

PETITIONER:
MOHD. IBRAHIM ETC.

Vs.

RESPONDENT:
STATE TRANSPORT APPELLATE TRIBUNAL, MADRASET.C.

DATE OF JUDGMENT:
30/04/1970

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
HIDAYATULLAH, M. (CJ)
DUA, I.D.

CITATION:
1970 AIR 1542 1970 SCC (2) 233
CITATOR INFO :
R 1972 SC2110 (2)
F 1974 SC 391 (6)
F 1975 SC 386 (2,3)
F 1978 SC 949 (5,8)
R 1984 SC 9 (7)
RF 1988 SC1676 (5)

ACT:
Motor Vehicles Act (4 of 1939), ss. 47, 57 and 63-Scope of
in relation to permits within a region, inter-regional
permits and inter-State permits.

HEADNOTE:

(1)A Regional Transport Authority is not required under s. 47(3) of the Motor Vehicles Act, 1939 to take into consideration any representations of the nature mentioned in s. 47(1) of the Act because there is first total absence in s. 47(3) of any reference to representations mentioned in s. 47(1) and secondly the Regional Transport Authority while acting under s. 47(3) does not deal with any dispute between operators and is confined to its own administrative policy. [480 A. D-F]

Neither the provision of a right of appeal under s. 64 read with r. 147(2) to a 'person aggrieved' by an order under s. 47(3) nor the right to apply for a revision under s. 64A, is itself decisive of the true function of the Regional Transport Authority under s. 47(3), and as to whether the said authority has to grant hearing to persons at the time of fixing the number of permits. While acting under s. 47(3) the Regional Transport Authority is the master of its own procedure, because it does not deal with individual or competing rights of operators, but is required to arrive objectively at its own conclusion independent of any application or representation by operators. [481 B-E]

Therefore, the Regional Transport Authority is not obliged to hear operators while exercising jurisdiction under s. 47(3) in fixing the limit of number of permits. [481 E]

(2)When the Regional Transport Authority approves a proposal of the Secretary of the Authority to open a new route or to have an additional permit on an existing route and, therefore notifications under s. 57(2) are made in

respect of grant of permit on a new route or an ' additional permit on an existing route, it can reasonably be held that there has been a valid order under s. 47(3), because, it is not the form but the substance of the order that has to be considered. [487 D-E; A-C]

(3)The limit of number of permits fixed by the Regional Transport Authority under s. 47(3) cannot be modified by the Regional Transport Authority when exercising the separate power of granting permits under s. 48, or even by the State Appellate Transport Authority dealing with appeals against the grant of permits. Section 48 begins with the words ,subject to the provisions of s. 47 meaning thereby that the jurisdiction to grant permits is subject to the determination of the limit of number of permits. It is in the scheme of the Act that limit should be fixed before the grant of permits and proper effect can be given to these provisions by deciding upon the limit of number of permits before application for grant

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of permits are invited under s. 57(2) of the Act and in other cases before application for grant of permits are published under s. 57(3) of the Act to enable persons to make representations. The central idea is that applicants and those who make representations should all know the limit of number of permits to be granted in order to ensure free and fair competition [485 A-G, D; 501 A-C]

(4)Though the scheme of the statute has not been followed in all the appeals in the present case, the Regional Transport Authority fixed the limit of number of permits before it actually considered the applications for grant of permit and all parties competed for the grant on that basis and no one expressed any grievance at the time. In the facts and circumstances of the present appeals it was found that there was a valid order under s. 47(3) of the Act and further there was a notification under s. 57(2) of the Act. [502 B-E]

Abdul Mateen v. Ram Kailash Pandey, [1963] 3 S.C.R. 523, M/s.Jaya Ram Motor Service v. S. Rajarathinan, C.A. No. 95/65 dt. 27-10-67, Baluram v. State Transport, Appellate Authority, M.P., C.A. No. 727/65 dt. 22-3-68 and R. Obilaswami Naidu v. Addl. State Transport Appellate Tribunal, Madras, [1969] 1 S.C.R. 730, followed.

(5)Section 47(3) will not apply to inter-State, permits, because, the provision relates to a Regional Transport Authority limiting the number of permits in the region or in any specified area or on any specified route within the region. It is confined in its operation in or within the region-.Sections 45 and 63 establish that in the case of an inter-State permit an application has to be made to the concerned Regional Transport Authority under s. 45 and the permit has to be countersigned by the appropriate authority concerned of the other State under s. 63, and the provisions of s. 57 need not be followed for the grant of counter-signatures. Section 63A, 63B and 63C refer to inter-State Transport Commission to be established by the Central Government for dealing with inter-State permits. In the absence of directions by such Commission or rules by the Central Government, the only way of harmonising the powers and functions of Road Transport Authorities in relation to inter-State routes, is that they should exercise their powers within their respective spheres of granting and counter-signing permits by agreement and accord. [483 D-H] Similarly, in view of the fact that s. 47(3) is restricted in its field in or within the region, its provisions do not apply to inter--regional permits also. Section contemplates

rules and conditions subject to which and the extent to which, a permit shall be valid in another region within the State without counter-signature, but in the absence of such rules, the relevant authorities will have to ensure agreement and act in concert. [484 F-H]

The number of permits in a region can be fixed by the Regional Transport Authority of that region but it will be for that region only. 'The number of permits for inter-State as well as inter-regional routes, beyond the frontier of the region, can only be determined by agreement. When the authorities in the two regions have thus agreed to open a new route or to have an additional vehicle and applications are invited for the grant of a permit in the case of inter-State or inter-regional permits, though s. 47(3) does not apply, to such routes, it will amount to an order, deciding upon the number of permits arrived at by agreement, before granting the permits. [499 B-D]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2322 ,of 1970 etc.

Appeals from the judgment and orders dated October 27, 1969 etc. of the Madras High Court in Writ Petitions Nos. 2709 of 1968 etc.

K.K. Venugopal and R. Gopalakrishnan, for the appellant (in C.As. Nos. 2322 and 2378 of 1969).

C. S. Prakasha Rao and R. Gopalakrishnan, for the appellants (in C.A. Nos. 2453-2456 of 1969 etc.)

N.G. Keishna Iyengar and R. Gopalakrishnan, for the appellants (in C.As. Nos. 2379 of 1969 etc.)

R. Gopalakrishnan, for the appellants (in C.A. No. 2608 of 1969) and respondent No. 1 (in C.A. No. 2341 of 1969).

S. Mohan Kumaramangalam, M. K. Ramamurthi, M. N. Rangachari, Shyamala Pappu and Vineet Kumar, for the appellants, (in C.A. No. 2332 of 1969).

M.N. Rangachari, Shyamala Pappu and Vineet Kumar, for the appellants (in C.A. Nos. 2323 of 1969 etc.)

M.K. Ramamurthi, Shyamala Pappu and Vineet Kumar, for the appellants (in C.A. Nos. 2478 of 1969 etc.)

M.K. Ramamurthi, V. Subramanian and K. Jayaram, for the appellants (in C.A. No. 2338 of 1969).

V.Submmnian and K. Jayaram, for the appellants (in C.A. No. 2339 of 1969 etc.)

K.Thirumalai and K. Jayaram, for the appellants (in C.A. Nos. 2353 of 1969 etc.)

A.R. Ramnathan and K. Jayaeam, for the appellants (in C.A. No. 8 of 1970).

V.T. Gopalan and K. Jayaram, for the appellants (in C.A. No. 2354 of 1969 etc.)

K.Jayaram, for the appellants (in C.As. Nos. 2368 of 1969 ,etc.)

A.R. Ramanathan and K. Jayaram, for respondent No. 1 (in C.A. No. 2333 of 1969) and respondent No. 2 (in C.A. No. 2323 of 1969).

