the aforesaid resolution and invited representations u/s 47 of the Act.

4. Consequent to the resolution, as aforesaid, the Secretary of the Regional Transport Authority issued a public notice dated June 19, 1975, calling for representations from interested persons or the Association u/s 47 as against the proposed shifting of the terminal point of Route No. 2 covering an additional distance of 3 miles from the present terminus at Mahesh, The notice further stated that representation, if any, is to be made within 15 days from the date of publication.

5. The present Respondents Nos. 1 and 2 representing the permit-holders of Route No. 3 made a representation. According to them, such a representation was not filed in answer to the public notice as aforesaid but was made demanding justice as the entire procedure adopted by the R.T.A. was without jurisdiction and not in accordance with law. However, the Regional Transport Authority treated this representation as a representation in answer to the public notice inviting representation and rejected the same on the ground that it was filed beyond the time specified in the notice. Having rejected the representation the Regional

Transport Authority adopted the following resolution on July 30, 1975, namely,.

Considering thoroughly the case in connection with the shifting of the terminal point of the existing bus Route No. 2 (Bandel to Mahesh) from Mahesh to Bag Khal since there are pressing demands from the travelling public as also from the operators and since the representation u/s 47 of the M V Act against the shifting of the above terminal point which ought to have been filed within 15 days of the publication of the notice on 27.6.75 was filed at a distance of time, i.e. 29.7.75 the representation cannot be entertained at this late stage and the same is rejected.

Resolved that the terminal point of buses of Route No. 2 (Bandel to Mahesh) be shifted from Mahesh to Bag Khal for the interest of travelling public and the bus operators, Secretary, R.T.A. be requested to take necessary action in the matter.

6. The Respondents Nos. 1 and 2 representing permit-holders of Route No. 3 challenged the validity of this resolution dated July 30, 1975, in a writ petition on the ground that by this resolution the Regional Transport Authority had purported to alter the existing Route No. 2 by extending the same by 3 miles without, however, fulfilling the requirements of Section 57(8) of the Motor Vehicles Act (hereinafter referred to as the said Act) The said writ petition was contested by the present Appellant who represented the permit-holders of Route No. 2 and also by the Regional Transport Authority, though no affidavit, however, was filed on behalf of the Regional Transport Authority, an affidavit was filed on behalf of the present Appellant Facts relating to the procedure followed for adopting the aforesaid impugned resolution by the Regional Transport Authority were not disputed.

7. Before the learned Judge in the trial Court the present Appellant and so also the Regional Transport Authority took the stand that by the impugned resolution the Regional Transport Authority merely changed the terminal which does not constitute alteration of the route to attract Section 57(8) Secondly, it was urged on their behalf, in the alternative, that even if it constituted alteration of the route, such alteration being within the sanction of and made in terms of Section 48(3) and Clause (xxi) of the Act, Section 57(8) could have no application Both the objections were overruled and the provisions of Section 57(8) not having been admittedly fulfilled the learned Judge in the trial Court set aside the resolution directing the Regional Transport Authority to proceed afresh in accordance with law It is this decision which is the subject-matter of challenge before us in this appeal.

8. The appeal is being contested by the Respondents Nos. 1 and 2 who represented the permit-holders of Route No. 3 The Regional Transport Authority, Hooghly, has not preferred any appeal but nonetheless appearing before us has supported the Appellant in their endeavour to uphold the resolution which had been set aside by the learned Judge in the trial Court.

9. Mr. Deb, appearing on behalf of the Appellant, has raised the very two points

which were raised before the learned Judge in the trial Court.

10. In the first place, Mr. Deb has contended that in substance the impugned resolution being a resolution directing change or shifting of the terminal only, it cannot be considered to be any alteration of the route or extension thereof which alone would require fulfilment of Section 57(8) Reliance was sought to be placed on an earlier decision of mine in the case of Burdwan District Bus Association v. Regional Transport Authority 1973 77 C.W.N. 896.

