

(1990) 08 AP CK 0029

In the Andhra Pradesh High Court

Case No : W.A. No"s. 795, 796, 434 to 438, 541, 824 and 825 of 1990, W.P. No"s. 17987, 14969, 14979, 14972, 14987, 14990 of 1989

The Secretary, Regional Transport Authority, Guntur and
another

APPELLANT

Vs

E. Rama Rao and Others

RESPONDENT

Date of Decision : 09-08-1990

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 132, 166, 212
Constitution of India, 1950 — Article 19(1)(g), 19(6), 226
Motor Vehicles Act, 1939 — Section 47(1), 47(3), 57, 57(3), 57(4)
Motor Vehicles Act, 1988 — Section 70, 71, 71(1), 71(2), 71(3)
Town Police Clauses Act, 1847 — Section 37
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20(1)

Citation : AIR 1991 AP 11

Hon'ble Judges : Yogeshwar Dayal, C.J.; Lakshman Rao, J.; Jagannadha Rao, J

Bench : Full Bench

Advocate : A.G. and Govt. Pleader, for Transport and K.N. Jwala, for the Appellant; T. Venkata Ramana, Mrs. Vinobha Devi and P. Rajgopalchary, for the Respondent

Judgement

1. These writ appeals have been referred to a Full Bench for considering the question whether the existing holders of stage carriage permits are entitled to submit representations and are also entitled to be heard before the Regional Transport Authority (hereinafter referred to as R.T.A.) when it is considering fresh applications filed after 1-7-1989. u/s 70 read with Sections 71, 72 and 80 of the Motor Vehicles Act, 1988. Incidentally the question has arisen whether the said existing operators are entitled to copies of the applications filed by new applicants under Rule 166 of the A. P. Motor Vehicles Rules, 1989 (hereinafter referred to as the Rules). As the points arising in all the writ appeals are common it will be sufficient to refer to the facts in W.A. No. 795 of 1990 arising out of W.P. No. 14987 of 1989. The writ petitioner therein (respondent in the writ appeal) is holding a pucca stage carriage permit on the town service route in Gutur town

from Syamalanagar to Sivareddipalem via Pattabhipuram, Kanakaragunta Gate, State Bank of India and old Bus Stand, the distance of which is 8 K.Ms., is running 24 single trips per day. The petitioner states that there is one more bus in his route making 24 single trips per day, that there are 22 buses having 7 K.Ms. of common sector from Syamalanagar to R.T.C. bus stand, in all making 440 single trips per day and that there are about 100 buses belonging to the R.T.C. covering the above route fully. According to, the petitioner there is no existing need to provide any additional transport facilities in the above route or on its sector and that even the existing transport facilities are more than the need and he states that he is suffering heavy loss for want of passengers in his bus. He also states that he is the oldest operator on the said route. Coming to know that certain fresh applications have been made for grant of pucca stage carriage permits on certain routes in Guntur town covering his route, the writ petitioner filed an application dated 17-10-1989 before the Secretary, Regional Transport Authority, Guntur (1st appellant), requesting him to furnish him certified copies of various new applications filed, covering the petitioner's route with a view to enable him "to file representation against the (sic) end to approach higher authorities if necessary". The 1st appellant refused to grant the same by endorsement dated 21-10-1989 stating that it is not possible to comply with the request as there are a number of applications received for grant of stage carriage permits on various sectors of the town. It was further stated that the writ petitioner may as well ascertain the information from the copy of the agenda published in the notice board of the office of the R.T.A. Then the petitioner filed the present writ petition stating that under Rule 166 of the Rules he is entitled to certified copies of the said applications. The petitioner also contended that there is no need to grant any permit on the route, that no traffic survey was conducted to find out the need, that there are no representations from the public for additional transport facilities and that no permit can legally be granted unless such need is first established. Thus the very receipt of applications is illegal. According to the petitioner, the agenda of the meeting will be published only on the date of consideration of the applications by the R.T.A. that the agenda does not contain all the particulars mentioned in the various applications and that therefore the writ petitioner cannot make any effective representation. The meeting was proposed to take place on 27-10-1989 and the permits were to be granted on the routes overlapping the writ petitioner's route, he would suffer irreparable loss and hardship. The petitioner therefore prays for the issue of a writ of Certiorari for quashing the orders of the 1st appellant dated 21-10-1989, refusing to grant certified copies and for a positive direction for furnishing certified copies of all applications filed for grant of pucca stage carriage permits on the town service route. Pending the writ petition he prayed for stay of consideration of the applications by the R.T.A. on 27-10-1989 as also to the subsequent grant of pucca stage carriage permits or temporary permits. In W. A. No. 796/90 (arising out of W.P. 14969/89 the writ petitioner asked for certified copies of other applications for representing to higher authorities also.

