

does not subject individuals to an arbitrary power; Shiv Parshad  
 it does not discriminate against some and in favour v.  
 of others; it treats all alike within the sphere of its Punjab State  
 operation. A statutory provision of this kind cannot Bhandari, C. J.  
 be regarded as violative of the constitutional provision  
 relating to equal protection of the laws. The moneys  
 claimed by the State in the present case are moneys  
 which are due from the insolvent in respect of licence  
 fees which were to be paid by the insolvent under the  
 provisions of the appropriate Excise Acts. The power  
 of issuing licences under excise laws is clearly an  
 exercise of police powers. It is impossible to hold  
 that the debt which is sought to be recovered in the  
 present case accrued to the State while it was acting  
 in its capacity as a private juristic person or while it  
 was engaged in commercial activities.

For these reasons I am of the opinion that neither  
 a State nor a Government can fall within the ambit  
 of the expression 'person' appearing in Article 14 of  
 the Constitution. Let an appropriate answer be re-  
 turned to the question which has been referred to us  
 by the learned District Judge.

KHOSLA, J. I agree.

Khosla, J.

CIVIL WRIT

*Before Bishan Narain, J.*

THE BHARAT WAFADAR MOTOR TRANSPORT CO,  
 LTD.,—*Petitioner*

*versus*

THE CHIEF COMMISSIONER, DELHI STATE AND  
 OTHERS,—*Respondents*  
 Civil Writ No. 335 of 1955.

*Indian Motor Vehicles Act (IV of 1939)—Scope of—  
 Sections 42, 47, 57 and 64—Procedure prescribed by—Object  
 of—Appeal to Appellate Authority—Notice of appeal—  
 Whether should be given to person who has been granted*

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*the permit—Principles of natural justice—How far to be observed—Several appeals filed against an order—Whether all should be heard together.*

*Held*, that the Indian Motor Vehicles Act, 1939, creates new rights and liabilities and prescribes an elaborate procedure for their regulation. The grant of permits is entirely within the discretion of the transport authorities and depends on consideration of several circumstances.

*Held*, that the procedure prescribed by sections 42, 47 and 57 of the Act has been provided by the Legislature with a view to safeguard the interests of the public. The nature of these proceedings is such that wide publicity should be given to them so as to enable proper persons to file applications for permits and also to enable members of the public to make representations. An applicant who has been refused the permit has a right of appeal to the prescribed authority called the Appellate Authority, who is to hear the appeal after notice to the State Transport Authority and the Appellant.

*Held*, that in spite of the provisions of section 64(a) of the Act, the Appellate Authority must observe the principles of natural justice and give an opportunity of hearing to the person to whom permit has been granted when an appeal has been filed against that order as the decision of the appeal may involve the cancellation of that permit. It is opposed to all canons of justice and equity and principles of fair play that a person whose interests may be prejudiced by the decision should not be given an opportunity to be heard before the decision is made. Obviously it is the duty of the Appellate Authority to give an opportunity to all those whose rights are likely to be adversely affected by that decision. It is true that the transport authorities are administrative bodies, but in this matter they exercise quasi-judicial functions. In any case it is the duty of even administrative bodies to listen fairly to the parties interested before deciding any matter.

*Held*, that when many appeals are filed against an order, they should all be heard and decided together so that all the persons interested in the decision of the appeals may be heard at one and the same time. To decide the appeals of

some in the absence of others is opposed to the principles of natural justice and all canons of equity and fair play.

*Petition under Article 226 of the Constitution of India, praying that writs of the nature of mandamus, certiorari or other appropriate nature or directions may graciously be issued to the Respondents Nos. 1 and 2 not to grant any stage carriage permit to Respondents Nos. 3, 4, 5 and 6 on Narela-Tikri Kalan route and rights of the petitioner company may not be adversely effected.*

B. K. JAGGI, for Petitioners.

BISHAMBER DAYAL and KISHAN CHAND CHAUDHRI, for Respondents.

