Ajantha Transports (P) Ltd.

Vs

M/s. T. V. K. Transports, Pulampatti, Coimbatore District.

Civil Appeal No. 1402 of 1974

(H. R. Khanna, V. R. Krishna Iyer, M. H. Beg JJ)

24.09.1974

JUDGMENT

BEG, J. -

1. We will detail facts leading up to the five Civil Appeals, which were heard together, before formulating and deciding the common questions of law raised by them.

2. Civil Appeal No. 1402 of 1974 arises out of fourteen applications, including that of the appellant before us, Ajantha Transports (P) Ltd., which were considered on December 29, 1971 by the Regional Transport Authority, Coimbatore, for the grant of a stage carriage permit to ply an additional bus on the route from Coimbatore to Sathyamangalam via Koilpalayam and some other places. Five of these were rejected on the preliminary ground that the prescribed fees had not been paid. One was withheld from consideration for want of Income Tax Clearance Certificate. One application was found disqualified, under Section 62(A)(c) of the Motor Vehicles Act as amended by the Tamil Nadu Amendment Act 16 of 1971, because he already had more than ten permits. Out of the remaining seven applicants, the highest scorer, according to the marking system adopted by the Regional Transport Authority of the region, was one Palaniappa Gounder who obtained nine marks. But, Gounder was "by-passed" in favour of the appellant who secured 8.69 marks because Gounder had already been granted a permit on October 8, 1971. Three appeals, including one by Gounder, were then preferred to the State Transport Appellate Tribunal against the Regional Transport Authority's resolution. Only the appeal of P.V.K. Transports, described as "the second appellant", succeeded, although this party was awarded only 7.42 marks as against 8.69 of the appellant before us. The break up of the marks allotted, in accordance with Rule 155(A) of the Tamil Nadu Motor Vehicle Rules, was given as follows :

> # ---------- Residence BO Workshop Experience Sector Viable Unit Total ----------
> ----Second Appellant 2 .. 2 2 0.42 1 7.42Respondent 2 .. 2 1.63 0.06 3 8.69 ----------
> ----------##

3. It appears, from the order of the State Transport Tribunal that the parties did not dispute the correctness of the marks actually assigned under various heads. The contention of the second appellate, M/s. P.V.K. Transports, before the State Tribunal, that two additional marks should also have been allotted to it for its Bench Office, was rejected on the ground that the R.T.A. had rightly refused to grant additional marks for this reason as the Bench Office had not been functioning continuously and was meant only for buses plying under temporary permits. The Tribunal then observed that, if operational qualifications only were taken into account, P.V.K. Transports had

secured 6.42 marks as against 5.69 of the Ajantha Transports (P) Ltd. It pointed out that the respondent before it was given two additional marks under the heading 'Viable Unit' only because it had three buses running as against one of P.V.K. Transports. It set aside the order of the Regional Transport Authority and preferred the claims of P.V.K. Transports on two grounds stated as follows :

> The R.T.A. had not borne in mind the relevant considerations under Section 47(1) of the MV Act in choosing the best one for the permit. I am of the view that the claim of the second appellant should be upheld as against the respondent on two substantial grounds. Firstly, the respondent was a recent grantee on the date of meeting, it having obtained its third permit on July 31, 1971 about five months prior to it. The second appellant's only permit was got by it on December 8, 1970. As already noticed, the R.T.A. has chosen to bypass applicant No. 6 (K. Palaniappa Gounder), to top scorer on the only ground that he was a recent grantee. This is a matter for surprise as to why he did not apply the same test to the respondent, also a recent grantee. That recent grant is a relevant consideration is beyond dispute. Secondly the second appellant is a single permit holder and the respondent is a three permit holder. This being a medium route, the claim of the former, whose qualifications are almost the same as those of the latter should be preferred. In WP No. 120/71 and 2028/71 the Madras High Court has upheld the judgment of the Tribunal preferring a single permit holder as against a two permit holder (vide also Judgment in WP No. 482/71). I therefore find that the second appellant is best suited for the grant of this permit.

