D. R. Venkatachalam and Others

Vs

Dy. Transport Commissioner and Others

Civil Appeal Nos. 1178-1180 of 1976

(CJI A. N. Ray, M. H. Beg, V. R. Krishna Iyer JJ)

10.12.1976

JUDGMENT

KRISHNA IYER, J. (for himself and Ray, C.J.)

1. A terse presentation of the twin contentions canvassed before us, in these appeals by special leave, after discomfiture at two tiers below, highlights the importance of the economic role of the State in undertaking, with legal preferences, strategic services vital to the community. The keynote thought underlying our decision is that the jural postulates of the old competitive order have to yield place to the new values of developmental jurisprudence. Public law in India, responding to the public needs and the State's functional role mandated by the Constitution, had evolved now approaches to old problems and given up dogmas which once prevailed during laissez faire days but now have become obsolete because of the 'welfare' economy which has been nurtured. This radical change in jural perspectives has its impact on canons of statutory construction and on verdicts about the vires of legislation. All these generalities acquire appropriate application in the present cases which arise under the Motor Vehicles Act, 1939 (Act IV of 1939) (the Act, for short) from challenges before the High Court without avail, by private operators, of the permit granted to the State Transport Undertaking (STU) by the transport tribunals. The validity of Rule 155A of the Motor Vehicles Rules framed under Section 68 of the Act is in issue.

2. The core of counsel's submissions is twofold : (1) Is Rule 155A, assigning five marks for a State undertaking not fatally violative of Section 47 of the Act ? (2) Does the later amendment to the proviso to Section 47 giving preference to State Transport systems, other things being equal, impliedly repeal, as contrary to its content, Rule 155A which gives better advantage to the favoured category, fulfilling the spirit of the statutory amendment more tellingly ? We will proceed further after stating the circumstances leading up to the writ petition before the High Court and the appeal before us.

3. The appellants, who have come by special leave to this Court, are private stage carriage operators. We will relate the facts of one case (Civil Appeal 1178 of 1976) the decision in which will settle the fate of the rest, the decisive point of law being identical. The permit of the appellants' bus on the rote Salem to Erode was to have expired on September 13, 1974 and so he applied for renewal under Section 58(2) of the Act. The respondent-State Transport Undertaking objected to the renewal of the permit urging preferential grounds in its own favour. The State undertaking's claim was upheld on the score that it secured higher marks computed with the aid of Rule 155-A. Baulked in his application for renewal, the appellant challenged the order before the appellant tribunal. Apprehending an adverse decision on the strength of Rule 155-A, he filed a writ petition before the High Court praying that a direction be issued to the appellant tribunal to dispose of his appeal

without relying one Rule 155-A. The plea was negatived by the learned single Judge and a Division Bench dismissed the appeal therefrom. Aggrieved by the concurrent findings the appellant has assailed before us the vires of Rule 155-A as obnoxious to the public interest excluding, in some measure, a fair competition and being contrary to the proviso to Section 47(1) of the Act.

4. A meaningful discussion of the points debated at the bar has to begin with a brief outline of the scheme of the Motor Vehicles Act in the branch relating to grant of permits for transport vehicles (Chapter IV). All transport vehicles, before they can be plied in any public place, require permits under Section 42 and even government vehicles, if put to commercial use, have to possess permits. Applications are made for stage carriage permits under Section 57 and the considerations germane to their grant are set out in Section 47 of the Act. It is common ground, and decisions are legion in support thereof, that the interest of the public generally is the super consideration decisive of the award of permits when there is a plurality of applicants. He who can serve the public best gets the permit to ply the stage carriage from the quasi-judicial authority charged with the responsibility for choice. We may read the relevant part of Section 47(1) here :