#### ORDER

The Bharat Wafadar Motor Transport Company Bishan Narain, Limited, Tikri Kalan, Delhi State, has filed the present petition under Article 226 of the Constitution for issue of a writ in the nature of certiorari to quash the order of the Appellate Authority constituted under the Motor Vehicles Act granting stage carriage permit on the Narela-Tikri route to the respondents Brahm Dutt and three others by its order dated the 26th August, 1955. The facts leading to this petition are not in dispute and stated shortly are as follows. The State Transport Authority, Delhi, granted stage carriage permit to the petitioner Company in 1949, on Narela-Bahadurgarh route which is along the Narela-Tikri route and proceeds a little beyond. Various persons appealed against this grant of permit, but the Appellate Authority dismissed all the appeals. It appears that this one permit was not considered to be sufficient and the State Transport Authority, Delhi, started proceedings for grant of another permit limiting it to Narela-Tikri route. Many applications were received. While these proceedings were being taken on these applications a temporary permit was granted under section 62 of the

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Act to the Bharat Wafadar Motor Transport Company on the 13th of August, 1952, and admittedly these temporary permits were renewed after the expiry of previous ones and the petitioning company plied a bus on this route till the 30th of April, 1954, (*vide* para 15 of the written statement). The Transport Authority by its order dated the 12th of November, 1953, rejected the applications of the petitioners and of many others including Brahm Dutt, etc., (respondents 3 to 6) and granted it jointly to Raja Singh and Ram Chander. The present petitioners, the present respondents 3 to 6 and many others appealed against this order under section 64(a) of the Act to the Appellate Authority. Raja Singh also appealed praying for grant of a permit exclusively to him. All these appeals came up for hearing before the Appellate Authority on the 26th of March, 1954. The appeal of the present petitioners along with those of many others was dismissed. The appeal of Raja Singh was accepted and he was granted exclusive permit. The appeal of Brahm Dutt, etc., however, was adjourned to enable the appellants to implead necessary parties to the appeal as this omission of theirs had rendered the appeal incomplete. The appeal of Brahm Dutt, etc., was not disposed of and was still pending when on the 23rd of November, 1954, the permit granted to Raja Singh was cancelled. The present petitioners before me were then granted temporary permit on the 7th of December, 1954, to ply a bus on this route. It appears from the reply filed on behalf of the Transport Authority that the State Transport Authority then invited applications for grant of a regular permit on this route. While these proceedings were going on, the Appellate Authority took up the appeal of Brahm Dutt, etc., on the 26th of August, 1955. At that time the State Transport Controller was not present though he had been duly served. The Appellate Authority was informed that the permit of Raja Singh had been cancelled and the appellants prayed for

the grant of this cancelled permit to them. The Appellate Authority accepted the appeal and ordered that the permit for the Narela-Tikri Kalan route be granted to the appellant Company. It is against this order that the present petition is directed.

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From the narration of these facts it is clear that on the 26th August, 1955, the Bharat Wafadar Motor Transport Company had a temporary permit to ply a bus on the route in dispute and further that proceedings were pending before the State Transport Authority for grant of a regular permit on it. It is also clear that the appeal of Brahm Dutt, etc., was heard without any notice to the Bharat Wafadar Motor Transport Company or to other appellants whose appeals had been previously dismissed and also without any notice to the applicants whose applications on that day were pending before the State Transport Authority.

On these facts it is argued by the learned counsel for the Bharat Wafadar Motor Transport Company that in the circumstances the petitioning Company was entitled to a hearing before the appeal of Brahm Dutt, etc., was decided. On the other hand, the respondents' case is that the petitioners were not entitled to any notice or to any hearing of that appeal under section 64(a) of the Motor Vehicles Act. To resolve this controversy it is necessary to examine the relevant provisions of the Motor Vehicles Act.

