

(1955) 04 PAT CK 0008

In the Patna High Court

Case No : Misc. Judl. case No's. 164 and 698 to 716 of 1954

S.M. Islam and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-04-1955

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6)
Motor Vehicles Act, 1939 — Section 1, 47, 57, 58

Citation : AIR 1956 Patna 73 : (1955) 3 BLJR 391

Hon'ble Judges : Das, C.J.;Imam, J

Bench : Division Bench

Advocate : Basant Chandra Ghose and Jamuna Prasad Chowdhury, in Nos. 698, 699 and 701 to 716 and 164 of 1954 and Basant Chandra Ghose, J.P. Choudhury, S. Shamsul Hasan and Sarwar Ali, for the Appellant; Govt. Advocate (in Nos. 698 to 701 and 164 of 1954) and Govt. Pleader (in Nos. 702 to 716 of 1954), for the Respondent

Final Decision : Allowed

Judgement

Imam, J.—These twenty miscellaneous Judicial cases, namely, Miscellaneous Judicial Cases Nos. 698 to 713 of 1954 and 164 of 1954, were heard together for the sake of convenience and also because the same points are involved in these cases: this judgment governs all these miscellaneous judicial cases. These applications were filed under Arts. 226 and 227 of the Constitution of India.

The case of these petitioners is that they have been carrying on business of stage carriage service in the districts of Gaya and Patna for a long time that the petitioners had been granted permits in the past for this business, and the permits had been renewed from time to time by the authorities; that when the permits were about to expire, the petitioners had filed applications for renewal of their permits and had complied with all the requirements of law, but in spite of this, the Regional Transport Authority concerned, by its order passed in its meeting, rejected the applications for renewal of their permits on the ground that the Government of Bihar proposed to run the services in certain areas of Gaya

and Patna districts.

These petitioners, however, were granted temporary permits so that they might ply their stage carriages up to the 31-3-1954. It is alleged by these petitioners that the stage carriage services are carried on as a result of the permits granted, by the Regional Transport Authority which, according to them, is a quasi-judicial body constituted by the State Government by virtue of the provisions of the Motor Vehicles Act, 1939.

2. It is alleged that the Motor Vehicles Act, 1939, had been amended by the Bihar State Legislature by Act 27 of 1950, and under that Act a new section, viz., Section 66A, was inserted authorising the State Government to declare by notification that a joint Stock Company in which the Central Government or the State Government or both having controlling interest would engage in the business of road transport either throughout the State or portion thereof as may be specified in the notification, and the State Government was empowered to direct the appropriate Transport Authority to grant permits in respect of such area or such routes or portion thereof to such Joint Stock Company and cancel any existing permit or reduce the number of vehicles or routes covered by any permit granted under the Act subject to certain conditions.

It is also alleged that in the same Act, Section 61A was inserted authorising the holder of a permit to transfer his permit to the joint stock company contemplated u/s 66A (1) even without the permission of the Transport Authority. It is said that no such joint stock company has been formed and the State Government started an unauthorised scheme of the so-called nationalisation of Road Transport, and in pursuance thereof the South Bihar Regional Transport Authority issued a letter (Memo No. 3766-845 R, T. A. dated the 30-10-1952) to different permit holders operating stage carriage services under the South Bihar Regional Transport Authority in the zone sought to be partially nationalised asking them to apply for permits on alternative routes or extension of their permits to diverted routes outside the proposed zone of so-called nationalisation, and further asked them to give an undertaking not to claim compensation for the routes taken over as they were being given permits for other routes to operate their buses.

It is also alleged that a notice also was sent to them asking them to apply for permits for the routes mentioned in annexure "D" (M. J. C. 698/54). The South Regional Transport Authority issued another letter (Memo No. 4102-197 dated the 13-12-1952) to all the permit holders who were likely to be affected in the so-called nationalisation scheme contemplated under the letter mentioned above, informing them that the Government proposed to give permits for alternative routes to permit holders likely to be affected thereby, and as some time was likely to take in observing legal formalities in granting permanent permits on alternative routes outside the zone of so-called nationalisation to be affected in January 1953, they were to take temporary permits.

