

Om Prabha Jain
v.
Gian Chand
and another

2. Name of the person on
whose behalf money
is paid—

Secretary to
the Election
Commission.

Sarkar, J.

The contention is that the receipt in this form showed that the money had been paid by the respondent acting for the Secretary to the Election Commission and not by him in favour of the latter. We are wholly unable to read the deposit receipt in that way. The second of the two entries reproduced above is intended to indicate the person in whose favour the money has been paid; 'on whose behalf' here clearly indicates in whose favour or for whose benefit. The form of the receipt contains no other heading for indicating the person in whose favour the money was paid and of course it was paid in favour of somebody. That makes it perfectly clear that the words 'on whose behalf' mean in whose favour. It would be absurd to think that the respondent had paid the money into the Treasury as security for the costs of the election petition acting as the agent of the Secretary, Election Commission which would be the position if we were to accept the appellant's contention.

We feel no doubt that the receipt was in full compliance with section 117 of the Act.

In the result we dismiss this appeal with costs.
B. R. T.

CIVIL WRIT

Before Bishan Narain, J.

NAV HIND FINANCE & TRANSPORT (PRIVATE) LTD,
DELHI AND ANOTHER,—*Petitioners.*

versus

THE CHIEF COMMISSIONER, DELHI AND OTHERS,—
Respondents

Civil Writ No. 522-D of 1958

1957

Apr., 6th

*Motor Vehicles Act (IV of 1939)—Section 47 Proviso—
Scope of—Individual owners—Meaning of—Promise of*

permits made by the State Government to a Co-operative Society—Fulfilment of—Whether a valid consideration while granting permits under the Act—Constitution of India (1950)—Article 226—Petition for writ of certiorari for quashing the order of the appellate authority making a choice for the issue of permit—High Court—Whether should interfere.

Held, that the proviso to Section 47(1) of the Motor Vehicles Act lays down that where all conditions are equal a co-operative society has preference over all other applicants who are not registered as a co-operative society. The term "individual owners" in the proviso has been used in contradistinction to "Co-operative Societies". "Individual Owners" in this context means any legal entity. The word "individual" is used in the sense of "person" and embraces artificial or corporate persons as well as natural persons.

Held, that the authorities under the Motor Vehicles Act must fairly consider all the applications made under that Act and come to a conclusion on merits and should not take into consideration any promise made by any authority however, high in considering this matter under the Act. An effort to fulfil a promise of this kind made unilaterally to a society cannot but be deprecated as it is unjust and unfair to other applicants. Such promise obviously by-passes the choice of the most competent person by following the procedure laid down in the Act.

Held, that under the Motor Vehicles Act no appeal lies to the High Court and it is not, therefore, open to the High Court in proceedings under Article 226 of the Constitution to convert itself into a court of appeal and then examine the correctness of the order made by the Appellate Authority by going into the evidence before the State Transport Authority. The State Transport Authority and the Appellate Authority under the Motor Vehicles Act are not courts or tribunals of fact. To select one out of many applicants who would best serve the purpose of the Motor Vehicles Act is a complex process and the decision cannot be considered to be a finding of fact. The choice of one of the applicants even if without any cogent reason cannot be quashed in proceedings under Article 226 of the Constitution as it cannot be said that it is an error apparent on the record. Preference of one over another in such circumstances cannot be interfered with by issue of a writ of certiorari.

After all, primarily it is the duty and obligation of the authorities under the Motor Vehicles Act to grant or refuse to grant a particular permits to a particular party. The High Court under Article 226 of the Constitution can only see if the provisions of the Motor Vehicles Act and Rules made thereunder have been complied with. It is not the function of the High Court to direct the authorities under the Act to prefer one party rather than the other when all the other things are equal.

