

(1959) 01 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 498 of 1958

V.G.K. Bus Service Ltd.

APPELLANT

Vs

Kerala State Transport Appellate Tribunal and Others

RESPONDENT

Date of Decision : 30-01-1959

Acts Referred:

Motor Vehicles Act, 1939 — Section 48A, 63, 64

Citation : AIR 1960 Ker 18

Hon'ble Judges : Vaidialingam, J

Bench : Single Bench

Advocate : K. Nilakanta Menon, for the Appellant; Government Pleader, for Respondent 1 and 2, V.K.K. Menon and A. Hariharasubramoniam, for the Respondent

Final Decision : Dismissed

Judgement

Vaidialingam, J.—This is an application by Messrs. V. G. K. Bus Service (Private) Ltd., Coimbatore under Article 226 of the Constitution to quash the order dated 12-3-1958 passed by the first respondent herein and marked as Ext. P8 in these proceedings. Alternatively, it is also prayed that the order of the second respondent dated 5-6-1959 and marked Ext. P6 in these proceedings may also be quashed if this court is of the view that the order, Ext. P8 passed by the first respondent is otherwise correct.

2. The circumstances leading to the filing of this application as could be gathered from the statements contained in the affidavit of Sri M. Kali-appa Gounder filed in support of this application, are briefly as follows;

3. The applicant is a private limited company, having its Head Office at Coimbatore. The petitioner company runs 3 buses from Koduvayur to Coimbatore via Tattamangalam, Velanthavalam and Chavadi. Velanthavalam in Kerala State is the frontier station between the Kerala State and the Coimbatore District forming part of the Madras State. The third respondent Messrs P. N. Krishna Iyer

and Sons (Private) Ltd., Trichur, are also running 2 buses from Trichur to Velanthavalam via Tattamangalam. The route from Tattamangalam to Velanthavalam is common to the buses run by the applicant company and the third respondent.

The third respondent, on 26-10-1954, filed an application to the then R. T. B., Trichur along with an application addressed to the R. T. A., Coimbatore. The said application requested the R. T. B. to make recommendation to the Coimbatore Authority to enable their buses running up to Velanthavalam to be extended up to Coimbatore. According to the petitioner, the R. T. B., without any regard to the provisions of the Motor Vehicles Act, recommended the said application for variation of the route as prayed for. The said resolution of the R. T. B. is Ext. P1. In pursuance of this recommendation, the R. T. A. Coimbatore, by its proceedings dated 12-8-1955 desired the third respondent, to produce from the R. T. A., Trichur a permit from Trichur to Coimbatore. The said resolution of the Coimbatore authority is Ext. P2.

4. Subsequently, the third respondent applied on 15-8-1955 to the second respondent for having the permits of their buses endorsed authorising them to run up to Coimbatore. On this application, the R. T. B., Trichur, without complying with the provisions of Section 63 of the Motor Vehicles Act, passed an order on 5-9-1955 permitting the endorsement of the route applied for.

5. The petitioner challenged this order of the R. T. B. by filing an appeal before the then C. K. T. B., Trivandrum. on 8-9-1955. The right of the present petitioner to file the said appeal before the G. R. T. B. was challenged in the then Travancore-Cochin High Court by the present third respondent in proceedings under Article 226 namely, O. P. 279 of 1955. An order was passed in the said O. P. on 20-12-1955 directing the C. R. T. B., Trivandrum to dispose of the appeal filed by the present petitioner before 5-1-1956.

6. The C. R. T. B. took up the appeal filed by the present applicant, and by its order dated 4-1-1956, Ext. P3. set aside the order of the second respondent and directed the second respondent to dispose of the matter again in accordance with the provisions of the Motor Vehicles Act, after giving an opportunity to this petitioner and other operators to place their objections, if any. The 3rd respondent again applied for a variation of the existing permit for his 2 buses and the same was published in the Travancore-Cochin Gazette on 6-3-1956, Ext. P4. The petitioner objected to the variations asked for by the third respondent on several grounds. The second respondent by its order dated 5-6-56, Ext. P6, rejected the objections of the applicant and granted the prayer of the 3rd respondent for variation of their permits. This order, Ext. P-5 according to the petitioner, is without jurisdiction and void.

7. Against this order of the second respondent dated 5-6-1956 Ext. P-6, the petitioner filed an appeal u/s 64 of the Motor Vehicles Act to the Kerala State Transport Appellate Tribunal, Trichur. respondent 1 to this application. Objection

was raised on behalf of the third respondent that the appeal, filed by the petitioner was not maintainable. The first respondent heard the appeal on 29-11-1957 and by its order dated 12-3-1958, Ext. P-8 upheld the preliminary objection of the third respondent and held that the appeal filed by the petitioner was not maintainable, In this view, the petitioner's appeal was dismissed.