K.K. Venugopal, K. R. Nambiar and A. S. Nambiar, for the :appellants (in C.As. Nos. 2326 of 1969 etc.)

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V.T. Gopalan, A. T. M. Sampath and E. C. Agrawala, ' for respondent No. 1 (in C.A. No. 2326 of 1969).

K.Thirumalai, A. T. M. Sampath and E. C. Agrawala, for respondent No. 5 (in C.A. No. 2337 of 1969) and respondent No. 7 (ill C.A. No. 2380 of 1969).

M.N. Rangachari and Madan Mohan, for respondent No. 1 (in C.A. No. 2344 of 1969), respondent No. 2 (in C.A. No. 2349 of 1969), respondent No. 3 (in C.A. No. 2337 of 1969) and respondent No. 6 (in C.A. No. 2356 of 1969).

S.Balakrishnan and N. M. Ghatate, for respondent No. 2 (in C.A. No. 2337 of 1969).

R. Mahalingier, for respondent No. 2 (in C.A. No. 2338 of 1969) and respondent No. 3 (in C.A. No. 2356 of 1969).

S. Shaukat Hussain, for respondent No. 6 (in C.A. No. 2486 of 1969).

N.G. Krishna Iyengar, P. N. Tiwari, J. B. Dadachanji, O.

C. Mathur and Ravinder Narain, for respondent No. 2 (in C.As. Nos. 2453 and 2358 of 1969).

The Judgment of the Court was delivered by

Ray, J. These appeals by certificate turn primarily on the interpretation of section 47(3) of the Motor Vehicle_s Act, 1939 (hereinafter called the Act) and raise two questions. First, whether the Regional Transport Authority in limiting the number of stage carriages for which stage carriage permits may be granted in the region or in any specified area or on any specified route in the region is required to hear persons or the said authority can limit the number of stage carriages for which permits may be granted by an administrative order under section 47 (3) of the Act. The second question is whether in the facts and circumstances of these appeals there was in each case a valid order under section 47(3) of the Act limiting the number of stage carriages for which permits might be granted.

Chapter IV of the Act deals with control of transport vehicles. Chapter IV consists of sections 42 to 68. Section 42 speaks of permits for use of transport vehicles. Section 44 contemplates the Transport Authorities which are the State Transport Authorities or the Regional Transport Authorities. A State Transport Authority coordinates and regulates the activities and policies of the Regional Transport Authorities of the State and performs the duties of a Regional Transport Authority where there is no such Authority and settles all disputes and.

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-decides all matters on which difference of opinion arise between the Regional Transport Authorities. Section 45 of 'the Act mentions the Authority to whom application for permit shall be made. Section 46 of the Act gives the particulars which an application for stage carriage permit shall contain. Section 47, of the Act deals with procedure of a Regional Transport Authority in considering application for stage carriage permits. Section 48 confers power on the Regional Transport Authority to grant stage carriage permits. Section 57 relates to the procedure in applying for and granting permits. Section 63 deals with validation of permits for use outside the region in which it is granted. We have referred mainly to the sections which are important for purposes of determination of the questions involved in these appeals.

We shall first deal with the question as to whether a Regional Transport Authority in limiting the number of stage carriages for which permits may be granted as contemplated in section 47(3) of the Act-is required to hear persons or it can determine the limit by an administrative order without hearing persons. In considering the question whether the Regional Transport Authority in limiting the number of stage carriage permits for which permits may be granted acts in a quasi-judicial or in an administrative manner, a distinction must be noticed between the jurisdiction and functions of a Regional Transport Authority

in relation to grant of stage carriage permits on the one hand and limiting the number of stage carriage permits on the other. A Regional Transport Authority while acting under section 47(3) of the Act exercises authority and jurisdiction which is entirely different from the jurisdiction and authority of a Regional Transport Authority while considering applications for granting stage carriage permits. It has been decided by this Court in Abdul Mateen v. Ram Kailash Pandey & Ors.(1) and the later decisions in M/s. Jaya Ram Motor Service v. S. Rajarathinam & Ors. (2) Baluram v. The State Transport Appellate Authority Madhya Pradesh & Ors. (3) and R. Obliswami Naidu v. The Addl. State Transport Appellate Tribunal, Madras & Ors.(4) that the Regional Transport Authority has to fix the limit of number of stage carriage permits under section 47(3) of the Act prior to the grant of stage carriage permits.

The difference between jurisdiction of the Regional Transport Authority while limiting the number of stage carriage permits and its jurisdiction in relation to grant of permits is recognised in section 57 of the Act. Section 57 deals with

(1) [1963] 3S.C.R. 523. (2) Civil Appeal No. 95 of 1965 decided on 27-10-1967.

(3) Civil Appeal No. 727 of 1965 decided on 22-3-1968.

(4) [1969] 1 S.C.R. 730.

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procedure in applying for and granting permits. A Regional Transport Authority is required to dispose of applications for grant of permits at a public hearing at which the applicant and the persons making representations in connection with the application are heard. The Regional Transport Authority is further required to give reasons in writing for refusal to grant permits to an applicant. The right of persons to make representations in connection with the application for the grant of permit arises by reason of section 57(3) of the Act which provides for the publication of an application for a stage carriage permit together with a notice of the date before which representations in connection therewith should be made to the Regional Transport Authority.

This procedure of hearing applications and representations in connection therewith is not applicable when the Regional Transport Authority limits the number of stage carriages for which permits may be granted. Sections 47, 48 and 57 of the Act deal mainly with jurisdiction, power and procedure of the Regional Transport Authority in relation to consideration of application for and grant of permits. Section 47(3) of the Act is the only provision which is applicable to the jurisdiction, power and procedure of the Regional Transport Authority while limiting the number of stage carriages for which permits may be granted. In section 47(3) of the Act it is said that a Regional Transport Authority may having regard to the matters mentioned in sub-section (1) limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region.

-Sub-section (1) of section 47 of the Act states that a Regional Transport Authority shall in considering an application for stage carriage permit have regard to matters enumerated in clauses (a) to (f) thereof and shall also take into consideration any representations made by persons already providing transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road

transport facilities or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies. In other words, section 47 (1) of the Act enjoins that a Regional Transport Authority while considering applications for stage carriage permits shall have regard to the matters mentioned in clauses (a) to (f) thereof and shall also take into consideration any representations as mentioned in the said sub-section.

Section 47 (3) of the Act, on the other hand, speaks only of the matters mentioned in sub-section (1) which a Regional

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Transport Authority may have regard to while limiting the number of stage carriages. The total absence in section 47(3) of the Act of any reference to representations mentioned in section 47(1) of the Act indicates that a Regional Transport Authority under section 47(3) of the Act is not, required to take into consideration any representation of the nature mentioned in section 47(1) of the Act. Representations mentioned in section 47(1) of the Act are referable to representations contemplated in section 57(3) of the Act. These, representations are those made by operators to the Regional Transport Authority after the publication of an application for a stage carriage permit. In view of the provisions of the Act and, in particular, section 48 of the Act which enacts that a Regional Transport Authority subject to the provisions of section 47 may grant a stage carriage permit, it is manifest that representations contemplated in sections 47(1) and 57(3) of the Act are, representations subsequent to the application for grant of permit, and, therefore, these representations do not at all enter the field of determination of number of stage carriages under section 47(3) of the Act. Representations mentioned in section 47(1) of the Act relate to representations by and between the competitors and contenders for grant of a permit. These individual representations raise rival contentions between operators. When the Regional Transport Authority acts under section 47(3) of the Act it does not deal with any dispute between operators. The Regional Transport Authority is required to arrive at its decision under section 47(3) of the Act having regard, to matters mentioned in section 47(1) of the Act independent of any representation by operators or any hearing. The deliberation as well as the decision of the Regional Transport Authority under section 47(3) of the Act is confined to its own administrative policy and order. The Regional Transport Authority in limiting the number of stage carriage permits under section 47(3) of the Act may, address itself to the matters enumerated in subsection (1) of section 47 of the Act and the said Authority is not required to hear operators at the time of the consideration of the matter of determining the limit of number of permits.

