If a departure is admissible it will be admissible for special reasons and special circumstances. Such a special case is not made out here with regard to the petitioners. When the Government has the power to proceed on *ad hoc* basis, it is even then not permitted to proceed in contravention of Articles 14 and 16 of the Constitution in regard to persons situate similarly and in the same circumstances. So that the same approach is to be made to the case of the petitioners even upon consideration of this argument of the learned counsel for the respondents. The consequence is that the denial of the benefit of Weighted Down 'N' formula to the petitioners when their companions in the same list II have the benefit of that formula and when all are similarly circumstanced having been selected on merits in list II by the Special Recruitment Board and having been recruited to the Indian Administrative Service on one and the same day, is violative of the protection under Article 14 and as such denial depresses the seniority of the petitioners, it affects their chances of promotion and hence also violative of Article 16(1) of the Constitution. The decision of the respondents to apply draft rule 3(3) (b) to the petitioners is, therefore, quashed with a direction to the respondents that in the case of the petitioners in the matters of year of allotment and assignment of seniority Weighted Down 'N' formula be applied as it has been applied to ten other officers in the same list as the petitioners. The petitioners, therefore, succeed in their petitions. The respondents will bear the costs of each petitioner in the latter's petition.

D. FALSHAW, C. J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before D. K. Mahajan and S. K. Kapur, JJ.

ZAMINDAR MOTOR TRANSPORT CO., PRIVATE LTD.,—*Appellant.*

versus

STATE TRANSPORT AUTHORITY, DELHI AND ANOTHER,—Respondents.

L.P.A. No. 79-D of 1961:

1965

March, 1st.

Motor Vehicles Act (IV of 1939)—S. 57(8)—Whether confined to conditions set out in S. 48—Delhi Motor Vehicles Rules—Rule 4.7—Application to vary the conditions of a permit—Whether must be

made in prescribed form—Motor Vehicles Act (IV of 1939)—S. 46—Whether mandatory.

Held, that the variation envisaged by section 57(8) of the Motor Vehicles Act, 1939, is not confined to the conditions set out in section 48 of the Act. It refers to any condition imposed by the State Transport Authority. The condition imposed on the Delhi Transport Undertaking not to operate new services parallel to the existing services of the private operators without the approval of the State Transport Authority is a condition within the meaning of section 57(8) and an application for removal of the said condition is to be considered as an application for the grant of a new permit. In substance the application for permission to operate new services is an application to vary the conditions of any permit by the inclusion of a new route or routes or a new area within the meaning of section 57(8) of the Act and has to be made in one of the prescribed forms as provided in rule 4.7 of Delhi Motor Vehicles Rules.

Held, that the whole object of section 46 of the Motor Vehicles Act, 1939, requiring certain particulars to be stated in the application is to enable the various persons concerned with the grant or refusal of the permit to be apprised of the various details with a view to enabling them to effectively participate in the consideration of the said application. Section 47 enjoins on the authorities concerned to have regard to the various matters set out therein. Section 48 authorises the authorities to grant a stage carriage permit in accordance with the application or with such modification as they deem fit. It also authorises the authorities to impose various conditions set out in section 48(3) of the Act. Section 57 deals with the publication, inspection and disposal of the objections and all representations made in the matter. These various sections show that the provisions of section 46 are required to be complied with to the extent it is possible to do so. Unless the particulars set out in section 46 or the rules are given in the application, the very object of hearing representations and objections as contemplated by section 57 may be defeated. The words "as far as may be" were added only to avoid an application for stage carriage permit being thrown out on the ground that some particular which it was not possible to state had been omitted in the application. These words do not altogether dispense with the requirement of complying with the section.

Letters Patent Appeal under Clause 10 *of Letters Patent against the order dated September* 11, 1961 *passed by Hon'ble Mr. Justice P. C. Pandit, in C.W.* 880-*D*/61 *dismissing the same.*

R. L. TANDON, ADVOCATE, for the Appellant.

P. NARAIN, M. N. GUJRAL AND DALJIT SINGH, ADVOCATES for the Respondent.

JUDGMENT.