A similar letter was also issued by the State Transport Authority, Bihar, Patna. It

is further alleged that the State Government "through its agents and employees, namely, the Regional Transport Authority and the State Transport Authority compelled the operators of stage carriage services on such routes sought to be partially nationalised in January 1953, by various methods to apply for permits for other routes outside the proposed so-called nationalised zones, and consequently such operators, who were likely to be affected and displaced by the so-called nationalisation, filed applications for permits with challans showing deposit of Rs. 50/- being the prescribed fee for permanent permits, as required by the South Bihar Regional Transport Authority, and they were granted temporary permits by the South Bihar Regional Transport Authority on routes outside the so-called nationalised zone.

It is further alleged that permanent permits have not been granted by the Transport Authorities up till now and some permits mentioned in annexure "C" (M. J. C. 698/54) and meant for the displaced persons have been granted to the Rajya Transport subsequently.

3. It is also alleged that the State Government started operating its buses, in the name of Rajya Transport from 26-1-1953, in the district of Patna and a portion in the district of Gaya up to Nawadah on certain routes. Further it is said that the operators who were displaced as a result of, the so-called nationalisation have not been granted permanent permits, though they complied with all the requirements.

Temporary permits, however, were issued to them, and the temporary permits were extended from time to time after every three months till December 1953, and thereafter in some cases they were extended up to 31-3-1954, when these temporary permits expired.

It is further the case of the petitioners that the State Transport Authority as also the South. Bihar Regional Transport Authority had previously passed a series of resolutions not to entertain any fresh application for new stage carriage permits, unless a prior vacancy was declared therefore and duly notified inviting applications therefor, and in pursuance of the said resolutions the South Bihar Regional Transport Authority and the State Transport Authority had been rejecting all applications for new stage carriage permits on any route summarily.

4. It is further alleged that though no previous vacancy for any route was notified inviting applications for new permits save and except those that were meant for the displaced persons, on 4-11-1953, a notice was published in the Bihar Gazette, being Notice No. 5754/Art, inviting objection to the grant of permit of stage carriage services to the applicant Rajya Transport, Government of Bihar, Patna, for the route mentioned in the said notification which was never declared vacant, and the Gaya Bus Operators" Association through its Secretary filed an objection on behalf of all the operators on the said route to the granting of Bihar.

It is stated that the objection filed by the Gaya Bus Operators" Association was disallowed, and permits were granted to the Rajya Transport, Government of

Bihar, by the South Bihar Regional Transport Authority in its meeting held on 14-12-1953, and on that very date the South Bihar Regional Transport Authority, by another resolution, rejected the renewal applications of some of the petitioners by passing the following resolution.

"Rejected as Government proposed to run their own services in these areas. They may continue on temporary permits till such times as Government take over."

It is alleged that by a letter of the Government, the President of the Gaya Bus Operators' Association was informed that the Government would operate their buses on the different routes of the districts of Gaya and Patna from 1-4-1954, as permits had been granted by the south Bihar Regional Transport Authority on 14-12-1953 which, according to these petitioners, were tantamount to monopoly of services of these routes and the Rajya Transport has been plying its services on the said routes from 1-4-1954.

It is alleged by these petitioners that the said proceedings of the Regional State Transport Authority and the State Government of Bihar in the Political (Transport) Department have been absolutely illegal and contrary to the clear mandatory provisions of the Motor Vehicles Act, 1939, and that the orders passed by these authorities are illegal, without jurisdiction, unconstitutional, null and void. It is also alleged that the granting of permits to the Rajya Transport and thereby giving monopoly to the said Rajya Transport, and the rejection of the applications of the petitioners for renewal of permits are illegal and against the provisions, of the Motor Vehicles Act, 1939.

It is said that the State Government, without any proper legislation, are trying to nationalise the road transport and thereby encroaching upon the fundamental rights of the petitioners guaranteed under the Constitution of India by illegally and arbitrarily issuing directions to the Regional Transport Authority and the State Transport Authority to pass orders refusing the renewal of permits in complete disregard of the provision of the Motor Vehicles Act, 1939, and that the order refusing to grant the renewal of permits by the Regional Transport Authority and the State Transport Authority affects the fundamental rights of the petitioners guaranteed under Article 19(1)(g) of the Constitution.

It is prayed by these petitioners that a writ in the nature of certiorari under Article 226 of the Constitution be issued, and the orders passed by the opposite party be quashed. It is also prayed that a writ in the nature of mandamus be issued upon the opposite party and they be directed to forbear from giving effect to the said orders. There is a further prayer that a writ in the nature of mandamus should be issued calling upon the opposite party to renew the permits in favour of the petitioners.

