

PETITIONER:
SHER SINGH & ORS

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 21/10/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
REDDY, O. CHINNAPPA (J)
VARADARAJAN, A. (J)

CITATION:
1984 AIR 200 1984 SCR (1) 464
1984 SCC (1) 107 1983 SCALE (2) 531
CITATOR INFO :
RF 1986 SC 1541 (9)
R 1986 SC 2039 (2, 3, 5, 6)
R 1988 SC 18 (11)

ACT:

Constitution of India 1950 Article 14 & 19 (1) (g)
Motor Vehicles Act-1939-Section 47 (1-H) Preference to
State Transport Corporations for grant of inter-state permit
over private operators-Whether denial of equality before
law-Denial of right to carry on trade.

Motor Vehicles Act, 1939 Sections 47 (1-H) & 58 (2)-
Grant of Inter-state permit-Preference to State transport
Corporations-Whether violative of Articles 14 and 19 (1) (g)
of the Constitution.

Application for renewal of existing permit by private
operator-Whether entitled to preference over fresh
application of a State Transport Undertaking-

Tamilnadu Motor Vehicles Rules 155 A-Assignment of 5
marks to State Transport Undertaking-Whether valid.
Words & Phrases.

"as if"-Meaning of-Section 58 (2) Motor Vehicles
Act 1939.

HEADNOTE:

The petitioner in the Special Leave Petition was the
holder of a Stage carriage permit on an inter-State route He
held several permits for operation of the said route and as
the period prescribed for a few of them had expired, he
applied for renewal under section 58 of the Motor Vehicles
Act, 1939 to the Regional Transport Authority which granted
renewal. In the meanwhile, the State Road Transport
Corporation the 5th respondent made an application for
grant of a stage carriage permit for operation on the said
route. This application was advertised and the matter was
taken up for consideration. During the pendency of this
application the petitioner was granted temporary permits
under section 62 which were renewed from time to time.

When the application of the petitioner for renewal of
permits and the application of the State Road Transport
Corporation for allotment of new permit were taken up for
consideration, an objection was raised on behalf of the

Corporation that as the route was an inter-State route it was entitled to the permit in preference to the petitioner in view of section 47 (1-H). On behalf of the petitioner it was contended that section 58 entitled the petitioner to renewal of permit in preference to the Corporation. The Regional Transport Authority negatived the petitioner's contention and allotted the permit to the Road Transport Corporation.

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The petitioner in his writ petition to the High Court contended that section 47 (1-H) was constitutionally invalid and no preference could be granted in favour of the State Road Transport Corporation. The Single Judge dismissed the writ petition and the Division Bench upheld the order.

In the Special Leave Petitions to this Court it was contended on behalf of the petitioners that the State Road Transport Corporation must either take recourse to the provisions contained in Chapter IV-A of the Act, which makes special provisions relating to State Transport Undertaking or otherwise if it wants to compete without recourse to chapter IV-A it must stand in competition with other applicants for allotment of stage carriage permits. Any preference that the State Road Transport Corporation may enjoy in respect of an interstate route under sub-section (1-H) is violative of Article 14 and the fundamental freedom to carry on trade under Article 19 (1) (g). Section 58 entitled the petitioners to renewal of permit in preference to the application for grant of a new permit made by the State Transport Undertaking.

In the connected Special Leave Petitions, it was contended on behalf of the petitioner that Rule 155-A of the Tamilnadu Motor Vehicles Rules provides for a marking system under different heads to objectively assess who is the best suited for grant of the permit, and consequently an ad hoc assignment of marks and failure to weed out the application of the State Transport Corporation on the ground of disqualification for not providing night-halt cleaners vitiated the decision of the Transport Authority. Dismissing the Petitions.

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HELD: 1.(i) Section 47 (1-H) would not deny equality before law and hence would not offend Article 14. [474-E]

(ii) The Regional Transport Authority under section 47 upon a judicious consideration of merits and demerits of every applicant must in a fair and reasonable manner decide who amongst the applicants would perform the duty and carry out the obligations under the permit. However, sub-section (1-H) carves out an exception, that where an application for stage carriage permit on an inter-state route is made by a State Transport Undertaking it must be accorded preference. But while granting preference, the Regional Transport Authority must satisfy itself that the Corporation would be able to operate on the inter-state route without detriment to its responsibility for providing efficient and adequate road transport service. [471 C-D]

Dosa Satyanarayanamurty etc. v. The Andhra Pradesh State Road Transport Corporation [1961]1 S.C.R. 642 referred to.