This Act, as laid down by their Lordships of the Supreme Court in *Veerappa Pillai v. Raman and Raman Ltd. and others* (1), creates new rights and liabilities and prescribes an elaborate procedure for their regulation. The grant of permits is entirely within the discretion of the transport authorities and depends on consideration of several circumstances. In

(1) 1952 S.C.R. 583

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Delhi the State Transport Authority grants stage carriage permits (section 42). This Authority which is an administrative body exercises *quasi-judicial* functions when it considers the grant of permits. Section 47 of the Act prescribes the matters which must be taken into consideration in deciding grant or refusal of a stage carriage permit and one of the matters that has to be considered is a representation made by persons already providing road transport facilities along or near the proposed route. The procedure to be adopted by the authorities is laid down in section 57 of the Act. According to this section the State Transport Authority must, on receipt of an application or applications, make them available for inspection by the public and also publish these applications or their substance together with the date by which representations must be submitted and the date on which the applications and representations have to be heard. Only after hearing the parties the State Transport Authority shall decide the matter. It appears to me that this procedure has been provided by the legislature with a view to safeguard the interests of the public. The nature of these proceedings is such that wide publicity should be given to them so as to enable proper persons to file applications for permits and also to enable members of the public to make representations. An applicant who has been refused the permit has a right of appeal to the prescribed authority called the Appellate Authority. In Delhi the Hon'ble the Chief Commissioner is the Appellate Authority and appeal lies to him. According to section 64(a) of the Act the Appellate Authority shall hear the appeal after notice of hearing to the State Transport Authority and the appellant. The Act, however, does not provide for notice to the party to whom the permit has been granted even when the acceptance of appeal may involve the cancellation of that permit.

Thus it is clear that while the proceedings for grant of a permit are pending before the original authority the legislature provided for a wide publicity of the proposal for grant of permit on a particular route and also of the applications received by it and further gives a right to the applicants and also to those who have made representations to be heard by the authorities before the matter is decided. It is significant that this right has been extended to persons who have made no applications for the permit but who have made representations which may be in support of an existing permit or may be directed against applicants in general or against particular applicants. Further it is clear that the legislature intended that the original authorities should hear and decide all these applications and representations at one and the same time by laying down that the date of their hearing should be published. On appeal, however, the legislature provides for a notice of hearing to the appellant and to the original authority only and not to anybody else although under section 69(2)(b) the State Government has been given powers to make rules relating to conduct and hearing of appeals. It appears to me that when enacting section 64(a) and (b) the legislature expected that all the persons aggrieved against the grant of permit to a particular party will appeal against the order and then the Appellate Authority will hear all the appeals at one and the same time. The legislature accordingly provided for the presence of the original authority to assist the Appellate Authority in adjudicating upon the rights of the various claimants to a permit. The notice to the original authority can be explained only on this assumption as it is not usual to call the original Tribunal for disposal of an appeal which has been filed against the order of that Tribunal. This is only natural when we consider the nature of the permit and the interest of the public involved therein. The power given to State Government to make rules for hearing

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and conduct of appeals indicates that the legislature intended to introduce a certain amount of elasticity in the procedure to be adopted by appellate authorities so that every State may make rules to suit the conditions prevailing in the State. It is noticeable that section 64 does not provide for notice of appeal to a party who has been granted a permit when appeal is directed against such a grant. The decision of the appeal may involve cancellation of a permit granted to a party and it is opposed to all canons of justice and equity and principles of fair play that a person whose interests may be prejudiced by the decision should not be given an opportunity to be heard before the decision is made. Obviously, it is the duty of the Appellate Authority to give an opportunity to all those whose rights are likely to be adversely affected by that decision. It is true that the transport authorities are administrative bodies, but in this matter they exercise quasi-judicial functions as has been laid down by their Lordships of the Supreme Court. In any case it is the duty of even administrative bodies to listen fairly to the parties interested before deciding any matter. It follows, therefore, that the Appellate Authority in such a case must observe the principles of natural justice in spite of the provisions of section 64(a) of the Act and give an opportunity of hearing to the person to whom permit has been granted and an appeal has been filed against that order. This was so held in *Pankaj Kumar Ghosh and another v. Commissioner, Burdwan Division and another* (1), *K. N. Bhatia Ghisalal v. The Regional Transport Authority and others* (2), and *Mrs. Suprava Deb Roy v. State of Assam and others* (3), and I am in respectful agreement with these decisions.

In the present case, however, the point involved is slightly different. The Bharat Wafadar Motor

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(1) A.I.R. 1953 Cal. 587.  
(2) A.I.R. 1952 M.B. 128.  
(3) A.I.R. 1953 Assam. 157.