Counsel for the respondent relied on section 64 of the Act which conferred a right of appeal on a person aggrieved by any order which may be prescribed as mentioned in clause (i) thereof and the rules framed under section 68 of the Act by the Madras Government by General Order No. 1852 dated 28 May, 1965 and in particular rule 147(2)(i) which made an order passed under section 47(3) of the Act appealable. It was said by counsel for the appellant that- the right of appeal by any person aggrieved by any order would indicate that a person

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had a right of being heard. Emphasis was placed on the word 'aggrieved' to show that one's grievance arose because one had been denied relief in relation to one's representation.

Prior to the introduction of the new Rules conferring right of appeal in respect of an order made under section 47(3) of the Act one could apply to the State Transport Authority under section 64A of the Act for revision of an order in which appeal lay. Now that there is a provision of appeal the position is not altered. Neither the right of appeal nor the right to apply for revision is itself decisive of the true function of the Regional Transport authority as to whether the said Authority has to grant hearing to persons at the time of fixing the limit of number of stage carriage permits. We have already referred to the elaborate procedure of publication of applications for grant of permits, representations by persons in connection therewith, a public hearing at the time of consideration of applications and representations, and written reasons being given by the Regional Transport Authority for refusing the permit. The Regional Transport Authority on the other hand while acting under section 47(3) deal with individual or competing rights of operators but is required to arrive objectively at its own conclusion independent of any application or representation by operators.

We are of opinion that the Regional Transport Authority is not obliged to hear operators while exercising jurisdiction under section 47 (3) of the Act in fixing the limit of number of stage carriage permits. It is also to be noticed that the limit of number of stage carriage permits fixed by the Regional Transport Authority under section 47(3) of the Act cannot be modified by the Regional Transport Authority when the said Authority exercises the separate power of granting permits under section 48 of the Act or even by the State Appellate Transport Authority dealing with appeals, against the grant of permits. This proposition was laid down in the case of Abdul Mateen(1). This view fortifies the difference in the functions and jurisdiction of the Regional Transport Authority under section 47 (3) of the Act on the one hand and section 48 of the Act on the other.

Another question arose in two appeals Nos. 2478 of 1969 and 2328 of 1969 as to whether in the case of Inter-State stage carriage permits and inter-regional stage carriage permits an order under section 47(3) of the Act is contemplated prior to the grant of permits. Two sections are important in this behalf. They are sections 45 and 63 of the Act. Section 45 of the Act enacts that an application for permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. If a vehicle is used in two or more regions within the,-

(1) [1963] 3 S.C.R. 523.

13 Sup.Cl./70-2

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same State then the application for permit shall be made to the Regional Transport Authority of the region in which the major portion of the route or area lies and in case the portion of the proposed route or area in each of the region is approximately equal, the application is made to the Regional Transport Authority of the region in which it is proposed to keep the vehicle. Then again if it is intended to use the vehicle in two or more regions lying in different States the application shall be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business. It, therefore, follows that in the case of inter-State permits application has to be made to the Regional Transport Authority of the region in which the applicant resides or

has his principal place of business.

In the case of inter-State permits section 63A of the Act refers to Inter-State Transport Commission constituted by the Central Government. Section 63A(2) of the Act in clauses (a), (c). and (d) thereof refer to the performance by the Commission of inter alia the regulation of the operation of transport vehicles in an interState region, issuing of directions to the State Transport Authority ,or the Regional Transport Authority interested regarding grant, revocation and suspension of permits and of counter-signatures of permits for the operation of transport vehicles in respect of any route or area common to two or more States. Section 64C of the Act confers power on the Central Government to make rules inter alia for procedure to be followed in considering applications for a permit or for counter-signature of permit, as also appeals against a decision of the Commission. We were not shown any relevant rule with regard to inter-State permits nor were we shown as to whether any inter-State Commission had issued directions to the State Transport Authority or the Regional Transport Authority regarding grant, revocation and suspension of permits common to two or more States.

Therefore, the only section which is relevant for determination ,of the question as to whether an. order under section 47(3) of the Act is contemplated for inter-State permit is section 63 of the Act. Section 63(1) of the Act states that a permit granted in any one State shall not be valid in another State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned. Section 63 (3) of the ,Act states that the provisions of Chapter IV of the Act relating to grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits. The proviso to section 63(3) of the Act is that it shall not be necessary to follow the procedure laid down in section 57 of the Act for the grant of countersignatures of permits where permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of an agreement arrived at between the States. These provisions establish that in the case of an interState permit an application has to be made to the Regional Transport Authority of a State as mentioned in section 45 of the Act and the permit is to be countersigned by the State, Transport Authority of the other State or by the Regional Transport Authority concerned as mentioned in section 63 of the Act. Chapter IV consists of section 42 to 68. Section 57 deals with procedure for application and grant of permits. That section will therefore, apply for the grant of inter-State permits. The effect of the proviso to section 63(3) is that in the case of inter-State permits where an agreement has been arrived at between the States the provisions of section 57 of the Act need not be followed for the grant of countersignatures of permits. In other cases the procedure in section 57 of the Act will apply in regard to grant revocation and suspension of permits and to countersignatures of permits as well. Section 48 of the Act which relates to power to grant of stage carriage permits will also apply to inter-State permits. the provisions contained in sub-section (1) generally and subsection (2) of section 47 will apply to the Regional Transport Authority at the time of consideration of the application for inter-state stage carriage permit. Section 47(3) of the Act will not in our opinion apply to

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inter-State permits because that provision relates to a Regional Transport Authority limiting the number of stage carriages for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region. In other words, section 47(3) of the Act is confined in its operation in or within the region. The provisions of section 47(3) of the Act do not apply to inter-State permits because an inter-State permit cannot be effective unless it is countersigned by the Authority of the other State. The suggestion that in regard to inter-State permits a limit has to be fixed in regard to number of stage carriages for inter-State routes will have the effect of adding words to the provisions in section 47(3) of the Act. That will not be the proper way of giving effect to section 47(3) of the Act. It will be misreading section 47(3) of the Act if it will be applied to inter-State permits. The combined effect of section 63, 63A, 63B and 63C is that the inter-State Commission will deal with inter-State permits. The Central Government under section 63C of the Act is authorised to make rules in regard to the procedure to be followed in considering an application for grant and countersignature of permits. In the absence of specific rules, the best way of harmonising the powers and functions is to allow these inter-State authorities to exercise their power within their respective spheres in regard to grant and countersignature of permits by agreement and accord.

In the case of inter-regional permits an application under section 45 of the Act has to be made to the Regional Transport

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Authority of the region in which the major portion of the proposed route or area lies and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles. Then under section 63 of the Act a permit granted by the Regional Transport Authority of one region shall not be valid in any other region unless the permit is countersigned by the Regional Transport Authority of that other region. Section 63 (3) of the Act makes the provisions of Chapter IV applicable relating to the grant, revocation and suspension of permits and to the grant, revocation and suspension of countersignature of permits. The result is that sections 47 to 68 which occur in Chapter IV are therefore attracted in case of inter regional permits. In view of the fact that section 47(3) of the Act is restricted in its field in or within the region, the provisions in terms do not become applicable to inter-regional permits. Section 68 of the Act contemplates rules and conditions subject to which and the extent to which, a permit shall be valid in another region within the State without countersignature. We have not been shown any rules to that effect. The reasons which do not make section 47(3) applicable to inter-State permit apply proportion vigorous to inter-regional permits.