(iii) While considering the application for stage carriage permit under section 47, the private operator has an equal chance to get a permit even on an inter-State route if it shows that the Undertaking is either unable to provide efficient and economical service or that the private operator is better equipped to render the same. Preference in this context would mean that other things

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generally appearing to be qualitatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking. [474 D]

(iv) Section 47 (1-H) provides that in the case of inter-State route, the Undertaking will have preference in the matter of stage carriage permit. The expression 'preference' amongst others, means prior right, advantage, precedence etc. It signifies that other things being equal, one will have preference over the other. [473 B]

(v) When an application for the stage carriage permit is being processed as required by sec. 47, the application of the Undertaking for an inter-State route shall be examined as an application of any other private operator. Their merits and demerits must be ascertained keeping in view the requirements of clauses (a) to (f) of sec. 47 (1) and after comparing the merits and demerits of both the application of the Undertaking will have preference over others. [473 C-D]

(vi) Qualitative and quantitative comparison on broad features of passenger transport facility such as fleet, facilities to travelling public and other relevant consideration may be undertaken and after balancing these factors other things being equal, the application of the Undertaking shall be given preference over other applicants. There is no question of eliminating private operators merely because the Undertaking applies for a stage carriage permit under Chapter IV. [473 E]

(vii) In an application under Chapter IV, the Corporation has to enter the arena like any other applicant, face the competition and come-up to the level of other Private operators intending to obtain stage carriage permits and then in respect of the route in question claim preference. Competition is the essence of improved commercial Service. [473 F]

2. (i) There is no substance in the contention of the petitioner that sec. 47(1-H) is violative of Art. 19 (1) (g) in that it denies the fundamental freedom to carry on trade because the petitioner has not been denied his free dom to carry on trade. The petitioner is entitled to make an application under Chapter IV for a stage carriage permit and must compete with other private operators as also the Undertaking. [474 F]

(ii) The Undertaking whose nett profits are required to be spent for the provision of amenities to the passengers using road transport services, welfare of labour employed by the Undertaking, for financing the expansion programmes of the Undertaking, and the balance to be made over to the State Government for the purpose of road development must receive in larger public interest preference for a permit compared to a private operator whose profits would go to argument his private income. [475 A-B]

Lachhman Das v. State of Punjab & Ors. [1963] 2 S.C.R. 353; Mannalal & Anr. v. Collector of Jhalawar and Ors. [1961] 2 S.C.R. 962 referred to.

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3 (i) If an application for renewal of a permit was to be trated differently than the application for a permit made under section 45 and perocessed under section 47 and other connected provisions, it was absolutely unnecessary for the legislature to provide that an application for renewal of a permit shall be made and disposed of as if it were an application for a fresh permit. [476 E]

(ii) The expression "as if" occurring in Section 58 (2)

in the phrase "as if it were an application for a permit .." would mean and imply that the application for renewal must be made in the same manner and to the same extent as an application for a fresh permit and must be processed as such. This means that even where an existing permit holder applies for renewal, it has to be advertised and fresh applicants can apply for a permit. [476F]

(iii) Section 47 (1-H) would also come into play when an application is for renewal of a permit on an inter-State route. There is no conflict between Section 47 (1-H) and Section 58 (2). [476 G]

4. Once the assignment of 5 marks to the State Transport Undertaking, is held to be valid the Transport Authority was perfectly justified in refusing renewal of permits to the petitioners. Regarding failure to explain absence of nighthalt cleaners, in the absence of concrete evidence, no inference can be drawn. [478 G-H]

D.R. Venkatachalam & Ors. v. Dy Transport Commissioner
JUDGMENT:

&
CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 6605 of 1983.

From the Judgment and Order dated the 6.4.1983 of the Rajasthan High Court in D.B. Special Appeal No. 74 of 1983.