2. The learned single Judge by his order dated 29-3-1989 allowed the writ petitions partly holding that the existing operators were entitled to have certified copies of the applications filed by third parties before the 1st or 2nd appellant if there was common sector between the route granted to the writ petitioner and the route for which fresh applications are made for grant of stage carriage permits and the impugned order was quashed. The R.T.A. was further directed before taking a decision to grant fresh permits to consider the representations of the existing operators who are likely to be affected by reason of the grant of fresh permit. The learned single Judge referred to the provisions of Sections 47(1) and 57(3), (4), (5) of the old Motor Vehicles Act, 1939 and Sections 70, 71(1), (2), (3) and 90 of the new Motor Vehicles Act as also Rules 132, 166 and 179 of the new Motor Vehicles Rules, 1989 and came to the conclusion that the procedure contemplated by the new Act for grant of stage carriage permits did not result in a total exclusion of principles of natural justice. The provisions of Rule 132, according to him, clearly negated such an assumption inasmuch as the proviso to the said rule unequivocally laid down that the R.T.A. shall give adequate notice of the meetings and of the business to be transacted at the meetings, "for the information of such persons who being interested in the particular business to be transacted." He held that it was not the intention of the Rule making authority that the information relating to the transaction of the business should be confined only to the applicants for the stage carriage permits. If that were the intention, the rule could have mentioned that the information was to be given to "such persons being interested in the particular business". Under the new Rule 179, the R.T.A. has to bear in mind several guiding principles including whether the new operators are financially sound and whether their performance has been satisfactory. The existing operators, the learned Judge said, cannot make a representation unless they could know the contents of the applications filed by the fresh applicants. Any increase in the permits or in the change of timings would affect their business and if so they would be entitled to prefer revision petitions under Sec. 90 of the new Act before the State Transport Appellate Authority. An existing operator will not be able to file an effective revision if he could not file a representation before the R.T.A. The business transacted under Rule 132 cannot be said to be purely administrative in character without any likelihood of the interest of others being affected. Even in respect of administrative actions the principles of natural justice apply. The learned Judge referred to *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, ; *The Co-operative Housing Society, Civilian Employees, Defence Service Vs. Commissioner and Special Officer, Municipal Corporation of Hyderabad and Others*, for the aforesaid proposition. He also relied upon the prevailing practice even after the commencement of the New Act, of representations being called for from existing operators. According to him, the words "other relevant documents" in Rule 166 include the applications made by new applicants for grant of permits which might partly or wholly cover the routes of the existing operators. At the pre-decisional stage before R.T.A. there could be enquiry into the question whether the existing operators are "interested in an appeal or revision" within

the meaning of the said words in Rule 166. The principle of natural justice was clearly embodied in Rule 132. According to the learned Judge, it is possible that grant of copies might be cumbersome if a large number of applications are filed but the R.T.A. can evolve its own procedure by fixing some time limit for making representations and quoted Dhani Devi Vs. Sant Bihari and Others, .

3. It is against the above said judgment of the learned single Judge that the present batch of writ appeals have been preferred and have later been referred to the Full Bench by a Division Bench of this Court.

4. The case for the appellants has been argued by the learned Advocate General. Sri K. N. Jwala, Sri E. P. K. Sikhamani, Smt. Vinobha Devi who appeared for the new applicants supported his contention. For the writ petitioners (respondents in appeals) arguments were submitted by Sri T. Venkata-ramana and Sri E. V. Ramana Reddy.

5. The point arising before the Full Bench can be stated as follows: Whether the existing operators on a route are entitled to file representations before the Regional Transport Authority while the said Authority is dealing with grant of stage carriage permits to fresh applicants u/s 72 read with Ss. 70, 71 and 80 of the Motor Vehicles Act, 1988 and whether the existing operators can also claim a right to be heard before the R.T.A. and claim, for the aforesaid purposes, a right under Rule 166 of the A. P. Motor Vehicles Rules for grant of certified copies of the applications made by fresh applicants?