8. It is further stated that the second respondent had no extra territorial jurisdiction to either entertain or grant the variation asked for by the third respondent and that the order Ext. P-6 is without jurisdiction, invalid, illegal and void in law. Similarly, the order of the first respondent Ext. P-8 is attacked on the ground that it is erroneous and illegal. It is stated that the applicant is entitled to file an appeal u/s 64 of the Motor Vehicles Act and the rejection by the first respondent on the ground that the appeal is not maintainable, is erroneous in law. It is on these grounds that the applicant asks this court to interfere under Article 226 against, mainly the order of the first respondent Ext. P8 and in the alternative, against the order of the second respondent Ext. P6,

9. The third respondent has filed a counter-affidavit controverting the position taken up by the applicant. It is stated that the application itself is riled after inordinate delay. The order Ext. P8 has been passed as early as 12-3-58 and the application in this court has been filed only on 6-8-58. Even on the basis that the petitioner obtained copies of the order only on 2-6-1958, there is no explanation offered by the petitioner for not filing the application within the usual period of 90 days.

10. It is further alleged that the application before the second respondent was only for variation of the conditions of his permit and Section 64 of the Act does not give any right to the applicant. to file an appeal before the 1st respondent. The fact that an application for variation, in the circumstances, is to be dealt with as an application for permit, will not alter the position so far as a right of appeal u/s 64 of the Act is concerned. The order of the first respondent holding that the appeal is not maintainable, is perfectly correct in law. There is no question of an extra territorial jurisdiction in this case. Further, the right of the petitioner to challenge the original order, Ext. P6 passed as early as 5-6-1956 is also challenged. Both the orders sought to be quashed namely, Exts. P-6 and P8 are stated to be orders passed within the jurisdiction of the respective authorities not amenable for interference by this court under Article 226.

11. Mr. K. Neelakanta Menon, learned counsel for the applicant, has contended that the view of the first respondent that his client's appeal is not maintainable is erroneous in law. In the circumstances of this case, the learned counsel contends that the proceedings before the second respondent which culminated in the order Ext. P6 were really in the nature of an application by the third respondent for a fresh permit to run his buses from Trichur to Coimbatore. In pursuance of the order of the CRTB evidenced by Ext. P3 the applicant had filed objections to the said application and therefore, the applicant will have a right of appeal either u/s 64(b) or Section 64(f) of the Motor Vehicles Act.

According to the learned counsel, his client was providing transport facilities and he has opposed the grant of a permit to the third respondent before the second respondent for running his buses from Trichur to Coimbatore. Notwithstanding the opposition, the second respondent has granted a permit in favour of the third respondent allowing him to run his 2 buses from Trichur to Coimbatore. The petitioner, who is admittedly operating his buses from Tattamangalam to Coimbatore, is aggrieved by the grant of the said permit in favour of the third respondent. Therefore, his client comes as a person aggrieved and as such, entitled to file an appeal u/s 64(f) of the Act.-

12. The learned counsel, also in the alternative, contended that the applicant has a right to file an appeal u/s 64(b) of the Act. Even assuming that the proceedings before the second respondent did not amount to the grant of a new permit, those proceedings are admittedly, even according to the third respondent, proceedings for variation of the conditions of his permit. By effecting variation in favour of the third respondent, the latter is allowed to run his buses up to Coimbatore. The third respondent, till the date of variation, was not running his buses from Velanthavalam to Coimbatore and the petitioner was running his buses in that route also.

The result of the variation of the condition of the permit of the third respondent materially affects the business of the petitioner and as such he is aggrieved by the variation of the conditions of the permit of the third respondent and as such, he will have a right of appeal u/s 64(b). The learned counsel also contended that the second respondent had no jurisdiction to grant an extension of at. permit so as to enable the permit holder to run his buses beyond the limits of Kerala Stafy aid in this connection, the learned counsel relied upon Section 63 of the Act. The proceedings connected" with an application u/s 63 are really in the" nature of an application for a fresh permit and considered from this point of view also, his client will be entitled to file an appeal u/s 64(f) at any rate.