WITH

Special Leave Petition Nos. 9678-9680 of 1982.

From the Judgment and Order dated the 4th October, 1982 of the Madras High Court in C.R.P. No. 2880-82/1978.

AND

Write Petition Nos. 9600-9601 & 9759-9760 of 1983.

Under Article 32 of the Constitution of India.

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K.K.Venugopal and Mukul Mudgal for the Petitioner in SLP. 6605/83.

Shanti Bhushan, S.K. Jain and B.M. Mathur for the Respondents in SLP. 6605/83.

C.S. Vaidyanathan for the Petitioner in SLP (Civil) Nos. 9678-9680 of 1982.

Dr. Y.S. Chitale and A.V. Rangam for the Respondents in SLP (Civil) Nos. 9678-9680 of 1982.

S.N. Kacker and A.K. Panda for the Petitioners in Writ Petitions.

Shanti Bhushan and B.N. Mathur, S.K.Jain & S.D. Sharma for the Respondents in Writ Petitions.

The Judgment of the Court was delivered by

DESAI, J. In this group of special leave petitions and writ petitions, constitutional validity of Sec. 47 (I-H) of the Motor Vehicles Act, 1939 ('Act' for short) directly or indirectly figures. With a view to focussing attention on the context in which the question is raised, it may be advantageous to refer to the factual matrix in S.L.P. 6605/83, in which the learned Single Judge and the Division Bench of the High Court repelled the challenge. We would first deal with the principal challenge common to all petitions and then dispose of specific contention raised in other petitions clubbed together here. For representative facts we would refer to S.L.P. 6605/83.

Re: S.L.P. No. 6605/83: Petitioner Sher Singh is the holder of a stage carriage permit on Behror-Rewari via Barrod, Shahjahanpur inter-State route. A portion of the route from Bahror to National Highway No. 8 via Barrod and Shahjahanpur 28 k.ms. in length passes through Rajasthan

State and the rest of the portion of the route 22 K.ms. in length lies in Haryana State. It is thus an inter-State route. Petitioner holds 12 permits, for operating on the aforementioned route. Of the 12 permits, the period prescribed under 8 permits expired and the petitioner applied for the renewal of the permits under Sec. 58 of the Act. Regional Transport Authority granted renewal of the permits upto and inclusive of January 20, 469

1981. The petitioner again applied for renewal of the permits on December 29, 1980. The Rajasthan State Road Transport Corporation, fifth respondent ('Corporation' for short) made an application to the Regional Transport Authority on April 20, 1981 for stage carriage permit on the aforementioned route. This application was as usual advertised. The application of the petitioner for the renewal of his permits accordingly was taken up for consideration on April 30, 1981. Pending the consideration of the application for renewal of permits, petitioner was granted temporary permits under Sec. 62 for a period of four months commencing from the date of the expiry of the earlier permit. The temporary permits were thus to expire on May 20, 1981. And these temporary permits were further renewed for a period of 4 months. Thereafter the application of the petitioner for renewal of his permits and the application for stage carriage permit made by the Corporation were taken up for consideration. An objection was raised by the Corporation that as the route in question is an inter-State route, it is entitled to permit in preference to the petitioner in view of the provision contained in Sec. 47 (I-H) of the Act. On the other hand, it was contended on behalf of the petitioner that in view of the provision contained in Sec. 58, the petitioner is entitled to renewal of his permits in preference to the Corporation, which has made an application for a fresh permit. This contention found favour with the Regional Transport Authority and the renewal of permits was refused to the petitioner and the permits were granted to the Corporation. This decision was questioned in a writ petition filed by the present petitioner in which the only contention raised was that the preference was accorded to the Corporation for grant of a permit under Sec. 47 (I-H) of the Act which is constitutionally invalid, and once no such preference could be granted, the preference in favour of a renewal of permit under Sec. 58 should have a precedence and the renewal ought to have been granted.

It was contended before the learned Single Judge of the High Court that Sec. 47 (I-H) is violative both of Art. 14 and Art. 19 (1) (g) and is thus constitutionally invalid. That was the only contention canvassed before the learned Single Judge which did not find favour with him as well as the Division Bench of the Rajasthan High Court. Hence the petitioner filed this petition for special leave. A notice was ordered to be issued to the respondent and it was directed that the petition be finally disposed of at this stage as the only question raised is one of law and no investigation of facts is necessary.

