

SUPREME COURT OF INDIA

Maharashtra State Road Transport Corporation

Vs.

Balwant Regular Motor Service, Amravati

C.A.Nos. 825 to 851 of 1968

(J. C. Shah, V. Ramaswami and A. N. Grover, JJ.)

22.08.1968

JUDGEMENT

RAMASWAMI, J.:-

1. These appeals are brought by certificate from the judgment of the Bombay High Court dated October 20, 1967 in Special Civil Applications Nos. 540-570 to 572, 575 to 596 and 634 of 1967 filed under Arts. 226 and 227 of the Constitution of India.

2. The appellant is the State Road Transport Corporation of the State of Maharashtra constituted under the Road Transport Corporation Act (64 of 1950), Respondent No. 1 who is a private stage carriage operator, along with other such private operators, had applied for renewal of stage carriage permits which they were holding and which permits were to expire on March 31, 1961. The Provincial Transport Services (the predecessor of the appellant) had been also operating the stage carriage service in the adjoining and nearby areas and had made applications sometime in January, 1961 for grant of substantive permits for the same routes. The Provincial Transport Services had published a scheme under S. 68-D of the Motor Vehicles Act, 1939 (hereinafter called the 'Act')

under which it proposed to take over several routes in the region including the routes in respect of which renewal applications were made by the appellant and the private operators. The scheme was approved by the Chief Minister of the then Bombay State. The approval was, however, challenged by private operators in Special Civil Application No.86 of 1962 in the High Court. By its order dated 29th/30th August, 1963 passed in that case, the High Court quashed the scheme with the direction that the matter should be reconsidered by the approving authority. The scheme was thereafter not pursued.

3. By a notification dated June 10, 1961 under S. 47-A of the Road Transport Corporation Act of 1950 the Central Government provided for the amalgamation of the Bombay Road Transport Corporation with the Commercial Undertaking of the State Government, namely, the Provincial Transport Services. It was also provided in the notification that any application for permit made by the Provincial Transport services would be deemed to be an application made by the Bombay Road Transport Corporation. In other words, the Provincial Transport Services was substituted by the State Road Transport Corporation which is now known as Maharashtra State Road Transport Corporation (hereinafter referred to as the appellant').

4. The applications for renewal of permits and applications for substantive permits were considered by the Regional Transport Authority, Nagpur (hereinafter called the 'R. T. A. ') on October 9 and 10, 1964 and the R. T. A. passed a common order by which all the applications for renewal made by private operators were rejected and the permits were granted to the appellant. This order of the R. T. A. was challenged by the private operators in Special Civil Application No. 603 of 1964. One of the grounds on which the order was challenge was that the R. T. A. was not validly constituted. By its order dated January 14, 1965, the High Court quashed the order passed by the R. T. A., holding that it was not properly constituted on October 13, 1964 when it passed the common order. Thereafter the applications for renewal of permits and for fresh grant of permits were again considered by the R. T. A. at its meeting held on May 10, 1965. By its order on the same date, the R. T. A. dismissed all the applications for renewal made by the private operators and directed that substantive permits for these routes should be granted to the appellant. The order of the R. T. A. dated May 10, 1965 was challenged by the private operators in different Civil Applications. One of the applications was Special Civil Application No. 488 of 1965. In this application, one of the prayer was to the effect that pending the decision of the application the R. T. A. should be directed to maintain status quo. Clause 3 of the prayer was to the following effect:

"That pending the decision of this application the R. T. A. Nagpur be directed to maintain status quo viz., to grant temporary permit to the petitioner as it has been done upto now on the routes Chikhli - Buldana and Chikhli - Deulgaonraja on which the petitioner is operating his vehicles."

On June 4, 1965 Paranjpe, J, ordered as follows:

"Rule. Expedite hearing at Nagpur on 21st June, 1965. In the meantime R. T. A. Nagpur to maintain status quo in terms of Clause 3."

The interim order was subsequently confirmed by the High Court and all the petitions were directed to be heard together.