As in the case of inter-State permits the harmonious reading of the sections will be to make sections 42 to 68 of the Act applicable wherever it is possible to do so. The fixing of limit of number of stage carriage permits in or within the region is entrusted to the Regional Transport Authority because of the particular local matters contemplated in section 47(1) of the Act, namely, adequacy of other transport services between the places to be served, benefit to, a particular locality to be afforded by the

service, conditions of the roads included in the proposed route or area. These considerations in the case of inter-State permits as also in the case of inter regional permits cannot be said to be entrusted to the Regional Transport Authority to which, the application is made because both in the case of inter State permits and inter-regional permits considerations in different States and in different regions will become relevant and are not embraced within the scope and intent of section 47(3) of the Act. We are therefore of opinion that section 47(3) of the Act will not apply either to grant or to countersignature of permits both in the case of inter-State and inter-regional permits. The relevant authorities in two States or two regions will ensure agreement and act in concert as the case may be. The number of services in the region can of course be fixed by the Regional Transport Authority but they will be for the region only. The number of services for inter regional or inter State routes beyond the frontier of the region will, have to be determined by agreement.

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The next question which falls for determination is the point of time when a Regional Transport Authority will under section 47 (3) of the Act fix the limit of number of stage carriage permits. This Court in Abdul Mateen's(1) case said that the general Order by the Regional Transport Authority under section 47 (3) of the Act in regard to the limit of number of stage carriage permits can be modified only by the Regional Transport Authority when exercising the jurisdiction under section 47 (3) of the Act. The Regional Transport Authority while acting under section 48 of the Act in regard to the grant of permits has no jurisdiction and authority to modify any order passed by the Regional Transport Authority under section 47(3) of the Act. In other words, the limit fixed by the Regional Transport Authority under section 47 (3) of the Act cannot be altered by, the Regional Transport Authority at the time of grant of permits. It is, -therefore, established that the determination of limit 'of number of permits is to be made before the grant of permits. That is why section 48 of the Act is prefaced with the words "subject to the provisions of section 47 of the Act" meaning there by that the jurisdiction of the Regional Transport Authority to grant permits is subject to the determination of the limit of number of permits under section 47(3) of the Act. This Court stated the legal position in M/s. Jaya Ram Motor Service's case(1) and said "it is therefore clear that the authority has first to fix the limit and after having done so consider the application or the representations in connection therewith in accordance with the procedure laid down in section 57 of the Act". Again in the case of R. Obliswami Naidu(3) this Court considered the submission in that case as to whether the Regional Transport Authority could decide the number of permits while considering applications for permits. This Court did not accept the submission because such a view would allow an operator who happened to apply first to be in a commanding position with the result that the Regional Transport Authority would have no opportunity to choose between competing operators and public interest might suffer. In the same case it is again said that the determination of the number of stage carriages for which stage carriage permits may be granted for the route is to be done first and thereafter applications for permits are to be entertained.

The four decisions of this Court to which we have referred establish two propositions. First, that the Regional

Transport Authority should fix the limit of number of stage carriage permits under section 47(3) of the Act and after having done so the Regional Transport Authority 'will consider the application for

(1) [1963] 3 S.C.R. 523. (2) Civil Appeal No. 95 of 1965 decided on 27-10-1967

(3) 1969] 1 S.C.R. 730.

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grant and representations in connection therewith in accordance with the procedure laid down in section 57 of the Act. Secondly, when a new route is opened for the first time and an advertisement is issued calling for applications for such a new route specifying the number of vacancies for it, it would be reasonable to hold that the number of vehicles is specified as the limit decided upon by the Regional Transport Authority. In the present appeals, the Regional Transport Authority in many cases fixed the limit of number of stage carriage permits on the same day on which it heard the applications for the grant of permits and representations in connection therewith. The Regional Transport Authority fixed the limit of number of stage carriage permits at a sitting separate from and prior to the sitting at which the Regional Transport Authority heard the applications for grant of permits and representations in connection therewith.

The present appeals are all governed by the Madras Motor Vehicles Rules. The Act under section 64 confers 'a- right of appeal against an order under section 47(3) of the Act, The Madras Motor Vehicles Rules framed under section 68 of the Act confer a right of appeal against an order under section 47 (3) of the Act. Section 64(i) of the Act confers a right of appeal against an order as may be prescribed by the Rules. That is how the Madras Motor Vehicles Rules have prescribed appeals against several orders which are otherwise not mentioned as appealable orders under section 64 of the Act. The result is that according to the Madras Motor Vehicles Rule there is a separate right of appeal against an order under section 47(3) of the Act.

In the present appeals none of the parties preferred any appeal to the State Transport Appellate Tribunal against any order under section 47 (3) of the Act. The parties preferred appeals only against refusal to grant permit. In those appeals against refusal to grant permit though no specific ground was taken as to absence of a valid order under section 47(3) of the Act the State Transport Appellate Tribunal in some cases allowed the parties to advance a contention in that behalf and in other cases the State Transport Appellate Tribunal suo motu went into the question as to whether there was a valid order under-section 47 (3) of the Act. The jurisdiction of the State Transport-Appellate Tribunal in appeals under section 64 of the Act against refusal to grant permit is confined only to that aspect. The jurisdiction of the Regional Transport Authority in the matter of orders under section 47(3) of the Act is entirely separate from jurisdiction of the Regional Transport Authority in the matter of grant and refusal of permit under sections 48 and 57 of the Act. The distinction between the two jurisdictions is so well demarcated that

(1) [1963] 3 S.C.R.

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this Court in Abdul Mateen's case(1) said that neither the Regional Transport Authority at the time of grant of permit nor the State Transport Appellate Tribunal in hearing appeals against refusal to grant permit could modify orders under section 47(3) of the Act.

The State Transport Appellate Tribunal however proceeded in the present appeals on the basis that the absence of a valid order under section 47 (3) of the Act would rob. the Regional Transport Authority of its jurisdiction to grant permit. In the present appeals, it became a question of fact as to whether there was in each case an order under section 47(3) of the Act. The State Transport Appellate Tribunal in some cases went into the records and held that there was no order in writing under section 47 (3) of the Act as to the limit of number of stage carriage permits. The records however contain evidence that the Secretary of the Regional Transport Authority on the basis of statistics advised the Regional Transport Authority to open new routes or to increase the number of permits and the Regional Transport Authority thereafter proceeded on that basis. In other cases the Regional Transport Authority of one State agreed, with the Regional Transport Authority of another State for new or additional permits and thereafter applications were considered. An order under section 47(3) of the Act is not a matter of mere form but of substance. When it became a question of fact as to whether the Regional Transport Authority fixed the limit of number of permits before the grant of permits, the State Transport Appellate Tribunal fell into the error of over-looking the substance of the matter. We are of opinion that if from the records of the Regional Transport Authority it could be spelt out that the Regional Transport Authority fixed the limit of number of permits for stage carriages before the Regional Transport Authority considered the applications and representations for grant of permit, the Regional Transport Authority then complied with the provisions of the statute. In the facts and circumstances of the present appeals all operators competed for the grant of Permits and thereafter preferred appeals only against the grant or refusal of permits.

We shall now deal with the appeals individually.