4. The High Court of Madras had rejected the Ajantha Transports' Revision Petition under Section 115 of the Civil Procedure Code which was made applicable to decisions of the Tribunal by the Tamil Nadu Motor Vehicle Amendment Act 16 of 1971. It held that there was no error of jurisdiction or material irregularity in the exercise of jurisdiction since the Tribunal had based its decision on relevant considerations. Against this decision the appellant was granted special leave to appeal to this Court.

5. Civil Appeal No. 2254 of 1969 arises out of twenty one applications which came up for consideration before the Regional Transport Authority, South Arcot, Cuddalore, for grant of a stage carriage permit for the route from Porto-Novo to Puliyangudi. The R.T.A. rejected five applications on the ground that they were from new entrants who had no previous experience of this business. One was rejected on the ground that it was from a dissolved company. Another was rejected because the applicant was dead. Six were eliminated because of bad entries on their permits during the preceding year. Five were rejected on the ground that they had either no workshops or not sufficiently equipped workshops. Out of the three remaining applicants, one was considered inferior in merit in comparison with the remaining two, as his knowledge of the route was not so good as of the other two. The joint applicants Chettiar and another at No. 6 were preferred to Natarajan, applicant No. 13, on two grounds : firstly, the applicants at No. 6 were considered as somewhat better acquainted with the routes; and, secondly, the applicant No. 13 had secured a recent grant of a permit on another route. Hence, it was considered more equitable to drop him so as "not to inflict strain on the same operator by granting him more than one permit at a time".

> Against the above mentioned decision of the R.T.A., there were three appeals before the State Transport Appellate Tribunal, which elaborately considered the claims of each appellant vis-a-vis the successful respondents. If preferred the claim of Kannon Motor Transport (P) Ltd., principally on the ground that it was a local enterprise of persons residing along the route. It seemed to take the view that the mere fact that

> Kannon Motor Transport (P) Ltd. had been granted a permit on another route at the same meeting of the R.T.A. was no disqualification. It did not actually hold such a ground to be irrelevant. But, its remarks showed that a recent grant of a permit on another route was not considered by it to be really material. It, however, made it clear that the principal ground of its preference was that M/s. Kannon Motor Transport (P) Ltd. was "a local enterprise" of persons who could be expected to be better acquainted with the needs of the locality.

7. A learned judge of the Madras High court refused to quash the order of the State Transport Appellate Tribunal because the main ground for the preference was that the local residence of the parties whose appeal had been allowed by the Tribunal gave them a better claim. In the course of his judgment, however, the learned Judge observed that the State Tribunal could not be compelled to take into account matters which were "external" or irrelevant for the purposes of exercising the power of granting permits. A Division Bench of the Madras High Court, disagreeing with this view, set aside the judgment of the learned Single Judge and remanded the case for reconsideration to the Tribunal on the ground :

> The Tribunal could well have considered whether in all the circumstances, the first respondent before us, should, having regard to public interest, be granted more than one permit at the same meeting of the Regional Transport Authority. That would be a relevant question.

It pointed out :

> The first respondent altogether got three permits at the hands of the Tribunal. Whether he having got a permit before the Regional Transport Authority it would be consistent with public interest to grant further permits at the stage of appeals was undoubtedly a matter relevant to the consideration and that having not been decided by the Tribunal, its order is vitiated.

8. The Civil Appeal No. 2254 of 1969 has come up before this Court after certification of the case by the Madras High Court under Article 133(1)(c) of the Constitution as fit one for an appeal to this Court.

9. Civil Appeals Nos. 1481-1483 of 1970 have resulted from 42 applications made for the grant of a permit to ply on the route Chidambaram to Tirukoilur via, Vedalur, Kadampuliyur, Panruti, and some other places, by the Regional Transport Authority, South Arcot. It appears that, after the elimination of a number of applications on various grounds of disqualification, the R.T.A. embarked, ultimately, on a comparison of the relative merits of three applicants :

> 1. M/s. Prabhu Transports (P) Ltd.;
>
> 2. Sri Dhanalakshmi Bus Service;
>
> 3. M.R.S. Motor Service.