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A brief reference to the relevant provisions of the Act may help us in demarcating the contours of controversy with precision. Chapter IV of the Act contains provisions for control of transport vehicles. For regulating the transport business, a scheme for granting different types of permits has been statutorily prescribed. There are various kinds of permits contemplated by the Act such as stage carriage permit, contract carriage permit, all India tourist permit,

special permit, permits for transport of goods etc. Various authorities have been constituted under the Act for the purpose of implementing the Act. Power has been conferred upon specific authorities for granting different kinds of permits. Sec. 47 prescribes procedure which the Regional Transport Authority has to follow while examining and deciding an application for stage carriage permit. Sec. 47 was specifically amended by Act 47 of 1978 which came into force on January 16, 1979. By the Amending Act, sub-secs (1-A) to (1-H) were added to Sec. 47. The focus of controversy is on subsec. (1-H). Sub-sec. (1-H) reads as under:

"(1-H): Notwithstanding anything contained in this section, an application for stage carriage permit from a State Transport undertaking for operating in any inter-State route shall be given preference over all other applications:

Provided that the authority shall not grant a permit under this sub-section unless it is satisfied that the State transport undertaking would be able to operate in the inter-State route without detriment to its responsibility for providing efficient and adequate road transport service in any notified area or notified route as is referred to in sub-section (3) of Section 68-D where the undertaking operates the service.

Explanation:-For the purposes of this sub-section, 'inter-State route' means any route lying contiguously in two or more States.'

A bare reading of the provision contained in sub-sec. (1-H) shows that where a Corporation set up under the Road Transport Corporations Act, 1950 is one of the applicants for a stage carriage permit on an inter-State route, then as between other applicants and a State Transport Undertaking ('Undertaking' for short), the latter

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will have preference over others. Routine statutory procedure prescribed in Sec. 47 for grant of a stage carriage permit requires the Regional Transport Authority which has the power to grant permit before selecting who amongst the numerous applicants should be granted the permit must take into consideration various things that are enumerated in Sec. 47. Fair approach would be that after examining the credentials of every applicant, the Regional Transport Authority shall grant permit to the person who in its opinion would best serve the travelling public. The Regional Transport Authority upon a judicious consideration of merits and demerits of every applicant must in a fair and reasonable manner decide who amongst the applicants would perform the duty and carry out the obligations under the permit. However, sub-sec. (1-H) carves out an exception to this generally well-recognised principle that an administrative authority has to adopt while exercising the power conferred upon it by the statute, that where an application for a stage carriage permit on an inter-State route is made by all intending applicants which includes a State Transport undertaking, its application must be accorded preference. But while granting preference, the Regional Transport Authority must satisfy itself that the Corporation would be able to operate on the inter-State route without detriment to its responsibility for providing efficient and adequate road transport service in any notified area or notified route as is referred to in sub-sec. (3) of Sec. 68-D where the undertaking operates the service.

At this stage, a reference to Sec. 58 would be useful. It provides for duration and renewal of stage carriage and

contract carriage permits other than temporary permit granted under Sec. 62. An existing holder of permit may apply for renewal of permit. Sub-sec. (2) of Sec. 58 requires that a permit may be renewed on an application made and disposed of as if it were an application for a permit. There is a proviso to sub-sec. (2) which prescribes the time limit within which an application for renewal of different kinds of permits may be made. There is a second proviso which is material and which may be extracted:

"Provided further that other conditions being equal, an application for renewal shall be given preference over new applications for permits."

Chapter IV-A was introduced in the Act by Amending Act 100 of 1956 which came into force on February 2, 1957. Chapter IV-A makes special provisions relating to State Transport Undertaking.