Civil Appeal No. 2322 to 1969

In this appeal the State Transport Appellate Tribunal set aside the grant of permit on the ground that there was no valid order under section 47(3) of the Act. The High Court also took the same view. In the present case there was proposal based on statistics to show the need for an additional bus. The Regional Transport Authority itself invited applications under section 57(2) of the Act for the grant of an additional permit on the route. It

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is significant that there was no application by any operator for the grant of an additional permit but that the Regional Transport Authority itself under section 57(2) of the Act invited applications for the grant of an additional permit and appointed dates for reception of applications in that behalf. This invitation of applications indicates in the facts and circumstances of the case that there was a valid determination under section 47(3) of the Act for an additional permit on the route. Therefore, this appeal is allowed and the matter is remitted to the State Transport Appellate Tribunal for hearing on merits of the appeals before the said Authority.

Civil Appeal No. 2323 of 1969

The State Transport Appellate Tribunal found that there was no valid order under section 47(3) of the Act before considering applications for grant of permits. The High Court also upheld the view. This was a case of a new route. In this case there was a notification under section 57(2) of the Act asking for applications for the grant of a permit on

the new route. This will, in our opinion indicate that there was a determination of the limit of number of stage carnage permits under section 47(3) of the Act. The State Transport Appellate Tribunal also 'considered the appeals on merits and held that M/s. M. K. S. & Brothers, Mettur Dam was the best Stated person for the permit. In view of that decision, the appeal is allowed and the matter is remitted to the High Court to deal with the application on merits on the basis that there is a valid order under section 47(3) of the Act.

Civil Appeal No. 2324 of 1969

The State Transport Appellate Tribunal held that there was no valid order under section 47(3) of the Act. The High Court was of the same view. This appeal relates to a new town route No. 2 Nagapattinam. The records indicate that the Regional Transport Authority first limited the number of buses to be put on the route to one. We are of opinion that having done so, the Regional Transport Authority thereafter dealt with applications for grant of permit. The State Transport Appellate Tribunal did not deal with the merits of the case. The appeal is therefore allowed and the matter is remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeal No. 2326 of 1969

The High Court was of opinion that there was no valid order under section 47(3) of the Act and allowed the petition. The State Appellate Tribunal found that there was in fact a valid order under section 47 (3) of the Act. An application for permit

489 was made by the appellant suo motu and representations in connection therewith were submitted. Before the Regional Transport Authority the serious contest was as to whether there was a need for an additional bus. The other contention was that the permit should not have been granted to the appellant on his application which was made suo motu. The State Transport Appellate Tribunal found that there was a need for a bus and that the Regional Transport Authority after receipt of the appellant's applications had notified the same and asked for representations in connection therewith. The State Transport Appellate Tribunal found that there was in-fact a determination for the grant of an additional bus and upheld the grant. In the facts and circumstances of the case it would be proper to hold that there was a valid order under section 47 (3) of the Act. The Regional Transport Authority decided upon the introduction of a new bus on the route and then dealt with the grant. The High Court was in error in holding that there was no valid order under section 47(3) of the Act. The appeal is therefore allowed.

Civil Appeal No. 2327 of 1969

The State Transport Appellate Tribunal held that there was no valid order under section 47 (3) of the Act. The High Court upheld that view. This was opening of a new route. The Regional Transport Authority under section 57(2) of the Act invited applications for a bus to be put on the route for the first time. We hold that this will amount to a valid order under section 47 (3) of the Act for introduction of one permit. We are also of opinion that applications for "a bus permit" would amount to one permit. The State Transport Appellate Tribunal set aside the permit of the appellant and did not deal with the merits. The appeal is allowed and the case is remitted to the State Transport Appellate Tribunal to be decided on merits.

Civil Appeal No. 2328 of 1969

This appeal relates to permits on inter-regional route. We have already held earlier that in the case of inter-regional permit section 47(3) of the Act will not apply. If however effect can be given to the concept inherent in section 47(3) of the Act by having agreement between the regions as to permits, it will appear that in the present case there was a notification under section 57 (2) of the Act asking for applications for one vehicle as "an additional bus on the route Coimbatore to Ootacamund via Mettupalayam" The State Transport Appellate Tribunal held that there was no valid order under section 47(3) of the Act. In our opinion, in the facts and circumstances of the case and in particular it being a case of an additional bus a notification under

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section 57(2) of the Act for the grant of an additional bus on the route will amount to a valid order. The appeal is therefore allowed and the case is remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeals Nos. 2332-2337 & 2343 to 2352 of 1969

These appeals relate in some cases to a permit on a new route and in other cases an additional permit on an existing route. Civil Appeals No. 2335, 2336, 2344, 2350 and 2351 of 1969 relate to permits on new routes. The other appeals relate to additional permit on existing route in each case. The State Transport Appellate Tribunal held that there was no valid order under section 47(3) of the Act. The High Court upheld that view. The facts establish that intensive traffic survey was conducted on the routes. Thereafter, the Secretary, Regional Transport Authority recommended an additional bus on the route. This recommendation was approved by the Regional Transport Authority. Thereupon notification under section 57(2) of the Act was made asking for applications for the grant of stage carriage permit. The combination of circumstances, namely, the approval by the Regional Transport Authority of the recommendation of the Secretary for the introduction of an additional bus on the existing route and the consequent notification under section 57 (2) of the Act asking for applications for grant of an additional permit on the said route in each case in our opinion establishes a valid order under section 47(3) of the Act in each case.

In Civil Appeal No. 2335 of 1969 there was a proposal for the opening of a new town service route. Applications under section 57(2) of the Act were invited for the new town route No. 3. Furthermore, the minutes of the Regional Transport Authority indicate that the Regional Transport Authority limited the number of stage carriage permits to "one for the present" before the said Authority proceeded to consider the applications for grant of permit. The invitation of applications under section 57(2) of the Act for a permit on a new route in the context of facts and circumstances of the case establishes that there was a valid order under section 47(3) of the Act.

In Civil Appeal No. 2336 of 1969 the minutes of the Regional Transport Authority indicate that the Authority limited the number of stage carriage permits to one and thereafter the Authority considered the applications for grant of permits. The other features are similar to those of Civil Appeal-No. 2335 of 1969.

In Civil Appeal No. 2337 of 1969 there was first a sitting of the Regional Transport Authority on 9 March, 1968 to consider the proposal to introduce an additional service on the route. The

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Regional Transport Authority decided to introduce two

additional buses on the route. On the same day at a separate sitting the applications for grant of permits were considered. The State Transport Appellate Tribunal held that since an order under section 47(3) of the Act was appealable sufficient time should have elapsed between the order under section 47(3) of the Act and the consideration of applications for the grant of permit in order to enable an aggrieved person to prefer an appeal. This question is of no importance in the present case because parties were allowed to challenge the entire proceeding. Ordinarily, both orders are appealable and order under section 47(3) of the Act is made prior to notification under section 57(2) of the Act or of publication of applications under section 57(3) of the Act. We, therefore, hold that there was a valid order under section 47(3) of the Act in this appeal.

In Civil Appeal No. 2343 of 1969 there was traffic survey on the existing route. There was a proposal based on statistics for the need of an additional bus. Applications were invited under section 57(2) of the Act for an additional bus. The Regional Transport Authority also decided upon the need for an additional bus prior to consideration of the applications for the grant of permit. Therefore, in the facts and circumstances of this case it can be held that there was a valid order under section 47(3) of the Act.

In Civil Appeals No. 2345, 2346, 2347, 2348, 2349 and 2352 of 1969 the facts are similar to those discussed in Civil Appeals No. 2337 and 2343 of 1969 and we are of opinion that in each case there was a valid order under section 47(3) of the Act. Civil Appeals No. 2350 and 2351 of 1969 relate to a bus on new routes and the facts are similar to those in Civil Appeals No. 2335 and 2336 of 1969 and we are of opinion that there was, in each case a valid order under section 47(3) of the Act.