10. The R.T.A. found, on December 23, 1965, the qualifications of M/s. Prabhu Transports (P) Ltd., to be superior to those of its rivals and ordered the grant of the permit to it. Fifteen appeals were filed against the order of the R.T.A. After setting out the qualifications of each of the appellants before it elaborately the State Transport Appellate Tribunal considered the case of the appellant

before us, M/s. Kannon Motor Transports (P) Ltd., to be best and over-ruled the objection that a recent grant on a different route altogether should also be considered material. It said :

> The ninth Appellant is M/s. Kannon Motor Transports (P) Ltd., Chidambaram. It owns two route buses. Its main office & residence are at Chidambaram. It has a fully equipped workshop at that place and arrangements for effecting repairs have been made at the other end of the route i.e. Tirukoilur. Its experience is from about the beginning of 1961. Its history sheet is perfectly clear. Its route knowledge is limited to 7.1/2 miles. This appellant is a local enterprise who is trying to have a viable unit. It has a fully equipped workshop at one of the termini and at the other termini arrangements for effecting repairs have been made. It has sufficient experience and some knowledge of the route. It thus possesses basic qualifications for the grant. But then it was pointed out that this appellant is a recent grantee of another permit. In W.P. Nos. 852 and 1049 of 1962, it has been held that where the recent grant relates to a different route altogether and if that is the only circumstances present that in itself may not be relevant as the sole ground for declining the grant of permit. It is not the case of any of the appellants that grant for this appellant is in respect of this identical pouts. This appellant who has the basic qualifications and who is trying to build up a viable unit in my view is the most suited person to receive this permit. For each of the remaining appellants owns more route buses than what he has.

11. Three connected writ petitions were filed in the Madras High Court against the judgment and order of the State Transport Appellate Tribunal preferring the appellant's claim over those of others on the ground that the appellant should have an opportunity to build up a viable unit as each of "the remaining appellants owns more route buses" than what the appellant had. A learned Single Judge of the Madras High Court, after examining the orders of the State Tribunal in the light of all the facts of cases of the claimants as set out by the Tribunal itself, concluded and ordered :

> There has in reality been no selection, considering the claims of the applicants together. A comparative assessment with reference to relevant and material facts is lacking and the ratio of the decisions relating to the relevancy of recent grants not understood. In the circumstances, the order of the State Transport Appellate Tribunal cannot be sustained. It is, therefore, quashed. The Tribunal has now to take up the matter and consider the claims of the aggrieved applicants, the petitioners in the Writ Petitions and the first respondent, afresh, in the light of the observations contained herein.

12. The matter was then taken before a Division Bench of the Madras High Court in these appeals. The Division bench quoted the following passage from the judgment of the learned Single Judge setting out the main grievance of the petitioners in the High court :

Counsel pointed out that, in the instant case, it is not even a case of recent grant in favour of the common first respondent, and that, ignoring the salutary and essential principal of giving equal opportunity to competent operators, the common first respondent has been made to build up his viable unit out of permits granted at the same sitting of the Regional Transport Authority, one by the Regional Transport Authority and two by the Tribunal. It is submitted that the petitioners have not been found to be unfit and if they were not otherwise disqualified their claims to build up viable units along with the first respondent should have been considered and the permits distributed.

It then gave the following justification of the view of the learned Single Judge and the dismissal in limine of the appeals before it :

> Now it is pointed out to us that the grant of the permits for the routes Porto Novo to Puliyangudi and Chidambaran to Perambalur has been set large for fresh consideration of the merits of the applicants, by the State Transport Appellate Tribunal. What the learned Judge has done in the present case, relating to the grant of the permit for the route Chidambaram to Thirukoilur, is to set at large the grant of the permit for the route also, that the claims of the rival applicants can be considered bearing in mind also the circumstance mentioned above, which was considered as a relevant circumstance for the grant of the permits more or (sic) at the same time, for different overlapping routes as between competing operators. It is this reason which appears to have weighed primarily with the learned Judge in setting aside the order of the State Transport Appellate Tribunal and remanding the matter to the same Tribunal for fresh disposal. In our opinion the correctness of the principle relied on by the learned Judge for setting the matter at large in the present case cannot be seriously disputed. It was clearly necessary to have the matter regarding the grant of the permit for the route Chidambaram to Thirukoilur also considered afresh, since the grant of the permits for the other routes also has been set at large. The learned Judge in the order now impugned has also restricted the scope of the lower Appellate Tribunal's order to the claims of the petitioner and the first respondent in the writ petition. To this extent the scope of the fresh enquiry has been narrowed and this will be an advantage to the appellant. In the above circumstances, we see no ground to interfere with the order of the learned Judge in the writ petition in these writ appeals which are dismissed in limine.