> 47. Procedure of Regional Transport Authority in considering applications for stage carriage permit.-
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> (1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely :-
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> (a) the interest of the public generally;
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> # * * * *##
>
> Provided that other conditions being equal, an application for a stage carriage permit from any State Transport undertaking or 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.
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5. 'The interest of the public generally', is often times too vague and, generally, the exercise of discretion deserves to be canalised to guide the statutory bodies and to facilitate better appreciation by the applicants of the claims that may ordinarily be considered by transport tribunals. From this angle, the Tamil Nadu State has framed rules, expressly subordinated to the paramount factor of public interest which shall weigh with tribunals when adjudging among competing claimants. This Court, in P. Kumaraswamy v. State Transport Appellate Tribunal ([1976] 2 SCR 214 : (1974) 1 SCC 373), summed up the purport of the rule thus :

> The system of marks under the Rules framed under the Act by the Tamil Nadu Government, prescribes the Motor Vehicles Act. Rule 155-A crystallises these considerations and describes them as guiding principles for the grant of stage carriage permits. The rule itself emphasizes what is obvious, that the paramount consideration of the interest of the public, as enshrined in Section 47(1), must be given full weight while awarding permits. That means to say that the various factors set out in Rule 155-A are subject to Section 47(1). This is clarified by sub-rule (4) of Rule 155-A, which runs thus :

After marks have been awarded under sub-rule (3), the applicants shall be ranked according to the total marks obtained by them and the applications shall be disposed of in accordance with the provisions of sub-section (1) of Section 47.

There is no doubt that bus transport is calculated to benefit the public and it is in the fitness of things that the interest of the travelling public is highlighted while evaluating the relevant worth of the various claimants.

Rule 155A(3)(D)(i) offends against the prescription in the proviso to Section 47(1) and is void, according to counsel for the appellants. Before examining this alleged vice, we may as well read sub-rule (3) of Rule 155-A to the extent necessary :

(3) After eliminating in the manner laid down in sub-rule (2), the applicants who are unsuitable, marks shall be awarded for assessing the different qualifications of the remaining applicants for the grant of permits as follows :

(A) Residence. - Two marks shall be awarded to the applicants who has his principal place of business or permanent residence at either terminus or on the route.

Explanation - The term 'principal place of business' shall mean only the registered headquarters of the company and not the residence of the Managing Director or any other Director of the Company.

(B) Technical qualification (for owner or Managing Director). - Two marks shall be awarded to the applicant if the owner or the Managing Director of the organisation has technical qualification which may be useful to run the transport service efficiently.

(C) Workshop facilities. - Two marks shall be awarded to the applicant who is in possession of workshop facilities as given in the Explanation under item (2)(iv).

(D)(i) Five marks shall be awarded to the application falling within the 'proviso to clause (c) of Section 62-A of the Motor Vehicles Act, 1939, i.e., State Government, Central Government or any Corporation or Company owned by the Central Government or State Government.

(ii) The applicant who operates not more than nine stage carriages excluding spare buses, shall be awarded marks as follows :-

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1. Applicant operating one to three buses - 4 marks.
2. Applicant operating four to six buses - 3 marks.
3. Applicant operating seven to nine buses - 2 marks.

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Provided that if a new entrant has made an application for a short route other than

town service route, no marks shall be awarded to any applicant under clauses (B), (C) and (D)(ii).

6. The ground of invalidation urged is that there is no justification for grant of 5 marks to an applicant falling within Rule 155A(3)(D)(i) solely for the reason that it is owned by the State Government. Ownership is irrelevant and the sacrifice of public interest at the altar of government interest is contended to be a flagrant partiality shown by the subordinate legislation in the teeth, and transgressing the limits, of the equal consideration implicit in Section 47(1). The second argument is that the proviso to Section 47(1), as amended by Act 48 of 1974 (Tamil Nadu Amendment Act) gives preference to a State Transport Undertaking, other things being equal, and impliedly provides against any larger preference being shown to such an undertaking in the guise of rules. For this reason, the generosity of the rule being contrary to the narrow preference in the proviso to the section (brought in by later amendment), the former cannot coexist with the latter and must be taken as impliedly repealed. Although this amendment to the Act was later than the promulgation of the rules, the law as it stands today is the basis of our judgment. Thus the two questions formulated right at the beginning of the judgment arise in the setting of facts and law we have broadly described above.