11. Secondly, it has been contended by Mr. Deb that there has since been a change in the position in law after the 1969 amendment On the amendment of the clauses u/s 48(3) read with Clause (xxi) thereof power having been given to the Regional Transport Authority to alter the route even by extension thereof within the limits specified, any alteration within the said limits would merely be altering the condition of, the permit which would not attract Section 57(8) It has been contended by Mr. Deb that Section 48(3)(xxi) read with Clause (i) thereof gives specific independent power to the Regional Transport Authority to grant such extension or alteration Reliance : has also been placed on Rule 81 of the West Bengal Rules framed under the Act for contending that even such Rule provides independent powers for grant of such alteration or extension It has been contended, accordingly, that if and when the Regional Transport Authority exercises powers u/s 48(3)(xxi) read with (i) or Rule 81 of the Rules it is exercising independent powers and is in no way fettered by the requirements of Section 57(8) of the Act It has, therefore, been very strongly contended by Mr. Deb that when the impugned resolution can well be supported as one adopted in exercise of powers either u/s 48(3)(xxi) read with (i) or under Rule 81 of the Rules, the objection raised on behalf of the Respondents Nos. 1 and 2 which prevailed with the learned Judge in the trial Court could be no ground for setting aside the resolution.

12. Mr. Basu appearing on behalf of the Regional Transport Authority has not only adopted the two contentions put forward by Mr. Deb but has gone further in contending that on grounded provisions o? Rule 55A in case of alteration or extension of a route as in the present case, requirements of Section 57(3), (4) and (5) are ruled out So that even if Section 57(8) be applicable adopting such a resolution on a previous notice as given in sufficient compliance with law.

13. Mr. Chowdhury appearing on behalf of the contesting Respondents has contested all these points raised on behalf of the Appellant and the Regional Transport Authority According to Mr. Chowdhury, on the plain language of Section 57(8) any decision on the part of the Regional Transport Authority to alter the route or extend the same even when it is so done by way of alteration of the conditions of the permit, that has to be done in accordance with the provisions of Section 57(8) According to Mr. Chowdhury, Section 57(8) in its turn invokes both Section 47 and Sub-sections (3), (4) and (5) of Section 57 These provisions not having been complied with, Mr. Chowdhury contends the resolution impugned in the writ petition can in no way be sustained Mr. Chowdhury has drawn our

attention to the representation, the records of the Regional Transport Authority and in pointing out that the Regional-Transport Authority in the present case proceeded on applications both by the members of the public and the representative association of the permit-holders of Route No. 2, when the said Authority granted the extension by the impugned resolution It being so it squarely comes within the provision of Section 57(8) and the Regional Transport Authority could not have dispensed with fulfillment of the requirements thereof Incidentally, Mr. Chowdhury has raised a more fundamental objection to the second contention of Mr. Deb to the effect that in the present case the Regional Transport Authority's right to alter the route as a condition of the permit not being inserted in the permits in favour of the permit-holders of Route No. 2 there could be no scope for the said Authority to alter the route in exercise of powers u/s 48(3)(xxi) of the Act Reliance is placed on the decision of the Supreme Court in the case of Sri Ram Vilas Service Ltd., Kumbakonam Vs. Raman and Raman Private Ltd. and Another, So far as Rule 81 is concerned Mr. Chowdhury has contended that a Rule cannot abrogate the requirements of the Statute itself.

14. The points thus raised are, in our opinion, of some importance We should first dispose of the first point raised by Mr. Deb to the effect that the impugned resolution being one for merely change of the terminal, Section 57(8) was not required to be complied with To support this contention Mr. Deb has naturally relied on the earlier decision of mine, in the case of Burdwan District Bus Association (Supra) and the decisions considered therein Mr. Chowdhury, however, has contended that the law has since changed By the Amending Act LVI of 1969 "route" has been defined to mean "a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another" On the amended provisions of Section 48(3) such a route is set out in the permit as a condition so that any alteration of such terminus would amount to alteration of the route inviting application of Section 57(8) of the Act In other words, according to Mr. Chowdhury, the effect of the decision relied on by Mr. Deb has since been nullified in view of the change introduced by the amendment of 1969 In this case, however, it may not be necessary to consider or decide the point thus raised by Mr. Chowdhury on the 1969 amendment as we are clearly of the opinion that on the facts the change brought about is not - merely a change of the terminus but is an alteration of the route itself No doubt the resolution adopted speaks of shifting of terminal from Mahesh to Bag Khal But we must construe the resolution by taking into consideration the attending facts and circumstances and the background in which it was so adopted It is the substance and not the form that must prevail It is not in dispute that there were representations made by the public at large for extension of the route from Mahesh to Bag Khal Bag Khal is not in Serampore and is beyond the municipal limits of Serampore, it falls within a different municipality of Rishra According to the Respondents, it was at a distance of nearly 3 miles from Mahesh and by the two extensions granted to Route No. 2 the permit-holders of that route really got an extension of nearly 5 miles beyond their Serampore terminal overlapping the

Route No. 3 In these circumstances, when such an extension was prayed for and was granted by the impugned resolution, we cannot but hold it to be really an extension of the route and not a mere change or adjustment of the terminal itself We, therefore, proceed to consider the legality of the resolution on that, basis.