5. During the pendency of the Special Civil Applications in the High Court an application was made by the R. T. A. jointly on behalf of the appellant and the private operators. A copy of that application is included as document No. 17 in Special Civil Application No. 575 of 1967. The joint application stated that the appellant and the private operators, with a view to end all litigation, had agreed to settle the matter on certain terms. One of the terms was that the Special Civil applications filed were to be withdrawn. The application for compromise was considered by the R. T. A. at its meeting held on September 10 and 11, 1966. The private operators including respondent No. 1 assured the R. T. A. that they would withdraw the petitions pending in the High Court. Upon such assurance the R. T. A. considered the matter at the meeting and after hearing the parties decided that the appellant who was granted substantive permits by its order dated May 10, 1965, would commence operation on the routes described in Sch.'A' from November 1, 1965. In regard to the routes mentioned in Sch. 'B' for which also the appellant had been granted substantive permits by the order of the R.T.A. dated May 10, 1965, the appellant was to be permitted to commence operation from July 1, 1965 and the private operators including respondent No.1 were to be allowed to operate on these routes on temporary permits uptill June 30, 1967. This interval of time was given to the private operators apparently to help them to wind up their business without having to incur any loss and to assure certainty of better transport to the public. With regard to the third category of routes covered by Sch 'C' of the order of the R.T. A., the private operators were operating on substantive permits which they agreed to surrender in favour of the appellant. The appellant, however, had not made any application till then for these routes. The R.T.A. decided that it had to consider these routes on merits by inviting applications as provided under the Act since the private operators holding substantive permits in respect of these routes were voluntarily surrendering them. Subsequently, the Secretary, R.T.A. on applications made by the parties, granted temporary permits to the appellant in respect of 20 of these routes and to the private operators in respects of 22 other routes. The decisions were actually reached by the R.T.A. in presence of all the parties and subject to the condition that the private operators would withdraw their petitions pending in the High Court. It appears that on October 8, 1967 the private operators including respondent No. 1 withdrew the petitions from the High Court and informed the R. T. A. of such withdrawal. The R. T. A. thereupon on October 15, 1965, announced its decisions which it had taken on September 10/11, 1965. Thereafter the R. T. A. invited applications in respect of Sch. 'C' routes but the private operators including respondent No- 1 made applications not only in respect of Sch. 'C' routes including those which were being operated by the appellant, but in respect of Sch. 'B' routes as well. These applications were made during the month of February, 1967. The appellant had also made applications in respect of Sch. 'C' routes in January, 1967 in response to a notification of the R. T. A. On April 5, 1967, the Secretary, R. T. A. issued permits to the appellant for a period of five years, commencing from July 1, 1967 in respect of Sch. 'B' routes, acting upon the order of R. T. A. dated May 10, 1965 granting permits to the appellant and the subsequent order of the R. T. A. dated September 10/11, 1965 allowing the appellant to commence operations from July 1, 1967.

6. The applications of the parties for substantive permits in respect of sch. 'C' routes and the applications made by the private operators in respect of Sch. 'B' routes, were considered by the R. T. A. in its meeting held on June 28./29, 1967. After considering each case on merits, the R. T. A. granted substantive permits in respect of Sch. 'C' routes to the appellant and rejected the applications of the private operators for the same. With regard to the applications of the private operators in respect of Sch. 'B' routes, and in respect of some routes of Sch. 'C' for which they had applied after expiry of the date prescribed for making of such applications, the R. T. A. expressed the view that such applications could not be maintained in respect of Sch. 'B' routes since substantive permits for those routes had already been granted by the R.T.A. in favour of the appellant on May 10, 1965. As regards Sch 'C' routes, the applications of the private operators were held to be not maintainable as they were filed late. Thereafter the private operators including respondent No.1 voluntarily converted their applications into applications for additional timings or trips on those routes. The R.T.A. thereupon decided to postpone consideration of these applications for additional timings in order to enquire and satisfy itself out the existence of the additional need. This order of the R. T. A, dated June 28/29, 1967 was challenged by the private operators including respondent No. 1 in Special Civil Applications which are the subject-matter of these appeals. By its judgment dated October 20, 1967, the Bombay High Court allowed the Special Civil Applications and granted a writ in the nature of certiorari quashing the order of the R. T. A. date September 10/11, 1965 and June 28/29, 1967 and the permits issued by the Secretary, R. T. A. to appellant on April 5, 1967. With regard to the order of the R. T. A. dated May 10, 1965 granting substantive permits to the appellant in respect of Sch. 'A' and Sch. 'B' routes, the High Court held that the said order had become "unworkable" in respect of Sch. 'B' routes and hence to that extent quashed that order.