13. Against the Division Bench judgment and order we have three appeals Nos. 1481-1483 of 1970 before us by grant of special leave.

14. Three questions which fall for consideration upon the facts set out above are :

> (1) Is possession by/or recent grant of another permit to an applicant for a stage carriage permit, either by itself, or, in conjunction with other facts and circumstances, a relevant consideration in either refusing or granting a permit to an applicant ?
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> (2) If it is, in any particular set of circumstances, a relevant consideration, what is the weight to be attached to it in the assessment of the comparative merits of rival claims ?
>
> (3) Does the High court's judgment or order in any of the cases dealt with by it call for interference by us in any respect in exercise of our powers under Article 136 of the Constitution ?

15. The questions posed above must, we think, be answered having regard to the provisions of Section 47 of the Motor Vehicles Act and such relevant and valid rules as may be framed for laying down the mode of exercising power to grant of permits. Section 47(1) of the Act reads as follows :

> 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 provision 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 owners.

16. One of the submissions before us was that the Regional Transport Authority can act on considerations falling even outside the purview of Section 47 of the Motor Vehicles Act. But, no case decided by this Court, where such a view may have been taken, was placed before us. Reliance was, however, placed on N. S. Ghouse Miah & Abdullaha Sheriff v. Regional Transport Authority (AIR 1963 AP 263, 266.), and Pal Singh v. State Transport Authority Tribunal U. P. (AIR 1957 All 254, 256)

17. In Ghouse Miah's case the Andhra Pradesh High Court has while considering the validity of a rule observed (at page 266) :

The State Government is surely competent to lay down by way of general guidance certain fundamental principles, which will be according to them in the interests of the public generally. The heading will cover any ground which might not have been expressly mentioned in Section 47. It is neither possible nor is it desirable to restrict the discretion of the Regional Transport Authority to grant or refuse a stage carriage permit on considerations of public interest.

It went on to express (at page 266) :

Even otherwise we do not think that the scope of the section is limited to the factors to be taken into consideration while granting stage carriage permit mentioned in Section 47. It is not correct to say that Section 47 of the Act forms a complete code

> or that the factors mentioned therein are exhaustive. In our view that is clear from the words 'shall have regard to' in Section 47. The requirement of the section is that the matter specified in the section may be taken into consideration. In other words, the primary duty of the Regional Transport Authority is to take into consideration the matters specified but it does not follow that the hands of the Regional Transport Authority are tied to the consideration of these matters alone and they must shut their eyes to everything else.

18. In Pal Singh's case, the Allahabad High Court had observed (at page 256) :

> The law on the subject is not exhaustively contained in Section 47; any direction given by the State Transport Authority in its appellate jurisdiction is also to be complied with by the Regional Transport Authority. If the State Transport Authority has jurisdiction to pass an order, it must be complied with by the Regional Transport Authority. Therefore our learned brother Gopalji Mehrotra was not correct when he observed that an application for renewal cannot be dismissed except on any of the grounds mentioned in Section 47, and that "when a permit had been granted to the petitioner the renewal application cannot be refused on the ground that the original permit itself was illegal".

19. Pal Singh's case (supra) was decided before this Court held, in Raman & Raman Ltd. v. State of Madras (1959 Supp (2) 227 AIR 1959 SC 694), that the administrative directions issued under Section 43A of the Motor Vehicles Act, 1939, as amended by the Motor Vehicles (Madras Amendment) Act, 1948, did not have the force of law in regulating the rights of parties. In Ghouse Miah's case (supra), the Andhra Pradesh High Court had, after indicating the amplitude of the "interest of the public generally", mentioned in Section 47(1)(a), held that the use of the words "shall have regard to in Section 47" meant that the Section did not exhaustively specify every kind of matter which may be taken into account. The High court had then tested the rules framed under the Act by the norms provided by Articles 19(1)(g) and 14 of the Constitution. It struck down a part of Rule 153(d) for violating Article 14.