Petition under Article 226/227 of the Constitution of India praying that Your Lordships may be pleased to call unto this Court the judgment of the first respondent, dated 17th December, 1958, for the purpose of quashing the same and Your Lordships may be pleased to quash the said judgment and orders of the first respondent and to pass such other orders or issue such other or further writs or directions as may appear to Your Lordships to be just, fit and proper in the circumstances of the case, and further praying that Your Lordships may be pleased to direct stay of operation of the impugned order till the final disposal of the writ petition and give such other or further interim directions for maintenance of status qua as may appear to Your Lordships to be just and proper.

R. S. NARULA, N. N. DHAWAN, AND KESHAV DAYAL, for Petitioners.

JINDRA LAL, S. C. ISAAC, S. S. DALAL, M. L. DHAWAN, B. K. JAGGI and D. D. CHAWALA, for Respondents

ORDER

Bishan Narain,
J.

BISHAN NARAIN, J.—The State Transport Authority decided to issue one stage carriage permit to ply a passenger bus on the Delhi-Lampur Route via Alipur and Narela and on 30th March, 1957, invited applications for this purpose. The State Transport Authority received 16 or 17 applications. It held various sittings and on 23rd May, 1958, ordered that the permit be issued to Nav Hind Finance and Transport (Private), Limited. An appeal against this order lay to the Chief Commissioner, Delhi. Eight of the applicants appealed to the Chief Commissioner who by order,

dated 17th December, 1958, accepted the appeal of Delhi Ex-Servicemen Co-operative Multipurpose Society, Limited and granted the permit to it cancelling the permit of Nav Hind Finance and Transport (Private), Limited. He dismissed all the other appeals. Dissatisfied with this decision separate applications under Article 226 of the Constitution have been filed by (1) Nav Hind Finance and Transport (Private), Limited, (2) The Parbhat Bus Service (Private), Limited, (3) The Soldiers United Motor Transport Company (Private), Limited, (4) The Crown Co-operative Transport Society, Limited; and (5) Raja Singh Bhasin. As the points involved are largely common to all these petitions and as the authorities under the Motor Vehicles Act have also decided these cases by one common order it will be convenient to decide all these petitions by this judgment.

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another
v.
The Chief Com-
missioner, Delhi
and others

Bishan Narain,
J.

In the present case the procedure adopted by the State Transport Authority or the Chief Commissioner has not been challenged before me. It follows, therefore, that both the authorities gave full hearing to the petitioners. The validity of the order of the Chief Commissioner is challenged only on the ground that it contains errors on the face of the order because (1) he has misconstrued the provisions of section 47 of the Motor Vehicles Act and because, (2) he has relied on reasons which are extraneous to and beyond the scope of section 47 or the purpose underlying that section.

Now the State Transport Authority laid down certain criteria for determining as to who out of the applicants should be granted the permit. The qualifying criteria were stated to be; (1) experience of stage carriage operations, (2) financial position and stability and (3) efficiency of management. Disqualifying criteria were stated to be, (1) predominance of inter-related persons as share-holders

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another
v.

The Chief Com-
missioner, Delhi
and others

Bishan Narain,
J.

and (2) possession of unduly large number of permits. After considering these criteria in detail the State Transport Authority granted permit to Nav Hind Finance and Transport (Private), Limited, as stated above.

On appeal the learned Chief Commissioner discussed the relevant case law and came to the conclusion that all the appellants before him satisfied the criteria of efficiency and that there was no satisfactory material on the record from which the other criteria of qualifications could be determined. Similarly, the learned Chief Commissioner held that there was not sufficient material relating to the above-mentioned disqualifying criteria. He then expressed his opinion that the considerations which must guide State Transport Authority are limited to those given in section 47 and he held that it was doubtful if considerations of monopoly and social justice could be considered as the ones included in section 47. Accordingly he rejected the conclusions of the State Transport Authority. He then went into the matter himself and came to the conclusion that grant of the permit to an applicant other than an existing operator on the Delhi-Alipur portion of the route in question would not adversely affect the standard or efficiency of the existing services.

