

PETITIONER:
S. KANNAN & OTHERS ETC.

Vs.

RESPONDENT:
SECRETARY, KARNATAKA STATEROAD TRANSPORT AUTHORITY

DATE OF JUDGMENT 29/08/1983

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

CITATION:
1983 AIR 1065 1983 SCR (3) 740
1984 SCC (1) 375 1983 SCALE (2) 212
CITATOR INFO :
RF 1984 SC1244 (2)

ACT:
Motor Vehicles Act, 1939-Sec. 63(7)-All India Tourist Permit. Sec. 62- Interpretation of. Sec. 62 does not comprehend power to grant temporary all India Tourist Permit-Expression Regional Transport Authority in Sec. 62 does not comprehend State Transport Authority. Sec. 62(1) does not provide for grant of temporary permits pending grant of a regular permit.

HEADNOTE:
In order to promote tourism, the Motor Vehicles Act, 1939 (Act for short) was amended in 1970 and sub-sec. (7) was inserted in s. 63 empowering the State Transport Authority in each state to grant permits valid for the whole or any part of India in respect of such number of tourist vehicles as may be specified by the Central Government. The Central Government specified that every State Transport Authority may grant such permit not exceeding 50 in number. The State Transport Authority of Karnataka issued 36 such permits and there were 14 vacancies. Several persons applied for temporary all India tourist permits to the State Transport Authority. The State Transport Authority rejected the applications. On appeal the State Transport Appellate Tribunal purporting to exercise power under s. 62 of the Act granted temporary all India tourist permits. On writ petitions filed by some of the holders of regular permits under s. 63(7) the High Court quashed and set aside the decision of the State Transport Appellate Tribunal. The appellants and the petitioners who had obtained or were desirous of obtaining temporary all India tourist permits challenged the correctness of the decision of the High Court. The appellants urged: (1) that the Regional Transport Authority can grant temporary all-India tourist permits for the reasons mentioned in sec. 62; (2) that the State Transport Authority of Karnataka can grant temporary permits for the vacancies till regular all-India tourist permits were granted; (3) that in view of the provisions of sec. 44(3), the expression Regional Transport Authority would either comprehend State Transport Authority or would not at least exclude the power conferred on the lower authority to

be enjoyed by the higher authority; (4) that as far as the State of Karnataka was concerned, on the issue of notification under sub-sec. (2A) of sec. 45 the expression 'Regional Transport Authority' in sec. 62 will also comprehend State Transport Authority. and, (S) that the expression 'such permit' in sec. 63(7) could only mean regular or all India tourist permit and the temporary all India tourist permit was not to be catered to by sec. 63(7) but by sec. 62 and therefore sec. 62 was rightly omitted from the array of sections set out in sec. 63(7).

Dismissing the appeals, special leave petitions and writ petitions,

741

^

HELD: There is no power to grant temporary all India tourist permit under sec. 62. [757 E]

An Authority having jurisdiction over a comparatively small area is favourably placed to notice a situation as contemplated by sec. 62. Therefore, sec. 62 confers power on the Regional Transport Authority, the jurisdiction of which extends over a region which is usually a small part of the State to grant temporary permits to operate vehicles for a short period to meet some temporary or emergency requirement or pending the renewal of an already granted permit. There is intrinsic evidence in the language of sec. 62 that this power was meant to be used by Regional Transport Authority for dealing with a situation within its small area. If Regional Transport Authority is not competent to grant regular all India tourist permit, no canon of construction would permit the Court to clothe him with power to grant temporary all India tourist permit. [752 A-D]

The Madhya Pradesh State Road Transport Corporation v. the Regional Transport Authority, Raipur, [1965] 3 S.C.R. 786 referred to.

Section 62(1)(d) does not provide for grant of temporary permits pending grant of a regular permit. On the contrary the first proviso to Sec. 62(1) makes what is implicit in cl. (d) explicit by providing that a temporary permit under sec. 62 shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit under sec. 46 or sec. 54 during the pendency of the application. It may be recalled that sec. 46 provides for an application for a stage carriage and sec. 54 provides for an application for public carrier's permit. Therefore, in no case a temporary permit can be granted under the section pending grant of or renewal of a contract carriage permit. Sub-sec. (2) of sec. 62, however, carves out an exception where a temporary contract carriage permit can be granted in respect of any route or area where no permit could be issued by reason of an order of the court or, other competent authority restraining the issue of the same. That is not the case here. Therefore, there is no power to grant a temporary contract carriage permit and ipso facto the temporary all India tourist permit under sec. 62. [753 D-G]

Sec. 44(3) merely provides that a State Transport Authority can perform the duties of a Regional Transport Authority where there is no such Authority or where, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions. In the instant case none of these conditions under which a State Transport Authority can perform the functions and discharge the duties of a Regional Transport Authority are satisfied, and therefore, it is difficult to accept the submission that the expression

'Regional Transport Authority' used in sec. 62 will comprehend State Transport Authority. Even if in its application, the Act with its local amendment to the State of Karnataka sec. 62 would enable the State Transport Authority to issue a temporary permit this would hardly make any difference because the power to grant temporary permit under sec. 62 in the circumstances and eventualities therein mentioned would not comprehend

742

the power to grant temporary all India tourist permit because none of the conditions under which the same can be granted would be attracted and the State Transport Authority will have no material for satisfaction of one or the other conditions set out in Sec. 62 which would enable it to grant such a permit. There is no express provision in the Act which provides that the State Transport Authority can always and without any fetter enjoy the power of the Regional Transport Authority and in the absence of such provision it is difficult to read merely on the basis of vertical hierarchy wherever the lower authority is mentioned in the statute, the higher authority be included therein.