20. What the Andhra Pradesh High Court seems to have meant was that powers contained in Section 47 of the Act as well as the rule making powers of the State must be exercised conformably with the Constitutional Guarantees given to citizens by Articles 14 and 19(1)(g) of the Constitution which are certainly not mentioned specifically anywhere in the Act. All powers conferred by the Act including those given by Section 47, must be deemed to be confined to the limits imposed by Constitutional guarantees to citizens. Hence, the manner in which a grant would affect guaranteed fundamental rights of citizens could also be considered. If this is all that is meant by laying down that even matters not specified in Section 47 of the Act can be taken into account, we think that the view is unobjectionable. Even where powers to be exercised by authorities, which are organs of the State, are not clearly defined, the Constitutional guarantees contained in Articles 14 and 19(1)(g) of the Constitution would certainly limit the scope and regulate the exercise of such powers.

21. This Court recently, in Maharashtra State Road Transport Corporation v. Mangrulpir Jt. Motor Service (P) Ltd.(1971 Supp SCR 561, 570 : (1971) 2 SCC 222, 229), after setting out the provisions of Section 47 of the Act, observed about the manner in which the Regional Transport Authority has to function (see p. 570) (SCC p. 229, para 19) :

It is a statutory body. It is to exercise statutory powers in the public interest. Such public interest

would have to be considered with regard to particular matters enumerated in Section 47 of the Act and the particulars of an application are to be judged with reference to Sections 46 and 47 in particular of the Act.

22. More recently, in Patiala Bus (Sirhind) Pvt. Ltd. v. State Transport Appellate Tribunal Punjab (AIR 1974 SC 1174, 1177 : (1974) 2 SCC 245, 249), this Court said with regard to the provisions of Section 47 of the Act (at p. 1177) (SCC p. 249) :

> The main considerations required to be taken into account are the interest of the public in general and the advantages to the public of the service to be provided, and these would include inter alia consideration of factors such as the experience of the rival claimants, their past performance, the availability of standby vehicles with them, their financial resources, the facility of well equipped workshop possessed by them etc. The State Transport Appellate Tribunal, however, failed to take into account any of these considerations and proceeded as if the stage carriage permits were a largesse to be divided fairly and equitably amongst the rival claimants. We do not find in the order of the State Transport Appellate Tribunal any discussion of the question as to what the interest of the public in general requires and who from amongst the rival claimants would be able to provide the most efficient and satisfactory service to the public. None of the relevant factors is considered, or even adverted to, by the State Transport Appellate Tribunal. The State Transport Appellate Tribunal merely seems to have considered what would be fair as between the appellant and the third respondent and thought that it would be most fair if one stage carriage permit with a return trip were granted to the appellant and one stage carriage permit with return trip were granted to the third respondent. That is a wholly erroneous approach. The question that has to be considered is not as to what would be fair as between the appellant and the third respondent, but what does the interest of the public, which is to be provided with an efficient and satisfactory service, demand. The order of the State Transport Appellate Tribunal, therefore, suffered from an in firmity, in that it failed to take into account relevant considerations and proceeded on the basis of an irrelevant consideration.