KAPUR, J.—The facts leading to the present Letters Patent Appeal are that Zamindar Motor Transport Co., Private Ltd., are engaged in running stage carriage permits on three routes, being (1) Delhi-Bawana-Narela, (2) Delhi-Bawana-Anchandi and (3) Delhi-Bawana-Kharkhoda. The appellant-company held three permits for route No. (1), two for route No. (2) and one for route No. (3). The appellant-company was performing on the above routes, twenty return trips per day. Besides the appellant-company, there were three other operators, whose routes were common with the appellant-company from Delhi to Bawana and they were performing about thirty return trips. Since May 9, 1956, the Delhi Transport Undertaking, respondent No. 2, had been holding stage carriage permits valid for certain areas other than the area in dispute. On October 19, 1959, the Delhi Transport Undertaking applied to the State Transport Authority requesting for validation of their permits for the entire Union Territory of Delhi. On January 6, 1960, the substance of their application was published in a vernacular paper "Daily Tej". It may be pointed out that in the said notice there is no specific mention of any request by the Delhi Transport Undertaking to operate their buses in the rural areas. The notice gave 20 days' time for objections and representations under section 57 of the Motor Vehicles Act. It was stated that the date and time of the meeting for the consideration of the representation will be notified later. On January 12, 1960, the Delhi Provincial Motor Transport Union Congress of which the appellant company was a member preferred their objections and requested that the Delhi Transport Undertaking should not be allowed any extension in the area of operation. On February 10, 1960, resolution No. 40 was passed by the State Transport Authority which deserves reproduction— Kapur, J.

"The representatives of the Delhi Transport Undertaking appeared. The representatives of the objectors, viz., The Delhi Provincial Motor Transport Union Congress were also present and they pressed their objections sent in writing. The representatives of the Delhi Transport Undertaking pointed out that under the Municipal Act they were required to provide

Zamindar Motor Transport Co. Private Ltd., *v.* State Transport Authority, Delhi and another

Kapur, J.

efficient and adequate services "in the entire territory of Delhi and, therefore, the area of their permits should be altered accordingly. The authority considered the request of the Delhi Transport Union reasonable. It was decided to alter the permits and make them valid for entire territory of Delhi but they should be informed that they should not operate new services parallel to the existing services of the private operators without the approval of the State Transport Authority."

The above resolution was communicated to Delhi Transport Undertaking on February 22, 1960, and on June 17, 1961, news appeared in certain newspapers that Delhi Transport Undertaking had decided to extend their rural service to Bawana, Narela and Auchandi. It was further stated in the said news-item that service to Bawana will begin on Monday and to two other destinations on July 1, 1961. On June 18, 1961, the appellant-company and some other operators sent telegram to Delhi State Transport Authority that the Delhi Transport Undertaking should not be allowed to operate in the above-mentioned rural areas as the same would be against the provisions of the Motor Vehicles Act. The Delhi Transport Undertaking started operation on Delhi-Bawana route on June 19, 1961. On June 20, 1961, the appellant received a letter from Secretary, State Transport Authority that the application of Delhi Transport Undertaking will be considered on June 21, 1961, at 11 a.m. On June 21, 1961, the appellant and some other operators wrote to the Secretary, State Transport Authority, *inter alia* pointing out—

(a) the applicants were not aware of the contents of the application of the Delhi Transport Undertaking;

(b) the application had not been published and objections and representations had not been invited;

(c) the notice given was very short; and

(d) proper opportunity for filing objections should be given after due publication of the application of the Delhi Transport Undertaking.

On June 21, 1961, the Delhi Transport Undertaking was permitted to run the buses on the said routes.

The appellant-company filed a writ petition in this Court which was dismissed by P. C. Pandit, J., by judgment dated September 11, 1961. The present appeal is directed against the said order.

The learned Single Judge *inter alia* held that compliance with sub-sections (3), (4) and (5) of section 57, of the said Act, was not necessary for removal of conditions laid down in the resolution dated February 10, 1960, regarding running of buses on the routes occupied by other operators. In the opinion of the learned Single Judge, the condition mentioned in the resolution that the Delhi Transport Undertaking would operate new services parallel to the existing services of private operators only, after getting the approval of respondent No. 1, was merely in the nature of administrative instruction. The learned Single Judge also held that the letter dated October 19, 1959, was validly treated as a formal application for grant of a new permit under section 57(8) of the said Act.

Shri Tandon, the learned counsel for the appellant, has raised the following contentions—

(a) There was no valid application for extension of permit to the whole of the Union Territory of Delhi, since none of the particulars specified in section 46 of the said Act were given in the letter, dated October 19, 1959;

(b) Section 46 of the said Act was mandatory and even if it be directory, it did not matter, since there was not even a substantial compliance with the provisions of section 46;

(c) Section 57(3) of the said Act was not complied with inasmuch as both the dates contemplated by the section were not published,

(d) The provisions of section 47 were not complied with inasmuch as the Transport Authority disregarded the various factors mentioned in clauses (a) to (f) of section 47(1) and based the decision on irrelevant consideration, and

Zamindar Motor Transport Co. Private Ltd., *v.* State Transport Authority, Delhi and another

Kapur, J.

