on 6th of February, 1978, by S. S. Sandhawalia and P. C. Jain, C.J., and, therefore, that decision had the approval of the Latters Patent Bench also.

11. For the view of law we have taken above, the decision of the learned Single Judge *Akhara Brahm Buta, Amritsar* v. *State of Punjab and others* (supra), would not be laying down correct law and is hereby over-ruled.

12. For the reasons recorded above, since the appellant had filed objections within the period of thirty days from the date of publication of the notification in the Official Gazette, which were duly considered, we hold that he is not entitled to impugn the notification merely on the ground that the same was published in the locality after undue delay. The letters patent appeal is dismissed but without any order as to costs.

*S. S. Sandhawalia, C. J.*—I agree.

*N. K. S.*

*Before Rajendra Nath Mittal, J.*

BAL KISHAN and another,—*Petitioners*

*versus*

STATE TRANSPORT COMMISSIIONER HARYANA and others,—*Respondents.*

*Civil Writ Petition No.* 2065 *of* 1979.

February 29, 1980.

*Motor Vehicles Act (IV of 1939)—Section 55—Large number of applicants for the grant of permits—Grant thereof by draw of lots—Such grant—Whether legal—Granting authority—Whether required to pass a speaking order.*

*Held*, that section 55 of the Motor Vehicles Act, 1939 relates to the procedure for considering applications for public carrier's

permits which *inter alia* provides that a Regional Transport Authority shall in considering an application for a public carrier's permits have regard to the advantages to the public of the service to be provided and the convenience afforded to the public by the provisions of such service and the saving of the time likely to be effected thereby. In order to determine the question as to who were entitled to get the inter zone permits, it was necessary that the interest of the public should have been taken into consideration by comparing the merits of the applicants *inter se*. It is well settled that the State Transport Commissioner while deciding the matter regarding the grant of permits is a quasi-judicial Tribunal and he has to consider on merits the claims of the respective parties. He should not take into consideration extraneous matters like guidance by the executive or administrative wing of the State. He should impartially decide the matter without any such considerations. It is the duty of the State Transport Commissioner to take into consideration the merits and demerits of each applicant and then come to a final decision as to who was entitled to get the permit. He is also required to write a speaking order giving reasons as to why he has preferred one applicant over another. An order granting permits by draw of lots is illegal. (Paras 5, 6, 7 and 8).

*Petition under Article 226 of the Constitution of India praying that—*

(a) *the order allotting the permits by lots be quashed.*

(b) *The State Transport Commissioner be directed to supply the copy of the orders allotting the permits by lots and also of the order discussing the merits of each applicants whereby be found that all the applicants are equal on merits.*

(c) *a writ of Mandamus directing the respondents to grant permits in accordance with the provisions of the Motor Vehicles Act and Rules made thereunder.*

(d) *No time is left for issuing notice as the Secretary, Regional Transport Authority is in a hurry to issue the permits as is clear from the facts that even the notices were not served to the petitioners and their names were not included while drawing the lots.*

*It is further prayed that the operation of the impugned order may be stayed and the Secretary Regional Transport Authority may be directed not to issue the permits till the decision of this writ petition.*

Laxmi Grover, Advocate, *for the Petitioner.*

B. L. Gulati, *for the State of Haryana.*

D. S. Nehra, *for respondents Nos. 3 to 7.*

JUDGMENT

*Rajendra Nath Mittal, J.*

(1) This judgment will dispose of Civil Writ Petition Nos. 2065 and 3528 of 1979, which contain same questions of law. The facts in the judgment are being given from Civil Writ Petition No. 2065 of 1979.

2. Briefly the facts are that the State Transport Commissioner, Haryana (respondent No. 1) invited applications for the grant of 15 permits under the Western and Northern Zone Schemes. The petitioners submitted applications for the grant of premits under both the Schemes in response to the notice. It is alleged that the authority concerned, according to law, is required to decide all the applications on merits, taking into consideration the criteria laid down in section 55 of the Motor Vehicles Act (hereinafter referred to as the Act). The petitioners received a letter from the Secretary, Regional Transport Authority that the permits would be granted by drawing lots. On receipt of that letter, they filed a writ petition No. 1029 of 1979. Notice of motion was issued in that writ petition and the Secretary, Regional Transport Authority, filed an affidavit on May 22, 1979, stating that all the applicants were found identical on merits, in view of the provisions contained in sections 55 and 56 of the Act. In view of the aforesaid affidavit the writ petition was dismissed.