5. There seems to be no counter-petition filed by the opposite party. I may straightway state that there is no question of cancellation of any existing permits, so far as these petitions are concerned. The point for consideration is

whether the refusal to grant or renew permits was done in accordance with the provisions of the Motor Vehicles Act, 1939, and secondly, whether the relevant provisions of the Motor Vehicles Act are ultra vires or not. I will deal with the second question first.

The learned lawyer on behalf of these petitioners submitted that the Motor Vehicles Act, 1939, after coming into force of the Constitution of India, was ultra vires, because this legislation was confiscatory in nature, and therefore, the legislation offended the fundamental rights guaranteed under the Constitution. For this purpose, the learned lawyer referred to a legislation passed by the Uttar Pradesh Legislature.

That legislation is known as Uttar Pradesh State Road Transport Act, 1950. The Uttar Pradesh Legislature by virtue of Section 3 of that Act, for all practical purposes, provided for monopoly of transport services in the State. I will quote that section:

"3. Where the State Government is satisfied that it is necessary in the interest of general public and for subserving the common good so to direct, it may, by notification in the official Gazette, declare that the road transport services in general or any particular class of such service on any route or portion thereof, as may be specified, shall be run and operated by the State Government exclusively or by the State Government in conjunction with Railway, or partly by the State Government and partly by " others in accordance with the provisions of this Act."

This Act is also known as U. P. Act No. II of 1951. It is admitted that this legislation was enacted after the commencement of the Constitution. The first amendment to the Indian Constitution was made after the passing of this Act. It is, amongst other things so far as Article 19(6) is concerned as follows:

"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 for making any law relating to (i) the professional or technical qualifications necessary for practising 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 or otherwise."

This amendment has retrospective effect. The U. P. Act II of 1951 was challenged before the Allahabad High Court, and the Allahabad High Court declared the legislation, in so far as Section 3 at any rate of that Act is concerned, ultra vires. An appeal was preferred before the Supreme Court, and the Supreme Court also held that the said legislation was ultra vires.

The reason, apart from other grounds for holding the legislation to be ultra vires, is that the amendment of the Constitution which came later cannot be invoked to validate an earlier legislation which was unconstitutional when it was passed--see *Saghir Ahmad Vs. The State of U.P. and Others*, ; Their Lordships of the Supreme

Court observed in the above case as follows:

"As Professor Cooley has stated in his work on Constitutional Limitations (vide Volume I, page 384 note), "a statute void for unconstitutionality is dead and cannot be vitalised by a subsequent amendment of the Constitution removing the constitutional objection but must be re-enacted" ".

After quoting this, their Lordships said:

"We think that this is sound law and our conclusion is that the legislation in question which violates the fundamental right of the appellants under Article 19(1)(g) of the Constitution and is not) shown to be protected by Clause (6) of the Article, as it stood at the time of the enactment, must be held to be void under Article 13(2) of the Constitution".

6. It will be seen, therefore, that the U. P. legislation was ab initio void by reason of the fact that that particular legislation was passed before the first amendment of the Constitution, and when it was passed the U. P. Legislature had no authority for passing such a legislation as it offended the provisions of Article 19(1)(g) of the Constitution and that the legislation was not protected by Clause (6) of the Article.

7. So far as the Motor Vehicles Act, 1939, is concerned, it has not been shown to us that this legislation is ab initio void. What was submitted was that when the Constitution came into force, automatically the Motor Vehicles Act became ultra vires. We have not been referred to any section of the Act which can be said to provide for confiscation of any property by the State or give the right of monopoly in the matter of motor business, and thus it is difficult to see how on the commencement of the Constitution this Act can be deemed to be ultra vires.

But even if it be held that on the commencement of the Constitution the Act does become ultra vires or any part of it, the first amendment of the Constitution relating to Article 19 of the Constitution has retrospective effect, and as a result of that amendment, it must be deemed that the amended form came into force when the Constitution came into force, and thus it cannot be said, in view of the amendment, that the Motor Vehicles Act is ultra vires, as now the State has the right of monopoly as provided by the amendment which I have cited above.