7. The first question arising in this case is whether the High Court was right in taking the view that the order of the R. T. A. dated May 10, 1965 granting substantive permits to the appellant was invalid merely because: (1) the period of validity of the permit was not expressly mentioned, and (2) the order does not mention the commencement of the period of the permit. As regards the first ground, there is no statutory requirement that the R. T. A. is required to expressly mention in its order for what period the permit was to be granted. In this connection reference may be made to Ss. 46, 48 and 58 (1) (a) of the Act which state:

"46. An application for a permit in respect of a service of stage carriages or to use a particular motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall, as far as may be, contain the following particulars, namely:-

(a) the route or routes or the area or areas to which the application relates;

(b) the number of vehicles it is proposed to operate in relation to each route or area and the type and seating capacity of each such vehicle;

(c) the minimum and maximum number of daily services proposed to be provided in relation to each route or area and the time-table of the normal services,

(d) the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions;

(e) the arrangement intended to be made for the housing and repair of the vehicles, for the comfort and convenience of passengers and for the storage and safe custody of luggage;

(f) such other matters as may be prescribed."

"48. (1) Subject to the provisions of S. 47, a Regional Transport Authority may, on an application made to it under section 46, grant a stage carriage permit in accordance with the application or with such modifications as it deems it or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any route or area not specified in the application.

(2) Every stage carriage permit shall be expressed to be valid any for a specified route or routes or for a specified area.

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

(i) that the service or any specified part thereof shall be commenced with effect from a specified date;

* * * * *

"58. (1) (a) A stage carriage permit or a contract carriage permit other than a temporary permit issued under Section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit."

