

**(1979) 07 MAD CK 0053**  
**In the Madras High Court**

|                                |    |            |
|--------------------------------|----|------------|
| Sowdambigai Motor Service      |    | APPELLANT  |
|                                | Vs |            |
| State of Tamil Nadu and Others |    | RESPONDENT |

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**Date of Decision :** 07-07-1979

**Acts Referred:**

Constitution of India, 1950 — Article 19(1)(g)  
Government of India Act, 1935 — Section 107

**Citation :** (1979) 92 LW 565 : (1980) 1 MLJ 82

**Hon'ble Judges :** M.M. Ismail, J

**Bench :** Division Bench

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**Judgement**

M.M. Ismail, J.—The Motor Vehicles Act, 1939, Central Act IV of 1939, was enacted by the Central Legislature and it came into force on

16th February, 1939. The said Act was obviously covered by Entry 20 in List III, Seventh Schedule to the Government of India Act, 1935,

namely ""Mechanically propelled vehicles"". Chapter IV of this Act made elaborate provisions for control of transport vehicles. It is pursuant to the

provisions contained in the said Chapter, permits are being granted for the purpose of running different types of motor vehicles on public roads.

The system of granting of permits for the purpose of running buses on the road came up for consideration before a Bench of this Court in C.S.S.

Motor Service, Tenkasi and Others Vs. The State of Madras and Another, . In that case, this Court has held that the right of a citizen to carry on

business in motor transport on public streets is within the protection of Article 19(1)(g) of the Constitution of India and as it is a right guaranteed

under the said Article, the validity of the relevant sections of the Motor Vehicles Act must be determined with reference to the requirement of

Article 19(6) and the said sections will be valid if they are reasonable restrictions

imposed in the interests of the public. This Court also has taken the view that all public streets and roads vest in the State, but the State holds them as trustee on behalf of the public; that 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 path-ways; and that the State as trustee 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. This view of this Court was approved by the Supreme Court in *Saghir Ahmad Vs. The State of U.P. and Others, and Raman and Raman Ltd. Vs. The State of Madras and Others*, . Thus, it is clear that the system of granting permits for the purpose of running motor vehicles on public streets and roads has been recognised by this Court as well as the Supreme Court as a reasonable restriction imposed by the State in the interests of the public on the fundamental right of a citizen to carry on his business in running such motor vehicles and such restrictions will be valid if they are reasonable.

2. As we have pointed out already the Motor Vehicles Act, 1939, was passed with reference to Entry 20 contained in List III of the VII Schedule to the Government of India Act, 1935. The said List was also known as ""Concurrent List"" thereby implying that the Central Legislature as well as the Legislatures of the Provinces had power to make law with respect to the matters enumerated in that List. The Constitution of India has retained the three types of lists provided for in the Government of India Act, 1935, by way of distribution of Legislative powers between the Centre and the States. As far as this particular matter is concerned, the only difference is that this item of mechanically propelled vehicles has become item No. 35 of the ""Concurrent List"" in the Constitution, with a slight expansion, namely, ""mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied"", as against Item No. 20 in the Government of India Act. Thus, even under the Constitution of India, the Parliament as well as the State Legislatures have competence to make a law with regard to that matter. The relationship between law made by the Parliament and a law made by the Legislature of a State in respect of such matters is governed by Article 254 of the Constitution of India, corresponding to Section 107 of the Government of India Act, 1935. Article 254

of the Constitution in Clause (1) thereof provides for the prevailing of the law made by the Parliament over a law made by the Legislature of a State in the event of there being a repugnancy between the two Clause (2) of Article 254 of the Constitution is in the nature of a proviso to the provision contained in Clause (1) thereof. The said Clause (2) of Article 254 states:

Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision

repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the

Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law

adding to, amending, varying, or repealing the law so made by the Legislature of the State.

3. On 18th June, 1971, the Governor of Tamil Nadu promulgated an Ordinance, namely, Ordinance VI of 1971 entitled as the Motor Vehicles

(Tamil Nadu Second Amendment) Ordinance, 1971 hereinafter referred to as the Ordinance. By this Ordinance, certain amendments were made

to the Central Act IV of 1939 and we, in the present case, are concerned with the amendments made to Chapter IV by way of introduction of

Sections 62-A to 62-D to which we shall make a detailed reference a little later in the course of this judgment. Before the promulgation of the

Ordinance, the instruction of the President had been obtained in pursuance of the proviso to Clause (1) of Article 213 of the Constitution. With

reference to the material provisions referred to above, the Explanatory Statement annexed to the Ordinance stated as follows:

In order to prevent monopoly in respect of stage carriage permits, the Government of Tamil Nadu have been considering the question of imposing

a ceiling on the number of such permits which a private operator can hold. After taking all relevant aspects into consideration, it has been decided

that no private operator who already holds ten or more than ten stage carriage permits should be granted a new permit or should be permitted to

renew an existing permit. The ceiling will not apply in respect of the Central

Government or a State Government. New Section 62A seeks to achieve this object.

2. In the case of operators who already hold more than ten stage carriage permits, they are allowed to hold their existing permits, till the normal date of their expiry. Option is, however, given to them to surrender the permits to the Regional Transport Authority in order that they may retain with them such of the permits which they consider most advantageous to them. New Section 62B and Section 62C provide for this.

3. The Government have noticed that many persons are holding stage carriage permits as benamidars. The State Government have decided that this practice should be put an end to. Provision is now made for refusing stage carriage permits to applicants who are only benami applicants.

However, before refusing a permit on this ground, the Regional Transport Authority is to make such enquiry, as he deems fit. It is also obligatory on the part of the Regional Transport Authority to give an opportunity to the person concerned as to why his application for the grant of permit or for the transfer of a permit should not be refused on the ground that the application is benami. New Section 48-A and 62-D (2) seek to achieve this object.

4. As a number of applications have been made for transfer of permits and also for the grant of new permits by persons who already hold more than ten stage carriage permits. the Government have decided that the proposed legislation should be made applicable to all pending applications either for grant of new permits or for renewal of existing permits or for the transfer of permits. Clause 10 of the Ordinance seeks to achieve this object.

The other portions of the Explanatory Statement are not relevant for the purpose of these cases.

4. Subsequently, the Ordinance was replaced by the Tamil Nadu Act (XVI of 1971) hereinafter referred to as the Act, which received the assent of the President on 30th July, 1971. The said Act was published in the Tamil Nadu Government Gazette, Extraordinary, dated 30th July, 1971. In terms of Article 254(2) of the Constitution, the Tamil Nadu Act will prevail over the Central Act (IV of 1939) to the extent of repugnancy, since it has received the assent of the President.

5. There is no dispute that the Tamil Nadu Ordinance and Act are repugnant to the provisions contained in the Central Act IV of 1939 in respect of matters for which special provisions had been made in the Tamil Nadu Ordinance and Act. In the first place, the Central Act as such does not prescribe any ceiling on the number of stage carriage permits that can be held by a person, while the Tamil Nadu Ordinance and Act do prescribe a ceiling. Secondly, the Central Act itself does not prevent or prohibit transfer of permits, though the authorities functioning under the said Act in a particular case may decline to approve the transfer for valid reasons. On the other hand, the Tamil Nadu Ordinance and Act do prohibit transfer of permits, purporting to impose that prohibition for the purpose of preserving the ceiling limit prescribed by them. Thirdly, the Central Act provides for renewal of a permit on the expiry of the original period of currency and also provides that the other considerations being equal, an application for renewal shall be given preference over new applications for a permit. However, the Tamil Nadu Ordinance and Act prohibit renewal, if such renewal will have the effect of the number of permits to exceed the ceiling. We shall refer to these differences, in greater detail later in the course of this judgment and we are just now referring to these features only for the purpose of showing the area of repugnancy between the Tamil Nadu legislation and the Central Act.

6. The validity of the Tamil Nadu Ordinance and the Act is being questioned in these writ petitions ; though in form they pray for different reliefs.

7. Before proceeding to deal with the arguments advanced before us, it is desirable to refer to the actual provisions with which we are concerned, made by the Ordinance as well as the Act, since, though the Act merely purported to replace the Ordinance, the provisions of the two are not identical. For the purpose of making this out, we give herein-below the concerned provisions in paralld columns:

#### ORDINANCE

##### 62-A. Ceiling on stage carriage permits-

Notwithstanding anything in this Chapter, no stage carriage permit shall be granted or renewed to any person if the number of stage carriage permits held by such person on the date of the application, for the grant or renewal of such permit is not less than ten:

Provided that nothing in this section shall apply to the Central Government or a State Government or to any corporation or company owned by the

Central Government or a State Government or to any corporation or company owned by the Central Government or one or more State

Governments or by the Central Government and one or more State Governments.

62-B. Surrender of stage carriage permits by persons holding in excess of ceiling limit.

(1) Where the number of stage carriage permits held by any person on the date of the commencement of the Motor Vehicles (Tamil Nadu Second

Amendment) Ordinance, 1971 is not less than ten, such person may, at any time within a period of one month from the date of such

commencement, surrender one or more of such permits to the Regional Transport Authority which granted the permit and such Authority shall,

notwithstanding anything contained in this Act, accept such surrender and cancel the permit or permits so surrendered.