(e) In the resolution dated 10th February, 1960 a condition had been imposed that the Delhi Transport Undertaking should not operate new services parallel to the existing services of the private operators without "the approval of the State Transport Authority". The application to vary the said condition fell under sub-section (8) of section 57 of the said Act and was, therefore, required to be treated as an application for the grant of a new permit with the result that compliance with sub-sections (3), (4) and (5) of section 57 became necessary. This appeal can be disposed of only on the last submission of the learned counsel for the appellant.

Learned counsel for the respondents admits that sub-section (3), (4) and (5) were not complied with because the application for permission to operate on the occupied routes was rightly not treated as an application for the grant of a new permit. The learned counsel submits that (a) only an application to vary conditions set out in section 48 of the Act is required to be treated as an application for grant of a new permit within the meaning of section 57(8), (b) the learned Single Judge was right in holding that the formalities required under sub-sections (3), (4) and (5) of section 57 had been complied with before passing the resolution of 10th February, 1960, when the permit already granted to Delhi Transport Undertaking had been validated for the entire Union Territory of Delhi and (c) the said condition imposed by the resolution was merely an administrative instruction given by State Transport Authority to the Delhi Transport Undertaking and not a condition. The learned counsel for the respondents also contends that the petitioner-appellants were not aggrieved by non-compliance of sub-sections (3), (4) and (5) of section 57 as their permits were neither affected nor cancelled and, therefore, the writ petition could not be entertained at their instance. In our view the condition imposed in the resolution, dated the 10th of February, 1960, was a condition within the meaning of section 57(8) and an application for removal of the said condition was, in view of the provisions of section 57(8), required to be considered as an application for the grant of a new permit. In our opinion, the variation envisaged by section 57(8) is not confined to the conditions set out in section 48. In the resolution dated the 10th of February,

1960, the Delhi Transport Undertaking was not entitled to operate new services parallel to the existing services of the private operators without the approval of the State Transport Authority. In substance the application for permission to operate new services was an application to vary the conditions of any permit by the inclusion of a new route or routes or a new area within the meaning of section 57(8) of the Act. Though this point is enough to dispose of the petition and allow the appeal but we might also, in view of the importance of the point raised, deal with the question regarding the validity of the applicaton by reason of its non-compliance with section 46 of the Motors Vehicles Act. The learned counsel for the petitioner draws our attention to rule 4.7 of Delhi Motor Vehicles Rules, which provides that every application for a permit in respect of a transport vehicle shall be in one of the prescribed forms, the form for stage carriage permit being P. St. S.A. It requires various particulars to be set out including (a) the route, routes or area for which permit is desired, (b) the maximum number of vehicles which will ply at any one time under the terms of the permit; (c) the minimum number of vehicles which will ply at any one time under the terms of the permit in the area or on any route or any part of any route, and the minimum number of daily vehicles-trips; (d) particulars of the vehicles to be used on the service; (e) particulars of the time-table proposed to be appended; (f) the standard rate of fare which is proposed to be charged, etc., etc.

Learned counsel for the appellant has invited our attention to the application, dated the 19th of October, 1959 (annexure R. 1) and points out that none of the particulars required by section 46 or rule 4.7 have been set out. The said letter which is not in the prescribed form first sets out the places for which the Delhi Transport Undertaking holds the permit. It then states that there have been various requests from the travelling public residing in the areas outside the limits of their present permit for extension of services in order to provide transport facilities for rural areas. It is also stated in the said application that the rural area Committee of the Municipal Corporation of Delhi has also desired this Undertaking to extend their service in such a way as to cover the entire rural area, and that section 288 of the Municipal Corporation Act, 1957 contemplates taking of steps by Delhi Transport Committee

Zamindar Motor Transport Co. Private Ltd., v. State Transport Authority, Delhi and another

Kapur, J.

for providing or securing or promoting the provision of efficient, adequate, economical or properly co-ordinated system of road transport services for passengers and goods in the Union Territory of Delhi. Then follows the request that in view of what has been stated above and in view of the application of the Delhi Transport Undertaking their permit should be validated for the entire Union Territory of Delhi. The learned counsel refers to *the Central Karnataka Motor Services, Ltd.*, v. *The Mysore Board of Revenue, Bangalore and others* (1) and *K. Sethuramachar and another* v. *N. S. Hirannayya and others* (2) and submits that the provisions of section 46 are mandatory. Mr. Parkash Narain, however, points out that these decisions are under section 46 as it stood before the amendment by Act 100 of 1956. The only alteration relevant for the purpose of the present argument brought about by 1956 amendment was addition of the words "as far as may be". Mr. Parkash Narain submits that that alteration renders the statute directory and, therefore, non-compliance therewith would not invalidate the application. Mr. Tandon, on the other hand submits that the words "As far as may be" referred only to such particulars which for certain reasons it may not be possible to state in the application but the obligatory nature of the section was not altered. No definite rule has been ever laid down for determining whether a particular enactment is to be considered directory only or obligatory with an implied nullification for disobedience. A conclusion has to be arrived at by carefully attending to the whole scope of the statute to be construed. As was observed by Lord Penzanc in *Howard* v. *Bodington* (3)—