8. It is true that S. 58 (1) (a) provides that the duration of the permit should be not less than three years and not more than five years as the R. T. A. may specify in the permit. But there is nothing in S. 48 (1) of the Act which states that the R. T. A. is required to specify expressly in the order of the grant of the permit as to for what period the permit is to be effective. It is manifest, however, in the present case that the period of validity of the permit should be deemed to be five years because the order of the R. T. A. should be construed as an order of grant of a stage carriage permit "in accordance with the application under S. 48 (1) of the Act. In other words, the order of the R. T. A. dated May 10, 1965 should be construed in the context of the language of S. 48 (1) of the Act which empowers the R. T. A. to grant a stage carriage permit "in accordance with the application" or "with such modifications as it deems fit or to refuse to grant such a permit." In the present case, the R. T. A. did not make any modification and it must therefore be deemed that the grant of the permit was made in accordance with the application of the appellant which expressly declares the period of validity of the permit applied for to be of five years (See the application of the appellant printed at page 205 of Vol. II of the Paper Book). Reference may be made in this connection to Rule 80 of the Bombay Motor Vehicles Rules which provides for the forms of application for permits and to Form P. St. S. A. prescribed under that Rule which requires the application to mention for what period the stage carriage permit is to be granted. We are accordingly of the opinion that the order of the R.T. A. dated May 10, 1965 cannot be held to be illegal merely because the period of validity of the permit has not been expressly mentioned therein. It was, however, argued by Mr. Phadke on behalf of respondent No. 1 that the period of commencement of the permit should have been mentioned by the R. T. A. in its order of May 10, 1965 and the omission of the R. T. A. to do so invalidated the order. It was pointed out by Mr. Phadke that the order of the grant of permit was made on May 10, 1965 by the R. T. A. but the permits were actually issued to the appellant on April 5, 1967 to be effective for five years from at date. There is, however, nothing in the Act or in the Rules to suggest that the R. T. A. is under an obligation to mention in the order of grant of permit the actual date from which the permit as to be effective. Mr. Phadke, referred to S. 48 (3) (i) of the Act which states that the R. T. A., if it decides to grant a permit, may grant the permit for a service of stage carriage of a specified description and may subject to any rules that may be made under the Act, attach to the permit a condition that the service or any specified part thereof shall be commenced with effect from a specified date. It is manifest that this statutory provision is merely permissive and it does not apply to the order of grant of a permit which is dealt with in S. 48 (1) of the Act. In the absence of any express statutory provision it must be taken that the date of the commencement of the period of the permit would be the date from which the permit is actually issued which is April 5, 1967 in the present case. The view that we have expressed is borne out by the decision of the Bombay High Court in *Shree Laxmi Bus Transport Co. v. R. T. A., Rajkot*, (1960) 62 Bom LR 958 in which it was said that when an application for renewal of a stage carriage permit is granted under S. 58 of the Act, subsequent to the date on which the period of the permit expires, the period specified in the renewal cannot be made to commence retrospectively from the date of expiry of the permit sought to be renewed but will commence from the date on which it is actually renewed. Hence it is not possible to accept the argument of Mr. Phadke that the order of the R.T.A. dated May 10, 1965 is illegal merely because the date of commencement of the operation of the permit is not specified therein. In our opinion, the High court was in error in holding that the order of the R. T. A. dated May 10, 1965 was legally invalid either because the period of validity of the permit or the

date of commencement was not mentioned therein.

9. The next contention put forward by Mr. Phadke is that the order of the R.T.A. dated September 10/11, 1965 fixing the date of the commencement of the service was an order which was tantamount to a review of the previous order of the R. T. A. dated May, 10, 1965 and as no express power of review is conferred on the R. T. A. by any provision of the Act, the order of September 10/11, 1965 was illegal and ultra vires. In this connection Mr. Phadke referred to the decisions of this Court in Harbhajan Singh v. Karam Singh, AIR 1966 SC 641 and Chunibhai v. Narayanrao, AIR 1965 SC 1457, and contended that a tribunal of limited jurisdiction has no inherent power to review its own orders except in the matter of clerical error. We consider that there is no substance in the argument put forward on behalf of respondent No. 1. It is not correct to say that the order of the R. T. A. dated September 10/11, 1965 is an order of review of the previous order dated May 10, 1965, because the later order of the R. T. A. fixing the date of commencement of the service is only supplemental and filled up an omission in the previous order of May 10, 1965 which was left intact.

10. We pass on to consider the next question arising in this case, namely, whether the order of the R. T. A. dated September 10/11, 1965 was invalid because it was passed during the subsistence of the stay order of the High Court dated June 4, 1965 in Special Civil Application No. 488 of 1965. The High Court has taken the view that the order of the R. T. A. dated September 10/11, 1965 was invalid because it was made on a compromise reached by the parties during the operation of the stay order of the High Court in Civil Application No. 488 of 1965. In our opinion, the High Court was not right in taking the view that the R. T. A. had violated the stay order. The parties had themselves approached the R. T. A. on the basis of the compromise which was meant to put an end to a long protracted litigation and which allowed time to the private operators to wind up their business. On a perusal of the order of the R. T. A. dated September 10/11, 1965 it is manifest that the R. T. A. was careful to say that the compromise will come into effect only after the withdrawal of the writ petitions by the private operators. To put it differently, the order made by the R. T. A. on September 10/11, 1965 was a conditional order, namely, an order which was intended to come into effect only after the writ petitions in the High Court were withdrawn by the private operators. It is not disputed that the order of the R. T. A., though dated September 10/11, 1965 was formally announced on October 16, 1965 after the private operators had withdrawn the writ petitions on October 8, 1965. In these circumstances we hold that there is no violation of the stay order of the High Court and the order of the R. T. A. dated September 10/11, 1965 which was formally announced on October 16, 1965 is not in any way invalid.