23. Thus, decisions of this Court have made it clear that an exercise of the permit issuing power, under Section 47 of the Act, must rest on facts and circumstances relevant for decision on the question of public interest, which has to be always placed in the forefront in considering applications for grant of permits. Consideration of matters which are not relevant to or are foreign to the scope of powers conferred by Section 47 will vitiate the grant of a permit under Section 47. A fact which, in certain circumstances, is relevant for a decision on what the public interest demands may become irrelevant where it is not connected with such public interest. Indeed, every class of consideration specified in Section 47(1) of the Act seems correlated to the interests of the public generally. It appears that Section 47(1)(a) given the dominant purpose and Section 47(1)(b) to (f) are only its sub-categories or illustrations. If any matter taken into consideration is not shown to be correlated to the dominant purpose or, the relationship or the effect of a particular fact, which has operated in favour of a grant is such as to show that it is opposed, on the face of it, the public interest, the grant will be bad. The power to grant permits under Section 47 of the Act is limited to the purpose for which it is meant to be exercised. Considerations which are relevant for applying Articles 14 and 19(1)(g) of the Constitution could not be foreign to the scope of Section 47(1)(a) which is fairly wide.

24. Where the power to grant permits shows that its exercise is meant to be judged on the touchstone of the interests of the public generally, the test being broad enough to take in applications of Articles 14 and 19(1)(g), read with the relevant proviso, which require a just and reasonable balancing and reconciliation of general and individual interests, we think that it would not be correct to hold that the power contained in Section 47 can go beyond it or against it, because, to take such a view, would make the provision itself constitutionally invalid. Therefore, we hold that permit issuing power under Section 47 is restricted to service of interests of the public generally in a broad enough sense to include due respect for guaranteed fundamental rights of citizens. Indeed, service of interests of the public generally is the expressed object of even Section 68C in Chapter IVA of the Act authorising framing of schemes of nationalisation of transport services. Such an object underlies the whole machinery of regulation by issue of permits for plying motor vehicles or hire.

25. It should be clear, when the main object, to which other considerations must yield in cases of conflict, of the permit issuing powers under Section 47 of the Act is the service of interests of the public generally, that any particular fact or circumstances, such as a previous recent grant in favour of an applicant or the holding of other permits by an operator, cannot, by itself, indicate how it is related to this object. Unless, there are other facts and circumstances which link it with this object the nexus will not be established. For instance, an applicant may be a recent grantee whose capacity to operate a transport service efficiently remains to be tested so that a fresh grant to him may be premature. In such a case, another applicant of tested efficiency may be preferred. On the other hand, a fresh grantee may have, within a short period, disclosed such superiority or efficiency or offer such amenities to passengers that a recent grant in his favour may be no obstacle in his way at all. Again, the fact that an applicant is operating other motor vehicles on other permits may, in one case, indicate that he had exceeded the optimum, or, has a position comparable to a monopolist, but, in another case, it may enable the applicant to achieve better efficiency by moving towards the optimum which seems to be described as a "Viable Unit" in the rules framed in madras in 1968. Thus, it will be seen that, by itself, a recent grant or the possession of other permits is neither a qualification nor a disqualification divorced from other circumstances which could indicate how such a fact is related to the interests of the public generally. It is only if there are other facts establishing the corelationship and indicate its advantages or disadvantages to the public generally that it will become a relevant circumstance. But, in cases where everything else in absolutely equal as between two applicants, which will rarely be the case, it could be said that an application of principle of equality of opportunity which could be covered by Article 14, may enable a person who is not a fresh grantee to obtain a preference. Such a consideration, as we have indicated above could not be said to be outside the broad view of the interest of the public generally which we are taking so as to include within its purview application of tests underlying provisions giving Fundamental Rights to citizens under Articles 14 and 19 of the Constitution.

26. We think that the Madras High Court while rejecting the application for a certificate of fitness of the case for appeal to this Court in cases which form the subject matter of Civil Appeals Nos. 1481-1483 of 1970 rightly observed :

> Whether a particular circumstance is relevant or not has to depend on the facts of each case. What is not relevant in particular circumstances of grant or refusal of a permit may be relevant in another set of circumstances.

27. Relevancy or otherwise of one or more grounds of grant or refusal of a permit could be a jurisdictional matter. A grant or its refusal on totally irrelevant grounds would be ultra vires or a

case of excess of power. If a ground which is irrelevant is taken into account with others which are relevant, or, a relevant ground, which exists, is unjustifiably ignored, it could be said to be a case of exercise of power under Section 47 of the Act, which is quasi-judicial, in a manner which suffers from a material irregularity. Both will be covered by Section 115 Civil Procedure Code.