The learned Chief Commissioner then remarked that under section 47 when all other things are equal then preference should be given to a co-operative society. He then discussed the comparative qualifications of the co-operative societies which had applied for the permit and upheld the claim of the Delhi Ex-Servicemen Co-operative Multipurpose Society, Limited.

It was argued though not seriously that the conclusion of the Chief Commissioner is not justified that there is not sufficient material on the

record to come to the conclusion on the various criteria of qualifications and disqualifications laid down by the State Transport Authority. This contention is based on misconception of this court's power in proceedings under Article 226 of the Constitution. Admittedly the Chief Commissioner heard the parties at length. He has given a detailed order giving reasons for his conclusions. Under the Motor Vehicles Act no appeal lies to this Court. It is not open to this Court in proceedings under Article 226 of the Constitution to convert itself into a court of appeal and then to examine the correctness of the order made by the Chief Commissioner by going into the evidence before the State Transport Authority. [*Vide G. Veerappa Pillai, etc. v. Raman and Raman, Limited, etc.* (1)]. This contention, therefore, is rejected.

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another
v.
The Chief Com-
missioner, Delhi
and others
Bishan Narain,
J.

It, therefore, follows that these petitions must be decided on the basis that all the applicants before me are equally efficient. That being so the proviso to section 47 was rightly held by the Chief Commissioner to become applicable to this case. This proviso reads:—

“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”.

The scope of this proviso is contested and it is necessary to construe it in this case.

(1) A.I.R. 1952 S.C. 192

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another
v.
The Chief Com-
missioner, Delhi
and others
Bishan Narain,
J.

It was urged by Raja Singh Bhasin that the proviso does not apply to section 47(1)(a) to (f) but to the remaining provisions of this section. This contention is devoid of any force as the provision after (f) merely lays down that the authorities under the Motor Vehicles Act shall take into consideration representations made by certain persons. This has nothing to do with the proviso which deals with the grant of permits to certain parties. That being so the application of Raja Singh Bhasin must fail because under this proviso a co-operative society is to be preferred to an individual owner applicant. I, therefore, dismiss the writ petition No. 39-D of 1959, filed by Raja Singh Bhasin.

Shri R. S. Narula and the other learned counsel for the petitioners then argued that under proviso a co-operative society gets preference over "individuals" and not over companies and partnership firms. I am unable to accept this contention. Generally speaking the word "individual" includes associations of persons whether incorporated or not unless the context indicates otherwise. The term "individual" in many cases in America has been held to include a natural person as well as corporations (*vide* "Words and Phrases" Volume 21, page 190). The term "individual owners" in the proviso to section 47(1) of the Motor Vehicles Act has been, in my opinion, used in contradistinction to "Co-operative Society". In my view the "individual owners" in this context means any legal entity. The word "individual" is used in the sense of "person" and embraces artificial or corporate persons as well as natural persons. Under the Motor Vehicles Act an application can be made by a natural person or a partnership firm or a company or a co-operative society. The proviso under consideration gives preference to a co-operative society. The natural inference is that this preference is against all other types of applicants. If

it were otherwise the legislature would have given preference to all kinds of individuals whether incorporated or not over individuals and would not have limited the preference to co-operative societies alone. For these reasons I hold that the proviso lays down that where all conditions are equal a co-operative society has preference over all other applicants who are not registered as a co-operative society. That being so the applications filed by (1) *The Nav Hind Finance and Transport (Private), Limited* (1), (2) *The Parbhat Bus Service (Private), Limited* (C.W. 522 D of 1958), (2), *The Parbhat Bus Service (Private), Limited* (C.W. 28 D of 1959), and (3) *The Soldiers United Motor Transport Company (Private), Limited* (C.W. 29 D of 1959), fail and are dismissed.

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another
v.
The Chief Com-
missioner, Delhi
and others
Bishan Narain,
J.

Now only the appeal of the Crown Co-operative Transport Society, Limited, remains to be considered. The Chief Commissioner considered the comparative claims of the two co-operative societies and held:—

“As between the two co-operative societies, the Delhi Ex-Servicemen Co-operative Multipurpose Transport Society is evidently better qualified to get the permit.”