11. In any event, we are satisfied that it is not open to the private operators including respondent No. 1 to apply for a writ in the nature of certiorari for quashing the order of the R. T. A. dated September 10/11, 1965 in view of their conduct. It is not disputed that the private operators including respondent No. 1 were present in the meeting of the R. T. A. held on September 10/11, 1965 either personally or through duly appointed Counsel. Respondent No. 1 and the other private operators assured the R. T. A. at the hearing that they would withdraw the writ petitions pending in the High Court. On such assurances and subject to the actual withdrawal of the writ petitions in terms of the assurance, the R. T. A. considered the matter in the said meeting and after hearing the parties,

made an order giving effect to the compromise. It is obvious that the private operators including respondent No. 1 were parties to the order dated September 10/11, 1965, had accepted that order, acted upon it and derive benefits and advantages from it for nearly one year and 9 months. But for the order which suspended the operation of the permit of the appellant till July 1, 1967 the private operators including respondent No. 1 could not have got temporary permits to operate on the same routes as no stage carriage permits could be issued under Section 62 of the Act during the subsistence of substantive permits. In these circumstances we consider that there was such acquiescence in the R. T. A.'s order dated September 10/11, 1965 on the part of respondent No. 1 and other private operators as to disentitle them to a grant of a writ under Article 226 of the Constitution. It is well established that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, similar to though not identical with, the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp*, (1874) 5 PC 221 at p. 239 as follows:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party as, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

This passage was cited with approval by this Court in a recent case-*The Moon Mills Ltd. v. M. R. Mehar*, President Industrial Court, Bombay, AIR 1967 SC 1450. In our opinion, the principle of this decision applies to the present case and since respondent No. 1 and the other private operators had not even pleaded any circumstances justifying the delay or their conduct, the High Court was in error in granting a writ of certiorari in their favour.

12. We next proceed to consider the question regarding the validity of the order of the R. T. A. dated June 29, 1967.

The High Court has taken the view that this order is invalid for two reasons: (1) the order of the R. T. A. is oral and not in writing, and (2) no reasons were immediately given by the R. T. A. for the order. In the present case, what actually happened was that the orders of the R.T. A. were made at its

meeting held on June 28/29, 1967. Respondent No. 1 was admittedly present at this meeting and knew of the orders of the R. T. A. It is also not disputed that the orders made on June 28/29, 1967 were in the form of resolutions and the minutes of the meeting were formally recorded on July 20, 1967 and communicated to respondent No. 1 and the other private operators on the same date. The letter of July 20, 1967 communicating the resolution dated June 28/29, 1967 is Annexure 'N' to the Writ Petition No. 634 of 1967. In this letter detailed reasons are given by the R. T. A. in support of its order granting stage carriage permits to the appellant for the routes in question. In our opinion, the procedure adopted by the R. T. A. does not contravene any provision of the Actor Rules made thereunder and no legal principle has been violated. Reference may be made in this connection to Section 57 of the Act and Rules 67 and 68 of the Rules which are to the following effect:

"S. 57. (1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date of which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates.

(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 modifications would have the effect of increasing the numbers 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-section (3) of Section 47 or sub-section (2) of Section 55, as the case may be, the Regional Transport Authority may summarily refuse the application without following the procedure laid down in sub-section.

(4) No representation in connection with an application referred to in sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representation such as is referred to in sub-section (3) is made , the Regional

Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

(6) When any representation has been made by the person or authorities referred to in Section 50 to the effect that the number of contract carriages for which permits have already been granted in any region or any area within a region is sufficient for or in excess of the needs of the region or of such area, whether such representation is made in connection with a particular application for the grant of a contract carriage permit or otherwise, the Regional Transport Authority may take any such steps as it considers appropriate for the hearing of the representation in the presence of any persons likely to be affected thereby.