13. On the other hand, Mr. V. K. Krishna Menon, learned counsel for the third respondent, has supported the order of the first respondent rejecting the petitioner's appeal as incompetent. The learned counsel contended that the proceedings in this case will clearly show that what was notified by the then R. T. B. as evidenced by Ext. P-4 was an application by the third respondent for variation of bis permit. It was to that application that the petitioner filed his objections and it is a variation that has been ordered by the second respondent, under Ext. P6. There is no question of any application for a fresh permit for which the objections of the petitioner or otherwise were called for. The order Ext. P6 itself clearly shows that it was a variation that was granted, The right of appeal is strictly circumscribed by the words of Section 64. Unless the petitioner has opposed the grant of the permit itself even in the first instance, the applicant will not come u/s 64(f). Again, according to the learned counsel Section 64(b) has no application to the petitioner because he cannot be said to be aggrieved by any variation of the conditions of a permit granted to him. The variations of the

conditions have been effected in the permit granted to the third respondent and the petitioner has no right of appeal against that variation u/s 64(b).

14. The learned counsel also contended that the interpretation placed on Section 83 by the counsel for the petitioner is also not correct. Section 63 clearly contemplates the R. T. A. of one Province granting a permit for a route situated in another Province; but the only limitation is, such a permit shall not be valid in the other Province unless countersigned by the Provincial Transport Authority of that other Province, or by the Regional Transport Authority concerned. Therefore, the second respondent had jurisdiction to pass the order, Ext. P6.

15. Both the learned counsel have also relied upon certain decisions in support of their respective contentions. But before I deal with those decisions I shall refer to the objection raised by the third respondent on the ground that the application has been filed long out of time. I do not think, this objection requires very serious consideration at my hands. Though the order, Ext. P-8 has been passed on 12-3-1958, it is seen that the applicant, who had filed an application for the copy immediately thereafter, was furnished with the same only on 2-6-1958 and the application for the issue of a writ has been filed on 6-8-1958. Therefore, the objection of the third respondent based on the ground of delay is over-ruled.

16. It is desirable to review briefly Exts. P4, P6 and P8. Ext. P4 is the notification published on 6-3-1956 in the Government Gazette by the then R. T. B. The Notification runs as follows:

NOTIFICATION

C. ROC 1416/NVP/54. 6-3-1956

Whereas application has been received from M/s P. N. Krishna Iyer and Sons Ltd., Trichur for the variation of the existing permit of stage carriages TCC 1627 and 2536 as shown below, it is hereby notified u/s 57 of the Motor Vehicles Act IV of 1939 for the information, of the public Or whomsoever it may concern, that representations, if any, against the grant or the variation should reach the office of the undersigned within 15 days from the date of publication of the notification in the Government Gazette. The objections received after the due date will not be considered. The Regional Transport Board will consider the objections at a public hearing at the office of the undersigned on such date and place as may be intimated to the objectors concerned.

Sl. No.

Reference No.

Name and address of the applicant.

Identification No. and route for which there is permit.

Variation of permit as applied for.

(1)

(2)

(3)

(4)

(5)

1

C. ROC. 1416/

MVP/54.

P. N. Krishna Aiyar & Sons Ltd., Trichur.

TCC. 1627 & 2536 Trichur- Velanthavalam.

(Sd.)

Trichur-Coimbatore via Vaniyampara, Vedakkancheri, Nemmara, Khollengode, Chittur and Velanthavalam (within State limits).

It will be seen that the notification clearly states that the application filed by the third respondent was for variation of the existing permit for the 2 stage carriages and representations were also invited against the grant of the variation within 15 days. Column (4) of the particulars gives the number of the buses and the route for which the third respondent has permits. The heading for column (5) is: Variation of permit as applied for," and under that heading the particulars of variation asked for by the third respondent are given.

17. The applicant before me filed objections to the said application of the third respondent which was notified under Ext. P4. His objection statement is Ext. PS. Evidently, he seems to have filed 2 objection statements, one dated 20-3-1958 and another dated 5-6-1956. In the objections, the petitioner mentions that the "variation sought for is not warranted by the needs of the public." It is also stated that "the interests of the Public will not in any way be served by the grant of the variation."

Later on. it is also stated: "Under the cir-cumstances public interests can never be served by the variation." Finally the objection statement dated 20-3-1956 winds up by saying that the pro- posed variation is beyond the jurisdiction of the R. T. B., Trichur. In the second objection statement dated 5-6-1956, the petitioner states that the notification, Ext. P4 is not in accordance with the directions of the C. R. T. B. passed on appeal namely, Ext. P3. It is also stated that the application which has been notified under Ext. P4 is really not one for variation, because the route sought to be added, is outside the limits of this State.