What the Supreme Court decided was that where the legislation is ab initio void by virtue of the fact that the, legislature has no power to pass the legislation, then the amendment of the Constitution cannot validate such a legislation since it must be deemed to have been dead and cannot be brought to life by the amendment. In ether words, that which is a nullity cannot be brought into existence merely by the fact that the amendment of the Constitution has retrospective effect.

The Motor Vehicles Act was never void ab initio, and therefore, the question of bringing, to life something that was dead or bringing into existence that which never existed does not arise. In other words, for the purposes of the point under

consideration, the Supreme Court decision has no application to the Motor Vehicles Act, and I am, therefore, of the opinion that it cannot be held for the reasons stated above, that the Motor Vehicles Act, 1939, is ultra vires.

8. It is now settled that citizen's right to use public highways is a fundamental right, provided always that the citizens use the highways in an orderly manner. In the same decision of the Supreme Court, their Lordships quoted the following passage:

"The true position, then is, that all public streets and roads vest in the State, but that the State holds them as trustees on behalf of the public. 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 pathway. 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 as 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".

After quoting the above, their Lordships observed :

"We are in entire agreement with the statement of law made in these passages. 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 the vehicles.

It is to this carrying on of the trade or business that the guarantee in Article 19(1)(g) is attracted 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".

Their Lordships further go on to observe :

"The legislation in the present case has excluded all private bus owners from the field of transport business. Prima facie, it is an infraction of the provision of Article 19(1)(g) of the Constitution and the question for our consideration therefore is, whether this invasion by the Legislature of the fundamental right can be justified under the provision of Clause (6) of Article 19 on the ground that it, imposes reasonable restrictions on the exercise of the right in the interests of the-general public."

I have already stated earlier that their Lordships held that the said legislation" of the U. P." Legislature was ultra vires. The position, therefore, comes to this that subject to such reasonable restrictions as the State may provide, the citizen, as of right, can use the public highways, i.e. Public streets, roads, pathways etc., as being his fundamental right.

Prima facie, therefore, it is not open to the State to restrict the citizen from using the public highways lawfully, unless there is legislation giving monopoly to the

State to run motor vehicles which now the State can do in view of the amendment of the Constitution referred to above.

So far as the Bihar State is concerned, there is no legislation by means of which the State can have monopoly to run motor vehicles either in the entire State or in any specified areas of the State. Mr. Lal Narain Sinha appearing for the State pointed out that the intention of the State was to have a monopoly in the matter of motor transport business, and it is for this reason that the Motor Vehicles Act was amended, and by virtue of the amendment, namely, Section 66A, it was provided that the State would declare by notification that a joint stock company in which the Central Government or the State Government or both have controlling interest would engage in the business of road transport either throughout the State or in such areas therein or on such routes or portions thereof as may be specified in the notification.

I do not think that any such interpretation can be given by reason only of this amendment of the Motor Vehicles Act, 1939. All that Section 66A provides is the starting of a joint stock company and nothing more".

9. It may perhaps be well to refer to certain sections of the Motor Vehicles Act. Section 42 provides for the necessity of the owner of a transport vehicle of having a permit. Section 45 deals with the general provision as to applications for permits, and Section 46 provides for what an application for stage carriage permit should contain. Section 47 which, to my mind, is the most important section for the purpose of this case, states what a Regional Transport Authority must consider when dealing with an application for stage carriage permit. It is as follows:

"47. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely:

(a) the interest 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 existing road passenger transport services between the places to be served, the fares charged by those services and the effect upon those services of the service proposed;

(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 and in particular of unremunerative services in conjunction with remunerative services; and

(f) the condition of the roads included in the proposed route or routes;

and shall also take into consideration any representations made by persons

already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed routes lies or by any association interested in the provision of road transport facilities.

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the time table so as to conform to the said provisions."

Section 48 gives power to restrict the number of stage carriages and impose conditions on stage carriage permits. Section 57 provides a procedure in applying for and granting permits. The important portion of that section is sub-section (3) which is as follows;

"(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted, and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered." Sub-section (5) of that section states:

"(5) When any representation such as is referred to in Sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the application and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative."

Section 58(1) provides as follows:

"(1) A permit other than a temporary permit issued u/s 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may by its discretion specify in the permit.