(2) The cancellation of the permit under Sub-section (1) shall take effect from such date as may be specified by the Regional Transport Authority.

62-C. Surrender of permits.

Without prejudice to the provisions of Section 62B, a holder of a stage carriage permit or other permit may, subject to such rules as may be made

in this behalf, surrender the permit to the Regional Transport Authority which granted the permit.

62-D. Benami transfers to be refused.

(1) Where the holder of any stage carriage permit applies for permission to transfer under Sub-section (1) of Section 59, the transport authority

shall refuse such permission if it appears to such authority, after making such enquiry as it deems fit, that the transfer sought for is a benami transfer:

Provided that no such refusal shall be made unless the transport authority has given the applicant, a reasonable opportunity of being heard.

(2) Without prejudice to the provisions of Sub-section (1), where the number of stage carriage permits held by any person is not less than ten, and

where such person applied for permission to the transport authority under Sub-section (1) of Section 59, the transport authority shall refuse such

permission if it appears to such authority, after making such enquiry as it deems fit, that the transfer sought for is only with a view to defeat the

provisions relating to the ceiling on the number of stage carriage permits:

Provided that no such refusal shall be made unless the transport authority has given the appellant a reasonable opportunity of being heard.

Clause 10 : Ordinance to apply to pending applications, etc.

All applications for, and proceedings relating to

(a) the grant of a stage carriage permit; or

(b) the renewal of a stage carriage permit; or

(c) the transfer of a stage carriage permit u/s 59, pending before any Court, transport authority or officer on the date of publication of this

Ordinance in the Tamil Nadu Government Gazette, and any appeal or revision arising from such pending application or proceeding shall be

disposed of under the principal Act, as amended by this Ordinance.

ACT

62-A. Ceiling on stage carriage permits\_\_\_\_

Notwithstanding anything contained in this Chapter:

(a) in the interests of the general public there shall be a ceiling of ten in respect of stage carriage permits held by any person under this Chapter:

Provided that subject to the other provisions of this Chapter, nothing in this clause shall apply to the number of stage carriage permits which are in

excess of ten already held by the applicant, till the normal date of the expiry of such excess permits;

(b) no person shall be entitled to apply for the grant of a new stage carriage permit or for the renewal of a stage carriage permit, if the number of

stage carriage permits already held by such person is not less than ten;

(c) the Regional Transport Authority shall not grant a new stage carriage permit or renew a stage carriage permit, if the number of permits already

held by the applicant is not less than ten, or if, by the grant of such new permit or renewal of a permit the number of stage carriage permits held by

the applicant shall exceed ten:

Provided that nothing in this section shall apply to the Central Government or a State Government or to any corporation or company owned by the

Central Government or one or more State Government or by the Central Government and one or more State Government:

Provided further that in computing the number of stage carriage permits for the purposes of this section,-

(1) the number of permits in respect of reserve vehicles kept by the holder of the permit to maintain the service ; or

(11) the number of temporary permits granted u/s 62, shall be excluded.

Explanation.-for the purpose of this section, "person" means the holder of a permit.

62-B. Surrender of stage carriage permits by persons holding in excess of ceiling limit.-

(1) Where the number of stage carriage permits held by person on the 18th June, 1971, is not less than ten, such person may, at any time within a

period of one month from the said date, surrender one or more such permits which are in excess of ten to the Regional Transport Authority which

granted the permit and such Authority shall, notwithstanding anything contained in this Act, accept such surrender and cancel the permit or permits

so surrendered.

(2) the cancellation of the permit under Sub-section (1) shall take effect from such date as may be specified by the Regional Transport Authority.

62-C Surrender of permits.

Without prejudice to the provisions of Section 63-B, a holder of a stage carriage permit or other permit may, subject to such rules as may be made

in this behalf, surrender the permit to the Regional Transport Authority which granted the permit.

62-D. Permission to transfer to be refused in cases where the applicant holds more than ten stage carriage permits.

Where the holder of stage carriage permits in excess of ten, applies to the transport authority for permission to transfer any stage carriage permit

under Sub-section (1) of Section 59, the transport authority shall refuse such permission:

Provided that no such refusal shall be made unless the transport authority has given the applicant, a reasonable opportunity of being heard.

(2) All applications for and proceedings (whether original or by way of appeal) relating to, transfer of stage carriage permit under Sub-section (1)

of Section 59, sought for by a holder of stage carriage permits in excess of ten and pending before any Court, transport authority or officer on the

18th June, 1971, and appeal or revision, if any, arising from such pending application or proceeding shall be disposed of under Sub-section (1).

62-E. Benami transfers to be refused:

Where the holder of any stage carriage permit applies for permission to transfer any stage carriage permit under Sub-section (1) of Section 59, the

transport authority shall refuse such permission if it appears to such authority, after making such enquiry as it deems fit, that the transfer sought for

is a benami transfer:

Provided that no such refusal shall be made unless the transport authority has given the applicant a reasonable opportunity of being heard.

Section 11 : Act to apply to pending applications, etc.-

All applications for, and proceedings (whether original or by way of appeal) relating to-

(a) the grant of a stage carriage permit ; or

(b) the renewal of a stage carriage permit; or

(c) the transfer of a stage carriage permit u/s 59; or

(d) the limiting the number of stage carriage or the opening of a new route, pending before any Court, transport authority or officer on the 18th

June, 1971 and appeal or revision, if any, arising from such pending application on proceeding, shall be disposed of under the principal Act, as

amended by this Act.

Section 12 of the Act (Tamil Nadu Act XVI of 1971) provided:

The Motor Vehicles (Tamil Nadu Second Amendment) Ordinance, 1971 (Tamil Nadu Ordinance VI of 1971), is hereby repealed.

Sub-section (3) of Section 1 of the Tamil Nadu Act XIV of 1971 also provided that the said Act shall be deemed to have come into force on 18th

June, 1971, that being the date on which the Ordinance was promulgated.

8. Thus, it will be seen that Section 62A of the Ordinance as well as the Act provided for the ceiling of 10 stage carriage permits. What was in a

single clause with a proviso in the Ordinance was split up into three different clauses in the section of the Act which as we shall point out a little

later, has not enhanced the prestige of the draftsman. Section 62B as contained in the Ordinance and the said section as contained in the Act deal

with the same subject-matter. But, here again as we shall point out a little later,

the draftsman has not covered himself with credit or glory in the language he employed in Section 62B (1). There is no difference between the clauses in Section 62C as contained in the Ordinance and as contained in the Act. Section 62D (1) as contained in the Ordinance corresponds to Section 62F as contained in the Act. On the other hand, Section 62D as contained in the Act is a completely new one. Clause 10 of the Ordinance corresponds to Section 11 of the Act, except for the addition of Sub-section (d) and Section 12 of the Act repeals the Ordinance.

9. The provisions of the above Ordinance and the Act are challenged before us on the following grounds:

(1) prescribing a ceiling on the number of stage carriage permits to be held by a person is unconstitutional, as constituting an unreasonable restriction on the right of a citizen to carry on his business;

(2) the provision for the prohibition of transfer of permits is again an unreasonable restriction on the right of a citizen to carry on business as well as the right to acquire, hold and dispose of property, as contemplated by Article 19(1)(f) of the Constitution of India, and this will violate Article 31 of the Constitution also;

(3) prohibition of renewal of permits in excess of 10 will again be unconstitutional as violating the rights of the petitioners under Articles 19 and 31 of the Constitution.

It may be pointed out, with reference to some of the arguments, that in some of the writ petitions, even before the Ordinance was promulgated, the holder of the permit had entered into an agreement with another for transferring the permit and a joint application for approval of the transfer had been made before the concerned Regional Transport Authority and that joint application was actually ripe for disposal and yet the said application had been dismissed solely because of the impugned statutory provisions—for instance, the case of the petitioner in W.P. No. 2191 of 1971 (vide : supplementary affidavit filed therein).