15. This brings us to the second point raised by Mr. Deb, namely, that even if the impugned resolution was a resolution for alteration or extension of the route, it was not necessary for the Regional Transport Authority to fulfill the requirements of Section 57(8) Our attention has been drawn to Section 48 (3)(i) and (xxi) which are set out hereunder.

(3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely,

(i) that the vehicle or vehicles shall be used only in a specified area or on a specified route or routes.

* * * *

(i) that the Regional Transport Authority may, after giving notice of riot less than one month,

(a) vary the conditions of the permit,

(b) attach to the permit further conditions:

Provided that the conditions specified in pursuance of Clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometres and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the public convenience and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof.

16. Present Clause (i) was introduced by the 1969 amendment which also incorporated the proviso to Clause (xxi) as aforesaid According to Mr. Deb, when Section 48(3)(xxi) read with the new Clause (i) invests special power in the Regional Transport Authority to alter the route or grant an extension within the limited sphere prescribed by the proviso in a special manner prescribed in the provision itself and when the Regional Transport Authority can do so even upon its own accord, it must be held to be an independent provision which would not attract Section 57(8) According to Mr. Deb, it is somewhat different from altering a route on an application for such alteration by variation of the condition of the permit contemplated by Section 57(8) of the Act A distinction has been sought to be raised by Mr. Deb on the fact that while Section 57(8) speaks of an application for the alteration Section 48(3)(xxi) does not speak about any such application Nonetheless, Mr. Deb is not ready to concede that the power u/s 48(3)(xxi)

cannot be exercised on an application though, according to him, it is wide enough to cover cases of alteration made either suo motu or on an application by the Regional Transport Authority Mr. Deb has emphasised the fact that if and when the Regional Transport Authority acts sua motu and grants alteration of the route or even extension thereof in exercise of powers u/s 48(3)(xxi), Section 57(8) would never be applicable because it is not being done on an application to that effect.

17. In the facts of the present case, it is not necessary for us to consider whether the Regional Transport Authority would be required to fulfill Section 57(8) when it grants alteration of a route suo motu in exercise of its powers u/s 48(3)(xxi) of the Act, inasmuch as on our findings made hereinbefore it was so done only on application Such an application was not only filed by the public at large but also on behalf of the permit-holders by an association thereof In our opinion, an application by the association of permit-holders is as good as an application made by all the permit-holders and when alteration is granted on such an application the provision of Section 57(8) are attracted and the mere fact that the individual permit-holders had not made any application is of no consequence We are unable to accept this contention of Mr. Deb that Section 48(3)(xxi) provides such powers that exercise thereof would not attract Section 57(8) at all Particular requirements of that provision would certainly be required to be fulfilled, but those are not independent substitute for Section 57(8) Nor would it be correct to held that when powers are exercised u/s 48(3)(xxi) for the said purpose, it would not be necessary to fulfill the requirements of Section 57(8) There is intrinsic evidence in the Act itself to establish the intention of the Legislature that when the Regional Transport Authority proposes to alter or extend route even by way of alteration of the condition of permit, Section 57(8) has to be fulfilled We say so because when Section 48(3) underwent an amendment of incorporation of the present Clause (i) thereof and the proviso to Clause (xxi) thereof which alone authorises the Regional Transport Authority to alter the route or extend the same by way of variation of the condition of permit, Section 57(8) too was materially amended by incorporating the words "by altering the route covered by it" This simultaneous amendment of the two sections is a clear pointer to the fact that the Legislature intended that even where the Regional Transport Authority proceeds to alter the route or extend the same by way of variation of the condition of permit within the sanction of Section 48(3)(xxi), procedure laid down u/s 57(8) has to be followed The obvious reason behind it is that any such alteration may and would naturally require taking into consideration the different factors specified in Section 47(1) which the law enjoins should also be the foundation for any action permitting alteration of a route or extension thereof This being the position we are unable to accept the contention of Mr. Deb that the Regional Transport Authority being authorised to alter the route by varying the condition of permit in exercise of its power u/s 48(3)(xxi) it was not necessary for the said authority to fulfil the requirement of Section 57(8) of the Act.