These appeals are allowed and the cases are remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeals No. 2338-2342, 2353-2362 & 2368 of 1969

In these appeals the State Transport Appellate Tribunal held 'that there was no valid order under section 47(3) of the Act. The High Court was also of the same view. Civil Appeals No. 2338, 2340, 2341, 2342, 2355, 2359 to 2362 of 1969 relate to a bus on a new route in each case. The other appeals relate to additional bus on an existing route in each case.

In Civil Appeals' No. 2338, 2340, 2341 and 2342 of 1969 the Regional Transport Authority issued notifications under section 57(2) of the Act inviting applications for grant of stage carriage permit on the routes. Thereafter notifications were issued under section 57(3) of the Act. These appeals relate to a new route in each case. Civil Appeals No. 2355, 2359-2362 of 1969 also relate to a bus on a new route in each case. In these appeals new routes were opened by the Regional Transport Authority after examining public representations and notifications under section 57(2) of the Act were also issued. The notifications under section 57(2) of the Act inviting applications for new routes establish that there was a valid order under section 47(3) of the Act in each case.

Civil Appeals No. 2339, 2353, 2354, 2356, 2357, 2358 and 2368 of 1969 relate in each case to an additional bus on existing route. An additional bus on an existing route has characteristics similar to that of a new route. In Civil Appeals No. 2356 and 2357 of 1969 two additional permits on

the existing route were decided upon by the Regional Transport Authority pursuant to the note of the Regional Transport Authority asking for increase. Applications were invited on that basis. In all these appeals a notification was issued under section 57(2) of the Act inviting applications for permit. Thereafter notifications were made under section 57(3) of the Act inviting representations in connection with the applications for grant of permit., Each applicant claimed for permit pursuant to notification issued under section 57(2) of the Act. Furthermore, introduction of an additional bus on the existing route was made as a result of intensive traffic survey conducted prior thereto and recommendation of the Secretary for increase of an additional bus and the approval by the Regional Transport Authority of the proposal of the Secretary. The notification under section 57(2) of the Act inviting applications for permit is to be judged in the background of these features. Therefore, in the facts and circumstances of these appeals it is just and proper- to hold that there was a valid order under section 47(3) of the Act in each case. All these appeals are allowed and the cases are remanded to the State Transport Appellate Tribunal for dealing with the appeals on merits.

Civil Appeals No. 2378-2380 of 1969

These three appeals relate to new routes. The State Transport Appellate Tribunal held that there was no valid order under section 47(3) of the Act. The High Court also took the same view. In all these appeals there was a notification under section 57(2) of the Act for the grant of a permit on each of the routes mentioned in these appeals. A notification under section-57(2) of

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the Act inviting application for one permit on each new route, in our opinion, indicates that there was an order under section 47(3) of the Act. These appeals are therefore allowed and the Cases are remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeals No. 2409, 2452, 2453-2457 of 1969

In Civil Appeals No. 2409 and 2456 of 1969 a new route was opened in each case with permits for two buses. There was first intensive traffic survey under the authority of the Regional Transport Officer. Thereafter, the Regional Transport Authority issued notifications under section 57(2) of the Act inviting applications for the grant of two stage carriage permits to run on each route forming the subject matters of these appeals. These notifications inviting applications for two permits on new routes in each case, in our opinion, show that there has been compliance with section 47(3) of the Act and in the facts and circumstances of the case there was a valid order under section 47(3) of the Act in each case.

In Civil Appeal No. 2452 of 1969 there was a traffic survey by the Regional Transport Officer who put up a note to the Regional Transport Authority and suggested introduction of four additional buses. The Regional Transport Authority agreed and directed that the concurrence of the Regional Transport Authority North Act be obtained because a portion of the route lay within, the latter's jurisdiction. The Regional Transport Authority, North Arcot granted concurrence for two permits. Applications were thereafter called for two permits. We have already said that the terms of section 47(3) of the Act will not apply to interregional permits. In the case of inter-regional permits a decision of the limit of number of permits is established by the concurrence of two Regional Transport

Authorities in that behalf. In this appeal that was done and thereafter a notification under section 57(2) of the Act inviting applications for grant of two permits was made. We are of opinion that the notification under section 57(2) of the Act in the context of the features mentioned amounts to a valid order fixing the number of permits.

In Civil Appeal No. 2453 of 1969 there were public representations to open a new route between Cheyyar to Brahmadesam covering a distance of 18 miles. The Regional Transport Authority thereafter invited applications under section 57(2) of the Act. The State Transport Appellate Tribunal held that there wasn't valid order under section 47(3) of the Act. The High Court also took the same view. The High Court gave an additional reason that it did not appear that the Regional Transport Authority

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rity took into consideration matters mentioned in clauses (a) to (f) of section 47 (1) of the Act. This is a new route. The notification under section 57(2) of the Act considered in that background establishes that there was a valid order under section 47 (3) of the Act. Unless the order gives reasons it is not possible to rip it open to find out what weighed with the Regional Transport Authority. In Civil Appeals No. 2454 and 2455 of 1969 there was in each case an additional permit on the existing route. In Civil Appeal No. 2454 of 1969 the Secretary of the Regional Transport Authority, North Arcot after traffic survey proposed to the Regional Transport Authority. North Arcot for the grant of an additional stage carriage permit on the route. The Regional Transport Authority, North Arcot approved the proposal and as the route was partly in South Arcot, the concurrence of the Regional Transport Authority of South Arcot was obtained. Thereafter, the Regional Transport Authority, North Arcot invited applications for the grant of an additional permit. The High Court held that there was no valid order under section 47 (3) of the Act because it could not be predicated that the Regional Transport Authority had considered all the matters mentioned in clauses (a) to (f) of section 47 (1) of the Act. It is not possible to find reference to consideration of the matters in the order. Suffice it to say that the two Regional Transport Authorities concurred in the proposal of an additional permit and thereafter applications were invited under section 57(2) of the Act. We are of opinion that there was a valid order under section 47(3) of the Act. In Civil Appeal No. 2455 of 1969 the appellant made an application to the Regional Transport Authority, Salem in September, 1963 for the grant, of a stage carriage permit on the route Kaveripatnam to Tirupethur. That application was treated as a proposal under section 47(1) of the Act and representations were invited. Thereafter, the Regional Transport Authority rejected the proposal. An appeal was made to the State Transport Appellate Tribunal. The appeal was allowed. The State Transport Appellate Tribunal, held that there was need for the grant of a stage carriage permit and remanded the matter for fresh consideration. Thereafter an application was made to the High Court against the order of the State Transport Appellate Tribunal. The High Court dismissed the petition observing that the Regional Transport Authority should satisfy itself about the condition of the roads and that the appellant should be granted the permit in accordance with law. The matter then came up before the Regional Transport Authority and it granted the permit to the appellant. There was an appeal against the grant of permit to the appellant and refusal of permit to the

respondent. The State

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Transport Appellate Tribunal held that there was no valid order under section 47 (3) of the Act. The High court agreed with the State Transport Appellate Tribunal. We are of opinion that there was a decision of the State Transport Appellate Tribunal to the effect that there was need for grant of a stage carriage permit. The High Court also held that view. The Regional Transport Authority satisfied itself about the condition of the roads in accordance with the directions of the High Court and then dealt with the matter of grant of permit. All these features considered along with the fact that this was a new route and there was also notification under section 57(2) of the Act establish that there was a valid order under section 47(3) of the Act. In Civil Appeal No. 2457 of 1969 the State Transport Appellate Tribunal held that there was no valid order under section 47 (3) of the Act and the High Court upheld that view. The Regional Transport Authority invited applications under section 57(2) of the Act for the grant of a stage carriage permit on a new route. This notification in the facts and circumstances of the case indicates that there was an order under section 47(3) of the Act for the grant of a stage carriage permit on the new route.