10. Before we examine the provisions contained in the Ordinance and the Act in detail and deal with the arguments of the different learned Counsel appearing for the various parties with reference thereto, we shall first deal with the general argument advanced by Mr. V.K. Thiruvenkata Chari

appearing for some of the petitioners challenging the Ordinance and the Act on the ground that the assent given by the President of India himself

under Article 254(2) is void. The argument ran as follows: The presence of the "Concurrent List" as a scheme of distribution of legislative power

between the Legislature of the Centre and that of the States is peculiar to India and such a provision found a place in the Government of India Act,

1935, which has been repealed in the Constitution of India. The purpose of enumerating certain matters in the Concurrent List is that the law made

with reference to those matters should be uniform throughout the country, though the need for variation or special treatment with reference to

particular Provinces then, and now States, cannot be ruled out. When such a need is alleged to be present, the President has to apply his mind and

satisfy himself whether such a need is actually present at all. That is the reason for the President being vested with the power to give assent to a law

made by a Legislature, in order to make that law prevail over the Central law with reference to a matter enumerated in the "Concurrent List". What

is now provided in Article 254(2) of the Constitution merely corresponds to what was originally contained in Section 107(2) of the Government of

India Act, 1935. Mr. Thiruvenkata Chari drew our attention to a particular passage in the Joint Parliamentary Select Committee Report on the bill

which became the Government of India Act, 1935, and the Instrument of Instructions issued to the Governor-General of India by the King of

England in 1937, and contended that they clearly showed that while the Governor-General was asked to give assent to a State law repugnant to a

Central Law, he shall have due regard to the matter of necessity for maintaining uniformity of law in the whole of the country and that the said

obligation is now imposed on the President under the terms of the Constitution, and in particular, under Article 254(2), that consequently before

assent to law made by a State Legislature, the President should take into account certain vital and relevant considerations, such as, was there any

need for making a departure from the Central Law applicable to the whole of the country in respect of a particular State, that the correspondence

that passed between the Government of India and the Government of Tamil Nadu in seeking and securing the instructions of the President before

the issue of the Ordinance and the assent of the President after the Legislature passed the Bill did not show that the President ever applied his mind

to this question at all, and that therefore, the assent of the President itself is void. He further contended that the President is acting only on the advice of the Council of Ministers, and therefore, the assent of the President is subject to scrutiny by the Court, just like any other act or order of the Central Government and that the Court is therefore, entitled to see whether these vital considerations had been taken into account by the President before giving assent in the present case. He further contended that the decision of the Courts in England in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 K.B. 223 and the decision of the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, would support this contention of his and that if the said requirement is not satisfied, namely, if the President had not taken into account relevant considerations or had taken into account irrelevant considerations, the assent can be struck down by the Court as void, with the consequence the law to which that assent has been given will itself be void.

11. As against his argument of Mr. V.K. Thiruvankata Chari, Mr. Parasaran, learned Counsel appearing for the Central Government contended that when the President gives assent to a Bill, that assent forms part of legislative process, and therefore, cannot be called into question by any Court under Article 122 and Article 212 of the Constitution of India. He also contended that under Article 74(2) of the Constitution of India the question whether any, and, if so, what advice was tendered by the Council of Ministers to the President shall not be enquired into in any Court, that in view of this, unless it is known what advice was tendered by the Council of Ministers to the President, it is not possible to find out whether a particular consideration was taken into account or not, when the President gave the assent and that when the Court cannot enquire into what was the advice the Council of Ministers tendered to the President, the assent of the President itself is outside the scrutiny by the Court.

12. It is admitted before us that the question raised by Mr. V.K. Thiruvankata Chari has not been decided by the Courts in this country so far.

Though the joint raised and the arguments advanced by Mr. Thiruvankata Chari were able, important and instructive, we are of the opinion that

both sides took somewhat an extreme stand on this point. In our view, there is absolutely nothing to hold that the "concurrent list" was introduced

into the Government of India Act, 1935 as well as the Constitution of India in respect of matters which required uniformity throughout the country

and therefore, when the Governor-General then was, and the President now is, called upon to give his assent to a law made by the Legislature of a

State with respect to a matter in the "Concurrent list", which law is repugnant to the provisions of the Central Law, the only consideration which

the President now will have to take into account is as to why there should be a departure in respect of a particular State only. If that "uniformity"

was fundamental, even if it was not the sole consideration, that particular subject-matter would have found its place in List I itself, namely, Central

List, with respect to which the Parliament alone will have legislative competence and that will prevent any State Legislature coming anywhere near

it and thus will preserve the uniformity of the law unimpaired. The very fact that a particular subject-matter is included in the "Concurrent List" is

itself evidence to show that the uniformity in respect of the law made in relation to such subject-matters was not the sole consideration or even the

main consideration. As a matter of fact, the Joint Parliamentary Select Committee on the Bill which became the Government of India Act, 1935

had not given "uniformity" alone as the criterion for the presence of that "Concurrent List" and gave three different reasons for the same. States the

Joint Parliamentary Select Committee:

Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a

provincial Legislature, and for which though it is often desirable that provincial legislation should make provision it is equally necessary that the

Central Legislature should also have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout

the country, in others to guide and encourage provincial efforts and in others again to provide remedies for mischiefs arising in the provincial sphere

but extending or liable to extend beyond the boundaries of a single province.

Instances of the first are provided by the subject-matter of the great Indian Codes; of the second by such matters as labour legislation, and of the

third by legislation for the prevention and control of epidemic disease.

It would in our view be disastrous if the uniformity of law which the Indian Codes provide were destroyed or whittled away by the unco-ordinated

action of provincial Legislatures. On the other hand, local conditions necessarily vary from province to province, and provincial Legislatures ought

to have the power of adopting general Legislation of this kind to meet the particular circumstances of a province.

Thus the above passage not only gives the three reasons for the provision of the "Concurrent List", but also gives illustrations with reference to

each and the emphasis to secure uniformity in the main principles of law throughout the country was with reference to the subject-matter of the

great Indian Codes. This aspect is in fact reinforced by the Instrument of Instructions given by His Majesty to the Governor-General under the

Government of India Act, 1935, on which Mr. Thiruvankata Chari himself relied. The said Instructions are dated 8th March, 1937 and Paragraph

XII of the Instructions deals with this aspect of the matter and the same reads as follows:

XII. In considering whether he shall give his assent to any provincial law relating to a matter enumerated in the Concurrent Legislative List, which

has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of an Act of the "Indian Legislature,

Our Governor General, while giving full consideration to the proposals of the provincial Legislature, shall have due regard to the importance of

preserving substantially unimpaired the uniformity of law which the Indian Codes have hitherto embodied.

(Italics are ours)

Thus, it will be obvious that the uniformity that the Joint Parliamentary Committee as well as the Instrument of Instructions were thinking of was the

uniformity of law which the Indian Codes had by that time embodied, such as the Indian Penal Code, the Transfer of Property Act, the Indian

Evidence Act, etc. Simply by way of answer to the reliance on the said paragraph in the Instrument of Instructions, it may be pointed out that the

Motor Vehicles Act, 1939, has been enacted subsequent to the Instructions, and therefore, that would not form part of law which the Indian

Codes had by then embodied.

13. This does not mean that the President had no obligation to consider whether the departure proposed by the State law, with reference to the

provisions contained in the Central law, in its application to the particular State

was called for. Even this situation was contemplated and provided for in the observation already extracted from the report of the Joint Parliamentary Committee. Therefore, independent of and apart from the question of uniformity, the President is obviously under an obligation to apply his mind to the question whether the law which the State Legislature wanted to make for the particular State differing from the law made by the Centre was necessary or not. In our view, the scope of this consideration must be very limited. From the very fact that the subject-matter is in the "Concurrent List", it is clear that the State Legislature is competent to make the law. It is needless to point out that if there is no Central law on the subject already in existence, the State law even without the assent of the President will become operative in the State. The particular question arises only when there is already a law made by the Parliament and the law now made by the State Legislature is repugnant to some provisions of the law made by the Parliament. In such a context, the considerations to be had by the President must be a very delicate, balanced and limited one in the sense that his refusal to give assent to the Bill passed by the State Legislature should not have the effect of impairing or affecting or nullifying the competence of the State Legislature to make the law and at the same time giving his assent to the Bill should be in recognition of certain welcome principles or certain local conditions the appreciation of which can be made better by the local legislature than by the President himself. If the local Legislature is of the view that certain conditions prevalent in the particular State or certain ideology or requirement which it considers desirable in the public interest warrant a departure from the Central law, the President from the very nature of the cases, cannot sit in judgment over that legislative recognition and overrule the will and wisdom of the State Legislature except for compelling reasons.

14. In these cases, all that has been contended by Mr. Thiruvengkata Chari is that the Motor Vehicles Act, 1939, enacted by the Centre had not fixed a ceiling for the number of state carriage permits to be held by a person, and when the State Legislature had proposed to prescribe such a ceiling, it was the duty of the President to apply his mind to the question whether the local conditions warranted such departure from the Central legislation or not. We are of the opinion that if the State Legislature, in

recognition of the existence of certain need for a special provision in the State, makes a law in this behalf, the President while applying his mind to the question whether the State Legislature has proceeded on such a basis or not, certainly will have no right to sit in judgment over the will and wisdom of the State Legislature and overrule or nullify the same, which very often will have the effect of destroying the very competency of the State Legislature to make a law on the subject in question and thereby impair the autonomy of the State Legislature.