[752 E-H; 753 A-B]

The whole concept of granting temporary all India tourist permit is foreign to the concept of all India tourist permit. An all India tourist permit is none-the-less a contract carriage permit but while contract carriage permit can be granted for any vehicle not required to be specially adopted for the purpose, a contract carriage permit for all India operation as envisaged by sec. 63(7) can only be granted in respect of tourist vehicle, and it appears that it requires a substantial financial investment for adapting a vehicle as a tourist vehicle. This intrinsic evidence shows that such huge or heavy outlay cannot be imposed on an applicant by giving him temporary all India tourist permit which can if at all be granted for a period extending 4 months [756 E-G]

If sec. 62 were to be a proviso to sec. 63(7) and therefore, one can conceive of granting a temporary all India tourist permit for meeting a particular temporary need, it is difficult to envisage a particular need of an all India variant which can be noticed by State Transport Authority of one State and such authority can proceed side-tracking all relevant provisions to grant temporary all India tourist permit. [756 H; 757 A]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 7897-7901, 8077 86, 8115-34, 7969-78, 4591-4598 of 1983, 788-92, 1360, 2225, 2365 67 of 1982, 7924-52, 8049-50, 7963-68, 8087-92, 8093-97, 8137-69 5824, 5818, 5233, 4578, 4577, 4574, 4576, 8047-48 of 1983, 7490-92/82, 3560, 5625, 5830, 6071-75, 6083-90, 6098-6101, 6102-29, 6180-88, 7046-47, 7495, 7613-14 7622-26, 7656-60, 7663-68, 7670-82, 8003, 8005, 8006, 4583, 8434-40, 8427-33, 5356-64, 7618-21, 7655, 8391-93, 3326, 3939, 6133-79 of 1983, 9347, 7800 and 9803 of 1982.

(Under article 32 of the Constitution of India).

WITH

Civil Appeal No. 31-34 of 1981.

Appeals from the judgment and order dated the 18th December, 1980 of the Karnataka High Court in Writ Petitions Nos. 21090 and 21339 of 1980.

743

AND

Civil Appeals Nos. 1735-06 of 1981

Appeal by Special leave from the judgment and order dated the 19th May, 1981 of the Karnataka State Transport Appellate Tribunal, Bangalore in Appeal Nos. 643 and 644 of 1980.

AND

Special Leave Petition No. 2275 of 1982.

From the Proceedings dated 6th October, 1981 of the Secretary, Karnataka State Transport Authority Bangalore, in Subject No. 165 of 1981.

For the Appearing Parties:

K. K. Venugopal, R. B. Datar & Ms. Madhu Mool Chandani, K. N. Bhatt, A. T. M. Sampath, P. N. Ramalingam, B.P. Singh, S. S. Javali, N. K. Sharma, Harbans Lal, R. N. Poddar, N. S. Das Bahl, V. G. Mehta, V. K. Verma, P. R. Mridul, Vineet Kumar, C. S. Vaidyanathan, N. Nettar, B. R. L. Iyengar, P.R. Ramasesh, P. K. Pillai, R. P. Bhatt, Swaraj Kaushal, M. Veerappa and A. K. Sharma.

The Judgment of the Court was delivered by

DESAI, J. Appellants and petitioners in this group of appeals and special leave petition and writ petitions are persons who have obtained or were desirous of obtaining temporary tourist permits valid for the whole of India styled as 'All India Tourist Permit'.

The chronology of events leading to the appeals and writ petitions may be briefly stated. Sub-sec. (7) was inserted in Sec. 63 of the Motor Vehicles Act, 1939 (Act for short) with effect from October 1, 1970 empowering State Transport Authority in each State, for the purpose of promoting tourism, to grant permits valid for the whole or any part of India, in respect of such number of tourist vehicles as the Central Government may, in respect of that State, specify in this behalf. The Central Government specified that the State Transport Authority in each State may grant permit as