18. In the order dated 5-6-1956 of the second respondent Ext. P6, Item No. V(i) is stated to be: "Subject: Variation of Trichur Velanthavalam route as Trichur-Coimbatore route." Then the order is to the effect that the main objection of the

present applicant is that the varied route is completely outside the limits of this State and the R. T. B. is not competent to sanction the variation. Finally the R. T. B. says that it is satisfied about its competency, to vary permits sanctioned by the Board u/s 57 of the Act. In this view the objection of the present applicant was over-ruled and the order finally concludes. "The variation applied for is sanctioned."

19. In fact, that the petitioner also proceeded on the basis that the proceedings before the R. T. B. were only in the nature of varying the conditions of a permit and not granting a new permit could also be seen from some of the points raised in his memorandum of appeal before the first respondent, Ext, P7. The relevant portion of paragraph 4 of the grounds runs as follows:

"The application of the respondent and the notification following the same are not in order, They do not conform to the statutory requirements. The application ought to have been "for an original permit from Trichur to Coimbatore u/s 63 of the Motor Vehicles Act . . . The application and the notification referring as they do to what is called a variation application, are entirely out of order and void....."

Ground No. 5 is again as follows:

"The trend of the notification clearly restricts the scope of the representations to objections for an extension from Velanthavalam to Coimbatore. This is entirely out of tune with the real scope of an application u/s 63 and the Scheme of M. V. Act."

The grounds extracted above will also show that though the petitioner before me would have liked the whole proceedings to be in the form of an application for a new permit from Trichur to Coimbatore and to be dealt with as such his grievance also was that the proceedings which culminated in the order, Ext. P6 were really only in the nature of proceedings for variation of the conditions of the permit which had been already granted to the third respondent.

20. The first respondent has considered the preliminary objection of the third respondent about the maintainability of the appeal filed by the petitioner and held that the appeal is not competent. The first respondent has held that the petitioner will not come either u/s 64(b) or Clause (f) of the Act. The first respondent has also held that u/s 63, the second respondent has got jurisdiction to grant the inter-State-Permit, but that permit will have validity in the other State only if the conditions mentioned in Section 63 are complied with. He rejected the contentions of the applicant that the proceedings before the second respondent which resulted in the order, Ext. P6 were really in the nature of an application for a fresh permit,

21. After hearing learned counsel on both sides, I am satisfied that the order of the first respondent. Ext. P8 is correct and does not require any interference by this court. I cannot accept the contention of Mr. Neelakanta Menon, learned counsel for the petitioner, that u/s 63 of the Motor Vehicles Act the second

respondent has no jurisdiction to grant a variation of a permit so as to enable the permit-holder to operate on a route outside the State. Section 63, in my opinion, does give the authorities mentioned therein power to grant an inter-State permit, but the only restriction is that such a permit, granted in any one Province shall not be valid in any other province unless counter-signed by the Provincial Transport Authority of that other Province, or by the Regional Transport Authority of that other Province, or by the Regional Transport Authority concerned.

Even the C. R. T. B. in its order Ext. P3, is of the view that the R. T. B., Trichur has jurisdiction to issue a permit in respect of that part of the route that lies in Coimbalore District provided the said permit is counter-signed by the R. T. B. Coimbatore. Again the C. R. T. B., is of the view that in this case there has been a substantial variation of an existing permit and that under Rule 220 of the Travancore-Cochin Motor Vehicles Rules, applications for variations of permits are to be dealt with as applications for permits, if the grant of variation will authorise transport facilities materially different from those authorised by the original permits. The C. R. T. B. was of the view that the endorsement by the R. T. B. Trichur on the permit of the third respondent authorising him to run from Trichur to Coimbatore instead of from Trichur to Velanthavalam will result in transport facilities being materially different from the existing facilities for those buses. Finally, the C. R. T. B. observes as follows:

"The only proper way of dealing with the application was to treat it as an application for permit, viz, to publish it inviting objections and to dispose of it at a public hearing, giving the applicant and objectors, if any, opportunity of being heard. Validation of permits for use outside the State as is done in the present case is also a variation of an existing permit, and the procedure mentioned above is the prescribed procedure."

Therefore, even the order of remand passed by the C. R. T. B. Ext. P3 has only directed the second respondent to deal with the application for variation as an application for a permit under Rule 220 of the Motor Vehicles Rules and to give opportunity for other permit-holders to file objections. But that it is only a variation of an existing permit is again emphasised by the C. R. T. B. observing:

"Validation of permits for use outside the State as is done in the present case is also a variation of an existing permit, and the procedure mentioned above is the prescribed procedure."