Transport Company had filed an appeal against the order granting permit to Raja Singh and Ram Chander. The petitioning Company, Raja Singh and many others appealed against that order. The Bharat Wafadar Motor Transport Company prayed for the grant of permit to it and claimed that it had a better right to the permit than Raja Singh and Ram Chander and other claimants. All the appeals were heard together. The appeal filed by Brahm Dutt, etc., was adjourned as incomplete while the other appeals were decided on that day. The appeal of Brahm Dutt, etc., was heard later without any notice to the petitioning Company. The consequence of the procedure adopted by the Appellate Authority was that the Bharat Wafadar Motor Transport Company and others were prevented from showing that their claim was superior to that of Brahm Dutt, etc., particularly when in the meantime the permit of Raja Singh had been cancelled and the State Transport Authority had invited fresh applications for this route. This procedure may have resulted in gross injustice to the Bharat Wafadar Motor Transport Company or to some other claimants. After all these claimants were at that time busy in establishing their respective claims before the State Transport Authority and cannot be said to be disinterested in the result of the appeal. In my opinion the procedure adopted by the Appellate Authority violated principles of natural justice and all canons of equity and fair play. The Appellate Authority should have either adjourned all the appeals or should have decided the appeal of Brahm Dutt, etc., with them. It was argued on behalf of the respondent company that in any case the Appellate Authority decided in favour of the Company on merits after taking all relevant matters into consideration and that the petitioner is unable to indicate how the decision is erroneous and unjust. The decision may or may not be correct. I am not in a position to decide this matter as all the appeals are

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not before me, nor am I entitled to scrutinise the decision on merits when I am exercising the jurisdiction vested in this Court under Article 226 of the Constitution. The validity of the order of the Appellate Authority is challenged by the petitioner on the ground that it had been denied a hearing at the time of the hearing of the appeal and that this denial is opposed to the principles of natural justice. I have already held that this contention is correct. It was argued on behalf of the transport authorities that the petitioner Company as holders of a temporary permit have no right in the matter and, therefore, no right of theirs has been infringed by the procedure adopted by the Appellate Authority. It was, however, conceded that the representation of a holder of a temporary permit is to be taken into consideration at the time when a permit is granted under section 47 of the Act. It follows, therefore, that in appeal which is after all a continuation of the original proceedings this matter has to be taken into consideration. If so, then in all fairness the petitioner company could not be considered as a party disinterested in the result of the appeal. It is clear that the decision of the appeal adversely affected it as it was not given any opportunity to show to the Appellate Authority that its claim was superior to that of Brahm Dutt, etc., I am in respectful agreement with the observations of Bose, J., in *Pankaj Kumar Ghosh and another v. Commissioner, Burdwan Division and another* (1), which read as follows:—

“It is true that section 64 does not expressly provide for any notice being given to any person other than the appellant and the Transport Authority but the moment it is intended to affect the right of any third

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(1) A.I.R. 1953 Cal. 587

person by any order made in the appeal, a duty arises according to the principles of natural justice to give notice to the persons affected."

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Accordingly I accept this petition and quash the order of the Appellate Authority dated the 26th of August, 1955. The result is that the appeal of Brahm Dutt, etc., remains pending before the Appellate Authority and it can take any action that is considered fit and proper on this appeal. The respondents shall pay the costs of the petitioning Company which I assess at Rs. 100.

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#### REVISIONAL CRIMINAL

*Before Falshaw and Kapur, JJ.*

SARDARI LAL,—*Petitioner*

*versus*

Mst. KAUSHALYA DEVI,—*Respondent*

**Criminal Revision No. 378 of 1956.**

*Code of Criminal Procedure (Act V of 1898)—Sections 488 and 531—Jurisdiction—Place of temporary residence—Whether within the meaning of word "resides" in section 488, Criminal Procedure Code—Order of Criminal Court—When can be set aside merely on the ground of Jurisdiction—Rule stated.*

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Husband belonged to Pakistan and on the partition of the country, came to India and lived in a village in Amritsar District with his wife. Being an employee of the Defence Department he was stationed in Meerut. The wife brought the application for maintenance in Amritsar. The question raised was as to the jurisdiction of the Amritsar Court to take cognizance of the case.

*Held*, that if the wife was residing in the village where the husband was visiting her, it cannot be said that he did