18. Moreover, we find ample substance in the contention of Mr. Chowdhury to the effect that Section 48(3)(xxi) could not have been invoked in the present case, as no such condition contemplated by Clause (xxi) has been proved to have been inserted in any of the permits when the permits were issued in favour of the stage carriage permit-holders of the Route No. 2. At least, that is our conclusion on a sample permit of one of the permit-holders as was produced to us. The decision of the Supreme Court relied on by Mr. Chowdhury is a clear authority for this proposition.

19. The next point urged by Mr. Deb is that the resolution impugned can well be sustained on the provisions of Rule 81 of the West Bengal Rules framed under the Act. Rule 81 is in the following terms:

81. Permit--variation of--(a) upon application made in writing by the holder of any permit or by any other person or of its own motion the Regional Transport Authority may at any time (after giving notice of not less than one month) vary the permit or any of the conditions thereof subject to the provision of the following sub-rules.

(b) Where a representation has been made by any person in connection with the grant of a carriage permit or a public carrier's permit under Sub-section (1) of Section 47 or Section 55 of the Act, the Regional Transport Authority shall not, subsequent to the issue of the permit, vary the permit or any condition thereof in a manner prejudicial to any person by whom such representation has been made unless the said authority afforded such person a reasonable opportunity of making a representation in respect of the proposed variation of the permit or of any condition thereof.

(c) Notwithstanding the provisions in Sub-rule (b), a Regional Transport Authority may vary any stage carriage permit or any public carrier's permit without affording any person an opportunity of making a representation, if, in the opinion of the Regional Transport Authority, the representation made by such person in respect of the issue or of the renewal of the permit was frivolous or vexatious, or if the variation of the permit or any condition thereof is in accordance with any particular or general direction issued by the State Transport Authority under Sub-section (4) of Section 44 of the Act, or involves a question of principle which has already been decided by a ruling of the Regional Transport Authority which has not been modified upon appeal.

20. According to Mr. Deb, Rule 81 confers independent powers and lays down independent procedure for exercise of that power for variation of conditions of a permit including the condition as to the extent of the route. In view of such a provision Mr. Deb contends Section 57(8) can no longer be invoked if the power has really been exercised under Rule 81. Though in the present case it is not very clear under which of the provisions the power had been exercised by the Regional Transport Authority, nonetheless it has been contended by Mr. Deb that if the resolution can be supported on the provisions of Rule 81 it should not be

set aside on a view that the power had been exercised on the provisions of Section 57(8) but without fulfilling the requirements thereof This is so, according to Mr. Deb, because Section 57(8) would have no application where independent powers under Rule 81 are being exercised Strong reliance is placed by Mr. Deb on certain observations of the Supreme Court in paras 9-12 in the case of Sri Ram Service Ltd. v. Raman and Raman Ltd. (Supra) In that case the Supreme Court was no doubt considering a Rule being Rule 208 of the Madras Motor Vehicles Rules which has similarity with the Rules now under consideration The Supreme Court, merely, observed that the Rule confers power on a Transport Authority to vary all kinds of permits or conditions attached therein The Supreme Court was not called upon to consider whether in exercising such powers such authorities are to fulfil other statutory requirements like Section 57(8) or not No such dispute arose for consideration before the Supreme Court To the extent the said decision was followed by the Patna High Court in the cases of Basudeo Tiwary Vs. Shree Bagun Sumbrui and Others, and Gangotri Prasad Narain Sinha and Another Vs. Bihar State Road Transport Appellate Tribunal and Others, relied, on by Mr. Deb there is no difficulty whatsoever But what we are unable to appreciate is the further contention of Mr. Deb that when power to alter the route by way of variation of the condition of the permit, can be derived from Rule 81, therefore, it would not be necessary to comply with the requirements of Section 57(8) As found by us for reasons already given when the Regional Transport Authority proceeds to alter the route or extend the same on application even if it does so by way of variation of the condition of the permit itself, Section 57(8) is immediately attracted and the Regional Transport Authority has to fulfil the requirements thereof There the law enjoins that in dealing with such an application certain statutory requirements are to be fulfilled; no rule can abrogate the statutory requirements Therefore, irrespective of the question whether Rule 81 confers any independent power on the Regional Transport Authority to alter the route or extend the same by way of variation of the permit or not, if such variation is to be made on an application answering the description of one referred to in Section 57(8) the requirements of the said provision are to be fulfilled Rule 81 must be read in harmony with the provisions of the Statute itself and cannot be so read as to abrogate the provisions of Section 57(8) as suggested by Mr. Deb The decision of the Supreme Court relied on by Mr. Deb does not go against the view we have taken In this view, this contention of Mr. Deb must fail and be overruled Incidentally, it should be noted that Mr. Chowdhury has claimed that even the requirements of Rule 81 had not been fulfilled when the notice that was issued was a notice u/s 47 and that too was 15 days notice and not a month's notice as enjoined by Rule 81 Moreover, there is no material before us to show that the requirements of Rule 81(b) had been fulfilled or not As a matter of fact, it appears to us that the Regional Transport Authority was not itself sure of its position to the procedure to be followed for disposing of the matter.