Provided that in the case of a permit issued or renewed within two years of the commencement of this Act, the permit shall be effective without renewal for such period of less than three years as the Provincial Government may prescribe."

Section 59 "lays down the general conditions attaching to all permits. Section 60 deals with cancellation and suspension of permits, and Section 62 provides that

"a Regional Transport Authority may at its discretion, and without following the procedure laid down in Section 57, grant permits to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport-vehicle temporarily for, and may attach to any such permit any condition it thinks

fit."

10. I have already pointed out that Section 47 is the most important section for the purposes of this case. That section has provided that the "Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters...." If the refusal to grant permit or to renew a permit is outside the matter stated in Section 47, then, in my opinion, such refusal to renew or grant a permit would be unjustified. Section 47 is mandatory in nature, for it says, "a Regional Transport Authority have regard to the following matters." This section further provides that it

"shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lies or by any association interested in the provision of road transport facilities."

The allegation is that the refusal to grant permanent permits was on the ground that the State intended to start their own services. The order of the South Bihar Regional Transport Authority was:

"Rejected as Government proposed to run their own services in these areas. They may continue on temporary permits till such times as Government take over."

The question, therefore, is whether the reason assigned for refusing to grant or renew the permits comes within the purview of Section 47 of the Motor Vehicles Act, 1939. The following matters have to be taken into consideration by the Regional Transport Authority (a) the interest of the public generally; (b) the advantage 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 existing road passenger transport services between the places to be served, the fares charged by those services and the effect upon those services of the service proposed; (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 and in particular of unremunerative services in conjunction with remunerative services; and (f) the condition of the roads included in the proposed route or routes.

I have already quoted the order of the South Bihar Regional Transport Authority, and from that order, it does not appear that any of these matters mentioned in Section 47 of the Act has been considered or taken any notice of. Annexure "A" attached to the petition (M. J. C. 698/54) shows that a meeting of the South Bihar Regional Transport Authority was held on 14-12-1953, and a resolution was passed. It is as follows : "Resolution No. 32.

Considered applications for renewal of Stage Carriage Permits in the following cases: "Then the names of the permit holders with routes and permit numbers

are mentioned, and then follows the order, namely, "Rejected as "Government proposed to run their own services in these areas. They may continue on temporary permits till such time as Government take over." To my mind, the South Bihar Regional Transport Authority, Patna, did not take into consideration the matters that have been mentioned in Section 47 of the Act for the purposes of granting or refusing to grant permits for stage carriages, or renewing or refusing to renew such permits.

As Section 47 is mandatory, the order of the Regional Transport Authority in question must be held to be without jurisdiction and, therefore, ultra vires. From this, however, it should not be inferred that the legislation in question, viz., the Motor Vehicles Act, 1939, is ultra vires. It is the order of the Regional Transport Authority which is being declared ultra vires.

11. The only result that can follow, therefore, is that the orders of the original and appellate authorities must be quashed, and all these applications must be accordingly allowed with costs. There will be one consolidated hearing fee of Rs. 300/- only. The applications of the petitioners before the authorities concerned must be reconsidered on merits and disposed of in accordance with law.

Das, C.J.

12. I agree with my learned brother that these 20 applications should be allowed with costs and the orders (original or appellate), by which the applications of these petitioners for renewal of their permits were rejected, should be quashed by the issue of a writ of "certiorari", and the Regional Transport Authority concerned, should be asked to reconsider the applications and deal with them in accordance with law,

13. As these 20 cases raise a very important issue or question. I shall endeavour to explain in my own words the reasons why I think that the petitioners are entitled to an appropriate writ for quashing the "orders rejecting the applications for renewal of their permits. Speaking for myself, I do not think that any serious question of the unconstitutionality of the Motor Vehicles Act, 1939 (Act IV of 1939) arises in the present cases. The Motor Vehicles Act, 1939, has been amended from time to time in the State of Bihar.