7. It was urged by Shri Chitale, followed by Shri Ramamurthi, in two of the several matters heard together, that Part IVA provided for monopolistic award of permits to the State Transport Undertaking but Part IV puts everyone on a competitive basis, regardless of whether one was a State undertaking or not, the most meritorious winning the battle in a free market economy, If the soul of Part IV were free competition, not 'rigged' selection, aid in the shape of extra marks given by rules had to be withdrawn and every applicant had to run without anyone being given a handicap in the race. State undertakings being awarded 5 grace marks for no reason except that they belonged to the State was a gross violation of the spirit and letter of Section 47(1) which postulated the promotion of public interest as the basic consideration and the selection of the ablest as the criterion for choice. Both counsel, in their overlapping arguments, stressed that there was a negative mandate in the proviso to Section 47(1) not to prefer a State undertaking was unable to attain the condition of equality with another, its claim could not be promoted by the artifice of assignment of marks to a State undertaking qua State undertaking.

8. Public law, in our piebald economy and pluralist society responds to societal challenges and constitutional changes. To miss the ideological thrust of our Constitution and the economic orientation of our nation while construing legislation relating to public law and scanning them for their validity is to fail in understanding the social philosophy that puts life and meaning into the provisions of the Act. The law, being realistic, reckons with the socialist sector covering State and cooperative enterprises.

9. The special status of a government-owned transport undertaking in a Welfare State is obvious. It has large resources to cater to the traffic needs. It has, within its range of influences and coordination, many services useful to the travelling public, which may be beyond the reach of private ownership. Its functional motto is not more profits at any cost but service to citizens first and in a far larger measure than private companies and individuals, although profitability is also a factor even in public utilities. Its sensitivity to community welfare and encouragement of labour participation, its accountability to the Government, the legislature and the public put it in a category by itself. It is socially conscious, not profit obsessed. We are aware of the shortfalls of some public sector undertakings in some respects but it needs little argument to hold that to classify State Transport systems on a separate footing is realistic and is ordinarily no sin before the principle of

'equality before the law.' The legislative body has done, in the given circumstances, what it thought was sound policy and we find no vice in the policy.

10. To classify what is conceptually and operationally different into a separate category is intelligence, not impertinence. The judicial art of interpretation and appraisal is imbued with creativity and realism, especially where fundamental changes have been wrought by the Constitution in our approach to public sector enterprises. Legal Darwinism, adapting the rule of law to new societal developments, so as to survive and serve the social order is necessary :

> That court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fullness of experience, be found to serve another generation badly, and which discards the old rule when it finds that another rule of law represents what should be according to the established and settled judgment of society, and no considerable property rights have become vested in reliance upon the old rule. It is thus great writers upon the common law have discovered the source and method of its growth, and in its growth found its health and life. It is not and it should not be stationary. Change of this character should not be left to the legislature. If judges have woefully misinterpreted the mores of their day, or if the mores of their day are no longer those of ours, they ought not to tie, in helpless submission, the hands of their successors. (Cardozo : The Nature of the Judicial Process : Yale University Press : pp. 151-152).

11. This refreshing perspective guides us to look at the submissions advanced. Both the contentions can be shout down by three considerations. Firstly, a State enterprise, in a truly Welfare State, is charged with a social consciousness and responsibility for its citizens, an attention to serve them and a willingness to embark on public utility undertakings better to fulfil peoples' demands. The public sector enterprises are expected to be model employers and model servants, planning their budgets, subjecting themselves to public audit and criticism and inquest by legislative committees and the Houses of the legislature. Profits are their concern but, more importantly, public weal is their commitment. Such is the philosophy of the State sector in our socialistic pattern of society. Article 19(6)(ii) and Article 38 of the Constitution, Section 47(1), especially the proviso, and Chapter IVA of the Act (now governed by the impregnable Ninth Schedule to the Constitution) throw light on this policy of the paramount law. Here, therefore, the rule making authority, having regard to all relevant circumstances, has decided to award to a State Transport Undertaking 5 marks. This is not an arbitrary stroke of favouritism because there are many promotional factors bearing on the interest of the travailing public which a State enterprise qua State enterprise will, but a private enterprise qua private enterprise will not, take care of. After all, private enterprise has its primary motivation in profit, although, under State direction, it is becoming socially responsive. The superiority in many respects (not all respects) of State Transport Undertakings, in the legislative judgment, has led to Rule 155A. This classification has poetic nexus with and rational relation to the object of augmenting the good of the passenger community. The theory, rooted in the obsolescent laissez faire economics, that only cold competition among claimants to run businesses brings out the best operator has serious limitations in fields where the focus is on public service, not gains of business. Public law, adapting itself to this socio-economic view, shifts its emphasis. This is what we have earlier called legal Darwinism. We, therefore, hold that the assignment of marks under Rule 155A is geared to public interest, which is the desideratum of Section 47(1) of the Act.