The procedure mentioned above was to treat it as an application for a permit and to invite objections.

22. Therefore, I cannot accept that contention of Mr. Neelakanta Menon that Section 63 does not give power to the R. T. B. to grant permits for routes outside the State or to vary the conditions of an existing permit so as to permit the running of buses outside the State.

23. No doubt, Mr. Neelakanta Menon contended that Rule 220 of the Motor

Vehicles Rules relied upon by the C. R. T. B. will apply only to inter-district or inter-State service and it cannot be applied to proceedings u/s 63 of the Act which are of an inter-State character. Even here, I cannot accept the contention of the learned counsel. In fact, even the C. R. T. B. as mentioned earlier in its order, Ext. P4, has applied only Rule 220 of the Travancore-Cochin Motor Vehicles Rules and asked the second respondent to treat the application of the third respondent as an application for a permit.

24. Once the contention of Mr. Neelakanta Menon that proceedings u/s 63 are really concerned with an application for a permit, is rejected, it will follow that Clause (f) of Section 64 will not at all help his client in filing an appeal against the order, Ext. P6. Under Clause (f) of Section 64 it is not enough that a person provides transport facilities alone, It is further necessary under Clause (f) that such a person who provides transport facilities should have opposed the grant of the permit in favour of the third respondent. It is not certainly the case of the applicant that he opposed the grant of the original permit in favour of the third respondent.

His main contention is that the proceedings before the R. T. B. resulting in the order Ext. P6 are really in the nature of an application for a permit. The application by the third respondent, the Gazette notification of the same Ext. P4 and the objections filed by the petitioner Ext. P5 clearly show that the proceedings could not have been and were not proceedings connected with the issue of a new permit to the third respondent. As stated earlier, even the C. R. T. B. in its appellate order Ext. P3, was of the view that validation of permits for use outside the State, as is done in the present case, is also a variation of an existing permit. It may be that the petitioner would have liked the third respondent to apply for a permit and the second respondent to deal with the said application as an application for permit. But what actually happened as mentioned earlier, was that the third respondent applied only for a variation of his permit.

It was that application for variation of the permit that was notified under Ext. P4. It was to such an application for variation that the applicant himself filed objections Ext. P5. The order, Ext. P6 clearly shows that "the variation applied for is sanctioned." In the face of all these proceedings, it is idle for the learned counsel for the petitioner to contend that those proceedings were in fact, connected with an application by the third respondent for a permit from Trichur to Coimbatore. In my view, Clause (f) of Section 64 relied upon by the learned counsel for the petitioner as giving a right of appeal to his client, falls to the ground.

25. Then the next question is as to whether Clause (b) of Section 64, gives a right of appeal to the petitioner. Clause (b) of Section 64 is as follows :

"Any person, aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof."

Admittedly in this case, the petitioner's permit has not been revoked, or

suspended, or the conditions thereof varied. There has been a variation of the conditions of the permit of only the third respondent herein. Therefore, the question is whether the petitioner gets a right to file an appeal against the order of the second respondent, to the first respondent. The petitioner's contention briefly is that it is not necessary that a particular person's permit should have been revoked, suspended or varied. If A provides transport facilities and his interests are affected by the variations of conditions granted in the permit of another operator B, according to the learned counsel, A will get a right of appeal u/s 64(b). The learned counsel further contended that the Bench decision of the Madras High Court relied upon by the first respondent, is not correct. Even if that decision can be said to lay down any principle, it is merely obiter dicta.

26. On the other hand, Mr. V. K. Krishna Menon, learned counsel for the third respondent, maintained that the petitioner will not get a right u/s 64(b) either. It is only a person whose permit has been revoked, suspended or varied, can alone file an appeal u/s 64(b) and the learned counsel also maintained that the Division Bench ruling of the Madras High Court relied upon by the first respondent, fully supports this position.