15. In the present cases, Mr. Thirvenkata Chari invited the attention of the Court to the correspondence that passed between the State

Government and the Central Government with reference to the obtaining of instructions of the President under the proviso to Article 213 of the

Constitution before the promulgation of the Ordinance and with reference to the obtaining of the assent of the President under Article 254(2) of the

Constitution, after the Bill was passed by both the Houses of the State Legislature, and pointed out that there was not one word in the said

correspondence as to the special circumstances requiring the fixing of the ceiling of the number of stage carriage permits held by a person in Tamil

Nadu as against there being no such ceiling in the Motor Vehicles Act, 1939. The correspondence brought to our notice consisted of the letter,

dated 30th May, 1971, written by the Secretary to the Government of Tamil Nadu in the Home Department to the Secretary to Government of

India, Ministry of Home Affairs, New Delhi, seeking instructions of the President under the proviso to Clause (1) of Article 213 of the

Constitution, the communication, dated 17th June, 1971, of the Deputy Secretary to the Government of India, Ministry of Home Affairs, New

Delhi, addressed to the Tamil Nadu Government conveying the instructions of the President and enclosing the instructions in the form of a separate

order, dated 17th June, 1971, the letter of the Secretary to the Government in the Law Department, Government of Tamil Nadu, addressed to the

Secretary to the Government of India, Ministry of Home Affairs, New Delhi, dated 25th July, 1971, seeking the assent of the President under

Article 254(2) of the Constitution, after the Bill was passed by both the Houses of the Legislature and the actual assent given by the President. Mr.

Thiruvankata Chari also represented that the Government of India has evolved a

procedure for considering such cases, when the assent of the President is requested under Article 254(2) of the Constitution of India by any State Government, and the entire procedure has been fully set out in an article by Mrs. Alice Jacob in the Journal of the Indian Law Institute, 1970 (at page 151) the author of which article had access to the original papers of the Government of India and that the said article clearly shows as to what the Government of India in the Home Ministry does after the receipt of a request from the State Government in this behalf, which other Ministries are consulted, what each such Ministry does and what are the factors that are taken into account before considering the question of grant of assent and that in the light of the said article, it will be seen that the Government of India has not applied its mind to the particular question, namely, what was the need for fixing a ceiling in the State of Tamil Nadu and as a matter of fact even the letter of the Government of Tamil Nadu addressed to the Government of India did not tell the Central Government as to what the changes were and why the changes were necessary.

16. After a careful consideration, we are of the opinion that this contention lacks substance. The two files of the Government of India, Ministry of

Home Affairs, (Judicial Section), dealing with the granting of instructions under the proviso to Article 213(1) of the Constitution before the

promulgation of the Ordinance and the giving of the assent after the Bill had been passed by the two Houses of the State Legislature were

produced before us. The said two files clearly show that the procedure on which Mr. Thiruvenkata Chari relied, as detailed in the article of Mr.

Alice Jacob, has been faithfully followed in the present case. On both the occasions, the Home Ministry consulted the Ministry of Shipping and

Transport, Department of Internal Trade, Ministry of Finance, Ministry of Law and Ministry of Railways and only after obtaining the views of those

Ministries and only after the Law Ministry had given its opinion that there was no legal or constitutional objection to the Ordinance and the Bill, the

assent had been given. In fact, those files clearly establish that the avowed policy of the Central Government itself was to restrict monopolies, and

in that context the Central Government's agreement with the State Government prescribing a ceiling can be said to have satisfied even the test

insisted upon by Mr. Thiruvenkata Chari. When the avowed policy of the Central

Government is to restrict monopolies, it cannot be contended

that it has failed to consider whether a ceiling to avoid monopoly in the State of Tamil Nadu, was necessary or not.

17. It is not contended that the assent of the President himself must give reasons as to why the President was giving his assent. If so, whether the

President had taken into account all the relevant considerations or had taken into account any irrelevant considerations can be tested only with

reference to the notings made in the file by the officials, who advise the Council of Ministers, who in turn advise the President. In such a situation,

with reference to what we have stated above and the contents of the files produced before us, we are of the opinion that the assent of the President

to the Act in question cannot be said to have been vitiated in the present case.

18. In this context, it may be pointed out that in some of the writ petitions, petitions were filed to implead the Central Government as a party. In the

affidavits filed in support of those petitions, it was contended that the Ordinance and the Bill made changes from the position resulting from Section

59(1) of the Motor Vehicles Act relating to transfer of permits, that it was necessary in law and justice to examine whether these changes in the

impugned Act were brought to the notice of the Government of India, apart from the question of the reasons given for the same and that the

deponent of the affidavit was advised to submit that if the Tamil Nadu Government had not given any reason either for imposing the ceiling or

prohibiting transfer of permits either generally or on conditions, the Government of India had acted either on misrepresentation or not considering

relevant factors in giving President's assent. A counter-affidavit has been filed on behalf of the Central Government. In that counter-affidavit, it was

stated that the material furnished by the State Government indicated all the particulars of the amendments made in the impugned Act, that in

addition the Tamil Nadu State Government had forwarded a memorandum containing, inter alia, a summary of the proceedings of the State

Legislature, which explained the scope of the changes made in the impugned Act and thus all the relevant materials were before the President when

he gave his assent and that the President gave assent to the Bill in accordance with the usual procedure and the relevant rules of business applicable

to such cases. It was further stated that the petitioners' contention that the

changes effected in the Bill by the Tamil Nadu Legislature had not been brought to the notice of the Government of India and that the Government acted on mis-representation was baseless and opposed to facts. We have already referred to the fact that the files produced by the Central Government before us showed that the procedure elaborated by Mrs. Alice Jacob had been implicitly followed in the present case. In our view, when the State Government proposes to make changes in a law to be made by the State Legislature departing from the provisions contained in the Central enactment on a concurrent subject, it is not necessary for the State Government to refer to the provisions contained in the Central enactment and state in what respect the proposed State legislation departs from the Central legislation. The Central Government is expected to know what the provisions contained in the existing Central Law are, and therefore, all that is necessary for the State Government to do is to communicate to the Central Government the changes which it proposes to make by the State law which will automatically indicate the extent of departure proposed to be made by the State Legislature from the Central Law. The very explanatory note appended to the proposed Ordinance and the statement accompanying the Bill clearly indicated the changes which the State Legislature proposed to make and therefore, in our opinion, this was sufficient to enable the Central Government to apply its mind to the question involved. It is in view of this only the Supreme Court in *Khajamian Wakf Estates etc. Vs. State of Madras and Another*, , observed:

There is no material before us from which we could conclude that the President or his advisers were unaware of the implications of those bills; we must proceed on the basis that the President had given his assent to those bills after duly considering the implication of the provisions contained therein.

Though the said observation was made in the context of the President's assent as required by the first proviso to Article 31-A of the Constitution, in our view the same is general in nature and it will apply to the present case also.

19. In view of this conclusion of ours, it is not necessary to consider whether the principles enunciated by Lord Greene, M.R., in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 K.B. 223 and

by the Supreme Court in its decision in *The Barium Chemicals*

*Ltd. and Another Vs. The Company Law Board and Others*, can be invoked, subjecting the assent of the President to judicial scrutiny.

20. We shall also deal with the argument of Mr. K. Parasaran in this context. The argument of Mr. K. Parasaran was that the assent of the

President is part of the legislative process and therefore, outside the judicial scrutiny. We are of the opinion that this argument is misconceived. It is

true that in view of the provisions contained in Article 79 of the Constitution, the President is a part of the Parliament of the Union, and similarly in

view of the provisions contained in Article 168(1) of the Constitution, the Governor is a part of the State Legislature. But, when the President gives

assent to a Bill passed by the sole house or two houses of a State Legislature, he is not performing his function as a part of that Legislature. At the

same time, it cannot be disputed that giving of assent to a Bill is an act of legislative nature. But it is far different from stating that in view of its

legislative nature, the assent is outside the scrutiny of the Court. The language of Article 122(1) and that of Article 212(1) of the Constitution is

practically the same. Article 212(1) states:

The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

Simply as a matter of construction, for this Article to apply, the following conditions must be satisfied-

- (1) there must be proceedings in the Legislature of a State;
- (2) the validity of such proceedings must be called in question; and
- (3) the validity of such proceedings must be called in question on the ground of alleged irregularity of procedure.

If only all the above three conditions are cumulatively satisfied, the bar imposed by Article 212(1) or Article 122(1) of the Constitution comes into

operation. When the validity of the assent of the President is questioned on the ground that the President has not applied his mind to the

consideration which he should take into account before giving his assent or refusing to give his assent, that is not questioning the validity of the

proceedings of the Legislature of a State or the Parliament on the ground of any irregularity of procedure. It is one thing to say that the grant of or

refusal to grant assent is a legislative process. It is another thing to say that the

same is a proceeding in the Legislature of a State or the Parliament.

Therefore, in our opinion, neither Article 122(1) nor Article 212(1) of the Constitution prohibits the Court from going into the validity of the assent

of the President. In fact, the learned Counsel himself was not able to draw our attention to any other specific provision in the Constitution or any

principle at all which prohibits the Court from going into the validity of the assent of the President.

21. The next argument of Mr. K. Parasaran is based on the language of Article 74(2) of the Constitution. That Article again merely prevents a

Court from enquiring into whether any, and, if so, what advice was tendered by the Council of Ministers to the President. This question is far

different from finding out what the Government of India itself considered with reference to a particular question. In fact, the Courts in this country

have made out this distinction.