6. The Motor Vehicles Act, 1988 has been brought into force with effect from 1-7-1989. It is an Act to consolidate and amend the law relating to motor vehicles. The Statement of Objects and Reasons mentions that the Act is passed after taking into account the changes in the said transport technology, pattern of passengers and freight movements, development of the road net-work in the country and particularly the improved techniques in the motor vehicles management. Various committees like the National Transport Policy Committee, National Police Commission, Board Safety Committee and the Law Com-mission have gone into different aspects of the road transport and have recommended the updating, simplification and rationalisation of the law. A working group constituted in January, 1984 submitted proposals for a comprehensive new legislation. The said working group took into account the suggestions made by various bodies and institutions like Central Institute of Road Transport, Automotive Research Association of India and other transport organisation as also manufacturers and general public, besides, the said group obtained the comments of the State Governments and discussed the same at a meeting of the Transport Ministers of all the States and of the Union Territories. Some of the factors suggested for consideration therein are as follows:-- (a) The fast increasing number of both commercial vehicles and personal vehicles in the country; (b) the need for encouraging adoption of higher technology in automotive sector; (c) the greater flow-of passengers and freight with the least impediments so that islands of isolation are not created leading to regional or

local imbalances; (d) concern for road safety standard and pollution control measures, standards for transportation of hazardous and explosive material; (e) simplification of procedure and policy liberalisations for private sector operations in the road transport field; and (f) the need for effective ways of tracking down traffic offenders. It is further mentioned in the Statement of Objects and Reasons that the legislation has been prepared in the light of the above background and among the various items provided therein include, liberalised schemes for grant of stage carriage permits on non-nationalised rules, All India Tourist permits also national permits for goods carriages.

7. Though the contentions of the learned counsel for the writ petitioners covered a large ground, we wish to make it clear even at the outset, that we do not propose to decide by hypothetical questions. It is neither necessary nor desirable for us to go into every aspect of the changes brought about by the new Act. We have therefore confined our decision to a very narrow compass consisting of only three inter-related questions concerning stage carriage permits, firstly, whether the existing operators have a legal right to file representations opposing the applications of new applicants after the commencement of the new Act; secondly, whether the existing operators have a right to be heard before fresh stage-carriage permits are granted; and thirdly whether, at the stage of grant of new stage carriage permits, the existing operators can claim a legal right, under R. 166, for grant of copies of the applications filed by the new applicants, for the limited purpose of enabling the existing operators to file representations. We are here concerned with the city town route services in Guntur, whose population is not more than five lakhs.

8. Under the old Act, the procedure contained in S. 47(1) required the factors stated in sub-clauses (a) to (f) thereof to be taken into account by the R.T.A. and it was further specifically provided in S. 47(1) that the R.T.A.:

"Shall also take into consideration any representation made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provisions of road transport facilities recognised in this behalf by the State Government, or by any local authority, or police authority within whose jurisdiction any part of the proposed route or area lies."

That would mean that existing operators, or recognised associations local or police authorities could file representations before the R.T.A. objecting to grant of permit to new applicants. S. 47(3) further permitted the R.T.A. to "limit" the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region. Adverting to S. 47(3), the Supreme Court has, however, pointed out in *Mohd. Ibrahim, etc. Vs. The State Transport Appellate Tribunal, Madras, etc.*, that while fixing the limit of the number of stage carriages under S.47(3) by the R.T.A., the said authority need not take into consideration any representation of the nature men-tioned in S. 47(1) nor hear the existing

operators. The Supreme Court further pointed out that representations mentioned in S.47(1) are referable to representations contemplated by S. 57(3) of the Act. These representations are those made by existing operators to the R.T.A., after the publication of an application for a stage carriage permit. The Supreme Court further observed that representations contemplated by S. 47(1) and S. 57(3) are representations by existing operators made subsequent to the application for grant of permit and therefore, these representations do not however enter the field of determination of number of stage carriages under S. 47(3) of the (old) Act. The deliberations decision under S. 47(3) as to the number of permits are confined to the R.T.A.'s administrative policy based on factors mentioned in S.47(1) and at the stage of S.47(3), there is no question of hearing the existing operators. Thus, even under the old Act, at the stage of limiting the number of permits under S. 47(3) there was no legal right vested in the existing operators either to file representations or to a right of hearing. A right to send representations and to a hearing was given before the R.T.A. under S.57(3) only at the stage of actual grant of permit to the new operators.

9. Under the old Act, S. 57(3) provided that if any person filed an application for a permit, the same should be available for inspection, that the R.T. A. should publish the application and contents thereof and further state that representations (by existing operators) would be received, if sent, within particular time. If the grant of new applications was to result in exceeding the number of permits limited by Sec. 47(3), the applications were to be "summarily" rejected. In other cases, the existing operators so representing should, under S. 57(5) be heard in the public hearing of the applications of the applicant.

10. The above procedure is changed under the New Act. We shall therefore compare Sec. 47(1) of the old Act and Sec. 71(1) of the new Act; and again Sec. 57(3) & (5) of the old Act and Sec. 80(2) of the new Act.