3. It is further averred by the petitioners that they filed applications for supply of the copy of the order in which the merits of the applicants and others were discussed and found to be identical but the same has not been supplied to them in spite of their best efforts. They have then averred that the respondents had tried to over-reach this Court and stated wrongly before it that all the applicants had been found identical on merits but in fact they had not compared the merits of the applicants and no orders had been passed by the State Transport Commissioner to that effect. They have, consequently, challenged the aforesaid orders.

4. It is contended by Mr. Grover, learned counsel for the petitioners, that the State Transport Commissioner was a quasi-judicial authority. He, while considering the applications on merits, should have decided them according to the criteria laid down in section 55

of the Act. According to the counsel, he did not do so but on the other hand ordered for extraneous considerations that the permits be allotted on the basis of draw of lots. He has also submitted that in spite of the best efforts of the petitioners, the copies of the orders were not supplied to them.

5. I have heard the learned counsel for the parties at a considerable length and find force in the contention of the learned counsel for the petitioners. Section 55 of the Act relates to the procedure for considering applications for public carrier's permits. It *inter alia* provides that a Regional Tansport Authority shall in considering an application for a public carrier's permits have regard to the advantages to the public of the service to be provided and the convenience afforded to the public by the provisions of such service and the saving of time likely to be effected thereby. In order to determine the question as to who were entitled to get the interzone permits, it was necessary that the interest of the public should have been taken into consideration by comparing the merits of the applicants *inter se*. A similar matter came before the Supreme Court in *Patiala Bus (Sirhind) Pvt. Ltd.* v. *State Transport Appellate Tribunal, Punjab and others* (1), Bhagwati, J., while speaking for the Court observed as follows:—

> "The main considerations required to be taken into account in granting permit under section 47 are the interest of the public in general and the advantages to the public of the service to be provided. These would include *inter alia* consideration of factors such as the experience of the rival claimants, their past performance, the availability of stand by vehicles with them, their financial resources, the facility of well-equipped workshop possessed by them etc. Failure to take into account any of these considerations and proceeding as if the stage carriage permits were a largesse to be divided fairly and equitably amongst the rival claimants is a wholly erroneous approach suffering from an infirmity."

No doubt the aforesaid case was under section 47 of the Act. That section relates to the procedure of Regional Transport Authority in considering applications for stage carriage permits. The criteria laid down for granting stage carriages is the same which is provided in

(1) A.I.R. 1974 S.C. 1174.

section 55 of the Act. Thus the above observations are fully applicable to the present case.

6. It is also well settled by the Supreme Court that the State Transport Commissioner while deciding such cases is a quasi-judicial Tribunal and he has to consider on merits the claims of the respective parties. He should not take into consideration extraneous matters like guidance by the executive or administrative wing of the State. He should impartially decide the matter without any extraneous considerations. The following observations of the Supreme Court in *B. Rajagopala Naidu* v. *The State Transport Appellate Tribunal, Madras and others,* (2), in this regard, may be read with advantage :—

> "This scheme shows that the heirarchy of transport authorities contemplated by the relevant provisions of the Act is clothed both with administrative and quasi-judicial functions and powers. It is well settled that Ss. 47, 48, 57, 60, 64 and 64A deal with quasi-judicial powers and functions. In other words, when applications are made for permits under the relevant provisions of the Act and they are considered on the merits, particularly in the light of evaluation of the claim of the respective parties, the transport authorities are exercising quasi-judicial powers and are discharging those functions are (as?) quasi-judicial orders (Tribunals?) which are subject to the jurisdiction of the High Court under Art. 226,—*vide* New Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd., 1957 SCR 98 at p. 118: (s) AIR 1957 SC 232 at p. 241) and (1959) Supp (2) SCR 227: (AIR 1950 SC 694) and AIR 1959 SC 896 so that when we examine the question about the validity of the impugned order, we cannot lose sight of the fact that the impugned order is concerned with matters which fall to be determined by the appropriate transport authorities in exercise of their quasi-judicial powers and in discharge of their quasi-judicial functions.
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> ... ... ... ...
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> ... ... ... ...

It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely

(2) AIR 1964 SC 1573.

unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the principles which have to be followed by the Tribunal in dealing with the said matters. The scope of the jurisdiction of the Tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the Constitution. But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders.

... ... ... ...

... ... ... ...