22. In the *The State of Bihar Vs. Rani Sonabati Kumari*, the Supreme Court had to consider the scope of Article 166 of the Constitution of India,

and it observed as follows:

The submission of learned Counsel is correct to this extent that the process of making an order precedes and is different from the expression of it,

and that while Article 166(1) merely prescribes how orders are to be made, the authentication referred to in Article 166(2) indicates the manner in

which a previously made order should be embodied.

23. In the same volume, the Supreme Court had to consider in the *The State of Punjab Vs. Sodhi Sukhdev Singh*, the claim of privilege in respect

of the advice given by the Public Service Commission to the Council of Ministers as well as the advice given by the Council of Ministers to the

Rajpramukh. The Court observed that the advice given by the Cabinet to the Rajpramukh or the Governor is expressly saved by Article 163, Sub-

Article (3) of the Constitution and that in the case of advice, no further question need be considered. But, the Supreme Court distinguished the said

advice from the advice given by the Public Service Commission to the Council of Ministers and with reference to that advice, the Supreme Court

did not invoke Article 163(3), but considered the claim of privilege with reference to Section 123 of the Indian Evidence Act.

24. Similarly, a Full Bench of the Patna High Court in *N.P. Mathur and Others Vs.*

State of Bihar and Others, , had to consider the scope of

Article 163(3) of the Constitution. The Full Bench has held that the process of making an order precedes and is different from the expression of it;

that the process of selecting a Chief Secretary by the method visualised by Rule 3(2-A) of the Indian Administrative Service (Pay) Rules (1954) is

different from the ultimate advice tendered by the Ministers to the Governor and that any document that deals with the process of selection of the

Chief Secretary, keeping in view Rule 3(2-A) can be scrutinised by the Court as that will not be a question of enquiring into the advice tendered by

the Ministers to the Governor.

25. It is well known that before a Minister or the Council of Ministers advises the Governor or the President as the case may be, considerable

amount of work is done at the Secretariat level by the Officials of the concerned Departments in the form of notes put up by the hierarchy of

officers at different levels which may be in the form of opinion or advice to the Minister or Council of Ministers; it may again be, the advice

tendered by a Minister or Council of Ministers to the Governor or the President as the case may be, is based upon the advice which they

themselves received from the permanent Government servants or any information which they collected otherwise. What Articles 74(2) and 166(3)

cover is the actual advice, if any, that may be tendered by the Ministers to the President or the Governor and not the process by which the

Ministers or Council of Ministers got themselves informed of the subject-matter with reference to which they have tendered advice. All that Mr.

Thiruvengkata Chari insists is that there must be something to show that the different officials who considered the matter and advised the concerned

Minister or Ministers took the relevant aspect into account so that that aspect was in the mind of the concerned Minister or Ministers who in turn

advised the Governor or the President as the case may be. To such a contention, neither Article 74(2) nor Article 166(3) is an answer.

26. Having regard to all the above circumstances, we are of the opinion that the Ordinance and the Act in the present case are not void, since

neither the instruction of the President under the proviso to Article 213(1) nor the assent given by the President under Article 254(2) can be said to

be void.

27. The second limb of the argument of Mr. Thiruvengkata Chari is that even a law of the Legislature of a State assented to by the President under

Article 254(2) of the Constitution will have to satisfy the requirements of the provisions contained in Part III of the Constitution relating to

fundamental rights and from this point of view, the provisions of the Act are violative of Articles 14, 19 and 31 of the Constitution of India. In our

view, there can be no controversy that even a law made by a State Legislature receiving the assent of the President under Article 254(2) of the

Constitution will fall within the scope of Article 13 of the Constitution, and therefore, will have to satisfy the requirements of Part III relating to

fundamental rights. The assent of the President is not intended to cure any constitutional invalidity of the State law with reference to the provisions

contained in Part III of the Constitution. The very fact that the Bill passed by the State Legislature was reserved for and received the assent of the

President is decisive of the fact that the State Legislature was competent to make the law with reference to a subject-matter in the "Concurrent

List" and that the assent of the President only enabled the State law to prevail over the Central law in the concerned State, in the event of the

provisions contained in the State Law being repugnant to the provisions contained in the Central law and did not no more. Therefore, there is no

need to elaborate this point any further.

28. Consequently, we straightaway proceed to consider the argument that the provisions of the State law in the present case violate the

fundamental rights under Articles 14, 19 and 31 of the Constitution of India.

29. Article 14 of the Constitution was invoked by Mr. Thiruvengkata Chari only on a hypothetical basis. The learned Counsel contended that the

moment the President has given the assent to the law made by the State Legislature in the present case, it is as if the Parliament itself has made this

law as part of the Motor Vehicles Act, 1939, but exclusively applicable only to the State of Tamil Nadu. We are afraid that Article 14 of the

Constitution cannot be considered on the basis of any such hypothesis. The law in question is undoubtedly a State law and simply because it is in

relation to a subject-matter in the "Concurrent List" already legislated upon by the Parliament and is repugnant to some of the provisions of the

Central law and in view of such repugnancy, to secure prevalence for the said law

in the State of Tamil Nadu, it has received the assent of the President, it cannot be stated that this is also a Parliamentary law forming part of the Motor Vehicles Act, 1939, but exclusively intended to apply to the State of Tamil Nadu. Therefore, as far as the Tamil Nadu Act itself is concerned, admittedly it does not make any discrimination and, if at all, any discrimination is made, it is as between private holders of stage carriage permits on the one hand and the Central or State Government or Governments or any corporation or company owned by the said Central or State Government or Governments on the other hand, that admittedly cannot be said to offend Article 14 of the Constitution.

30. Then, we shall take up for consideration the argument based on Article 19 of the Constitution of India. Here the contention of Mr.

Thiruvengkata Chari is that it is no doubt true that reasonable restrictions can be imposed on the fundamental right of a citizen to carry on his

business under Article 19(1)(g) of the Constitution of India, read with Article 19(6) thereof, but the reasonableness or otherwise of such

restrictions has to be tested, in the present case, in the light of the fact that the Motor Vehicles Act, 1939, which is in force in other States has not

prescribed a ceiling on the number of permits held by a holder. In other words, according to the learned Counsel, if there is no Motor Vehicles

Act, 1939, and the Act passed by the State Legislature is the only law on the subject, what constitutes reasonable restrictions will have to be

determined on a priori reasoning, but now that the Central law is in operation in other States, which law itself has not prescribed any ceiling, that

fact will constitute the touch-stone for finding out whether the ceiling fixed by the State Law will constitute a reasonable restriction or not. In

considering this question, it will be appropriate to deal with the anterior history in this behalf, as far as this State is concerned.

31. The avowed object of the Ordinance and the Act is to prevent monopoly and the imposition of the ceiling is for the purpose of achieving that object.

32. As early as 1946 the Government of the then composite Presidency of Madras passed an order in G.O.Ms. No. 3898, Home, dated 9th

December, 1946, giving certain directions to the authorities functioning under the Motor Vehicles Act, 1939, with a view to curb monopoly among

the bus operators, and the said Government Order in full has been extracted in the judgment of this Court in Sri Rama Vilas Service, Limited Vs.

The Road Traffic Board, . In that case a Bench of this Court held that nowhere in the Motor Vehicles Act there was any express provision by

which the authorities granting a permit must act in accordance with the Orders of the Government and that therefore, the said Government Order

was without any right or authority and was naked of any legality. It is thereafter that the State Legislature amended the Motor Vehicles Act by

introducing Section 43-A by Madras Act XX of 1948. By this amendment, the State Government took powers to issue such orders and directions

of a general character as it may consider necessary in respect of any matter relating to road transport, to the State Transport Authority or a

Regional Transport Authority and such Transport Authority shall give effect to all such orders and directions. Pursuant to this statutory provision

with which it armed itself, the Government issued directions from time to time. On 28th March, 1953, the Government issued G.O.Ms. No. 1037,

Home Department, providing among others that the transport authorities while granting stage carriage permits should work up to the minimum of

five permits with a spare bus for each operator and the issue of permits should be so regulated as not to encourage benamidars on the one hand

and inefficient operators on the other. Later, on 15th November, 1954, the Government issued G.O.Ms.No. 3353, Home Department, which

among others directed that each viable stage carriage unit in the State shall consist of not less than 10 buses and that in the matter of grant of stage

carriage permits, other things being equal, and with a view to build up such viable units, the following shall be the order of preference:

(1) Operators with less than 10 buses but nearer the mark of 10.

(2) Operators with 10 and more buses.

(3) Others including new entrants.

On 15th June, 1955, the Government issued G.O.Ms. No. 1689, Home Department, whereby the Central Road Traffic Board was informed that

pending further orders of Government after re-examination of the question of formation of viable units of stage carriages, the orders in para, (ii) of

G.O.Ms. No. 1937, Home, dated 28th March, 1953, would be in force. All these orders of the Government have been referred to in Raman and

Raman Ltd. Vs. The State of Madras and Others, . Subsequently, on 28th April, 1956, the Government in the Home Department issued G.O.Ms.