(A) "Sec. 47(1) (old Act) : Procedure of Regional Transport Authority in considering application for stage carriage permit:-- (1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely: --

(a) the interests of the public generally;

(b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served;

(d) the benefit to any particular locality or localities likely to be afforded by the service;

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

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

and shall also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provisions of road transport facilities recognised in this behalf by the State Government, or by any local authority, or police authority within whose jurisdiction any part of the proposed route or area lies:

Provided that other conditions being equal, an application for a stage carriage permit from a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, as far as may be, be given preference over applications from individual owner."

"Sec. 71(1) (new Act):-- Procedure of Regional Transport Authority in considering application for stage carriage permit:-- (1) A Regional Transport Authority shall, while considering an application for a stage carriage permit, have regard to the objects of this Act :

Provided that such permit for a route of fifty Kilometres or less shall be granted only to an individual or a State Transport undertaking."

Note:-- (S.71(3) indicates procedure for limiting the number of permits in town with population not less than 5 lakhs).

(B) Sec. 57 (old Act):-- Procedure in applying for and granting permits:-- (3) On receipt of an application for a stage carriage permit or a public carrier's permit the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which and the time and place at which the application and any representations received will be considered;

Provided that, if the grant of any permit in accordance with the application or with the modifications would have the effect of increasing the number of vehicles operating in the region or in any area or on any route within the region under the class of permits to which the application relates, beyond the limit fixed in that behalf under sub-sec. (3) of S. 47 or sub-sec. (2) of S. 55, as the case may be, the Regional Transport Authority may summarily refuse the application without following the procedure laid down in this subsection.

(5) When any representation such as is referred to in sub-sec. (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an

opportunity of being heard either in person or by a duly authorised representative."

"S. 80(2) (new Act):-- Procedure in applying for and granting permits:-- (2) A Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act Provided that the Regional Transport Authority may summarily refuse the application if the grant of any permit in accordance with the application would have the effect of increasing the number of stage carriages as fixed and specified in a notification in the Official Gazette under cl. (a) of sub-sec. (3) of S.71 or of contract carriages as fixed and specified in a notification in the Official Gazette under cl.(a) of sub-sec. (3) of S. 74:

Provided further that where a Regional Transport Authority refuses an application for the grant of permit of any kind under this Act, it shall give to the applicant in writing its reasons for the refusal of the same and an opportunity of being heard in the matter."

11. It is important to note that there is no reference to any representation in S.7(1) of the New Act, which corresponds to S. 47(1) of the old Act. All that S. 71(1) states is that the R.T.A. shall, while considering the applications for stage carriage permit, have regard to "the objects of the Act". While S. 47(3) of the old Act permitted the R.T.A. to limit permits in all routes without reference to the extent of population, the new S. 71(3) permits such a limit to number of permits to be imposed only in towns with population of not less than 5 lakhs, that too provided the Central Government and the State Government so direct, as stated in S. 71(3) of the new Act. There is also no reference to the factors (a) to (f) referred to in S. 47(3) or to the filing of any representations by the existing operators of associations, local authority or police authorities. Nor is there any reference to submission of representations in S. 80(2) of the new Act which corresponds to S. 57(3) of the old Act. Further, under the first proviso to S. 80(2), the applications for permits are liable for summary rejection if the grant thereof will result in exceeding the number of permits limited under S. 71(3) for city routes in towns with population of not less than five lakhs. Under the second proviso to S. 80(2), a right of hearing is limited to the applicant alone and if the permit is to be refused, reasons shall have to be given.

12. So far as the right of existing operators to send representations and seek a right of hearing are concerned, identical questions arose in the State of Uttar Pradesh after the State amendment in U.P. Act 25 of 1972. By that amendment, S.47(1) was amended by omitting the right of representation to existing operators given under the Central Act. However that right in so far as local and police authorities were/concerned was retained. It was held by a Division Bench of the Allahabad High Court in Mithan Lal Vs. State Transport Appellate Tribunal, U.P., Lucknow and Others, that, after the U.P. amendment, the right of representation by existing operators has ceased to exist as the said provision is dropped.

13. The said U.P. amendment omitting the right of representation by existing operators, came up for consideration before the Supreme Court in *Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others*, . Adverting to the right of a rival operator to object to the grant of the application of other persons, the Supreme Court referred to Art. 19(1)(g) and (6) of the Constitution of India and held that rival operators have no right to represent against the grant of permit to other persons. Such a right to represent, if it has to be conferred on an existing operator, it can be done only by way of a law made under Art. 19(6) in the interests of the general public. The Supreme Court observed (in para 8) :

"The fact that some others have also been enabled to obtain permits for running buses cannot constitute a violation of the appellants' rights under the above two cls. ((f) and (g)) of Art. 19 of the Constitution. The above provisions are not intended to grant a monopoly to a few bus operators to the exclusion of other eligible persons. No right guaranteed to any private party by Art. 19 of the Constitution of carrying on trade and business without competition from other eligible persons. Cl. (g) of Art. 19(1) gives a right to all citizens subject to Art. 19(6), to practise any profession or to carry on any occupation, trade or business. It is an enabling provision and does not confer a right on those already practising a profession or carrying on any occupation, trade or business to exclude and debar fresh eligible entrants from practising that profession or from carrying on that occupation, trade or business. The said provision is not intended to make any profession, business or trade the exclusive preserve of a few persons."