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The broad scheme of Chapter IV-A is that a State Transport Undertaking may prepare and publish a scheme on road transport service. On the publication of the scheme, objections can be filed as provided in Sec. 68-D. Sec. 68-E confers powers for modification and cancellation of the Scheme. Then comes Sec. 68-F which provides that where, in pursuance of an approved scheme, any State transport undertaking applies, in such a manner as may be prescribed by the State Government in this behalf, for a stage carriage permit or a contract carriage permit in respect of a notified area or notified route, the State Transport Authority in any case where the said area or route lies in more than one region and the Regional Transport Authority in any other case shall issue permit to the State Transport undertaking, notwithstanding anything to the contrary contained in Chapter IV. In short in respect of a notified area or a notified route, an application for permit by State Transport undertaking shall be granted to the exclusion of any other operator. Apart from this specific provision in Sec. 68-F, this outcome to some extent also emerges from the provision contained in Sec. 68-B which provides that the provisions of Chapter IV-A and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent there with contained in Chapter IV of the Act or any other law for the time being in force or in any instrument having effect by virtue of any such law.

The first contention raised on behalf of the petitioner was that the State Transport Undertaking must either take recourse to provision in Chapter IV-A or otherwise if it wants to compete without recourse to Chapter IV-A, it must stand in competition with other applicants for stage carriage permit and any preference that it may enjoy in respect of inter-State route under sub-sec. (1-H) of Sec. 47 is violative of Art. 14 and is denial of fundamental freedom to carry on trade guaranteed to petitioners by Art. 19 (1) (g).

At the outset it is necessary to bear in mind the legal position of a State Transport Undertaking when dealt with under Chapter IV-A and Chapter IV of the Act. If an approved scheme in respect of a notified area or a notified route is in force, State Transport Undertaking alone is entitled to operate vehicles and therefore is entitled to obtain stage carriage permits both regular and temporary depending upon whether the scheme provides for total or partial exclusion of private operators. However, when an application for a permit is made under Chapter IV, the Undertaking has to compete

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with private operators who may as well make an application for permit. When the Undertaking applies for permit under Chapter IV, it must satisfy the Regional Transport Authority that it is better suited than the private operator to render transport facility to the travelling public. Sec. 47 (1-H) however, provides that in the case of inter-State route, the Undertaking will have preference in the matter of stage carriage permit. Does preference of this nature deny equality guaranteed by Art. 14 ? The expression 'preference' amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other. It signifies that other things being equal, one will have preference over the others. When an application for a stage carriage permit is being processed as required by Sec. 47, the application of the Undertaking for an inter-State route shall be examined as application of any other private operator. Their merits and demerits must be ascertained keeping in view the requirements of (a) to (f) of Sec. 47 (1) and after comparing the merits and demerits of both, not with the yardstick of mathematical accuracy, but other things being equal, the application of the Undertaking will have preference over others. Qualitative and quantitative comparison on broad features of passenger transport facility such as fleet, facilities to travelling public and other relevant consideration may be undertaken and after balancing these factors other things being equal, the application of the Undertaking shall be given preference over other applicants. There is no question of eliminating private operators merely because the Undertaking applies for a stage carriage permit under Chapter IV. That situation is catered to under Chapter IV-A. In an application under Chapter IV, Corporation has to enter the arena like any other applicant, face the competition and come-up to the level of other private operators intending to obtain stage carriage permits and then in respect of the route in question claim preference. Would this statutory provision violate equality guaranteed by Art. 14 ? The answer is obviously in the negative. Competition is the essence of improved commercial service. After ensuing competition in matter of rendering more efficient transport service a public sector undertaking is assured statutory preference, remember no monopoly, there is no denial of equality guaranteed by Art. 14 ? A similar argument when the vires of the provisions contained in Chapter IV-A were questioned in Dosa Satyanarayanamurty etc. v. The Andhra Pradesh State Road Transport Corporation (1) did not commend to the Constitution Bench when it repelled the challenge observing as under:

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"Ordinarily a State Transport Undertaking should be in a better position than others to carry on the said services for the benefit of the public; administratively, financially and technically it can be expected to be in a far better position than others. It can provide more well equipped buses, give better amenities to the travelling public, keep regular timings repair or replace the buses in emergencies. It may also employ efficient supervisory staff to keep things going at an appreciably high standard."

This would apply mutatis mutandis to the present situation. But let it be made clear that while considering the application for stage carriage permit under Sec. 47, the private operator has an equal chance to get a permit even on inter-State route if it shows that the Undertaking is either unable to provide efficient and economical service or that the private operator is better equipped to render the same.