(7) When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.

"Rule 67. Regional Transport Authorities.-(1) the Regional Transport Authority shall meet at such times and at such places as its Chairman may appoint:

Provided that it shall meet not less than once in each month unless the State Transport Authority otherwise directs.

(2) Not less than 3 days' notice shall be given to every member of any meeting of the Regional Transport Authority.

(3) A member of the Regional Transport Authority shall attend at least six meetings in each financial year. The State Government may at any time remove any such member from office on his failure to attend the minimum number of meetings flied under this rule. The State Government may also remove from office any member for any other cause.

.....

(5) Where a Regional Transport Authority consists of more than three members the number of members whose presence shall constitute a quorum shall be one half of its members and where it consists of three members, the quorum shall be two. If within half an hour from the time appointed

for the meeting a quorum is not present, the meeting shall be adjourned to such day and at such time and place as the Chairman or the Presiding Officer nominated under sub-rule (6) may appoint; and if at the adjourned meeting a quorum is not present, the members present shall be a quorum.

.....

(7) The chairman or the Presiding Officer shall have a second or casting vote."

"68. (1),.....

(2) Subject to the provisions of the Act and these rules and to the approval of the State Government, a State or a Regional Transport Authority shall have power to make bye-laws to regulate the conduct of its business and shall likewise have power to amend or rescind such bye-laws and the business of such Transport Authority shall be conducted according to such bye-laws under the direction of the Chairman.

(3) Save in the case of the hearing of an objection to the grant of stage carriage permit or of a public carter's permit and in the case of the hearing of a representation under sub-section (6) of Section 57, a State or a Regional Transport Authority, as the case may be, may decide any matter, without holding a meeting by the majority of the votes of members recorded in writing and sent to the Secretary (hereinafter referred to as procedure by circulation).

.....

(6) The State or the Regional Transport Authority, as the case may be, may require any applicant for a permit to appear before it and may withhold the consideration of the application for the permit until the applicant has so appeared in person if so required, or by any recognised agent if so furnished, and until the applicant has furnished such information as may be required by the Transport Authority in connection with the application.

Explanation.-In this sub-rule, except in cases falling under sub-section (5) of Section 57, the expression "recognised agent" means a pleader or the father, son, brother, partner or employee of the applicant duly authorised by him in writing or any other person so authorised and recognised by the Transport Authority concerned as a fit person to be a recognised agent under its bye-laws made under sub-rule (2).

(7) Nothing contained in this rule shall prevent a State or Regional Transport Authority from deciding by following the procedure by circulation any matter which has been considered at a meeting or has been the subject of a hearing and upon which a decision has been reserved.

(8) Where a matter is decided by the votes of members present at a meeting of a State or Regional Transport Authority, no person other than a member of the Transport Authority shall be entitled to be present and no record of the voting shall be kept save of the number of votes cast on either side; provided that when any matter is decided by the exercise of the second or casting vote of the Chairman or the Presiding Officer the fact shall be recorded."