The amendments made in 1950 by Bihar Act 27 of 1950 have been brought to our notice. By the said amending Act, certain new provisions were inserted in the Motor Vehicles Act, 1939; and one of these new provisions is s. 66A, which gives the State Government power to declare, by notification, that a joint stock company, in which the Central Government or the State Government or both have controlling interest, will engage in the business of road transport either throughout the State or in such area therein or on such routes or portions thereof as may be specified in the notification,

An Explanation appended to the section says that the power conferred by it may be exercised, from time to time, as occasion arises. In the cases under our

consideration, no declaration was made by the State Government u/s 66A. It is, therefore, unnecessary for us to consider the constitutional validity or otherwise of Section 66A. By the amending Act of 1950 another new section was inserted, namely, Section 43A, which gave the State Government power to issue such orders and directions as it might consider necessary, in respect of any matter relating to road transport, to the State Transport Authority or the Regional Transport Authority, and the section states that such Transport Authority shall give effect to all such orders and directions.

No order or direction made "under Section 43A by the State Government has been brought to our notice in respect of the orders impugned by these 20 applications; it is, therefore, unnecessary to consider in these cases whether Section 43A does or does not impose an unreasonable restriction on the right of all citizens to carry on the trade or business of road transport, within the meaning of Clause (6) of Article 19 of the Constitution. There has been some argument before us as to the legal effect of the amendment of Clause (6) of Article 19 by the Constitution of India (First) Amendment Act, 1951.

The amendment is, by "its express terms, retrospective, because it says that it shall be deemed always to have been enacted in the amended form. Bihar Act 27 of 1950, received the assent of the President on the 26th of June 1950, and the assent was published in the Bihar Gazette. Extraordinary, of 21-7-1950. The Constitution of India (First) Amendment Act, 1951, was enacted sometime later, that is, on 18-6-51. Therefore, the question was mooted before us whether the Bihar Legislature could validly enact some of the provisions of Bihar Act 27 of 1950, particularly those provisions, which relate to a monopoly of the business of road transport, either by the State or by a corporation owned or controlled by the State.

Mr. B. C. Ghose, who has appeared on behalf of the petitioners in all these cases, referred us to the decision of the Supreme Court in AIR 1954 S. C. 728 (A) and of the Allahabad High Court in Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others, . It is, however, quite unnecessary to decide such a question on the present applications. As I have already said, the present applications do not relate to either Section 43A or Section 66A of the Motor Vehicles Act, 1939.

It is well settled that no Court should pronounce on the constitutional validity or otherwise of the provisions of a statute, unless it becomes necessary to do so, for the purpose of the case under consideration of the Court. I therefore, do not propose to say anything with regard to the Provisions of Section 43A or 66A of the Motor Vehicles Act, 1939.

14. In fairness to learned Counsel for the petitioners, I must say that he did not contend that the whole of the Motor Vehicles Act, 1939, was unconstitutional by reason of the coming into force of the Constitution of India; what learned Counsel for the petitioners contended before us was that if certain provisions of

the Indian Motor Vehicles Act, 1939, constituted restrictions on the right of the citizen to carry on the trade or business of road transport and were not saved by Clause (6) of Article 19 as it stood before the Constitution of India" (First Amendment Act, 1951, then the amending Act of 1951 would not validate such provisions, in spite of the circumstance that the Constitution of India (First Amendment Act, 1951, is retrospective in express terms.

This is a point which may fall for consideration in connection with some of the provisions inserted by Bihar Act 27 of 1950. As we are not concerned with those provisions on the present applications, it is quite unnecessary for us to give any decision on the constitutional validity or otherwise of such provisions.

15. Let me now come at once to those provisions with which we are concerned on the present applications. We are concerned with some of the provisions in Chapter IV of the Motor Vehicles Act, 1939. Section 42 of that Chapter, as amended in Bihar, states, in effect, that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted by a Regional Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is used.

There are certain exceptions mentioned in Sub-section (3) of Section 42. As we are not concerned with those exceptions, it is unnecessary to refer to them. Section 43 gives the State Government power to control road transport. Section 43A is a new section inserted by Bihar Act 27 of 1950. We are not, however, concerned with that section. Section 44 states who are the Transport Authorities. Section 45 contains a general provision as to applications for permits.

Section 46 states what particulars must be given in an application for a permit to use a motor vehicle as a stage carriage. Then comes Section 47 which is the most important section for our purpose. My learned brother has quoted the section in extenso. The section gives a Regional Transport Authority power to grant or refuse a stage carriage permit; the section further states that in granting or refusing a stage carriage-permit, a Regional Transport Authority shall have regard to certain matters, and these are mentioned in different clauses, numbered (a) to (f) in Sub-section (i).