The aforesaid judgment of the Supreme Court, therefore, makes it clear that an existing operator has no fundamental right to a monopoly of the trade, business or occupation and after the omission by the U.P. amending Act of 1972 of the right of representation by existing operators, no such right could be claimed. We may add that viewing the matter from the point of view of the new applicant's fundamental right under Article 19(1)(g), the said right can be fettered only to the extent specified by law made under Art. 19(6). Under the old Act, the fetters on this fundamental right of the new applicant included a right conferred on existing operators and others under Ss.47(1), 57(3), (5) to represent. Those fetters have now been removed under S.71(1) and S.80(2) of the new Act of 1988. An existing operator, in our view, cannot, therefore, claim a right of representation or a right to be heard before the R.T.A. These rights have been specifically omitted in the new Act by Parliament.

14. Learned counsel for the writ petitioners (respondents) however relied upon a later decision of the Supreme Court in *Rameshwar Prasad and Others Vs. State of Uttar Pradesh and Others*, to contend that the decision in *Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others*, no longer holds the field. In view of the subsequent statutory changes in U.P. we are of the view that this contention cannot be accepted. What happened in U.P. was that, after the U.P. Amendment of 1972 to the Motor Vehicles Act, 1939 it was found that certain

anomalies had arisen in the working thereof, particularly in regard to the provision allowing an unrestricted number of stage carriage permits to be granted. With a view to remedy the situation, the U.P. Legislature amended the Act again by the U.P. Act 15 of 1976 permitting restriction of the number of permits. Thereafter the Central Act was also amended by Parliament in certain respects by Act 47 of 1978. Even so the State Government had issued certain notifications dated 10-1-1981 and 23-1-1981 permitting grant of permits to all eligible applicants without any upper limit. The Supreme Court held that these notifications were inconsistent with the limitations as to number of permits introduced afresh by the U.P. Amending Act, 1976 and were bad. Their Lordships referred to the earlier judgment in *Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others*, and said that the judgment was good as the law stood before the U.P. Amendment Act, 1976 and that once the U.P. Legislature had itself changed the law in 1976, the State Government could not have issued notifications inconsistent with the amending Act of 1976. It is, therefore, clear from the judgment in *Rameshwar Prasad and Others Vs. State of Uttar Pradesh and Others*, that the Supreme Court nowhere-doubted the correctness of its earlier judgment in *Hans Raj Kehar v. State of U.P.* In fact, it stated (at para 19) :

"Without saying anything more on the point, it may be stated that whatever this Court may have observed while considering that provision would not apply now as there is a clear departure made by the Legislature from that policy when it enacted the new sub-sec. (2) of S.43-A."

We may point out that the Supreme Court nowhere said in *Rameshwar Prasad and Others Vs. State of Uttar Pradesh and Others*, that even after the U.P. Amendment of 1972, (which are similar to the provisions of the present Act of 1988) omitting the provisions relating to the right of representation and right of hearing to existing operators, the existing operators have a right to represent or a right to be heard before the R.T.A. Hence, this latter decision, far from supporting the writ petitioners, supports the appellants as it reiterates the correctness of *Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others*, according to the law as it stood before the U.P. Amendment of 1976.

15. We may, in the context of Article 19(1)(g) and (6) also refer to four other rulings of the Supreme Court. In *Harman Singh and Others Vs. Regional Transport Authority, Calcutta and Others*, , smaller taxis at cheaper rates were introduced by orders of the R.T.A. and the same was questioned by taxi-owners who were to charge higher rates, on the ground that their business would be affected. The contention was rejected by the Supreme Court holding that if other persons were also allowed the right to carry on the same occupation and an element of competition was introduced in the business, that did not amount to violation of fundamental right guaranteed under Article 19(1)(g). In another case in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, relating to change of location of existing rice-mill which adversely affected the business of another miller in the locality, it was held that a

compelitor in the business (owner of another rice-mill), could have no grievance against the grant of permission to another under the Rice Milling Industry (Regulation) Act, 1958 and the fundamental right under Art. 19(1)(g) was subject only to such restrictions as are imposed under Art. 19(6) of the Constitution of India. A similar question arose again under the Bombay Cinema Regulation Act, 1953 and the Bombay Cinema Rules (1954) in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, . It was held, on an elaborate consideration of the case-law, that the said Act and Rules did not confer any substantive justiciable right on a rival in cinema trader to lodge an objection in response to a notice published under R.4. The proprietor of a Cinema theatre holding a licence for exhibiting films had no legal right under the statutory provisions or under the general law which could be subjected to or threatened with injury as a result of the grant of no objection certificate" to the rival trader. After elaborately discussing the meaning of the words "aggrieved person" in various laws, the Supreme Court observed (see para 46):