12. We now move on to an examination of the alleged fatal incompatibility between the proviso to Section 47(1) and Rule 155A. This second submission of counsel is a trifle mystifying. There

cannot be a contradiction without diction. Unless Section 47(1) proviso carries a negative injunction that transport tribunals shall not give any other preferential consideration than what is stated in it, there cannot be any conflict between it and the impugned rule. The proviso to the section does nothing of the kind. It merely takes care of a specific situation. Where a State Transport Undertaking and a private operator are equally balanced, the scales may be tilted in favour of the former. There is no implied interdict that in other contingencies no preference shall be accorded. It is not a 'Thus far and no further. Indeed, the spirit of this proviso has been carried further by the rule, having regard to the realities of the total transport system plying in the State.

13. The third consideration which silences the appellant's charge of violation of Section 47 is that the marking formula dies not deprive the administrative tribunals of their discretion to choose the best. The consternation of the private entrepreneurs that by manipulating the marking mechanism the State undertaking, regardless of its demonstrable inferiority of public service, will knock off all the premits, paralysing the power of the tribunal to pick and choose, by the overwhelming and inevitable superiority of marks, is misplaced. The fear is falsified if we read the rule aright. It has, written on its face, its own limitation. Marks shall guide, not govern the award. Full discretion, to some extent, canalised by the marking procedure, still vests in the transport authority. For, the marks, these authorities will remember, way the exercise of judgment, not supersede it. It is conceivable that the peculiarities of a route, the calamitous performance in an area of a State Transport system, the outstanding special facilities of a particular private operator or other like feature may outweigh the mechanics of marks. After all, many qualifications, advantageous to the travelling public, may be thought of, untouched by the rigid marking moulds. They are not irrelevant and may still be regarded by the tribunals. All this leads to the conclusion that marks shape but do not clinch the ultimate selection. The public is the consumer, its plenary service is the final test. Therefore, there is nothing in Rule 155A deprivatory of the discretion vested by Section 47(1). This interpretative footnote must allay the apprehensions voiced by counsel. Nor are we convinced that there is no possibility of a private operator exceeding the minimum marks of a State Transport Undertaking. Moreover, the marking formula lacks flexibility. Merely because the State Transport Undertaking has no 'residence' or workshop on the route, although its attention and ability to reach are considerable, why should it suffer a marks-created handicap ? There is equity in Rule 155-A, making up, as it does, for the present shortfalls in the marking system vis a vis a government transport service.

14. The appeals, for these reasons, must suffer dismissal. There will be no order as to costs.

BEG, J. (concurring)

I agree with the conclusion reached by my learned brother Krishna Iyer. As arguments in this batch of cases seem to raise some questions which I, speaking entirely for myself, consider to be really outside the sphere of the law which we have to interpret and apply, I would like to make some observations on the implications of these questions argued after stating my reasons for agreeing with my learned brother.

16. Mr. Chitale's first argument for some of the appellants raised only what may be described as "normal" legal questions of construction or interpretation (there is some difference between these two allied processes as will appear from Crawfords "Statutory Construction", 1940 Edn., Chapter 18, paragraphs 157 to 158 pages 240-244), as to whether Rule 155A(3)(D)(i), reproduced in the judgment of my learned brother Krishna Iyer, gives effect to or conflicts with Section 47 of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'). It was urged by the learned counsel

that what can be done only by resorting to Chapter IV-A of the Act, by framing a scheme for partial or complete nationalisation of the routes involved, cannot be accomplished by framing a rule only ostensibly purporting to give effect to Section 47(1) of the Act or the proviso to it.