No. 1298. This Government Order among others gave certain directions for building up viable units. The said order stated:

After considering the statistics available and the reasons advanced, Government have decided that efficiency of service and economy in cost can

be secured by fixing viable units of five buses. It is accordingly necessary that, other things being equal, preference should be given to existing

owners of four buses and less to build up to a fleet of five buses. These owners will have preference over other applicants in the ascending order.

For the purpose of achieving this object, the Government provided for a marking system. These instructions were reviewed by the Government in

G.O.Ms. No. 2265, Home Department, dated 9th August, 1958. Under this Government Order, while superseding paragraph 2(A) of G.O.Ms.

No. 1298, Home dated 28th April, 1956, the Government classified the routes, as short routes, medium routes and long routes and provided for

different standards of preference in respect of these routes. This Government order stated that for short routes, new entrants should be given

preference and for medium routes, applicants with 1 to 4 permits should be given preference. This again provided for another marking system.

33. However, in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, the Supreme Court held that the field covered by

Section 43-A is administrative and does not infringe the area which is the subject-matter of the exercise of quasi-judicial authority by the relevant

Tribunal and that therefore, the Regional Transport Authority and the State Transport Authority and the State Transport Appellate Tribunal, while

dealing with the grant of permit should not feel themselves constrained by the orders issued by the Government u/s 43-A of the Motor Vehicles

Act, 1939.

34. Thereafter, in G.O. Ms. No. 1427, Home (Transport II) Department dated 13th May, 1968, in exercise of its statutory power u/s 68 of the

Motor Vehicles Act, 1939, the Government incorporated some of these principles in the form of rules made by it, namely, Rule 155-A of the

Tamil Nadu Motor Vehicles Rules, 1940. These rules again classified the routes as short routes, medium routes and long routes and provided for

different preferences in respect of different types of routes. These rules also provided for a marking system, with a view to enable the operators to

build up viable units. The validity of these rules came up for consideration before a Bench of this Court in *The Erode Co-operative Motor*

*Transport Society (for Harijans) Ltd. Erode and Others Vs. The State Transport Appellate Tribunal, Madras I and Others*, and the said rules were

held valid by this Court.

35. Thus, it is clear that ever since 1946 there has been an attempt in this State to enable bus operators to build a viable unit and at the same time

to prevent concentration of permits in the hands of a few persons and to avoid monopoly. In fact, independent of the directions issued by the

Government as well as the rules made by it, the Supreme Court had taken the view that the refusal to grant a permit on the ground of the applicant

being a monopolist cannot be said to be illegal and it will be in public interest. In *Sri Rama Vilas Service (P) Ltd. Vs. C. Chandrasekaran and*

*Others*, the Supreme Court observed:

There can be no doubt that in granting a permit, the appropriate authorities under the Motor Vehicles Act are required to consider the interests of

the public generally u/s 47(1)(a), and in assessing the merits of an individual applicant for a permit on any route, it would be open to the

appropriate authority to enquire whether the service which the individual applicant would render to the public if he is given a permit would be

efficient and satisfactory or not. In dealing with this aspect of the matter, it would not be irrelevant for the appropriate authority to hold that, if any

applicant is or would be in the position of a monopolist if a permit was granted to him, he would be liable to neglect the interests of the public and

may not be very keen on taking all steps to keep his service in good and efficient order. Absence of any competition from another bus operator on

the route is likely to develop a feeling of complacency in the monopolist and that is a factor which the appropriate authority can certainly take into

account. Therefore, it cannot be urged that in taking into account the fact that the appellant was a monopolist on a part of the route, the Appellate

Tribunal has been influenced by any irrelevant fact- vide *R.K. Ayyaswami Gounder v. Sowdambigai Motor Service, Dharapuram C.A. No. 198*

of 1962 dated 17th September, 1962.

36. Again, as to the actual number of permits which would constitute a ceiling, the above history in the State will clearly show that the Government

has been from time to time reviewing what would constitute a viable unit to enable an operator to run an efficient service and the same has been

alternating between 5 and 10. In that context, if a ceiling of 10 permits is fixed, it cannot be said to constitute an unreasonable restriction. We do not

know whether the steps which the Government of Tamil Nadu has been taking from 1946 onwards have been taken in any other State or not.

However, we can safely state that what has been done by the Government in this State from 1946 onwards will constitute the distinguishing

features of the State and will themselves constitute sufficient justification for prescribing a ceiling on the number of stage carriage permits to be held

by a private operator in this State.

37. An argument was advanced before us that even with regard to the number of permits, fixed, to constitute the ceiling, the provisions are not

clear but are confusing. There is certainly substance in this contention, Section 62A as introduced by the Ordinance merely provided that no stage

carriage permit shall be granted or renewed to any person, if the number of stage carriage permits held by such person on the date of the

application for the grant or renewal of such permit is not less than ten. Of course there is certain ambiguity in the language, because the language

used is "no stage carriage permit shall be granted or renewed to any person", but the same is qualified by providing, "if the stage carriage permits

held by such person on the date of the application for the grant or renewal of such permit is not less than ten". The ambiguity consists in this. The

Motor Vehicles Act makes provisions as to the time when the application for the grant or renewal of a permit shall be made. Section 57(2) of the

Motor Vehicles Act, 1939, provides that an application for a stage carriage permit shall be made not less than six weeks before the date on which

it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications on such

dates. Consequently it may happen that a person is having 10 permits, the period of one of which is about to expire and he applied for a new

permit within the period of six weeks referred to above. We shall also assume that before the application comes up for final disposal by the

Regional Transport Authority, the period of validity of the permit referred to earlier had expired. The result of this will be, on the date when the

Regional Transport Authority considers the application for the grant of the permit, the applicant would be having only nine permits. Still as per the

provisions contained in the Ordinance, the Regional Transport Authority shall not grant the permit because on the date of the application for the

grant, the person had not less than ten permits.

38. Similarly with reference to renewal, Section 58(2) of the Motor Vehicles Act, 1939, provides that a permit may be renewed on an application

made and disposed of as if it were an application for a permit, provided that the application for the renewal of a permit shall be made in the case of

a stage carriage permit not less than one hundred and twenty days before the date of its expiry. Let us take a case where on the date, when the

application is made for renewal of a permit, the applicant is having ten permits, the period of one of which is about to expire and with reference to

that permit alone he has filed the application for renewal. If the section is literally construed, renewal cannot be granted because at the time when

the application came to be filed, the applicant had not less than ten permits. Notwithstanding the defect in the language of the section, it is clear that

the intention was that a person should not be granted more than ten permits and that after renewal a person should not hold more than ten permits.

39. The same defect has been persisted in the Act (Tamil Nadu Act XVI of 1971) itself in a different form. As we have pointed out already, what

was contained as a single provision without any clause in Section 62A in the Ordinance had been changed into a section consisting of three clauses

in the Act. The argument advanced by Mr. K.K. Venugopal is based upon the language of Clause (b) as contained in the Tamil Nadu Act XVI of

1971. According to the learned Counsel, though Clause (a) of Section 62A fixed the number of permits to constitute a ceiling as ten, in effect

Clause (b) reduced it to nine. According to the learned Counsel, Clause (b) opens up by stating:

No person shall be entitled to apply for the grant of a new stage carriage permit or for the renewal of a stage carriage permit, if the number of stage

carriage permits already held by such person is not less than ten.

The consideration to which we have drawn attention with reference to the

provision contained in Section 62A in the Ordinance will apply to this also. Undoubtedly, the language in which the provisions have been couched is defective; none-the-less the object is clear, namely, that the ceiling should be 10 only and that 10 shall be after the renewal of the permit, which means that it will not have the effect of reducing the ceiling to 9. Notwithstanding the defect in the language, if all the three clauses contained in Section 62A are read together, the object of the Legislature will be clear, that is, to prescribe a ceiling of 10 stage carriage permits. Certainly, it is open to the Courts to read the language contained in the statute by removing the defect found therein as to give effect to the real intention of the Legislature, so long as that intention is made clear by the Legislature itself.