"Juridically, harm of this description is called *damnum sine injuria*, the term *injuria* here used in its true sense of an act contrary to law (Salmond on Jurisprudence, 12th Ed. by Fitzgerald, p. 357, para 85). The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it is that such harm done to an individual is again to society at large."

and again stated (para 49):

".....the result of the exercise of discretionary powers, in his (existing licence) favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema * business in the town, and above all, it will in effect, seriously injure the fundamental right of respondents 1 and 2, which they have under Art. 19(1)(g) of the Constitution of India to carry on trade or business subject to "reasonable restrictions imposed by law"."

Again, in *Mohd. Ibrahim Khan and Others Vs. State of Madhya Pradesh and Others*, the question arose under the M.P. Cinemas (Regulation) Act and *J. M. Desai's* case AIR 1976 SC 578 above referred to, was followed.

16. Viewing therefore from the perspective of Art. 19(1)(g) & (6) of the Constitution of India, it is clear that the existing operators have no "legal right" to object to the grant of a permit to rival operators. Any injury by way of loss of business to the existing operators cannot, in law, be treated as a "legal injury". There would be no legal injury if such injury was the result of exercise of a fundamental right by another person.

17. Learned counsel for the writ petitioners while accepting that there is no express provision in the new Act either in S. 71(1) or S. 80(2) conferring on the existing operators a legal right to file representations or for being heard have,

however, contended that such a right has to be "implied" by law. We shall now refer to this aspect of the matter.

18. Learned counsel for the writ petitioners (respondents) Sri. T. Venkataramana and Sri M. V. Ramana Reddy, referred to *State of Orissa v. Binapani Devi* (AIR 1967 SC 1267); *Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others*, ; *Cosmosteels Private Ltd. and Others Vs. Jairam Das Gupta and Others*, ; *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, ; *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, ; *Baldev Singh and Others Vs. State of Himachal Pradesh and Others*, ; *State of Haryana Vs. Ram Kishan and Others*, ; *The Co-operative Housing Society, Civilian Employees, Defence Service Vs. Commissioner and Special Officer, Municipal Corporation of Hyderabad and Others*, ; *India Cable Co. Ltd. Vs. The Government of Andhra Pradesh and Others*, and *Re Liverpool Taxi Owners' Assn.* (1972) 2 All ER 589 for the proposition that "whenever an order is passed by any authority which is likely to affect the rights of another person, such person must be given a reasonable opportunity to submit his objections. It is also stated in these decisions that principles of natural justice are to be implied and that there can also be a post-decisional opportunity in certain cases. On the other hand the learned Advocate General has referred to *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, and *R.S. Dass Ors. Vs. Union of India (UOI) and Others*, . to contend that principles of natural justice can be expressly excluded and that such exclusion can be necessarily implied in certain cases.

19. In our view, there can be no quarrel with the general propositions of law referred to above by the learned counsel. No doubt, principles of natural justice can normally be implied even if there is no express provision therefore whenever the rights of a party are affected. But, at the same time, it is equally true that they can be excluded by the statute expressly or by necessary implication. This depends again on the intendment of the legislature, the provisions of the particular statute and the facts and circumstances of the case. We, therefore, once again come back to the question as to what is the position under the new Act of 1988?

20. We have noticed that under the old Act, there were provisions in Sec. 47(1) as well as S. 57(3) and (5) enabling existing operators to submit their representations and for a hearing to be given to them. But under the new Act, 1988 these provisions have been deliberately dropped by Parliament. The Statement of Objects and Reasons clearly states that the new Act proposes to liberalise the grant of permits. In such a situation, it is, in our opinion, not open to this Court to imply and read into the new Act, the same provisions which have been deliberately and expressly omitted. The new applicants for grant of stage carriage permits are obviously exercising their fundamental right under Art. 19(1) (g) to carry on their occupation, trade or business. Such a fundamental right can, no doubt, be restricted by an existing law or a new law, by the imposition of reasonable restrictions in the interest of the general public under Art. 19(6). It is