13. On behalf of respondent No. 1 Mr. Phadke conceded that the procedure adopted by the R. T. A. did not contravene any section of the Act or the Rules made thereunder. Counsel, however, put forward the argument that even in the absence of any express provision a statutory tribunal has to give its order in writing and no oral judgment can be legally given. It was also contended on behalf of respondent No. 1 that it was not sufficient that reasons for the decision were given subsequently by the R. T. A. in its letter dated July 20, 1967 but the reasons should have been given simultaneously at the time of the resolutions on June 28/29, 1967. We are unable to accept this argument as correct. As we have already stated, there is no provision either in the Act or the Rules which requires the R. T. A. to give a written decision with regard to the grant of a stage carriage permit. Nor is there anything in the Act or the Rules which by necessary implication throws a duty upon the R. T. A. to give a written judgment in each case and to give reasons thereof along with the written decision. It is true that Section 57 (7) of the Act requires the R. T. A. to give in writing the reasons if it refuses an application for a permit of any kind. But in the case of a grant of a permit the statute does not impose any such duty upon the R. T. A. Mr. Phadke on behalf of respondent No. 1 has been unable to point to any section of the Act or any Rule from which a necessary implication can be drawn that such a duty is thrown upon the R. T. A. Reference was, however, made by Mr. Phadke to two decisions of this Court in *Bhagat Raja v. The Union of India*, (1967)3 SCR 302 = (AIR 1967 SC 1906) and in *Prag Das Umar Vaishva v. The (Union of India, Civil App. No. 657 of 1967, D/-17-8-1967 (SC)*. In the former case, the appellant was one of several applicants for a mining lease in Andhra Pradesh. The State Government however granted it to respondent No.3. The appellant then filed an application in revision, under-Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 read with R.54, to the Union of India. Respondent No.3 filed a counter statement and the State Government filed its comments. The appellant filed a rejoinder. The Union Government without hearing the appellant rejected his revision application. An appeal was filed before this Court. The question which fell for consideration was whether it was necessary for the Government of India to give reasons for its decision in view of the provisions of the Act and the Rules or because the decision was liable to be questioned in appeal to this Court. It was held by this Court in these circumstances that "a speaking order is all the more necessary in the case of a decision under Rule 55 because there is provision for new material being placed before the Central Government which was not there before the State Government, and further, because the decision, affecting important rights of parties, is given in a summary manner without a hearing being allowed to the parties and that a party was entitled to know why the decision has gone against him." In the result, the appeal was allowed and the orders of the Central Government were set aside

and the Central Government was directed to decide the review applications afresh in the light of the observations made. In the latter case, i. e., Civil App. No, 657 of 1967, D/- 17-8-1967 (SC) the same principle was reiterated. It is manifest that the material facts in the present case are different. The significant fact in the present case is that the decision of the R. T. A. on June 28/ 29, 1967 was given after hearing respondent No, 1 and the other private operators who were present at the meeting of the R. T. A, either personally or through Counsel and reasons for the decision were also communicated to respondent No. 1 and other private operators by a registered letter dated July 20, 1967. The principle of the decisions of this Court in (1967) 3 SCR 302 = (AIR 1967 SC 1606) and in Civil App. No. 657 of 1967, D/-17-8-1967 (SC) as therefore no bearing upon the determination of the question involved in the present case. Apart from any requirement imposed by the statute or statutory rules either expressly or by necessary implication we are unable to accept the contention of Mr. Phadke that there is any general principle that a statutory tribunal should always give its judgment in writing and should always give reasons thereof immediately with the pronouncement of the judgment.