27. The Division Bench ruling relied upon by the first respondent in its order and the counsel for the third respondent before me, is the decision of the Madras High Court of the learned Chief Justice and Mr. Justice Venkatarama Ayyar reported in M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others, This was an appeal against the judgment of a Single Judge Subba Rao, J. whose decision also is reported in the same Volume at p. 276. No doubt the judgment of Mr. Justice Subba Rao supports the contention of the petitioner. But in my view, that judgment has been overruled by the learned Chief Justice and Mr. Justice Venkatarama Aiyar J. Ordinarily, I would not like to spend much time in discussing a decision which has been overruled. But Mr. Neelakanta Menon contended that the decision of Mr. Justice Subba Rao, on the application of Section 64(b) to such cases, has not been overruled by the Division Bench. Therefore, in fairness to the arguments advanced by the learned counsel, I will consider the decision of Mr. Justice Subba Rao in the first instance. That decision, as already stated, is reported in A. Vedachala Mudaliar Vs. The State of Madras and Another, Leaving all other facts which are not necessary for the purpose of this case, shortly, the point there arose was as follows:

28. The timings in respect of the running of buses by an operator, A was altered by the RTB. and his permit varied accordingly, B, another operator filed an appeal against the variation in the permit of A to the CRTB, on the ground that he was aggrieved by the variation of the conditions in the permit of A. The question was whether the appeal by B was maintainable. Therefore the questions that arose were:

(a) whether the timings were conditions of permit; and

(b) if it is a condition of permit, whether B in that case, was entitled to maintain

an appeal u/s 64(b).

The learned Judge, Mr. Justice Subba Rao, held that the timings were conditions of a permit. The learned Judge also held that B, whose interests are affected by the variation of the timings which are conditions of the permit granted to A, is entitled to file an appeal u/s 64(b) of the Act. I am only concerned in this case with the decision of the learned Judge on point (b). The learned Judge deals with this point in the following words at page " 276 of the reports:

"The learned counsel also relied upon Section 64 and contended that a third party cannot file an appeal against the variation of a condition and therefore the sub-section gives a clue that the order varying the conditions is not a judicial order. But to my mind the terms of that section are wide enough to confer a right of appeal even on third parties if the variation of a condition in the permit issued to another affects his rights u/s 64(b) any person aggrieved by any variation of the conditions of a permit can prefer an appeal from the order of the Regional Transport Authority. The petitioner is certainly aggrieved by the variation of the condition as by the change of the timings his financial interests would suffer. But it is stated that I must read the words, "the permit" along with the words "a permit granted to him" found in Clause (a) and if so read any person can only be the person the conditions of whose permit have been varied. Though his argument has some force I-am inclined to hold that Section 64(b) is not confined to the permit holder the conditions of whose permit have been varied but to any person who is affected by the variation of the conditions in the permit issued to another.

In this view, the learned Judge held that the appeal by B in that case before the C. R. T. B., was competent u/s 64(b) of the Act,

29. As stated earlier, this judgment of Mr. Justice Subba Rao was challenged before Raja-mannar, C. J.. and Venkatarama Iyer, J. in the decision reported in M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others, The party, A, whose permit was actually varied by giving new timings, was the apellant before the learned Judges and he contested the judgment of Mr. Justice Subba Rao both on the ground that the timings were not conditions of permit and that even if timings are conditions of permit it will not give a right of appeal to another operator namely, B. The learned Judges differed from Mr. Justice Subba Rao and Held after a consideration of the relevant sections of the Act, that the timings are not conditions of a permit. The learned Judges had also to consider the Madras Rule 208 which corresponds to Rule 220 of the Travancore-Cochin Rules.

No doubt, I am aware of the stand taken by the learned counsel for the petitioner in this case that Rule 220 has no application to inter-State routes, But the point which I wish to emphasise is that in spite of Rule 220 directing the application for variations of a certain nature to be dealt with as if it is an application for a permit that will not make the proceedings before the 2nd respondent really proceedings by way of application for a new permit This aspect

has been considered by the learned appellate Judges of the Madras High Court.

30. The learned Judges, after holding that the timings are not conditions of a permit and that in the case before them, there has been no variation, cancellation or addition to any condition of a permit, observe at page 548 as follows:

"It follows that Section 64 has equally no application. It is only if there is any variation of a condition that Clause (b) of that section would apply. Clause (f) also has no application. It cannot be said that the first respondent is a Person who had opposed the grant of a permit. It is true that Rule 208 provides that if there is an application for the variation of the permit which would authorise transport facilities materially different from those attached to the original permit, the procedure to be followed is the same as that prescribed for considering applications for permit; but we do not think that because this procedure applies, the person opposing an application for variation could be deemed to be a person opposing the grant of a permit within Section 64(f)."

The quotation extracted above furnished also an effective answer that Section 64(f) of the Act does not give a right of appeal to the petitioner.