The section also states that a Regional Transport Authority shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lies or by any association interest in the provision of road transport facilities. Section 48 gives a Regional Transport Authority power to restrict the number of stage carriages and impose conditions on stage carriage permits.

It is unnecessary to read for our purpose Sections 49 to 56, which relate to applications for contract carriage permit and public carrier's permit. Section 57 is important, as it lays down the procedure in applying for and granting permits.

The procedure is quasi-judicial in nature, because the Regional Transport Authority has to dispose of the application at a public meeting 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.

The section further states that when a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal. Section 58 states that a permit other than a temporary permit issued u/s 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit.

Sub-section (2) of Section 58 is important, and it states that a permit may be renewed on an application made and disposed of as if it were an application for a permit. There is a proviso which says that, other conditions being equal, an application for renewal shall be given preference over new applications for permits. This is an important proviso, and the contention of learned Counsel for the petitioners is that in refusing renewal of the permits of the petitioners, the Regional Transport Authority has violated the provisions of Sections 47, 57, and the provisions of Section 58 of the Act. It is argued that the violation is an error which is apparent on the face of the record.

In reading the aforesaid sections, I have omitted certain consequential amendments which were made by reason of the insertion of Section 66A by Bihar Act 27 of 1950; because those amendments have no particular bearing on the present applications and also because no declaration had been made by the State Government u/s 66A of the Act.

16. Mr. B.C. Ghose has not contended before us that the aforesaid sections which I have read, are by themselves unreasonable restrictions within the meaning of Clause (6) of Article 19 of the Constitution, as it stood before the Constitution of India (First) Amendment Act, 1951. He has argued that if those sections allow discrimination or monopoly, then they are invalid in spite of the retrospective amendment of Clause (6) of Article 13 in 1951.

In my opinion, the restrictions are clearly restrictions in the interest of the general public and are neither discriminatory nor monopolistic in nature; and the point is settled by the decision in *C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another*, a decision approved by the Supreme Court. I may state, however, that some clauses of Section 47, e.g., Clause (e) were held to be unconstitutional in the aforesaid Madras decision. Those clauses do not however, arise for consideration in the cases before us, and it is not necessary for me to discuss the constitutional validity of each and every clause, numbered (a) to (f) in Sub-section (1) of Section 47.

I, therefore, deal only with such of those-clauses as require our consideration. Mr. B. C. Ghose's main argument, in short, is that the orders of the Regional Transport Authority concerned, in these 20 cases, were orders in violation of

Sections 47, 57 and 58 of the Motor Vehicles Act, and the violation is apparent on the face of record. This is the crux of the dispute before us; therefore, the short question before us is if the orders complained of are bad on, the ground that they are orders passed in violation of the provisions of the statute under which the power has to be exercised and the order has to be passed.

17. In my opinion, the orders are bad on, the ground stated by Mr. E. C. Ghose. It is well settled that the power, which the Regional Transport Authority exercises u/s 47 and other related sections, is a quasi-judicial power, and the power must be exercised within the ambit laid down by those sections. The Regional Transport Authority cannot travel beyond that "ambit and refuse to renew a permit on a ground which" does not come within any of the clauses of Section 47 or which violates the provisions of Sections 57 and 58 of, the Act.

It appears to me that the Regional Transport Authority concerned in all these cases has passed the orders complained of on a ground which does not fall within Section 47, and, furthermore, the orders violate the clear provisions of Sub-section (2) of Section 58 of the Act. The orders complained of were passed on different dates by the South Bihar Regional Transport Authority. In most of the cases, the orders were passed on 14-12-53.

In some of the cases, however, the orders were passed on other dates; e. g., in M.J.C. 703 of 1954 the Order was passed on 23-2-54, in M.J.C. 704 of 1954 the order was passed on 11-8-53, in M.J.C. 705 of 1954 the order was passed on 9-5-53. It is not necessary to reproduce all the orders or give their respective dates; because the orders are all in the same terms. My learned brother has quoted the order of the South Bihar Regional Transport Authority dated 14-12-1953. The order states:

"Rejected as Government propose to run their own services in these areas. They may continue on temporary permits till such times as Government take over.

In M. J. C. 703 of 1954, the order was passed on 23-2-54. There the order was in terms:

"Resolved that the renewal application be rejected. Temporary permits for these routes may be issued to the applicants till the nationalisation of the services."