14. In English law, an applicant for a certiorari was required to verify by his affidavit a copy of the conviction or other record of adjudication complained of, or to explain his failure to do so. The rule in question was Rule 35 of the Crown Office Rules, 1886 which seems merely to have codified the common law on the subject. This rule was later replaced by Rules of Supreme Court and Order 59, Rule 8 (1) is substantially to the same effect. It is apparent that this rule, like the earlier rules, though it calls for a written record when a certiorari is moved for, permits its absence at the outset if the applicant accounts for his failure to lodge the order to the satisfaction of the Court. At Common Law the practice was that if the conviction or order attacked had not been put in writing, the applicant for the certiorari would simply so state in his affidavit, and thus its non-production would be excused at that stage. If the court was persuaded that the conviction or order when in writing would probably be quashable, it would grant the certiorari, and order return of the record of adjudication. It is well settled by several English authorities that even though there was no such record when the inferior tribunal received the writ of certiorari it could not defeat the writ by making a return that the record was not drawn up or that it had only made an oral order. If it did so, then the return would be quashed and the tribunal directed to enter the conviction or order and return it: *R. v. Levermore*, (1700) 1 Salk 146; *R. v. Lichfield*, (1843) 4 QB 893; *R. v. Coles*, (1845) 8 QB 75; and *R. v. Trafford*, (1855) 4 WR 55. This was the legal position even though at common law a practice had grown up of not drawing up convictions until an appeal was taken or a certiorari received, which practice was continued by the Summary Conviction Rules, 1915, R. 53 and later by the Magistrates' Courts Rules 1952, Rule 19 (1). These rules referred to convictions not being drawn up till needed for an appeal or other "legal purpose." That an oral order was a legally valid order is also indicated by the decision of the Court of Appeal in *Rex v. Newington Licensing Justices*, (1948) 1 KB 681 in which the lessee of premises in respect of which a justices off-licence was in force applied for the transfer of the licence to her from the previous lessee and licensee. At the hearing of the application it appeared that the applicant had mortgaged the premises by way of sub-demise to the lessors and the justices considering the mortgage to be an agreement or other assurance under which the licence was to be transferred and held' within the meaning of S. 25, sub-section (2), of the Licensing (Consolidation) Act, 1910, purported to order the applicant to produce it. It was held by the Court of Appeal that the justices had no power to order the production of any document even if it were a document which the section required to be produced and that in any view the mortgage was not such a document, and the order of the justices was therefore made without jurisdiction. The order of the justices was, however, made orally at the bearing of the application and had not been

reduced into writing at the time when the motion for an order of certiorari was made. On that point the Court of Appeal held that it had no power to deal with any order but an order in writing in proceedings for certiorari. The court, therefore, refused to give judgment until the order was reduced into writing, but consented to hear the arguments on an undertaking being given by the parties that the order would be duly reduced into writing and produced before the Court. After the Court of Appeal had heard the arguments a written order was drawn up by the justices and produced before the Court which thereafter delivered the judgment and quashed the order of the grant of a writ. Reference should in this context be made to Section 12 (3) of the Tribunals and Inquiries Act, 1958 (6 and 7 Elizabeth 2, c. 26) which contemplates that a tribunal or any Minister may furnish a statement, either written or oral, of the reasons for the decision if requested on or before the giving or notification of the decision, to state the reasons. Section 12 provides as follows:

"(1) Subject to the provisions of this section, where after the appointed day-

(a) any such tribunal as is specified in the First Schedule to this Act gives any decision, or

(b) any Minister notifies any decision taken by him after the holding by him or on his behalf of a statutory inquiry,

.....

it shall be the duty of the tribunal or Minister to furnish a statement, either written or oral, of the reasons for the decision if requested, on or before the giving or notification of the decision, to state the reasons:

Provided that the statement may be refused, or the specification of the reasons restricted, on grounds of national security, and the tribunal or Minister may refuse to furnish the statement to a person not primarily concerned with the decision if of opinion that to furnish it would be contrary to the interests of any person primarily concerned.

.....

(3) Any statement of the reasons for such a decision as is mentioned in paragraph (a) or (b) of sub-section (1) of this Section, whether given in pursuance of that sub-section or of any other statutory provision, shall be taken to form part of the decision and accordingly to be incorporated in the record.

.....

It should be noticed that under this section, the statement of reasons may be oral and any such statement "shall be taken to be a part of the decision and accordingly to be incorporated in the record". Further, the duty to give reasons arises only, when a request to give them is made to the tribunal or to the Minister. No such duty arises under this sub-section if the request is made after the decision has been given or notified.

15. We are therefore of the opinion that in the absence of any statutory provision there is nothing wrong in principle if an administrative tribunal gives a decision orally and subsequently reduces to writing the reasons thereof and communicates it to the parties. We accordingly reject the argument of Mr. Phadke on this aspect of the case.

16. For the reasons expressed we hold that the judgment of the Bombay High Court dated October 20, 1967 should be set aside and Special Civil Applications Nos. 540, 570 to 572, 575 to 596 and 634 of 1967 filed by respondent No. 1 and other private operators should be dismissed. We accordingly allow these appeals with costs--there will be one hearing fee.

Appeals allowed.