31. After having held that the timings are not conditions attached to a permit, the learned Judges also considered the question whether the party B there was entitled to file an appeal before the C. R. T. B., when the timings in the permit of another operator A were changed. Dealing with this question, the learned Judges expressed their view that Section 64(b) does not confer a right on one person to appeal against an order varying the conditions of a permit granted to another person, in these words, at page 548 of the reports:

"Even if the timing, can be said to be a condition attached to a permit, we do not agree with the learned Judge that the first respondent could be treated as a person aggrieved by the variation of the conditions of the permit within the meaning of Clause (b) of Section 64. The expression "the permit" in that clause must obviously refer to the permit mentioned in Clause (a). That permit is a permit granted to any person by the Transport Authority. We think the proper construction of that clause is to confine its application to persons aggrieved by the revocation or suspension of the permits granted to them or again aggrieved by any variation of the conditions of such permit's granted to them. That clause does not confer a right on one person to appeal against an order varying the conditions of a permit granted to another person."

In the view that timings are not conditions of a permit, and also that the variation of the conditions of a permit granted to A does not confer a right on B 3 different person to file an appeal, the learned Judges reversed the judgment of Mr. Justice Subba Rao. Therefore, in the face of the unequivocal expression of the view of the appellate Judges extracted above, it is idle for the learned counsel for the petitioner to contend that these observations are only in the nature of an obiter dicta. Both the questions had been decided in a particular manner by the

learned Single Judge and both these views were canvassed before the appellate Judges, and the appellate Judges have dissented from the view of Mr. Justice Subba Rao on both these points. Therefore, the decision of the learned Chief Justice and Mr. Justice Venkatarama Iyer referred to above, conclusively establishes that the petitioner before me. has no right of appeal against the Order, Ext, P6 to the first respondent either u/s 64(b) or u/s 64(f). This decision also lays down that the fact that an application for variations under certain circumstances, has to be" dealt with as if it were an application for a permit, does not also lead to the conclusion that a right is given u/s 64(b) or (f) to persons like the petitioner before me to Hie an appeal, I respectfully agree with the judgment of the learned Chief Justice and Mr. Justice Venkatarama Ayyar reported in AIR. 1952 Mad 545, referred to above.

32. But the learned counsel for the petitioner, Mr, Neelakanta Menon, very strongly relied upon a Full Bench judgment of the Rajasthan High Court reported in Jairamdas Vs. Regional Transport and Others, , of Wanchoo, C. J., Dave and Modi, JJ. No doubt, prima facie the said decision supports the contention of the petitioner, that in the circumstances before me, the petitioner can maintain an appeal u/s 64(b). But with, great respect to the learned Judges who decided that case, I regret, it is not possible for me to follow the principles laid down in that decision. There, under similar circumstances, the competency of an appeal filed by a party u/s 64(b) was canvassed. The reasoning or the learned Judges shows that they were inclined to place a wide interpretation on the scope of Section 64(b). A reference has been made in the said Full Bench decision to two earlier decisions of that court where divergent views have been taken. While discussing the right u/s 64(b), the learned Judge, Mr. Justice Modi, who delivered the leading judgment, observed at page 315 as follows:

"It seems to me, therefore, that the right of appeal given u/s 64 should not be given an unduly wide meaning, and such a situation would certainly arise if we were to hold, for example, that the inhabitants of a locality catered for by a particular bus service have a right of appeal on account of any variation in the conditions of the permit because they may feel aggrieved by such variation."

Again on the same page the learned Judge observes:

"None the less, what seems to have been overlooked, when this case was decided was that a case of the variation of a condition of a permit may possibly arise where such variation may not only affect him adversely at all, but it may adversely affect the holder thereof or indeed may not afreet a person who has been already providing transport facilities in or near that very area. It would clear-ly appear on further consideration, that such a possibility cannot be entirely eliminated out ot consideration in adjudging the true scope and attractability of Clause (b) of Section 64.""

Then the learned Judges discuss the judgment of Mr. Justice Subba Rao and also the Division Bench judgment of the learned Chief Justice and Mr. Justice

Venkatarama Aiyar referred to earlier. According to the learned Judges, the Division Bench of the Madras High Court has not pursued the matter further except expressing considerable doubt as to the correctness of Mr. Justice Subba Rao's view on Clause (b) of Section 64. Though the learned Judges referred also to the concluding portion of the judgment of Rajamannar, C. J., and Venkatarama Aiyar, J. extracted by me earlier, it is rather significant that the learned Judges of the Full Bench do not in any way express their views one way or the other about those observations. Those observations, in my view, really express their view about the scope of S. 64(b), dissenting from Mr. Justice Subba Rao. Therefore, I do not get any assistance, if I may say so with respect, from the Full Bench decision of the Rajasthan High Court about the views of those learned Judges on the judgment of the Madras High Court in *M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others*, The view of the learned Judges of the Rajasthan High Court, on Section 64(b) of the Act, is expressed as follows at page 316;