28. Therefore, our answers to the three questions formulated above are :

> (1) The relevance of the previous possession or grant of a permit, appears only when other facts and circumstances, connecting it with and showing either the adverse or beneficial effects of its impact, in a particular case, on the interests of the public are shown to exist. Unless and until these other facts are circumstances, indicating the nexus or connection with public interest, appear, such a fact, by itself, should not effect an application for a permit.
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> (2) The weight to be attached to such a consideration will, obviously, depend upon the totality of all such facts and circumstances viewed in a proper perspective.
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> (3) The answer to the third question has been indicated already by the broad and general propositions which we now proceed to apply to each case before us.

29. In Civil appeal No. 1402 of 1974, Mr. Chitalay, appearing for the appellant, contended that, as Section 47(1)(e) was omitted altogether by a Madras State amendment, at the relevant time, the State Appellate Tribunal should not have taken into account the alleged disadvantage, almost raised to the level of a disqualification, of recent or previous grant of a permit.

30. We, therefore, examined the provisions of the Motor Vehicles Tamil Nadu (Amendment) Acts 10 and 16 of 1971 and found that they do not omit Section 47(1)(e) at all, although there were two ordinances Nos. 4 and 6 of 1971 which had substituted amended provisions of Section 47 from which Section 47(1)(e) was omitted. But, the ordinances were repealed by the Tamil Nadu Acts 10 and 16 of 1971 so that the provisions of Section 47(1)(e) of the Act in their application to Madras were intact at the time of the grant. The contention was, therefore, unsound.

31. It was then contended, in Civil Appeal No. 1402 of 1974, that the State Transport Appellate Tribunal had held two extraneous or irrelevant circumstances to be decisive. These were : that the respondent grantee before it was a recent grantee and that he held three permits altogether whereas the second appellant before it, to which the permit was granted by it, held only one permit. It was urged that these considerations were applied mechanically without showing their corelationship at all with the interests of the public generally as though the Appellate Tribunal was entrusted with the task of distributing favours and had to do this equitably on grounds which, however, laudable, are extraneous to the purposes of Section 47 of the Act. Furthermore, it was pointed out that, at the relevant time, certain rules had been validly framed by the State Government under Section 133(1) of the Act the effect of which was, inter-alia, that possession of more than one vehicle was, an item, so to say, on the credit side instead of an item on the debit side of the balance sheet prepared on the basis of marks. The grievance was that the Tribunal had converted into a demerit what was, according to the rules, an additional ground to support a grant. The relevant sub-rule (3) of Rule 155A, providing for giving the marks, contains the provisions :

> (F) Viable Unit : The applicant who operates not more than four stage carriages excluding spare buses, shall be awarded marks at the rate of one mark for each stage

carriage in order to have a viable unit of five carriages excluding spare buses.

32. In reply, it was pointed out that, although Rule 4 required that the applicants shall be ranked according to the total numbers of marks obtained by them, yet, "the application shall be disposed of in accordance with the provisions of sub-section (1) of Section 47". This contention pre-supposes an indication of the relevance of any fact taken into account to matters all of which seem to us to be covered by the broad class of "interests of public generally". On the view we are adopting, Section 47(1)(a) is wide enough to include all categories of public interest including those laid down by valid rules. Clause (F) of sub-rule (3) of Rule 155-A, set out above, should, therefore, have been taken into account, and, unless there was good enough reason to depart from it, the rule should have been followed. Had this been done, it is clear that every additional stage carriage up to four would give an applicant an additional mark so as to help him to make up the "Viable Unit" of five. A recent grant could not, considered by itself and single, by converted into a demerit as the Appellate Tribunal seems to us to have done. Inasmuch as disposal of the claims before the Appellate Tribunal seems to us to have taken place in a rather mechanical fashion by ignoring Clause (F) of sub-rule (3) of Rule 155-A and without showing the corelationship of facts mentioned by it to any of the categories of public interest found in Section 47(1) of the Act or to the Constitutional guarantees contained in Articles 14 and 19(1)(g) of the Constitution, the observance of which must also be presumed to be in public interest, the order of the Appellate Tribunal was, in our opinion, vitiated by a material irregularity. The High Court should, therefore, have interfered even in the exercise of its power under Section 115 Civil Procedure Code which has been made applicable to such cases.