40. Another argument that was advanced in this behalf was that the provision contained in the Ordinance as well as the Act, namely, that no renewal, shall be granted in excess of the ceiling limit is itself unconstitutional. According to the learned Counsel for the petitioners, in terms of Section 58(1) of the Motor Vehicles Act, 1959, as construed by the Supreme Court in V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore, , a renewed permit is a continuation of the old permit and not a new permit and because of this as well as the preference in favour of an applicant for renewal provided for in Section 58(2) of the Act, the imposition of a ceiling on the number of permits held by a person as to refuse renewal in the case of persons holding permits in excess of ten would affect the fundamental rights to property of an operator under Article 19 as well as Article 31 of the Constitution. Section 58(1)(a) of the Motor Vehicles Act, 1939, provides that a stage carriage 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. The Supreme Court in the decision referred to above, namely, V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore, , merely pointed out that a reading of the relevant provisions of the Motor Vehicles Act and of the Rules thereunder led indubitably to the conclusion that a renewal was a continuation of the permit previously granted and that the fact that the grant of renewal was not a matter of course or that it was open to the

authorities to impose fresh conditions at the time of renewal did not, when the permit was in fact renewed, alter its character as a renewal. Sub-section (2) of Section 58 provided that a permit may be renewed on an application made and disposed of as if it were an application for a permit, provided that, other conditions being equal, an application for renewal shall be given preference over new application permits. In our opinion, these provisions do not have the effect of making the renewal itself a vested right. In fact, the above decision itself assumes that the grant of renewal is not a matter of course and that it is open to the authorities to impose fresh conditions at the time of renewal. Once the grant of renewal is not a matter of course, we are unable to see any justification for holding that the possibility of obtaining renewal itself can be considered to be a vested right. It is true that Sub-section (2) of Section 58 of the Act provides for giving of preference in favour of applications for renewal over new applications for permits. That preference is a very slender one, because the preference will come into operation only when the other conditions are equal. Consequently, the mere right to apply for renewal and the possibility of obtaining the same cannot be said to be a right to property. When a permit-holder applies for renewal of permit, he is not entitled to a renewal thereof as a matter of course. If others also apply for permit on the same route as contemplated by Section 57(2) of the Act, then the Transport Authority concerned has to deal with the application for renewal along with the fresh applications and the applications for renewal will get preference only if other conditions are equal. In view of this contingency, it is not possible to hold that the right to apply for renewal and the possibility of obtaining the same has such significance as to come to the conclusion that the provisions that renewal will not be granted where the applicant for renewal is already having 10 permits will constitute deprivation of property attracting Article 31 of the Constitution or even an unreasonable restriction violating the right of an operator under Article 19 of the Constitution.

41. This conclusion of ours derives further support from the following observations of the Supreme Court in *T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others*, :

The High Court acceded to the argument of the Advocate-General that a bus with

a permit is a valuable property but without permit or when the permit expires it ceases to have more value than what can be fetched in the market. The motor vehicle is not taken away by the Government and the permit-holder is free to use it. Since the renewal of a permit is not a matter of right on the expiry of the permit its holder had no property in it and as such there was no question of infringement of his fundamental rights guaranteed by Art. 19(1)(f) or Article 31 of the Constitution.

The above observation does not merely refer to the conclusion of the High Court accepting the argument of the Advocate-General, but reflects the decision of the Supreme Court itself, as the dismissal of the appeal preferred against the judgment of the High Court clearly shows.

42. Thus, we have come to the conclusion that in fixing a ceiling of 10 stage carriage permits and providing that a person holding 10 permits will not be entitled to the grant of any further permit or renewal of any permit in excess of ten, the provisions of the Act have not violated any right of the petitioners constitutional or otherwise.

43. We may also refer to the provisions contained in the Ordinance and the Act relating to surrender of permits. As we have pointed out already, the prescription of a ceiling of 10 permits does not affect the permits in excess of 10 during their currency. As on the date of the promulgation of the Ordinance, all that the provisions do is to deny renewal of permits in excess of ten. However, a person holding more than ten permits may like to make a selection out of the permits held by him to be retained by him within the ceiling limit. If he merely allows the permits to expire according to their period of validity, it may be that he will lose a permit which he would like to retain, from his business point of view. In order to enable him to make such a selection, Section 62B as contained in the Ordinance enabled a permit-holder holding 10 or more permits to surrender one or more of such permits to the Regional Transport Authority within a period of one month from the date of commencement of the Ordinance and imposed an obligation on the said Regional Transport Authority to accept the surrender and cancel the permit. This is a special provision in order to give a choice to the holders of permits, and to their benefit. No doubt in order to exercise the choice and thereby retain the permits which are more valuable to them, they have to pay the price of surrendering other permits

within one month from the date of the commencement of the Ordinance even during the currency of those permits. In any event, this is only an enabling provision and that too made specially in the context of the prescription of the ceiling, because even before the Ordinance and the Act there is a provision in the Tamil Nadu Motor Vehicles Rules, 1940, for surrendering of a permit by a permit-holder and for having the same cancelled under Rule 193 of the Rules. But, Section 26-B as contained in the Ordinance enabled permit-holders to exercise this choice only within a period of one month from the date of commencement of the Ordinance, that is, from 18th June, 1971. However, in reproducing this provision in the Act XVI of 1971 which replaced the Ordinance, the draftsman had not taken sufficient care. Section 62B (1) as contained in the Act XVI of 1971 provides:

Where the number of stage carriage permits held by any person on the 18th June, 1971, is not less than ten, such person may, at any time within a period of one month from the said date, surrender one or more of such permits which are in excess of ten to the Regional Transport Authority which granted the permit and such Authority shall, notwithstanding anything contained in this Act, accept such surrender and cancel the permit or permits so surrendered,

We have already referred to the fact that the Act received the assent of the President on 30th July, 1971 and was published in the Tamil Nadu

Government Gazette, Extraordinary of the same date. The language of the section (Section 62B (1) contemplates only a future surrender, as

indicated by the words ""may... surrender"". But, the period for the purpose of surrender is one month from 18th June, 1971 and that period ended

on 17th July, 1971, that is even before the Act came into force. The consequence of this will be that Section 62B is a meaningless and purposeless

provision in the Act, as far as the language goes. The learned Advocate-General who appeared for the State found it difficult to justify this

provision in the form in which it has been enacted. All that he contended was that such a provision might have been made in order to continue the

power of the Regional Transport Authority to accept the surrender as provided for in Section 62B as contained in the Ordinance. We are of the

opinion that there is no substance whatever in this desperate attempt to explain

away Section 62B as contained in the Act, because before the Act came into force, the period of one month had already expired and any permit-holder who chose to surrender his permit would have surrendered the permit and in terms of Section 62B as contained in the Ordinance he had a right to have that surrender accepted by the Regional Transport Authority and therefore notwithstanding the repeal of the Ordinance by the Act, the right of the permit-holder to have the surrender of the permit already made accepted by the Regional Transport Authority and the obligation of the Regional Transport Authority to accept the surrender remained intact.

44. Section 62C of the Act stated that without prejudice to the provisions of Section 62B, a holder of a stage carriage permit or other permit may, subject to such rules as may be made in that behalf, surrender the permit to the Regional Transport Authority which granted the permit. It is not clear as to what exactly the purport of this section is, in view of the existence of Rule 193 of the Motor Vehicles Rules, 1940, already referred to. But, in any event this does not in any way affect the petitioners herein and hence no attack was made on the said section.

45. We can easily dispose of one other provision, namely, what was Section 62D in the Ordinance and what is Section 62E in the Act. Section 62D in the Ordinance was slightly more elaborate than Section 62E in the Act. They provide for refusal of benami transfers. Once we uphold the validity of the prescription of the ceiling on the number of stage carriage permits, it goes without saying that a provision for refusal of benami transfers is merely incidental to it, to see that the prescription of the ceiling on the number of permits is effectively implemented and is not allowed to be defeated. In fact, even before the Ordinance and the Act, independent of the context of the ceiling on the number of permits fixed by the Ordinance and the Act, the Regional Transport Authorities as well as the State Transport Appellate Tribunal have been rejecting applications for grant of permit as well as applications for approval of transfer of permits on the ground that such applications were benami, and this was being done with reference to the Government orders already referred to and in the interests of public and such orders of the Transport authorities have been upheld by Courts. Consequently, the provisions contained in Section 62D as

introduced by the Ordinance and Section 62E as introduced by the Act cannot be held to be in any way illegal or unconstitutional.

46. Then there remains the very important consideration with reference to Section 62D as introduced by the Act. From the comparative table which we have given already, it will be seen that there was no corresponding provision in the Ordinance, and this provision finds a place only in the Act. Section 62D (1) imposes an obligation on the Transport Authority to refuse permission where the holder of stage carriage permits in excess of ten applies to that Authority for permission to transfer any stage carriage permit u/s 59(1) of the Act. Section 62D (2) provides that all applications for and proceedings (whether original or by way of appeal) relating to, transfer of any stage carriage permit under Sub-section (1) of Section 59, sought for by a holder of stage carriage permits in excess of ten and pending before any Court, transport authority or officer on the 18th June, 1971, and appeal or revision, if any, arising from such pending application or proceeding shall be disposed of under Sub-section (1). We are clearly of the opinion that this section is totally unconstitutional as offending both Article 19 and Article 31 of the Constitution.