21. On our findings made hereinbefore, it was incumbent for the Regional

Transport Authority, Hooghly, to comply with the provisions of Section 57(8) of the said Act and now we shall proceed to consider the other contention of Mr. Basu that there had been sufficient compliance with the said provisions when the Regional Transport Authority adopted the impugned resolution after the notice issued u/s 47 on June 19, 1975 According to Mr. Basu, it was a case for alteration of the route, at best by an extension of about 2 or 3 miles When the Regional Transport Authority, by its resolution dated May 19, 1975, accepted the proposal for the alteration, it must be held that the said Authority necessarily decided to add 40" stage carriages existing on Route No. 2 on the extended area Therefore, there was sufficient compliance with Section 47(3) and Section 47(1) was complied with when representations were invited in terms of public notice dated June 19, 1975 So far as Section 57(3), (4) and (5) are concerned, according to Mr. Basu, the present case being a case merely of alteration of the route or extension thereof on the added provisions of Rule 55A, it was not necessary to follow the provisions of Sub-sections (3), (4) and (5) We are, however, unable to accept this contention of Mr. Basu, in our opinion, Section 57(8) invokes Section 47 and the provisions of the other sub-sections thereof which are applicable in a part of a stage carriage permit That was the decision of this Court in the case of Barrackpore Bus Syndicate v. Sheikh Serajuddin (1956) 61 C.W.N. 217 and we feel no hesitation in agreeing with the principles laid down therein Section 47 being invoked, it is necessary that the Regional Transport Authority must consider administratively u/s 47(3) whether, in the facts of the present case, they would add the number of stage carriages operating on the existing Route No. 2 on the extended area and this administrative decision they are to arrive at taking into consideration the factors specified in Section 47(1) The decision may be administrative but the law requires that the decision has to be taken on considerations specified by the Statute Therefore, it was necessary for the Regional Transport Authority to consider whether adding of the stage carriages plying on Route No. 2 on the extended area where stage carriages of Route No. 3 were operating at the time would be proper and justified or not in the light of the requirements of Section 47(1) If it is not so done, there is no compliance with Section 47(3) This position, in our opinion, follows from the decision of the Supreme Court in the case of Rattan Lal Gupta and Others Vs. Shri Suraj Bhan and Others, Mr. Basu, on the other hand, has strongly relied on the decision of the Supreme Court in the case of Gajendra Transport (P.) Ltd. Vs. The Anamallais Bus Transport (P.) Ltd. and Another, . This decision, however, does not really help Mr. Basu In the case under consideration, the Supreme Court found on consideration facts that in substance there had been due compliance with Section 47(3) when the Regional Transport Authority invited applications for grant of one more stage carriage permit on an existing route This decision, on the other hand, well supports the contention of Mr. Chowdhury that compliance with Section 47 is an essential pre-requisite though, on facts, the Supreme Court found that there was such compliance when on consideration of a committee report the Regional Transport Authority had decided to call for applications for grant of one stage carriage permit We may agree with Mr. Basu that it would