17. In ultimate analysis, the rule of constriction relied upon by Mr. Chitale to make the last mentioned submission is : "Expressio unius est exclusio alterius". This maxim, which has been described as "a valuable servant but a dangerous master" (per Lopes J., in Court of Appeal in Colquhoun v. Brooks ([1881] 21 QBD 52, 65), finds expression also in a rule, formulated in Taylor v. Taylor ([1876] 1 Ch D 426, 430), applied by the Privy Council in Nazir Ahmad v. King Emperor ([1936] LR 63 IA 372 : AIR 1936 PC 253), which has been repeatedly adopted by this Court. That rule says that an expressly laid down mode of doing something necessarily implies a prohibition of doing it in any other way. The maxim from which the rule in Taylor v. Taylor (supra) is derived and the rule itself were discussed and explained by this Court in the Parbhani Transport Cooperative Society Ltd. v. The Regional Transport Authority, Aurangabad ([1960] 3 SCR 177 : AIR 1960 SC 801), with specific reference to the argument advanced there that, as Chapter IV-A is meant for running its own buses by the State by nationalisation of Motor Vehicle Road Transport Services, it was not open to the State to apply for permits at all under Chapter IV of the Act which applies to private operators only. This argument, repelled by this Court there, has been put forward before us in a somewhat different and attenuated form by Mr. Chitale. Nevertheless, the basic rule of interpretation submitted to us is the same as the one which was relied upon in this Court in the Parbhani Transport Cooperative Society's case (supra) in an attempt to exclude the State Transport Undertaking altogether from entry into what was sought to be made out to be the exclusive preserve of private operators. Before us, it is contended that exclusion of private operators could only be brought about by resorting to a duly framed scheme on appropriate grounds given in Section 68C of the Act, but not indirectly by framing the kind of rule which has the effect of excluding private operators from the sphere of open competition which it is submitted postulates an initial equality of positions. This argument rests, as I will indicate below, on two erroneous assumptions : firstly, that Rule 155A (3)(D)(i) has the effect of excluding private operators; and, secondly, that the proviso to Section 47(1) compels the permit issuing authorities to postulate or start by assuming an equality of conditions, as between private operators and a State Transport Undertaking. Indeed, if they were to start with the assumption of equality they will have to give preference to the State Transport Undertaking straightaway because that is what the proviso requires. The mainstay of the arguments of learned counsel for the appellants before us, however, is that Rule 155A(3)(D)(i) really has the effect of excluding the private operators altogether by making it impossible for them to ever obtain preference over the State Transport Undertaking when it applies for a permit in competition, against them.

18. The reply on behalf of the State is that no exclusion of private operators is either intended or brought about by an application of Rule 155A(3)(D)(i) of the Act. On the other hand, it is submitted that, as an ordinary operator and a State Transport Undertaking are, in many ways, so unlike each other that, unless five marks were assigned to each application of the State Transport Undertaking, it could not compete at all, on a fair and equal footing, with private operators, who are able to obtain straightaway two marks for residential qualifications, four marks if they are operating not more than three buses, and two marks for workshop facilities. Apparently, the residential qualification has reference to residence within the area in which the motor vehicles are to ply and marks for workshop facilities are granted to operators who are able to show such facilities on particular routes, whereas the State Transport Undertakings, it is pointed out, will neither have a residence within such an area nor may be able to show, in a particular case, workshop facilities on particular routes even though they may have better workshop facilities on the whole. Again, two marks are to be