These appeals in this group are allowed and the cases are remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeals No. 2478-2479 of 1969

Civil Appeal No. 2478 of 1969 relates to what is described as inter-State route between Madras and Pondicherry. The State Transport Appellate Tribunal held that there was no valid order under section 47(3) of the Act. The High Court upheld that view. We have already held that section 47(3) of the Act does not apply to inter-State permits. If however any determination of the limit of number of permits in regard to inter-State permits is necessary it is to find out whether the two States have concurred in the proposal for a new route or an additional bus on the route as the case may v. This appeal relates to a new inter-State route. The two State authorities agreed and thereafter notification under section 57(2) of the Act was made inviting applications for the grant of permit on the new route. We are of opinion that there was a valid order for the grant of permit.

In Civil Appeal No. 2479 of 1969 the Regional Transport Authority, South Arcot granted a permit to the appellant on the route Pondicherry to Mylam. The Transport Commissioner, Madras Region, wrote to the State Transport Authority, Pondicherry that the Regional Transport Authority, South Arcot had approved the proposal for opening of a new route from Pondicherry

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to Mylam via Thiruchitrabalam and asked for concurrence in the proposal in pursuance of the principles of agreement for sharing the permits by both the States. The State Transport Authority, Pondicherry granted concurrence. Thereafter, the Regional Transport Authority, South Arcot invited applications under section 57 (2) of the Act.

Apart from the consideration that section 47(3) of the Act does not apply, it is abundantly clear that the two States agreed to the grant of a permit in each appeal. Both appeals relate to inter-State permits. The appeals are allowed and the cases are remitted to the State, Transport Appellate Tribunal to be dealt with on merits.

Civil Appeals No. 2485 and 2486 of 1969

The High Court upheld the view of the State Transport Appellate Tribunal that there was no valid order under section 47 (3) of the Act in each case. The Regional Transport Authority was of the view that there was need for opening a new route and a notification under section 57(2) of the Act was made inviting applications. This being a new route, we hold that there was a valid order under section 47(3) of the Act. The appeals are allowed and the cases are remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeals No. 2518-2520 & 2523 of 1969

In these appeals the High Court held that there was no valid order under section 47(3) of the Act and upheld the view of the State Transport Appellate Tribunal. Civil Appeal No. 2518 of 1969 relates to an additional stage carriage permit. There was a notification under section 57(2) of the Act inviting applications for an additional stage carriage permit. This notification in the context of facts and circumstances of the case indicates that there was a decision under section 47(3) of the Act for an additional stage carriage permit. Civil Appeals No. 2519-2520 and 2523 of 1969 relate to new routes. In each case there was a notification under section 57(2) of the Act inviting applications. We are of opinion that there was a valid order under section 47 (3) of the Act in each case. The appeals are therefore allowed and the cases are remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeals No. 2524 and 2532 of 1969

In these two appeals the High Court upheld the view of the State Transport Appellate Tribunal that there was no valid order under section 47(3) of the Act. In Civil Appeal No. 2524 of 1969 the Regional Transport Officer asked for the introduction of an

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additional bus because of heavy traffic. The Regional Transport Authority approved the proposal and thereafter invited applications under section 57(2) of the Act. The High Court held that the Regional Transport Authority did not "pay attention to all the matters" mentioned in section 47(1) of the Act. Civil Appeal No. 2532 of 1969 relates to a new route. There was a proposal of the Secretary, Regional Transport Authority to open the new route. The Regional Transport Authority approved the proposal and thereafter invited applications under section 57(2) of the Act. There was a valid order under section 47(3) of the Act in the facts and circumstances of each case. These appeals are therefore allowed and the cases are remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeals No. 2575, 2576 and 2584 of 1969.

Civil Appeal No. 2575 of 1969 relates to a stage carriage permit on a new route. The State Transport Appellate Tribunal held that there was no valid order under section 47(3) of the Act. The High Court upheld that view. The Regional Transport Authority, North Arcot, invited applications for the stage carriage permit on the route Perampattu to Perampattu via Vishamangalam, Tiruppathur, Vengalapuram and Kurisalpatu, covering a distance of 19 miles 2 furlongs. The route was opened because of representations by the public. The Secretary, Regional Transport Authority examined the question and put up a proposal before the Regional Transport Authority to open the route. The Regional Transport Authority, North Arcot approved the proposal of the Secretary. Notification under

section 57(2) of the Act invited applications for one permit. We are of opinion that there was a valid order under section 47(3) of the Act in the facts and circumstances of the case.

Civil Appeal No. 2576 of 1969 relates to a stage carriage permit on an existing route. The State Transport Appellate Tribunal as well as the High Court was of the view that there was no valid order under section 47(3) of the Act. There was a notification under section 57(2) of the Act inviting applications for a stage carriage permit. The Regional Transport Authority further first fixed the limit of number of permits and thereafter dealt with the permit. We are of opinion that in the facts and circumstances of the case there was a valid order under section 47(3) of the Act. Civil Appeal No. 2584 of 1969 relates to a new route. The High Court upheld the view of the State Transport Appellate Tribunal that there was no valid order under section 47(3) of the Act. There was an application for permit. The Secretary, Regional Transport Authority, North Arcot invited applications under section 57(2) of the Act. Thereafter application was published and'

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representations were asked for under section 57(3) of the Act. We are of opinion that there was a valid order under section 47(3) of the Act.

These appeals are allowed and the cases are remitted to the State Transport Appellate Tribunal to be dealt with on merits on the footing that there was a valid order under section 47(3) of the Act.

Civil Appeal No. 2608 of 1969

This appeal-relates to an additional stage carriage permit on the route Periakulam to Madurai. The High Court upheld the view of the State Transport Appellate Tribunal that there was no valid Order under section 47(3) of the Act. There was traffic survey of the route. The Secretary, Regional Transport Authority invited applications for the grant of permit under section 57(2) of the Act. We are of opinion that there was a valid order under section 47(3) of the Act in the facts and circumstances of the case. The appeal is allowed and the matter is remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeal No. 8 of 1970

This appeal relates to an additional bus on the existing route. The High Court upheld the view of the State Transport Appellate Tribunal that there was no valid order under section 47(3) of the Act. The Secretary, Regional Transport Authority made traffic survey, and thereafter submitted a proposal for the introduction of an additional bus on the route. The Regional Transport Authority approved the proposal and published notifications under section 57(2) of the Act inviting applications for the grant of a stage carriage permit. We are of opinion that there was a valid order under section 47(3) of the Act. The appeal is therefore allowed and the case, is remitted to the State Transport Appellate Tribunal to be dealt with on merits.

Civil Appeal No. 248 of 1970

This appeal relates to an additional bus on the existing route. The position is similar to that of Civil Appeal No. 8 of 1970 and for the same reasons we are of opinion that there was a valid order under section 47(3) of the Act. The appeal is therefore allowed and the matter is remitted to the State Transport Appellate Tribunal to be dealt with on merits.

In these appeals, the State Transport Appellate Tribunal was

of the view that there was no valid order under section 47(3) of the Act. The High Court upheld that view. In some cases the absence of a formal order under section 47(3) of the Act was held to be an infraction of section 47(3) of the Act. We have held that it is not the form but the substance of the order which will have to

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be found out by looking into the facts and circumstances of each case. Judged by that test we have found that where the Regional Transport Authority approves a proposal of the Secretary, Regional Transport Authority to open a new route or to have an additional permit on an existing route and thereafter notifications under section 57(2) of the Act are made in respect of grant of a permit on a new route or an additional permit on an existing route it can be reasonably held in the totality of facts and circumstances that there has been a valid order under section 47(3) of the Act. Similarly, in the case of inter-State and inter-regional permits where the two regions have agreed to open a new route or an additional bus and applications are accordingly invited for the grant of permit. apart from our decision that section 47(3) of the Act does not apply to, these inter-State and inter-regional routes, we are of opinion that it can be reasonably held that there has been by agreement of different States or regions, as the case may be, an order deciding upon the number of permits before granting the same.