"The correct position as to the right of appeal available under Clause (b) of Section 64 therefore boils down, in my view, to this: Ordinarily and in the vast majority of cases, it is only the permit-holder under this clause who would be competent to file an appeal against an order varying the conditions of his permit, because such variation would by and large adversely affect his interests only. But a class of cases also arises where such variation may or may not adversely affect the holder of the "permit" a condition whereof is under variation but adversely affects another permit-holder in the same area or a neighbouring area and if so the applicability of Clause (b) cannot be legitimately denied in a case of this type or in such other similar cases and where such situation arises, this clause cannot but be held also to permit an appeal by the party so affected. Having expressed their view referred to above, the learned Judges strike a note of caution later on that the applicability of the principle laid down by them in concrete cases calls for great caution.

33. As mentioned earlier, with great respect, it is not possible for me to subscribe to this wide meaning given to Section 64(b) of the Act by the learned Judges of the Rajasthan High Court.

34. Section 48-A of the M. V. Act contemplates variation being affected in the conditions of a permit already issued; and it is to such a person, the holder of the permit, that a right of appeal is given, in my opinion, u/s 64(b). This aspect, if I may say so with respect, has not been considered by the learned Judges of the Rajasthan High Court.

35. The learned Judges have not also considered the correctness or otherwise of the decision of the Madras High Court of the learned Chief Justice and Venkatarama Ayyar, J., nor have they expressed their views on that decision. According to the learned Judges of the Rajasthan High Court, there may be cases of bus operators who may be affected by the varying of the conditions of the permit of another operator and they must be held entitled to challenge by way of an appeal u/s 64(b) of the Act. In considering the scope of Section 64(b), in my

opinion, the learned Judges have not given due consideration to the right given u/s 64(f). It is not as if that the legislature did not have in view a person providing transport facilities. Section 64(1) clearly gives a right of appeal to a person providing transport facilities; but the condition for his having a right of appeal is that he should have opposed the grant of a permit and should be aggrieved by a grant thereof, or by any condition attached thereto. The legislature, in my view, has given a right of appeal u/s 64(f) to a person providing transport facilities and who opposed the grant of a permit. As to why the legislature gave a right only to such person, it is not for the court to consider. It is well settled that a right of appeal is a substantive right and not a matter of procedure and should be created or conferred expressly by a Statute. It cannot be inferred by implication. The Act is a self-contained Code and creates rights and also provides for adjudication of the disputes arising in respect of such rights and in such cases, the remedy provided by the Statute alone must be followed.

36. Whether a right of appeal on the facts of the case exists or not, one has to look to the provisions contained in Section 64 of the Act and if a party claiming a right of appeal is not able to bring himself within any of the clauses enumerated in Section 64, he has no right of appeal. As pointed out by Lord Bramwell in *Sandback Charity Trustees v. North Strafordshire Ry. Co.* (1877) 3 Q. B. D. I.

"An appeal does not exist in the nature of tilings. A right of appeal from any decision of any Tribunal must be given by express enactment." This principle has been uniformly accepted by the-various High Courts in India. In this case, all counsel are agreed that it is Section 64 of the Act, prior to its amendment, that applies. The learned counsel for the petitioner only relied upon clauses (b) and (f) of Section 64 as giving his client a right to file an appeal against the order Ext. P-6. I am not able to accept the contention of the learned counsel for the petitioner that either Clause (b) or (f) of Section 64 gives his client a right to maintain an appeal against the order, Ext. P-8. In this view, the order of the first respondent, Ext. P-8 rejecting the appeal filed by the petitioner as incompetent and not maintainable, is correct and there is absolutely no error in the said decision.

37. Finally, Mr. Neelakanta Menon urged that even if the order, Ext. P-8 is correct, this court should interfere with the original order, Ext. P-6, as it is an order passed by the second respondent without jurisdiction. If the petitioner had really any grievance against the order, Ext. P-6 as such, he should have sought appropriate relief long ago. That order was passed as early as 5-6-1956 and this writ application has been filed only on 6-8-1958, nearly 2 years after the said order. Apart from this inordinate delay, from what I have mentioned earlier, Ext. P-6 cannot be said to be an order passed without jurisdiction either. On both these grounds, I decline to interfere with the order, Ext. P-6.

38. In the result, the Rule Nisi issued by this Court is discharged and this application dismissed with costs of the contesting third respondent.