given to private concerns or organisations, plying on particular routes, if their owners or Managing Directors have certain technical qualifications. It is pointed out that, as State Transport Undertakings do not have individual owners or Managing Directors, for whom these marks could be allotted, even though they may have technically much better qualified personnel to attend to their motor vehicles, the impugned Rule 155A(3)(D)(i) could be justified as meant only to place State Transport Undertakings on a footing of possible equality with private operators in competing for permits to be granted under Section 47(1) read with Section 42(3) of the Act and to do no more. Furthermore, Rule 155-A (3)(D)(i) occurs in a group for marks to be assigned on the basis of the number of vehicles run by the operators. In any case, it was submitted that it is a fair provision as a rough guide but is not decisive by any means. It seems to me that the contention advanced on behalf of the State that the impugned part of Rule 155A enables provisions of the proviso to Section 47(1), read with Section 42(3), to be worked in a manner in which the statutory provisions were intended to operate and does not really authorise a circumvention or infringement of the provisions of Chapter IV of the Act, is well founded.

19. The manner in which provisions of Chapter IV of the Act were meant to operate in cases of competition between private operators and State Undertakings was explained in the Parbhani Transport Cooperative Society's case as follows (at p. 184) :

> The Government has of course the power to do any business it likes and therefore the business of running stage carriages. We have earlier drawn attention to the change made in clause (a) of Section 42(3) by the amendment of 1956. Previously, it was not necessary for the Government to obtain permits under Section 42(1) for buses that it intended to run as stage carriages. Since the amendment the Government can no longer run transport vehicles for commercial purposes without obtaining permits under Section 42(1). Now the plying of buses as stage carriages is a commercial enterprise and for such buses, therefore, under the sections as they stand, the Government would require permits as any one else. That being so, the sections clearly contemplate that the Government may apply for and obtain permits for its buses run as stage carriages. The rule applied in Nazir Ahmad's case ([1936] LR 63 IA 372, 381) does not permit the ordinary meaning of Section 42, sub-section (1) and sub-section (3), clause (a) to be cut down because of the provisions of Chapter IVA. The Act lays down two independent sets of provisions in regard to the running of buses by the Government, one under Chapter IV and the other under Chapter IVA. Chapter IVA was intended to give the Government a special advantage. When the Government chooses to proceed under that chapter, it becomes entitled as a matter of right under Section 68F(1) to the necessary permits. Under Chapter IV the Government does not have any such advantage; it has to compete with other applicants to secure permits to be able to run its buses. The powers under the two chapters are therefore different. To such a case the principle of Nazir Ahmad's case cannot be applied.

20. Both Chapters IV and IVA enable plying of State transport as well as privately owned vehicles on hire on same routes, but the grounds for these combined operations under the two chapters are different. The governing principle of Section 47(1) is to preserve as free and open a competition as possible in public interest, whereas the reason for allowing private operators upon a nationalised route may be a broader one of public policy which may favour a decision against sudden stoppage of privately provided motor transport, so as to avoid wastage of national wealth, even though it takes the form of investments by individual entrepreneurs, or, its object may even be prevention of

undue hardship to private operators. Other reasons for permitting combined service can be given. It is, however, possible only under Chapter IVA to exclude private operators completely. But, unless any rule relating to provisions of motor transport under Chapter IV has that effect it cannot be asserted that what can be done only by resorting to Chapter IVA is being attempted under the provisions of Chapter IV.

21. The rule in Nazir Ahmad's case (supra) applies only to cases where there is a single specified mode laid down for doing something in exercise of the legal power to do it. In that event, the specified mode may, negatively, operate as a prohibition against what is not prescribed at all and is outside the statute. But, it could not apply to a case where two modes of doing the same thing are provided for by a statute itself. Nor, as I have indicated above, could it be said that what is to be done under Chapter IV and what can be done under a scheme under Chapter IVA are really the same simply because, in a given case, the results of both may appear to be similar or even identical.