7. The respondents along with their return have produced the copy of the order passed by the State Transport Commissioner on the basis of which it has been said that on comparison, all the applicants were found identical on merits. The order reads as follows:—

> "The applicants were heard on 24th April, 1978 at Ambala, and after that the matter was ready for decision. But on account of the number of applicants being very large and the available permits being very small, it became difficult to decide what method should be adopted for deciding the grant of these permits. *This matter has been discussed with the Secretary, Transport, Chief Parliamentary Secretary and the Chief Minister.* All the applicants operators are eligible and all trucks on which the zonal permits have been applied for are new. In these circumstances, it was suggested to the Government that drawing of lots will be the best method for deciding the grant of permits. This suggestion has been accepted by the Chief Minister (who is also the Transpot Minister) during discussion. *He has also ordered that the small truck*

> *operators be given preference in (the grant of) these permits because big operators should already be having such permits.* So it is decided that available zonal permits be given only to single truck operators and may be given by drawing lots. "The Secretaries, Regional Tansport Authorities may be informed to act accordingly," (emphasis supplied).

From the perusal of the order it is evident that the State Transport Commissioner did not decide the matter on merits. There is no finding that all applicants were found identical on merits. He has gone on extraneous considerations. The order reveals that he discussed the matter with the Secretary, Transport, Chief Parliamentary Secretary and the Chief Minister, before ordering decision by drawing of lots. He further said that the small truck operators be given preference in the permits because the big operators have already such permits. These matters could not be taken into consideration for deciding the question of grant of permits. It was the duty of the State Transport Commissioner to have taken into consideration the merits and demerits of each applicant and then to come to a final decision as to who was entitled to get the permit. He is also required to write a speaking order, giving reasons as to why he has preferred one applicant over another. A reference in this connection may be made to *The Ambala Bus Syndicate (P) Ltd.* v. *The State of Punjab and others,* (3). It was observed in that case that the order granting a temporary permit must show reasons for the grant of such a permit. What is true in the case of temporary permit is also true in the case of permanent permit.

8. The learned counsel for the respondents has made a reference to the order of the State Transport Commissioner, dated June 11, 1979, whereby the permits were granted after drawing of lots. It is not necessary to go into that order in detail as the order dated February 7, 1979, by which the order of draw of lots was made, has been held by me to be illegal. Any proceeding subsequent thereto on the basis of that order is liable to be quashed.

No other argument has been raised in Civil Writ Petition No. 3528 of 1979.

(3) 1968 P.L.R. 330.

10. For the aforesaid reasons, I accept the writ petitions with costs and quash the impugned orders. The matter can, however, be decided afresh in accordance with law and after taking into consideration the observations made above. Counsel's fee in each case is Rs. 200.

*N. K. S.*

*Before S. S. Sandhawalia, C.J.*

LEKH RAJ,—*Petitioner.*

*versus*

STATE,—*Respondent.*

*Criminal Revision No. 834 of 1977.*

February 29, 1980.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16(1) (a) (i)—Prevention of Food Adulteration Rules 1955—Appendix B, Item A. 11.02.08—Standards of purity prescribed for ice cream under the Rules—Whether also applicable to fruit cream—Sample fruit cream not conforming to such standards—Conviction under Section 16(1) (a) (i)—Whether can be recorded.*

*Held,* that fruit cream *prima facie* does not come within the description of ice-cream, *kulfi* or chocolate ice-cream nor can it be basically described as a frozen product as given in Appendix B, Item A. 11.02.08 of the Prevention of Food Adulteration Rules 1955. In ordinary parlance fruit cream does and can mean merely the admixture of fruit with cream and this would be so irrespective of any element of even cooling far from freezing. For example, strawberry with cream, or mixed fruit with cream and similar products which may be fairly labelled as fruit cream have no identity with the frozen product implied in the term ice-cream or *kulfi* etc. Therefore, there is no warrant to hold that fruit cream and ice cream are either identical or inter-changeable terms. As such no conviction can be recorded under section 16(1) (a) (i) of the Prevention of Food Adulteration Act 1954 in those cases where fruit cream does not conform to the standard prescribed for ice cream. (Para 7).

*Petition under section 401 Cr.P.C. for revision of the Order of Shri H. S. Bakshi, Additional Sessions Judge, Amritsar, dated 30th September, 1977, maintaining Judgment, dated 14th September, 1976, passed by Shri P. S. Bajaj, J.M.I.C. Amritsar, convicting & sentencing the petitioner.*

Harinder Singh, Advocate, *for the Petitioner.*

T. N. Bhalla, Advocate, *for the State.*