In M. J. C. 704 of 1954, the order was passed on 11-8-53, and it is in these terms:

"Resolved that the renewal applications be rejected as Government propose to run their own services in these areas. In the meanwhile temporary permits be issued to operators."

I have quoted some of the orders only to indicate their nature. The appellate orders in those cases in which appeals were filed, are also in similar terms. All the orders proceed on one ground, namely, that a permit should not be renewed, because Government propose to run their own services. Section 47 and other

related sections (I am not talking now of Section 43A or Section 66A) do not authorise the refusal of a permit or of a renewal of a permit on the ground that the State Government may run their own service.

It is manifest that the orders are in violation of Sections 47 and 58 of the Act. The whole scheme of procedure under Sections 47, 57 and 58 is that all the applications should be considered on merits with due regard to the matters mentioned under clauses (a) to (f) of Section 47 and others related sections. None of those clauses say that a Regional Transport Authority can refuse a stage carriage permit on the ground of a State monopoly or on the ground that on some future date, the State Government may run their own service.

18. The learned Government Advocate appearing for the State Government has referred us to Clause (a) of Sub-section (1) of Section 47, and has contended that it was open to the Regional Transport Authority to refuse renewal of permits under that clause, having regard to the circumstance, that Clause (6) of Article 19 of the Constitution had been amended in 1951 and new Sections 43A and 66A had been inserted in the Motor Vehicles Act, 1939. Clause (a) of Sub-section (1) of Section 47 states, in effect, that in granting or refusing a stage carriage permit, the Regional Transport Authority may have regard to the interest of the public generally.

The argument of the learned Government Advocate is that the Regional Transport Authority may have considered that it was in the interest of the public generally to refuse to renew the permits of the petitioners on the ground that the State Government would shortly run their service on the same routes, for which the petitioners asked for renewal of their permits. The answer to this argument of the learned Government Advocate is that the orders speak for themselves; none of the orders say that the Regional Transport Authority concerned applied its mind and considered that it was in the interest of the public generally that the applications for renewal of their permits by the petitioners should be refused.

I have already stated that u/s 57 of the Act a Regional Transport Authority has to give the applicant in writing its reasons for refusal. The only reason which the Regional Transport Authority gave does not indicate that the Regional Transport Authority was thinking of the interest of the public generally. On the contrary, the orders seem to indicate that the Regional Transport Authority bowed down to certain executive instructions of the State Government (which were not instructions u/s 43A of the Act) and did not at all apply its mind to the matters referred to in clauses (a) to (f) of Sub-section (1) of Section 47 or to the proviso of Sub-section (2) of Section 58.

If the Regional Transport Authority thought that the refusal was in the interest of the public generally and that it was passing an order under Clause (a) of Sub-section (1) of Section 47, then the Regional Transport Authority should have said so. The matter would then have been considered on that basis by the appellate authority or this court.

19. I must make it clear that I am expressing no opinion as to whether a State monopoly in road transport is or is not in the interest of the public generally; for aught I know, it may, indeed, be desirable as a matter of State policy, to have a public utility service, like road transport, nationalised. It is not, however, within our scope to consider merits or demerits of a scheme of nationalisation with regard to road transport.

If the State Government wish to introduce nationalisation, it is for them to take such legislative power as they may wish to take for that purpose within the wider limit now permissible under amended Clause (6) of Article 19 of the Constitution; they may also take such action as they may be -advised to take u/s 66A of the Motor Vehicles Act, 1939. As my learned brother has pointed out, in Uttar Pradesh special legislation was undertaken for the purpose. These are, however, matters on which it is unnecessary for us to say anything; these are really matters of policy.

All that I need say is that when orders are passed under Sections 47, 57 and 58 of the Motor Vehicles Act, 1939, the orders must comply with, the provisions of those sections, and if the orders clearly violate the provisions of those sections, as the present orders do, then the orders must be held to be invalid; because in passing those orders the Regional Transport Authority or the appellate Transport Authority went not merely beyond the scope of their power, but committed a contravention of statutory provisions which is apparent on the face of the record.

20. For the reasons given above, I would hold that all the orders passed against the petitioners, whether original or appellate, rejecting their applications for renewal of their permits, must be quashed by the issue of an appropriate writ, and the applications must now be disposed of by the appropriate Regional Transport Authority in accordance with law.