for Parliament from time to time to define the limits up to which the said fundamental right under Art. 19(1)(g) can be reasonably restricted. Under the old Motor Vehicles Act, 1939 the restrictions included one which enabled an existing operator to represent and also to be heard in opposition. That restriction has now been deliberately removed and thereby the fundamental right of the applicant is not now as restricted as it was before the new Act. Further an existing operator cannot be said to suffer any legal injury (vide *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, if a new rival operator is proposed to be introduced. These being the factors governing the situation, we are of the view that Parliament intended to negative any right to the existing operators either to submit their representations or to a right to a hearing under S. 71(1) or S. 80(2) of the new Act. It is therefore not open to the Court to imply principles of natural justice and add further restrictions than what Parliament considered sufficient, according to its new legislative policy. A similar change in the legislative policy brought about by the U.P. Legislature in 1972 has already had the approval of the Allahabad High Court and the Supreme Court as stated in detail earlier.

21. The decision in *Re Liver Pool Taxi Owners' Association* (1972-2 All ER 589) relied upon by Sri M. V. Ramana Reddi for the writ petitioners turned, as stated by the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, on the peculiar facts therein and in particular on the assurance or undertaking given by the officials of the Liverpool Corporation and cannot help the writ petitioners. There, the number of taxi-cabs had been limited since 1948 to 300 by the licensing authority namely the Liverpool Corporation. In 1970, after learning that the Corporation proposed to increase the number of licences, the taxi-cab owners' association took up the matter with the Corporation. On 24th July, 1970 and 28th October 1970 the town-clerk of the Corporation wrote to the solicitors of the association that the interested parties and the association would be fully consulted and heard before any decision was taken. In July, 1971, the matter came up before a sub-committee of the Corporation, the association was heard and the limits proposed by the Committee were approved by the council and finally on 4th August, the Chairman of the sub-Committee gave an undertaking that no licences additional to the existing 300 licences would be issued until the proposed legislation, which was under consideration, had come into force. But this undertaking was not adhered to later on the ground that it had no legal basis and the Corporation unilaterally resolved on 22nd December, 1971 to increase the number of licences. The Court of Appeal held that the undertaking that was given was compatible with the Corporation's statutory duties and that it could be prohibited from acting contrary to the said undertaking. It is important to notice that under S. 37 of the Town Police Clauses Act, 1847, the Corporation had a right to "limit" the number of licences. Further, there was an undertaking given on behalf of the Corporation. Adverting to this decision, it was observed in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, by Sarkaria J. as follows (see paras 24,

25):

"It may be noted that in this case, the whole question turned on the effect in law of the , undertaking and whether the applicants had been treated fairly.

Emphasising the "very special circumstances" of the case, the Court read into the statute, a duty to act fairly in accordance with the principles of natural justice. Thus, a corresponding right to be treated fairly was also imported by implication in favour of the applicants. Viewed from this standpoint, the" applicants had an interest recognised in law which was adversely affected by the impugned action. They had suffered a wrong as a result of the unfair treatment on the part of the Corporation."

The abovesaid English decision is therefore clearly distinguishable. Learned counsel for the writ petitioners attempted to argue that the above English case was not based on the undertaking alone. We are unable to agree with this contention particularly in view of the observations of the Supreme Court. So far as the decision in *India Cable Co. Ltd. Vs. The Government of Andhra Pradesh and Others*, is concerned, that decision related to the locus standi of the petitioner tenant therein to file a writ petition under Art. 226 of the Constitution of India questioning an exemption granted by the Government under S. 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 to the owner of the premises. It was held that though the petitioner had locus standi to file a writ petition, the petitioner's legal rights as such were not affected and also that it had no right to be heard. While locus standi occupied a "larger area" governing the right to approach the Court under Art. 226, every such person could not claim a legal right to be heard before the Government under S. 20(1) of the said Act. For the purposes of application of principles of natural justice, the question according to the learned Judges was merely whether "any legal power has been exercised over a person affecting his legal rights and not whether he has some legal right to move the Courts. For that purpose, the Court relied upon the decision of the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, .

22. It was then argued for the respondents by Sri M. V, Ramana Reddi that the R.T.A, was a quasi-judicial tribunal and that it was a body exercising powers in "public interest" and therefore it ought to receive representations from existing operators and give them a right of hearing. In our view, the provisions of S. 71 and S. 80 in the new Act as compared with Ss. 47 and 57 of the old Act clearly define the limits of the restrictions to be imposed in "public interest" under Art. 19(6) and therefore, the R.T.A. while exercising powers under the new Act has necessarily to bear in mind those restrictions and cannot impose any other restrictions in the context of Art. 19(6), that were statutorily imposed earlier by Ss. 47 and 57 of the old Act.

23. For all the aforesaid reasons, we hold that when the R.T.A. is dealing with new applications for grant of stage carriage permits, existing operators cannot

claim any legal right to file representations or a right for being heard.