Preference in this context would mean that other things generally appearing to be qualitatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking. Viewed from this perspective the provision contained in Sec. 47 (1-H) would not deny equality before law and hence would not offend Art. 14.

The next contention was that Sec. 47 (1-H) is violative of Art. 19 (1) (g) in that it denies to the petitioner the fundamental freedom to carry on trade. There is no substance in this contention because the petitioner has not been denied his freedom to carry on trade. The petitioner is entitled to make an application under Chapter IV for a stage carriage permit and must compete with other private operators as also the Undertaking. It is too late in the day to contend that a preference in favour of the Undertaking would be violative of Art. 19 (1) (g) for the obvious reason that Undertaking like all other applicants for permit has to compete for a permit. It may be recalled that when it came to the provisions of Chapter IV-A, this Court has more often than once upheld the validity of the provisions contained in Chapter IV-A and repelled the challenge of its being violative of Art. 19 (1) (g), even though the private operator may be wholly excluded from even applying for a permit in respect of a notified area or a notified route being part of an approved scheme. From a slightly different angle, the challenge may be repelled in that other things

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being equal, even apart from the statutory preference, the Undertaking whose net profits are required to be spent for the provision of amenities to the passengers using road transport services, welfare of labour employed by the Undertaking, for financing the expansion programmes of the Undertaking, and the balance to be made over to the State Government for the purpose of road development must receive in larger public interest preference for a permit compared to a private operator whose profits would go to augment his private income. Sec. 30 of the Road Transport Corporation Act, 1950 makes statutory provision for disposal of net profits of a State Transport Undertaking. In a slightly different context, this Court in *Lachman Das v. State of Punjab & Ors.* while repelling the challenge to the validity of Patiala Recovery of State Dues Act, IV of 2002 BD approved the ratio in *Mannalal & Anr. v. Collector Of Jhalawar and Ors.*(2) in which it was held that the dues of the Government of a State are the dues of the entire people of the State. This being the position, a law giving special facility for the recovery of such dues cannot, in any event, be said to offend Art. 14 of the Constitution.' This very approach requires to be adopted while examining the challenge under Art. 19 (1) (g).

It was next contended that petitioner was an existing permit holder and therefore, under Sec. 58 it was entitled to renewal of its permits in preference to the applications for new permits made by the Undertaking. The second proviso to Sec. 58 (2) does provide that 'other conditions being equal, an application for renewal shall be given preference over new applications for permits.' What has surprised us the most is that while the petitioners have a serious grievance against the preference accorded to the Undertaking for a permit on the inter-State route under Sec. 47 (1-H), the same petitioner is keen to protect preference in favour of the renewal of a permit against a new applicant statutorily provided in Sec. 58. But Sec. 58 also manifests the legislative intention when it uses the expression

preference with an adjectival clause 'that other conditions being equal', an application for renewal will have a preference over the new applications.

The first submission in this behalf is that when an application is made for a renewal of a permit, it has to be considered only under

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Sec. 58 and the preference therein provided excludes any consideration of an application for a permit under Sec. 47. Approaching the matter from this angle, it was contended that as the present petitioner has made an application for the renewal of the permit, he should have been accorded preference as mandated by the second proviso to Sec. 58(2) over the fresh application of the Undertaking and consideration of the application of the renewal of the permit under Sec. 58 excludes importing of the provisions of Sec. 47. This approach overlooks a specific provision enacted in sub-sec. (2) of Sec. 58 which provides as under:

"58 (2) A permit may be renewed on an application made and disposed of as if it were an application for a permit ..."