47. From what we have pointed out already, the avowed object of the Legislature was to prescribe a ceiling of 10 stage carriage permits to be held by a person. In such a context, the prohibition of transfer of permits had neither relevancy nor significance. If a person has more than 10 permits, and in order to comply with the ceiling provision he proposes to transfer the permits in excess of 10, it is impossible to conceive any reason for prohibiting such transfer. u/s 59(1) read with Section 62A as introduced by the Ordinance and the Act, permission for such transfer will be granted by the Regional Transport Authority only if the transferee happens to hold less than 10 permits. If the object of the Legislature is to prescribe a ceiling of 10 permits, there is no justification whatever for refusing to grant permission for such transfer, because the same in no way defeats the prescription of the ceiling. At the same time there is a further infirmity, namely, that the validity of a current permit has always been held to be property of the holder both by this Court as well as the Supreme Court. Under Article 19(1)(f) of the Constitution of India, a citizen has got a fundamental right to acquire, hold and dispose of property. Consequently, the

right of a holder of a permit to transfer his permit is a right available to him under Article 19(1)(f) and if any restriction is sought to be imposed on that right, it must be a reasonable restriction as contemplated by Article 19(5) of the Constitution. The learned Advocate-General who appeared for the State was not able to give any reason whatever for making this provision compelling the transport authority to refuse to give permission for such transfers. In fact, so long as the provision contained in the Act fixing the ceiling is not violated, the prohibition of transfer does not appear to have any meaning or significance. As a matter of fact, the learned Advocate-General could not advance any argument in support of the said provision by way of answer to the challenge made against its validity in the context of the avowed object of the Legislature to prescribe only a ceiling on the number of stage carriage permits to be held by a private operator.

48. There is yet another infirmity in this provision. As we have pointed out already, Section 62D(1) imposes an obligation on the transport authority to refuse to grant permission for transfer, where the holder of stage carriage permits in excess of ten applies for permission to transfer. However, the proviso states that no such refusal shall be made unless the transport authority has given the applicant a reasonable opportunity of being heard. The provision for giving a reasonable opportunity of being heard is merely a meaningless and misleading provision in the context of the mandatory provision contained in Section 62D(1) imposing an obligation on the authority to refuse such permission. Normally, a statute contemplates an opportunity being given to a person to be heard or to make representation only when the statute empowers a particular authority to take action in the alternative or vests a discretion in the said authority. When that authority has no option in the matter but to take action only in the manner contemplated by the statute, the question of giving reasonable opportunity of being heard to a party is an exercise in futility and a totally empty formality and in fact will have the effect of adding insult to injury.

49. When Section 62D(1) compels the authority to refuse permission for the transfer, it has another consequence also. A question of transfer will arise only during the currency of a permit. Once the period of the validity of a permit expires, there is no question of that permit being transferred.

Therefore, when a person holding permits in excess of 10 and knowing full well that he will not be allowed renewal of permits in excess of 10

wants to dispose of the excess permits, and which disposal by way of transfer will be approved by the transport authority only if the transferee was

holding less than 10 permits and consequently he would be entitled to apply for renewal of such permits, not only the provision preventing transfer

will be illegal but the provision preventing renewal also will be illegal. The scheme of the Ordinance and the provisions contained in the Ordinance

and the Act have so interlinked the provision for refusing the renewal with the provision for refusing transfer that the invalidity and illegality of the

one necessarily affect the other.

50. In all these cases, so long as the object of the Legislature is only to prescribe a ceiling on the number of permits to be held by a person and

there is no intention to expropriate the current permits, the provision prohibiting the transfer as well as the provision prohibiting renewal will be

void. Let us take an illustration. Suppose "A" holds 15 permits. The Act has fixed the ceiling as 10 permits. During the currency of five of the

permits, he wants to transfer those permits to another person holding no permit at all or holding such number of permits which would not exceed

ten, if these five permits were transferred in his favour. "A" knows very well that in view of the fixing of the ceiling of ten, he will not be entitled to

apply for renewal of the permits in excess of ten. However, if he transfers the five permits in the manner indicated above, the transferee may be

entitled to apply for renewal of those permits. Therefore, if the law prescribes a period of time giving an opportunity to "A" to shed his excess

permits, he can certainly transfer five permits, as a result of which he will not suffer deprivation of the property and at the same time the transferee

may have the permits renewed and therefore, these permits will be held by the transferee. On the other hand, the provisions contained in the Act

and in particular Section 62D preventing the transfer compels a permit-holder to allow the excess permits to lapse after the expiry of the period of

their currency. The result of that will be, the permits themselves would lapse and the authorities will have to take steps for the purpose of issuing

those permits afresh, which is certainly not called for, for effectuating the provision for the ceiling. At the same time after the expiry of the permits,

the buses covered by those permits will become practically useless and valueless to the owner thereof and they would be causing loss to him.

51. It is in this context, Mr. K.K. Venugopal contended that the provisions in this behalf are merely destructive in the sense that the permits are

neither allowed to be transferred nor allowed to get renewed with the result that the permits lapse and the services covered by the permits will

come to an end putting the travelling public to discomfort and inconvenience, till fresh steps are taken for granting permits on the same routes

afresh, which will necessarily involve delay; on the other hand, if the transfers or renewals are allowed as indicated by us, there will be continuity of

the transport facilities available to the public. He further contended that if there is no provision for such transfer and the permits are allowed to

lapse, then the owner of the bus will have to sell the bus only to a person who gets a new permit in the future and thus the owner may be forced to

sell the bus for a much lower price than what it is worth, which in effect will be a distress sale and there is no justification whatever in the context of

fixing a ceiling on the number of stage carriage permits to be held by a person to produce such hardship and consequence. We cannot say that

these submissions are wholly imaginary.

52. Hence these provisions, namely, the provisions contained in the Ordinance and the Act imposing a ban on the transfer as well as renewal

cannot be said to be valid.

53. We may point out in this context that there are several methods of achieving the object of prescribing the ceiling. Just as the statute has

prescribed a period of time enabling a permit-holder to surrender the excess permits, the statute can certainly prescribe a period from the

commencement of the law enabling a permit-holder to transfer the excess permits. There is a precedent for such a provision. Section 6A of the

Insurance Act, 1938, contains certain provisions as to capital structure and voting rights and maintenance of registers of beneficial owners of

shares. Sub-sections (7), (8) and (9) of that section read as follows:

(7) Where the total paid-up holding of any person in the shares of a company referred to in Sub-section (1) on the date of the commencement of

the Insurance (Amendment) Act, 1950, exceeds five per cent. of its paid-up capital where that person is a banking company or an investment

company, or ten per cent. of its paid-up capital in any other case, he shall dispose of the excess holding of shares within three years from such

commencement or such further period not exceeding two years as may be allowed to him by the Central Government.

(8) If after the expiry of three years or of such further period as may be allowed to any person under Sub-section (7), the total paid-up holding of

any such person had not been reduced to the limits specified in that sub-section any shares in excess of the limits specified in that sub-section shall

vest in the Administrator-General of the State in which the registered office of the company concerned is situate and the Administrator-General

shall take such steps as may be necessary for taking charge of any property which has so vested in him and shall dispose of the said shares and the

proceeds thereof in such manner as may be prescribed.

(9) Subject to the other provisions contained in this section, but notwithstanding anything contained in the Indian Companies Act, (VII of 1913) or

in the memorandum or articles of association of any such company as is referred in Sub-section (1), on such, company shall refuse to register the

transfer of any shares where the transfer is for the purpose of securing compliance with the provisions of Sub-section (7) and (8).

On the model of such provision, if a period is prescribed enabling the persons holding permits in excess of ten to transfer the excess permits and

notwithstanding the said opportunity being given to them, if they do not transfer the excess permits, there will be certainly justification for allowing

the excess permits to lapse on the expiry of the period of the currency, without giving them right to apply for renewal. On the other hand, the

object of the law being only to fix a ceiling, certainly a reasonable opportunity must be given to the holders of permits in excess of ten to dispose of

the excess permits so that their right to carry on business under Article 19(1)(g) and right to acquire, hold and dispose of property under Article

19(1)(f) of the Constitution may not be unreasonably restricted or their property taken away without payment of compensation. It is only in that

context that we hold that not only the provision imposing a ban on the grant of permission to transfer is void, but the provision for refusing renewal

of permits is also void.

54. Thus, while making it clear that the law in so far as it has fixed a ceiling of

ten permits to be held by a person and provided for refusal of

benami transfers is valid, we hold that the provisions making it obligatory on the part of transport authority to refuse permission for transfer and in

that context the provision for rejection of applications for renewal are void. Since after separating these two provisions from the valid provisions

the scheme of ceiling can not be implemented and worked, all the provisions introduced by the Legislature by way of Sections 62A, 62B, 62C,

62D and 62E to the Motor Vehicles Act, 1939, have become unworkable and we declare all those provisions as void.

55. As we have pointed out already, the form of relief prayed for in the various writ petitions is different, namely, some of them pray for declaration

that the Act is ultra vires some others pray for the issue of a writ of mandamus directing the Regional Transport Authority to forbear from in any

way enforcing the provisions of the ceiling and some others pray for a direction to the Authority to renew or approve the transfer. However, having

regard to our conclusion, it is enough if we grant a writ of declaration that for the reasons indicated in this judgment and subject to the reservations

made therein, Section 62A, Section 62B, Section 62C Section 62D, and Section 62E of the Motor Vehicles Act, 1939, as introduced by the

Tamil Nadu Act XVI of 1971 are void and further issue a direction to the Regional Transport Authorities concerned as well as the State Transport

Appellate Tribunal to dispose of the proceedings relating to the approval of transfer of permits and renewal of permits in accordance with law,

without reference to the above sections.

56. The writ petitions are allowed in the above terms. There will be no order as to costs.