22. Mr. Ramamurthi, appearing on behalf of some of the appellants, embarked on quite an ambitious argument built upon an elaboration of the theme that Chapters IV and IVA belong to two different fields or spheres of action which cannot, so to speak, be allowed to mix, overlap, or collide. It was contended that the waters of what are, in the eye of law, two different streams of activity must not be allowed to mingle. If I am not mistaken, even the word "pollute" was used, in the flow of arguments, to describe, possibly in a light vein, the alleged inequity of an invasion by a State Transport Undertaking of the supposedly exclusive preserve of private enterprise. It was suggested that such a result would involve "pollution" of the domain of open competition, which is forbidden territory for State Undertakings introduced as a consequence of another ideology or sphere of action found in Chapter IVA. It seems to me that to hear such an argument, advanced even in a lighter vein, is really rather surprising in view of the language of the statute and well known facts to which it is related. It is quite well known that ours is what is known as a "mixed economy". The highest norms of our law are embodied in our Constitution. Article 19(6)(ii) of the Constitution clearly contemplates : "the carrying on by the State, or by a Corporation owned or controlled by the state, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise". And, in order to fulfill the objectives of the preamble to our Constitution, the Constitutional mandate, contained in Article 39(c) of the Constitution, which the State has to carry out, may make it imperative upon the State, in appropriate circumstances, either to take over or nationalise motor transport on roads in any region or area completely or to supplement the transport services provided by private operators with those provided by the State. It seems to me that neither Chapter IV nor Chapter IVA can be really put into two separate watertight compartments so as to make it imperative either to exclude State Transport Undertakings from operating under the provisions of Chapter IV or to exclude private operators when a scheme under Chapter IVA, which may itself provide for only a partial exclusion of such operators, is in force. In the face of the clear words of proviso to Section 47(1) of the Act, enabling State Transport Undertakings to provide transport facilities in open competition, and of Section 68(C) in Chapter IVA of the Act, enabling "the exclusion, complete or partial" of private operators from particular areas or routes, such an argument cannot be put forward at all before us under some preconceived notions even after these very notions had been rejected by this Court in the Parbhani Transport Cooperative Society Ltd.'s case (supra).

23. It is clear that the two chapters of the same Act are both intended to subserve "the interest of the public generally" in any area in the country. That is the integrating or governing principle evident from the language of the Act itself in both Chapter IV and Chapter IVA of the Act.

24. An argument advanced on behalf of the appellant seemed to be that Rule 155A(3)(D)(i) results in defeating the mandate of Section 47(1) of the Act, that the Regional Transport Authority must, as explained repeatedly by this Court, keep "the interest of the public generally" in the forefront. As already indicated by me, this argument really proceeds on the erroneous assumption that the mere fact that the State Transport vehicles are given five marks would defeat public interest by excluding consideration of all facts except that the State Undertaking has applied for one or more permits on a particular route. As my learned brother Krishna Iyer has also pointed out, this is an unwarranted assumption. Rule 155A gives only guidance, but the totality of factors mentioned in Section 47(1) really decide.

25. It was suggested on behalf of the State Transport Undertaking that the obvious capacity of a State Undertaking to provide facilities which are beyond the reach of private operators, that its actions are subjected to such constant, vigilant, and rigorous control on behalf of the public, and that it is bound to be so free from any desire to make profits by sacrificing public interests or convenience of passengers that, even if nothing else was considered, these presumed advantages would justify the award of five marks on each application of the State Undertaking for a permit. If this line of reasoning was completely accepted and carried to its logical conclusion, the provision for giving five marks to each application of the State Undertaking would become quite otiose or unnecessary because, in that case, the State Undertaking would, by relying merely on a presumed superiority for purposes of Section 47(1), get a preference automatically. The proviso to Section 47(1) of the Act would then, apart from making it clear that the State Undertaking can also apply for permits, for which purpose Section 42(3) was enough, serve no useful purpose. Indeed, if such a view were to be accepted, the first part of the proviso to Section 47(1) would seem to rest on a false premise because there could be no case in which "other conditions" could ever be "equal" as between a State Transport Undertaking and a private operator. The State Transport service would, in that case, always get a preference. For this reasons, I do not think that this line of reasoning could be pushed too far. It has to be assumed, in view of the opening words of the proviso to Section 47(1), that there may be cases in which an application of the basic principle, contained in Section 47(1) of the Act, may tilt the balance either in favour of the State Undertaking or the private operator. The proviso applies only where the State Undertaking could reasonably be deemed to be in a position of equality as regards comparative advantages offered by it. As there cannot, between such dissimilar operating untis be comparability of conditions or advantages offered, unless some rule is framed and applied which could make comparison reasonably possible, it seems to me that Rule 155A(3)(D)(i) is justifiable on the ground that it makes what is legally contemplated and permissible also practicable.