When a statute prescribes that an application for renewal of a permit shall be made and disposed of as if it were an application for a permit, the legislature incorporated by pen and ink all those provisions which are applicable for grant of a permit upon a fresh application made in this behalf. If an application for renewal of a permit was to be treated differently than the application for a permit made under Sec. 45 and processed under Sec. 47 and other connected provisions, it was absolutely unnecessary for the legislature to provide that an application for renewal of a permit shall be made and disposed of as if it were an application for a fresh permit. The expression 'as if' is used to make one applicable in respect of other. Therefore, the expression 'as if' used in Sec. 58 (2) would mean and imply that the application for renewal must be made in the same manner and to same extent an application for a fresh permit and must be processed as such. This would mean that even where an existing permit holder applies for a renewal of his permit, it has to be advertised and fresh applicants can as well apply for a permit to ply vehicles on the same route for which the previous holder of permit has applied for renewal of his permit. After considering all such applications, other conditions being equal, an existing operator who has applied for renewal will have preference. Therefore, by necessary interpretation, Sec. 47 (1-H) would also come into play when an application is for renewal of a permit on an inter-State route. There is no conflict between Sec. 47 (1-H) and Sec. 58 (2). It is therefore, not possible to accept the submission that while considering the application for renewal of a permit, Sec. 47 (1-H) is not attracted.

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It appears that the State of Rajasthan had amended Sec. 58 (2) in its application to that State by engrafting a third proviso to sub-sec. (2) of Sec. 58 by Rajasthan Act 8 of 1973, which reads as under:

"Provided also that other conditions being equal, an application for stage carriage permit by a State Transport Undertakings, as defined in Section 68-A, whether an application for renewal or a new application shall be given preference over all other applications for renewal."

Addition of this proviso merely makes explicit what was implicit in sub-sec. (2) of Sec. 58. Nothing was pointed out

to us to hold that the Rajasthan State Legislature lacked competence to add the aforementioned proviso to sub-sec. (2) of Sec. 58.

Re: S.L.Ps. Nos. 9678 to 9680/82:

In this group of petitions for special leave, it was contended before the High Court that as Pallavan Transport Corporation Ltd., the first respondent, did not make provision for night halt cleaners, the application for permits made by them were liable to be screened. The High Court declined to examine this contention on the short ground that this contention was not raised before the State Transport Appellate Tribunal. For the same reason, we could as well have declined to examine this contention. However, it may as well be pointed out that even if the contention is to be examined on merits, there is no substance in it. The State of Tamil Nadu has framed what are styled as Tamil Nadu Motor Vehicles Rules. Rule 155-A provides for a marking system under different heads to rival claimants for permit to objectively assess who amongst them is the best to whom permit should be granted. Before proceeding to assign marks under different heads, the Transport Authority has to screen applications so as to weed out those unsuitable on one or the other ground mentioned in the rule. One such disqualification is the failure to provide for night halt cleaners. It was urged that after the Transport Authority made the enquiry from the first respondent-Corporation whether it has provision for night halt cleaners, without waiting for the clarification, the Transport Authority proceeded to dispose of the application. It was next pointed out that Rule 155-A (3) (d) provides that 5 marks shall be awarded to the applicant falling within the proviso to cl. (c) of Sec. 62 of the Act which means and implies a State Transport Undertaking. The

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grievance is that such adhoc assignment of marks and failure to weed out the application on the ground of disqualification for not providing night halt cleaners has vitiated the decision of the Transport Authority. The validity of Rule 155-A and its various sub clauses came up for consideration of this Court in D.R. Venkachalam & Ors. vs. Dy. Transport Commissioner & Ors.(1) This Court repelled the challenge especially to the provision for assigning 5 marks to a State Transport Undertaking observing as under:

"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 people's 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."

On the question of assignment of 5 marks to State Transport Undertaking this Court held that 'this is not an arbitrary stroke of favouritism because there are many promotional factors bearing on the interest of the travelling 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'. The Court further observed that 'the superiority in many respects of State Transport

Undertakings, in the legislative judgment, has led to r. 155-A'. The Court ultimately held that the assignment of marks under r. 155-A is geared to public interest, which is the desideratum of s. 47 (1) of the Act. Once the assignment of 5 marks to State Transport Authority Undertaking is held to be valid, the Transport Authority was perfectly justified in refusing renewal of permits to the petitioners in comparison to the State Transport Undertaking. As for failure to explain absence of night halt cleaners, in the absence of concrete evidence, no inference can be drawn. This was the only additional contention in this group of petitions and we find no substance in it.

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These are all the contentions in this group of petitions and as we find no substance in any of them, all the petitions are dismissed with no order as to costs.

N. V. K.

Petitions dismissed.

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