In coming to this conclusion he pointed out that the Crown Co-operative Transport Society, Limited, had a capital of only Rs. 12,200 while the Transport Authority had laid down a minimum of Rs. 20,000 and further that only one of their members had experience of running bus services while the members of Delhi Ex-Servicemen Co-operative Multipurpose Transport Society were ex-servicemen formerly in Army Motor Transport who were demobilised after the Second World War. The learned Chief Commissioner then went on to refer

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another
v.
The Chief Com-
missioner, Delhi
and others
Bishan Narain,
J.

to the directive of the Central Government to assist this society and also to the promise of the State Government made in 1948 to give 20 stage carriage permits to the Delhi Ex-Servicemen Co-operative Society. The learned Chief Commissioner then dealt with the allegation that this society had hired its permit but held on the basis of the report of the Registrar under the Co-operative Societies Act that the allegation had not been proved.

The learned Counsel for the Crown Co-operative Transport Society, Limited argued, (1) that the allegation should have been enquired into by the State Transport Authority Act and that it had no power to refer the matter to the Registrar under the Co-operative Societies Act, (2) that the reliance on the State Government's promise was extraneous to the purpose of the Motor Vehicles Act, and (3) that the reliance on this matter vitiated the order of the Chief Commissioner so far as it had the effect of rejecting the claim of the Crown Transport Society. It is, therefore, necessary to deal with these contentions now.

I see no impropriety in the State Transport Authority requesting the Registrar under the Co-operative Societies Act to inquire into the allegation that the Ex-Servicemen Society had been hiring its permits. It is not disputed that under the Co-operative Societies Act the Registrar has this power. No objection appears to have been raised to the adoption of this course by the State Transport Authority. In my view considering the nature of the allegation the Registrar was better equipped to inquire into the matter than the State Transport Authority which had to deal primarily with choosing the most efficient person out of the applicants to get the permit. I have, therefore, no hesitation in rejecting this contention.

The second contention to my mind has force. The appellate authority has mentioned in the order that the State Government has not yet fulfilled its promise of 1948. A permit under the Motor Vehicles Act is to be granted after following a procedure laid down in the Act. The promise made by the Delhi State is entirely outside the scope of the Act. Such a promise obviously by-passes choice of the most competent person by following the procedure laid down in the Act. Any attempt to fulfil such a promise through the provisions of the Motor Vehicles Act appears to me to be unjust and unfair to other applicants. The learned counsel for the respondents tried to justify this observation of the learned Chief Commissioner by drawing my attention to the words "interest of the public generally" occurring in section 47(1)(a). In my opinion, however, a wide meaning be given to this expression it will not cover a promise of the kind which I am discussing. The Supreme Court in *Raman & Raman, Limited v. State of Madras* (1), has observed that under section 47 the State Transport Authority should take into consideration among other things the interest of the public generally and the advantages to the public of the service to be provided. This, however, does not mean that a promise made to a potential applicant for a permit on a route which may be opened some time in future for passenger buses should be accepted as binding even after following the procedure laid down in the Motor Vehicles Act. In my opinion the authorities under the Motor Vehicles Act must fairly consider all the applications made under that Act and come to a conclusion on merits and should not take into consideration any promise made by any authority, however, high in considering this matter under the Act. I cannot but deprecate an effort to fulfil a promise of this kind

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another
v.

The Chief Com-
missioner, Delhi
and others

Bishan Narain
J.

(1) A.I.R. 1956 S.C. 463

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another

made unilaterally to the society. I, therefore, hold that this consideration was extraneous to the Act and should have been ignored by the learned Chief Commissioner.

v.
The Chief Com-
missioner, Delhi
and others

The question, however, remains if the order of the appellate authority must be quashed simply because it had mentioned this consideration of the promise given by the State Government to the Delhi Ex-Servicemen Society. It is argued on behalf of the applicants that if this consideration is ignored then it is not possible to gauge as to how far it had actuated the learned Chief Commissioner in deciding the matter in favour of the Ex-Servicemen Society and, therefore, the decision should be quashed. Reliance was placed on the dictum of Mahajan, J., in *Dhirajlal-Girdhari Lal v. Commissioner of Income-tax, Bombay* (1), which reads:—

Bishan Narain,
J.