> "I believe, as far as any rule is concerned, you cannot safely go further than that in each case, you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

There are a large number of cases dealing with various provisions which are devoid of any indication of the

(1) A.I.R. 1960 Mysore 72.
(2) A.I.R. 1960 Mysore 90.
(3) (1877) 2 P.D. 203 (211).

intention of the legislature regarding the effect of non-compliance with them. In some of them the conditions prescribed by the statute have been regarded as essential to the act or thing regulated by it and their omission has been held fatal to its validity. In others, such prescriptions have been considered as merely directly, the disregard or disrespect of which did not affect its validity. It must, however, be borne in mind that general rule is that an absolute enactment must be obeyed or fulfilled exactly but it is sufficient if a directory enactment be obeyed or fulfilled substantially. Bearing these principles in mind we proceed to examine the provisions of the Motor Vehicles Act with a view to determining whether the prescription is mandatory or merely directory and secondly whether the addition of words "as far as may be" has made any difference in the nature of the mandate prescribed by the statute. To our mind it appears that the whole object of section 46 requiring certain particulars to be stated in the application is to enable the various persons concerned with the grant or refusal of the permit to be apprised of the various details with a view to enabling them to effectively participate in the consideration of the said application. Secton 47 enjoins on the authorities concerned to have regard to the various matters set out therein. Section 48 authorises the authorities to grant a stage carriage permit in accordance with the application or with such modification as they deem fit. It also authorises the authorities to impose various additions set out in section 48(3) of the Act. Section 57 deals with the publication, inspection and disposal of the objections and all representations made in the matter. These various sections, to our mind, show that the provisions of section 46 are required to be complied with to the extent it is possible to do so. Unless the particulars set out in section 46 or the rules are given in the application, the very object of hearing representations and objections as contemplated by section 57 may be defeated. In our view the words "as far as may be" were added only to avoid an application for stage carriage permit being thrown out on the ground that some particular which it was not possible to state had been omitted in the application. These words do not altogether dispense with the requirement of complying with the section. In any case so far as the present case is concerned there has not even been a substantial compliance with the provisions of section 46

Zamindar Motor Transport Co. Private Ltd., *v.* State Transport Authority, Delhi and another

Kapur, J.

and rule 4.7 and consequently the letter of 19th October, 1959 could not have been treated as an application. Regarding the objection of the learned counsel for the respondents whether the appellants were persons aggrieved or not, we are of the opinion that they were. They were bound to be prejudicially affected in case the Delhi Transport Undertaking was permitted to operate services parallel to the existing services of the appellants.

In view of the opinion that we have expressed on these two questions it is not necessary to deal with the other contentions raised by the learned counsel for the appellants. In the result the appeal succeeds and the permits granted to Delhi Transport Undertaking to run their buses on Delhi-Bawana; Delhi-Narela *via* Bawana; Delhi-Anchandi *via* Bawana and Delhi-Kharkhoda *via* Bawana routes quashed, There will, however, be no order as to costs.

Mahajan J. D. K. MAHAJAN, J.—I agree.

B.R.T.

INCOME TAX REFERENCE

Before Daya Krishan Mahajan and S. K. Kapur, JJ.

DELHI REGISTERED STOCKHOLDERS (IRON AND STEEL) ASSOCIATION LTD.,—Appellant.

versus

THE COMMISSIONER OF INCOME TAX, DELHI AND RAJASTHAN, NEW DELHI.,—*Respondent.*

Income Tax Reference No. 1—D of 1962

1965

March, 2nd.

Income-tax Act (XI of 1922)—Proviso to S. 2(11)(1)(a)—Order passed by Income-tax Officer refusing change in the previous year—Whether appealable.

Held, that no appeal would lie against and order of the Income tax Officer refusing change in the previous year under the proviso to sub-clause (a) of clause (1) of section 2 (11) of the Income-tax Act, 1922. Under section 3 the tax is to be charged in respect of the total income of the previous year. The previous year is defined in sub-section (11) of section 2 and under the proviso thereto once an assessee has been assessed in respect of a particular source of income or where in respect of business, profession or vocation newly set up, an assessee has exercised the option under sub-clause (c), the assessee cannot in respect of that source, business, profession or vocation