24. We shall next refer to the right of the existing operators to obtain copies of the applications filed by new applicants under Rule 166 of the A.P. Motor Vehicles Rules, 1989. Rule 166 reads thus:

"166. Levy of fees for supply of copies of documents:-- The Secretary, State Transport Authority, and Secretary, Regional Transport Authority, the State Transport Appellate Tribunal or any authority specified by the said Tribunal may in its discretion give any person interested in an appeal or revision a certified copy of the decision or an order or of any other relevant documents on payment of a fee of Rupees two, such payment being made by means of Court fee stamps affixed to the application for each such copy of the decision, orders, petition or documents."

It will be noticed that, under the said Rule, the R.T.A. may, in its discretion, give any person interested in an appeal or revision, a certified copy of the decision or an order or of any other relevant documents on payment of the fee. In the present case, the applications filed by the writ petitioners before the R.T.A- do not anywhere say that the applicants are interested in filing an appeal or revision. On the other hand, they merely say that they, as existing operators, require the certified copies of the applications filed by other applicants with a view to file "representations" and that unless such certified copies are granted, they will not be in a position to file effective representations. Hence the applications of the writ petitioners do not, in our view, satisfy the requirements of R. 166. Further, we are of the view that the question of filing any application for a certified copies of the orders, decisions, petition or documents referred to in R. 166 arises only after the R.T.A. disposes of the application for grant of stage carriage permit and not before that stage.

25. So far as W.A, No. 796/90 (arising out of W.P. No. 14969/89) is concerned, where copies are asked also for purpose of submission of representation to higher authorities, we may state that R. 166 does not cover such a situation.

26. We may point out that even after the grant of such permits, the existing operators, have, as conceded before us, no right of appeal under S. 89 of the Act. There is no provision for appeal by existing operators.

27. It is no doubt argued by Sri T. Venkataramana and Sri. M, V. Ramana Reddi that the existing operators are, however, entitled to file revisions under Sec. 90 as "persons aggrieved". Reliance for that purpose is placed upon the decision of the Supreme Court in Lakshmi Narain Agarwal Vs. State Transport Authority, U.P. and Another, wherein it was held, with reference to S. 64-A of the old Act, that though the existing operators had no right to represent at the stage of Sec. 47(3) when the public need is gone into and the R.T.A. decides to open a new route, the existing operators could file a revision under Sec. 64-A. It is argued, on the said analogy, that even if existing operators have no right to represent or right to be heard at the stage of Ss. 71 and 80, they could still file revisions

under S. 90. We do not think it necessary for the purpose of the cases before us to decide the question whether existing operators could file revisions under S.90 against orders granting stage carriage permit to applicants inasmuch as the matter in these writ petitions is still at the stage of grant of permits by the R.T.A. and also because the question whether they had a right of revision will depend upon the scheme of the Act.

28. There was also some argument before us as to whether under S. 89(2) of the new Act permits for stage carriage ought to be ordinarily granted as a matter of course in cases not covered by S. 71(3). While for the appellants and for some of the new applicants it was argued that was the position as argued for the writ petitioners (respondents) and for some of the other new-applicants, that even in cases not covered by S. 71 (3) of the new Act, it is incumbent on the R.T.A. to bear in mind the guidelines referred to in R. 179 of the new A.P. Motor Vehicles Rules, 1989 (corresponding to Rule 212 of the old Rules). We do not think it necessary to decide this question either.

29. The only and limited question therefore decided by us is that whenever fresh applications are filed under S.72 read with Ss. 70, 71 and 80 of the new Motor Vehicles Act, 1988, existing operators have no legal right to file representations before the R.T.A. Nor can they claim any right to be heard by the R.T.A. It may however be open to them to send whatever representations they may like to send, as a matter of information, to the R.T.A. but this they cannot claim as of right. If any representations are so sent, it is open to the R.T.A. to consider them if there is anything relevant in the said representations. But the R.T.A. may or may not consider every such representation sent by the existing operators. Nor can the existing operators claim any legal right to be heard before the R.T.A. under any circumstances. They cannot also claim a right to be given certified copies under R. 166 of the A. P. Motor Vehicles Rules, 1989, of any applications filed by fresh applicants (who are seeking stage carriage permits) on the ground that such copies are necessary "for filing effective representations" before the R.T.A. We do not decide any other question or questions which may have been incidentally referred to during the arguments, as it is not relevant for the question being decided by us.

30. For the aforesaid reasons, the writ appeals are allowed, the orders of the learned single Judge are set aside and the writ petitions are dismissed. In the circumstances there will be no order as to costs. Advocate's fee Rs. 330/- in each case.

31. Appeals allowed.