26. The proviso to Section 47(1) reads as follows :

> Provided that other conditions being equal, an application for a stage carriage permit from any State Transport Undertaking or a cooperative 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.

An examination of this proviso shows that an equality of other conditions is contemplated before any question of giving preference, merely on the ground that the applicant is the State Transport Undertaking or a co-operative society, can arise. If other conditions are equal, then, undoubtedly, the choice, as between such equals, must, if the proviso is to be given effect, be made in favour of the State Transport Undertaking or a co-operative society automatically. That is how, in such a case, section 47(1) itself would be deemed to operate.

27. The validity of the proviso is not challenged. Even if Article 14 were available for an attack upon it, as it is not during the current emergency, it is clear that the State Transport Undertaking does stand in a separate category. Therefore, it could be found entitled, for obviously good and intelligible reasons, to preference over private operators "other conditions being equal". The narrow question before us, thus appears to me to be nothing more than whether the impugned part of Rule 155A subserves or violates the proviso. The proviso itself is meant to explain what public interest, as visualised by Section 47(1), requires. Hence, it appears to me that the validity of the impugned part of Rule 155 could be determined on purely legal grounds as a necessary corrollary of the proviso to Section 47(1). The impugned part of the Rule is there to make the proviso workable and not to defeat its provisions.

28. It is, however, becoming increasingly fashionable to start with some theory of what is basic to a provision or a chapter or in a statute or even to our Constitution in order to interpret and determine the meaning of a particular provision or rule made to subserve an assumed "basic" requirement. I think that this novel method of construction puts, if I may say so, the cart before the horse. It is apt to seriously mislead us unless the tendency to use such a mode of construction is checked or corrected by this Court. What is basic for section or a chapter in a statute is provided : firstly, by the words used in the statute itself; secondly, by the context in which a provision occurs, or, in other words, by reading the statute as a whole; thirdly, by the preamble which could supply the "key" to the meaning of the statute in cases of uncertainty or doubt; and, fourthly, where some further aid to construction may still be needed to resolve an uncertainty, by the legislative history which discloses the wider context or perspective in which a provision was made to meet a particular need or to satisfy a particular purpose. The last mentioned method consists of an application of the Mischief Rule laid down in Heydon's case long ago.

29. If we start from a theory as to what the real purpose or need is or could be, the danger is that we may be injecting a subjective notion or purpose of our own into what is, after all, a legal question of construction or interpretation, according to well recognised principles, although it may be necessary, in exceptional cases, to explain or fortify the interpretation adopted in the light of so well understood and well known a purpose or theory that we could take judicial notice of it and refer to it. The exposition of the well known purpose or theoretical foundation must, however, generally, flow from and explain an interpretation adopted, on the strength of legally acceptable and accepted canons of construction, if we are to avoid the danger of an a priori determination of the meaning of a provision based on our own preconceived notions of an ideological structure or scheme into which the provision to be interpreted is somehow fitted. The path of judicial certainly and predictability has to be paved with well settled principles of construction and interpretation. We cannot let it develop into a slippery slope beset with hazardous possibilities. The science of statutory construction and interpretation - I think we can call it that - rests on certain systematised principles and rules of common sense, logic, and reason. It cannot be transformed into a happy hunting ground for whatever may captivate the forensic or judicial fancy or become something akin to poetry without even the attractions of euphony.

30. For the reason given above, I find that, on an application of the ordinary and well recognised rules of interpretation, without resorting to any of the novel methods suggested by some of the arguments of learned Counsel for the appellants the impugned part of Rule, 155A(3)(D)(i) is valid. I, therefore, concur with my learned brother Krishna Iyer, and hold that the connected appeals and petitioners before us must be dismissed.

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