The next question is as to the effect of the notification under section 57(2) of the Act. This Court in Abdul Mateen's case(1) held that an advertisement under section 57(2) of the Act inviting applications for a new route would indicate a decision of the Regional Transport Authority under section 47(3) of the Act that the number specified in the advertisement would be the limit fixed. This decision has not been noticed by the State Transport Appellate Tribunal. In the same case this Court held that in the case of advertisement in respect of an old route it would not necessarily mean that was the number fixed. The instance of an additional bus on an existing route was not considered in Abdul Mateen's case(1). In our opinion a notification under section 57(2) of the Act inviting applications for the grant of a permit for an additional bus on existing routes in the background of entire facts and circumstances of the present appeals indicates that the Regional Transport Authority had in each case arrived at a decision under section 47(3) of the Act as to the limit of number of permits as mentioned in the notification.

Before the State Transport Appellate Tribunal as well as in the High Court there was some doubt as to the point of time when an order under section 47(3) of the Act would have to be made, namely, whether it would be before applications are made for grant of permit or whether it could be valid if it were made before grant of a permit. Section 57(2) of the Act in relation to stage carriage permits specifies that applications shall be made for the grant of a permit not less than six weeks before the date on which it is desired that the permit shall take effect. In such a case it will not be possible for the Regional Transport Authority to fix the limit of number of permits before applications are made.

(1) [1963] 3 S.C.R. 523.

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On the other hand, where the Regional Transport Authority appoints dates for the receipt of applications as contemplated in section 57(2) of the Act it may be

justifiable to hold that the Regional Transport Authority before publishing the dates for the receipt of such application for grant of stage carriage permit will decide the number of stage carriage permits to be granted.

This Court in M/s Jaya Ram Motor Service case(1) said that the Authority has first to fix the limit and after having done so it will consider the application or representations in connection therewith in accordance with the, procedure laid down in section 57 of the Act. In that decision there is another observation that the Regional Transport Authority having fixed the limit publishes the applications under section 57(3) of the Act. Before the State Transport Appellate Tribunal and the High Court it was contended that this Court in R. Obliswami Naidu's case (2) referred to two independent steps in connection with the grant of a permit the first being the determination by the Regional Transport Authority under section 47(3) of the Act for the number of stage carriages for which permits might be granted and the second being that "thereafter applications for stage carriage permits should be entertained" and therefore it would mean that before applications, could be received there should be a determination under section 47(3) of the Act. That Position, is' made clear by the following observations of this Court in Obliswami Naidu's case(1)

"The question for determination is whether the determination as to the number of stage carriages required on a route should be done at a stage anterior to that of entertaining applications for stage carriage permits or that it could be done at the time it considers applications, made by operators for stage carriage permits in that route. The R.T.A. has proceeded on the basis that question can be decided while considering the applications made to it for permits by operators whereas the Appellate Tribunal and the High Court have taken a contrary view. Sub-s. (3) of S. 47 of the Act if read by itself does not throw any light on the controversy before us but if ss. 47 and 57 of the Act are read together it appears to us to be clear that the view taken by the Appellate Tribunal and the High Court is the correct view".

It is in this context that this Court said in Obliswami Naidu's case(1) that the limit could not be fixed at the time of consideration of applications because thereby public interest might not gain the dominant consideration and on the contrary the decision of the Regional Transport Authority might be influenced

(1) Civil Appeal No. 95 of 1965 decided on 27-10-1967.

(2) Civil Appeal No. 727 of 1965 decided on 22-3-1968.

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by personal consideration of or predilection for the applicants. There should not be any room for elasticity of the number of permits at the time of consideration of applications for the grant. It is in the scheme of the Act that limit should be fixed before the grant of permit and proper effect can be given to these provisions by deciding upon the limit of number of permits before applications for grant of permits are invited under section 57(2) of the Act and in other cases before applications for grant of permits are published under section 57(3) of the Act to enable persons to make representations. The central idea is that applicants and those who will make representations should all know the limit of number of permits to be granted in

order to ensure free and fair competition.

In some of the present appeals, the High Court held that where order under section 47(3) of the Act was made at a sitting on the same day on which the Regional Transport Authority considered the applications for grant of Permits, there was not sufficient space of time between the order under section 47(3) of the Act and the order for the grant of permit and thereby persons aggrieved by order under section 47(3) of the Act could not prefer any appeal. We have already pointed out that the provision for appeal against an order under section 47(3) of the Act is an adequate answer. Furthermore in some of the present appeals all parties competed for the grant and never challenged the proceedings on the ground that there was no order under section 47 (3) of the Act and were allowed by the State Transport Appellate Tribunal to question the want of a valid order of limit of number of permits. Therefore in these cases the matter is of no importance. These are special features in some of the present appeals. These will not happen when the Regional Transport Authority will decide the limit before notification under section 57(2) or publication of application under section 57(3) of the Act as the case may be.

In our opinion, the provisions of the Act in regard to stage carriage permits have the following consequences. If the Regional Transport Authority were to appoint a date- for the receipt of applications for the grant of stage carriage permits, the Regional Transport Authority should fix the limit of the number of permits which might be granted and then notify the same under section 57 (2). of the Act. If, on the other hand, applications were sent by persons suo motu for the grant of permit the, applications would have to be published and the representations would have to be asked for. The proviso to section 57 (3) of the Act furnishes the answer that if the grant of any permit in accordance with the application would have the effect of increasing the number of permits beyond the limit fixed under section 47(3) of the Act, the Regional Transport Authority might summarily refuse the

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application without following the procedure laid down in section 57 of the Act. In other cases, the proper stage for fixing the limit under section, 47(3) of the Act would be after applications are received and before the same would be published under section 57(3) of the Act asking for representations. If however the Regional Transport Authority would not increase or modify the number of permits which already exist, the grant of an application would mean transgressing the limit fixed, and procedure laid down in section 57(3) of the Act need not then be followed. On the other hand, if the Regional Transport Authority on receipt of applications would decide upon the limit of permits and the grant thereof would be within the limit prescribed then the procedure laid down in section 57 (3) of the Act would be followed. Though this scheme of the statute which is outlined here has not been followed in all the appeals in the present case, we have found that the Regional Transport Authority in some cases fixed the limit of number of permits before it actually considered the applications for grant of permit and all parties competed for the grant on that basis and no one expressed any grievance at that time. The contention as to validity of order under section 47(3) of the Act was raised subsequently at the time of hearing of appeal against refusal or permit. We have found that there was notification under section 57(2) of the Act and we have held

in the facts and circumstances of the case that there was a valid order under section 47(3) of the Act. In few cases it was said that the order of fixing the limit was done at the same sitting along with the hearing but in the facts and circumstances of those particular cases we have found that there was a notification under section 57(2) of the Act inviting applications for the grant of permits on new routes or additional bus on existing routes, and it could therefore be held in those cases that, there was a valid order under section 47(3) of the Act.

The parties in all the appeals will bear their own costs because of the special features in these cases. First, no appeal was preferred against any order under section 47(3) of the Act. Secondly, the point was canvassed before the State Transport Appellate Tribunal without specific ground in that behalf. Thirdly, all parties competed for the permit on the basis of the limit fixed by the Regional Transport Authority and the decision in that behalf was conveyed to all the parties. Finally, the State Transport Appellate Tribunal did not deal with the merits of the appeals pending before the said Authority and the matters are remitted to that Authority. In other cases where either the appeal has been allowed or the matter is remitted to the High Court, the parties will bear their own costs.

V.P.S.

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