essentially be an investigation on fact in each case to find out whether there has been a prior compliance with Section 47(3) or not irrespective of the technicalities. But even if we look at the substance, we are unable to accept the suggestion of Mr. Basu that in the present case when the Regional Transport Authority accepted the proposal to extend the stage carriages operating on Route No. 2 to cover a part of Route No. 3, the Regional Transport Authority did so on a specific and positive decision that it would be proper and worthwhile to add all those stage carriages on the extended area covered by an independent route. We have referred to the resolution relied on by Mr. Basu hereinbefore. That resolution indicates that; the proposal for extension by way of shifting of the terminal was accepted only on consideration of the mass representation of the public and the operators of Route No. 2. Ex facie there was no consideration as to whether it would be economical to add so many more stage carriages on the extended area and whether the road would permit so many stage carriages to be added. There was no consideration of the relevant considerations referred to in Section 47(1) and this is clearly indicative of the fact that that resolution cannot be taken to be the decision contemplated by Section 47(3). We are, therefore, of the opinion that, in the present case, the Regional Transport Authority did not comply with the statutory requirements of Section 47(3) while altering the route by its extension from Mahesh to Bag Khal covering a part of the route of Route No. 3.

22. Section 47(1) proviso contemplates consideration of representation by certain persons to the grant of stage carriage permits. These representations, in our opinion, in cases like the present one, can be considered along with the representations made u/s 57(3) as against the individual Applicants in respect of their application or applications for variation of the condition of their permits by extension of the route. The requirement of Sections 47(1) proviso and 57(3) can well be substantially complied with by considering the two kinds of representations simultaneously, because the law requires that those representations are to be considered while considering the application for stage carriage permit which is made applicable u/s 57(8) to applications for variation of the condition of the permit by extension of the route. We are unable to accept the suggestion of Mr. Basu that, in cases like the present one, where the application is not an application for the grant of a new stage carriage permit, Section 57(3), (4) and (5) are not required to be fulfilled and that the said conclusion follows in view of the added proviso to Rule 55A of the West Bengal Rules framed under the said Act. It is difficult for us to conceive how, if the statute requires that the requirements of Section 57 (3), (4) & (5) are to be fulfilled, the same can be abrogated by a rule. Moreover, in our opinion, Mr. Basu has misread Rule 55A and its amendment in raising a contention, as indicated hereinbefore. Rule 55A reads as follows:

55A Route or area for State Carriage permits--publication thereof.--The Regional Transport Authority or the State Transport Authority, if it decides to grant permits for stage carriages on any route or area, Shall publish in a newspaper or newspapers of standing in the region, particulars of such route or area, the

number of permits to be granted and the date appointed for receipt of applications for such permits.

A proviso was added to this Rule in August 1972 which is as follows:

Provided that where the existing route or area is extended and the number of permits remains same as before on the existing route or area, publication of the particulars of such route or area so extended, the number of permits to be granted in the area and the date appointed for the receipt of applications for such permits shall not be necessary.

Rule 55A read with the added proviso would show that it contemplates publication of a notice inviting applications for permits, i.e. , it is a publication at the stage of Section 57(2) All the provisions of Section 57 being made applicable to applications for variations of the conditions of permit by extension of the route, the added proviso merely dispenses with publication of certain particulars which would have been relevant only to cases of applications for new grants Section 57(3), however, enjoins that the applications invited u/s 57(2) when filed should be open to inspection and the substances thereof should be published along with the invitation of representations as against such applications Rule 55A has nothing to do with this publication so that the added proviso necessarily has nothing to do with this publication either This provision being invoked by Section 57(8), the application for variation of the condition of permit by extension of the route would have to be given inspection of and the substance thereof will have to be published inviting the representation as against them u/s 57(3) All representations so filed u/s 57(3) are to be considered as enjoined by Section 57(4) and simultaneously all representations made u/s 47(1) proviso may as also be considered by the Regional Transport Authority The Regional Transport Authority will then proceed to act following the subsequent provisions of Section 57 thereof and decide for itself whether the application for variation of the permits by extension of the route should or should not be allowed These requirements were not complied with and as such, the resolution granting the alteration of the route by extending the same from Mahesh to Bag Khal mast be held to be one made in non-compliance with the requirements of Sections 47 and 57 of the Act The learned Judge in the trial Court was therefore, right in his conclusion that the impugned resolution was not in accordance with law and the grant of alteration of the route by extending the same from Mahesh to Bag Khal was contrary to the provisions of the Motor Vehicles Act and as such, the same is liable to be set aside.

23. On the conclusions as above, this appeal fails and is dismissed There will be no order as to costs.

M.N. Roy J.

24. I agree.