33. In Civil Appeal No. 2254 of 1969, a preliminary objection was taken to the grant of a certificate of fitness of the case under Article 133(1)(c) of the Constitution in such a case when there was no final order passed by the High Court. Reliance was placed upon M/s. Raman & Raman (Private) Ltd., Kumbakonan v. Sri Rama Vilas Service Ltd. Kumbakonam (C.A. No. 995 of 1965, decided on May 3, 1968), where this Court said :

> We are of the view that the High Court was in error in granting the certificate when nothing was decided by their judgment. The order was not final. The order of the High Court did not determine the rights and obligations of the parties : it merely set aside the order of the Appellate Tribunal and directed the Tribunal to deal with a dispose of the question according to law. The appeal is liable to fail on that limited ground alone.

No satisfactory answer has been given to the preliminary objection. But, as we could, if the case deserved it, grant special leave to appeal, even at this stage, we will refer to the merits also.

34. In this case, we find that the Division Bench of Madras High Court had only sent back the case to the Tribunal for disposal after determining the impact of considerations placed before the Tribunal on public interest. The relative merits of rival claimants must be compared after testing the very criterion of merit adopted on the anvil of public interest. The High Court only held that the fact that an applicant is a recent grantee may be a relevant consideration. As we have pointed out, the relevance or irrelevance of such a consideration will depend upon the totality of facts and circumstances which must correlate such a ground to public interest. It was contended, not without force, that the appellate Tribunal had discussed all the relevant facts and circumstances sufficiently to indicate the impact of each of these upon public interest without expressly saying so and that the Division Bench need have done no more than to have pointed out that the observation of the learned Single Judge to the effect that the question of a recent grant of a permit in favour of an applicant

was extraneous to the considerations contained in Section 47 of the Act was incorrect, or, to have explained that what this really meant was that, without showing other facts and circumstances connecting a recent grant with public interest, a recent grant of a permit was not material. However, as the Division Bench had sent back the case to the Appellate Tribunal, without determining the rights of the parties, we think that the mere fact that two views could be taken on the advisability of such a course would not, justify interference by us under Article 136 of the Constitution. Therefore, we are not disposed to grant special leave at this stage on the question raised. The question whether the order is a final one determining the rights of the parties is material even when considering the question of propriety of interference under Article 136 of the Constitution. We have no doubt that, in view of the clarification of the law by us her, the Tribunal will dispose of the case in accordance with law and deal with all the facts and circumstances which have a bearing on public interest, including facts and circumstances which may have come into existence between the time when the grant was made and the time when the Tribunal reconsiders the claims to which the case is confined.

35. In Civil Appeals Nos. 1481-1483 of 1970, we find that the High Court has given good enough grounds to justify reconsideration of the claims by the State Transport Appellate Tribunal. The High Court seems to us to have rightly hinted that, where the results of exercise of power to grant permit shows that permits are, without sufficient grounds for a discrimination or preference based on an appraisement of merits or requirements of public interest, being invariably granted to one particular party the powers are not fairly or impartially exercised. Quasi-judicial powers have to be exercised fairly, reasonably, and impartially. Capricious or dishonest preferences on purely personal grounds are necessarily excluded her. We have no doubt that the Tribunal will reconsider claims in conformity with needs of public interest as they exist at the time of reconsideration by the Tribunal. We do not think that these cases justify interference by this Court in exercise of its power under Article 136 of the Constitution.

36. The result is : We allow Civil Appeal No. 1402 of 1974 and set aside the order and judgment of the High court as well as of the State Appellate Tribunal and direct it to reconsider the cases of the parties concerned in the light of the law on the subject as laid down and explained by us. Civil Miscellaneous Petition No. 6852 of 1974 for an interim order has become infructuous and is hereby dismissed. The parties will bear their own costs throughout.

37. We dismiss Civil Appeals No. 2254 of 1969, and Nos. 1481-1483 of 1970 with costs. One hearing fee.

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