“It is well established that when a Court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises.”

Reliance was also placed on the observation of Bose, J., in *Messrs Satya Narayan Transport Co., Limited v. Secretary, State Transport Authority, West Bengal and others* (2). In my view this principle laid down by Mahajan, J., does not apply to a case like the present one. The State Transport Authority and the Appellate Authority under the Motor Vehicles Act are not courts or tribunals

(1) A.I.R. 1955 S.C. 271

(2) A.I.R. 1957 Cal. 638

of fact. To select one out of many applicants who would best serve the purpose of the Motor Vehicles Act is a complex process and the decision cannot be considered to be a finding of fact. It appears to me that the learned Chief Commissioner was faced with the problem of choosing between two competing co-operative societies. He considered the comparative financial position and experience and came to the conclusion that the Delhi Ex-Servicemen Society was better qualified. It is true that while dealing with the matter he also referred to an alleged promise made by the State Government in 1948 but in my opinion that reference was not really the basis of the decision. It depends on the circumstances and facts of each case whether a particular reason given by an Authority constitutes one of the reasons of the decision or has been mentioned only incidentally. It appears to me that the learned Chief Commissioner mentioned the promise of 1948 merely to reinforce a conclusion which he had already reached. In any case even if the grounds given for the preference of the Delhi Ex-Servicemen Society be ignored then it follows that both the co-operative societies were equally efficient and equally qualified. In that case also the learned Chief Commissioner had to make his choice. Choice of one of them even if without any cogent reason could not be quashed in proceedings under Article 226 of the Constitution as it could not be said that it was an error apparent on the record. Preference of one over another in such circumstances cannot be interfered with by issue of a writ of certiorari. After all, primarily it is the duty and obligation of the authorities under the Motor Vehicles Act to grant or refuse to grant a particular permit to a particular party. This Court under Article 226 of the Constitution can only see if the provisions of the Motor Vehicles

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another
v.
The Chief Com-
missioner, Delhi
and others
Bishan Narain,
J.

Nav Hind
Finance and
Transport
(Private), Ltd.,
Delhi
and another
v.
The Chief Com-
missioner, Delhi
and others

Act and Rules made thereunder have been complied with. It is not the function of this court to direct the authorities under the Act to prefer one party rather than the other when all the other things are equal. In this view of the matter the application of the Crown Co-operative Transport Society, Limited, also fails.

Bishan Narain,
J.

The result is that all the five applications fail. The applications of Nav Hind Finance and Transport (Private) Limited, the Parbhat Bus Service (Private), Limited, the Soldiers United Motor Transport Company (Private), Limited and Raja Singh Bhasin are dismissed with costs. The application of the Crown Co-operative Transport Society, Limited, is dismissed but the parties are left to bear their own costs.

B. R. T.

APPELLATE CIVIL

Before I. D. Dua, J.

RAM SUNDRI alias SHAM SUNDRI,—Appellant

versus

THE COLLECTOR, LUDHIANA AND OTHERS —Respondents

Regular Second Appeal No. 1339 of 1958

1957
Apr., 7th

Code of Civil Procedure (Act V of 1908)—Section 80—Notice under—Object of—Such notice, whether necessary before filing suit under Order 21 Rule 63 C. P. C.—Suit under Order 21 Rule 63—Nature of—Whether continuation of objection proceedings under Order 21 Rule 58.

Held, that the object of giving a notice under section 80 of the Code of Civil Procedure is to afford to the Government or the public officer concerned an opportunity to reconsider the position with regard to the claim made and if so advised either to settle it or otherwise to make