744

contemplated by Sec. 63 (7) not exceeding 50 in number. Armed with this power, the State Transport Authority of Karnataka State in all granted 36 such permits. There were thus 14 vacancies. It appears that several persons applied for temporary all India tourist permits to the State Transport Authority of Karnataka State. These applications for the permits were rejected and some of the applicants who were respondent Nos. 3 to 11 in the writ petition in the High Court and who are appellants in this Court preferred appeals to State Transport Appellate Tribunal. The appellate tribunal purporting to exercise power under Sec. 62 of the Act granted temporary all India tourist permits to them. Some of the holders of regular permits granted under sec. 63 (7) of the Act filed writ petitions in the High Court of Karnataka. By a common Judgment the Division Bench of the High Court allowed the writ petitions, inter alia, on the ground that the grant of a permit under Sec. 63 (7) must be in accordance with the provisions of the various sections set out therein which does not include Sec. 62 under which alone temporary permit can be granted and therefore, grant of temporary permits for tourist vehicles of all India operation is not permissible. Accordingly, a writ of certiorary was issued quashing and setting aside the decision of the State Transport Appellate Authority. On the request of the present appellants, the High Court granted a certificate under Art. 134 A of the Constitution as in its view a substantial question of law of general importance, namely, whether a temporary permit can be granted in respect of a tourist vehicle for all India operation, does arise and

further in its opinion the question needs to be decided by the Supreme Court. Hence some appeals by certificate.

Following the decision of the High Court, large number of appeals pending before the State Transport Appellate Authority were dismissed and the appellants whose appeals were dismissed have approached this Court under Art. 136 of the Constitution. Further a large number of writ petitions have been filed under Art. 32 of the Constitution questioning the correctness of the decision of various transport authorities refusing to grant temporary all India tourist permits and praying for a writ of mandamus directing the State Transport Authority of various States to grant such permits. A further prayer in some of the writ petitions is to the effect that that part of sub sec. (7) of Sec. 63 which enables the Central Government to prescribe a quota for each State in resp-ct of all India tourist permits, is violative of the Constitution and must be declared unconstitutional.

745

As common questions have been raised in the appeals, special leave petitions and the writ petitions, they were heard together and are being disposed of by this common judgment.

The narrow and the only question that was canvassed before us is: whether there is power in any of the Transport Authorities as enumerated in Sec. 44 of the Act to grant temporary all India tourist permits? In other words, whether the power conferred by Sec. 62 of the Act enabling the Regional Transport Authority without following the procedure laid down in Sec. 57, to grant temporary permit as therein envisaged would comprehend the power to grant temporary all India tourist permits? We must frankly confess that this neat question of law is none too easy of answer and much can be said in support of rival contentions.

At the outset, let it be made distinctly clear that there is no nomenclature as regular or permanent all India tourist permit. Sec. 63 (7) has specified a permit that can be granted by the State Transport Authority of any State, subject to the quota fixed by the Central Government valid for the whole or any part of India. In other words, such a permit would enable the permit holder to undertake an all India operation which for brevity's sake may be described as all India tourist permit. Sec. 63 (7) speaks of such permit which may be granted after complying with the various sections of the Act therein set out. Such permits when granted may be styled as regular all India tourist permit in contradistinction to what the appellants and the petitioners seek as temporary all India tourist permit.

A brief resume of the relevant provisions of the Act may shed light on the controversy raised before us. Expression 'contract carriage' is defined in Sec. 2 (3) to mean a motor vehicle which carries a passenger or passengers for hire or reward under a contract express or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum etc. 'Stage carriage' is defined in Sec. 2 (29) to mean a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. Expression 'tourist vehicle' is defined in Sec. 2(29 A) to Mean a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as the State Government may, by notification in the official Gazette, specify in this behalf. The defini-

746

tion of 'tourist vehicle' was introduced by Amending Act 56 of 1969 by which Sec. 63 (7) was also introduced. Chapter IV bears the heading 'Control of Transport Vehicles'. Sec. 42 prohibits owner of a transport vehicle to use the same in the public place save in accordance with the conditions of a permit granted under the relevant provisions of the Act. It may be recalled that transport vehicle includes goods vehicle as well as passenger vehicle. Thus no passenger vehicles can be used in any public place without a permit. Sec. 44 requires the State Government to constitute various transport authorities in each State such as State Transport Authority, to exercise and discharge the powers and functions specified in sub-sec. (3) as also Regional Transport Authority to exercise and discharge throughout such areas referred to as regions, as may be specified in the notification, powers and functions conferred on such authority. It would appear that a State Transport Authority is to be constituted for the whole State. The State is to be divided into various regions and a Regional Transport Authority has to be constituted for one or more of such regions. The powers and functions of the State Transport Authority are generally stated in sub-sec. (3) which include; (a) the duty to co-ordinate and regulate the activities and policies of the Regional Transport Authority, if any, of the State, (b) to perform the duties of a Regional Transport Authority where there is no such authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions, (c) to settle the disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities, and (d) to discharge such other functions as may be prescribed. Sec. 45 makes general provisions as to applications for permits. Sub-sec. (2) of Sec. 45 provides that notwithstanding anything contained in sub-sec. (1), the State Government may, by notification in the official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in DIFFERENT States, the application under Sec. 45 (1) shall be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business. Sec. 46 specifies the contents of an application for a stage carriage permit. Sec. 49 prescribes the requirements of an application for a contract carriage permit. One of the requirements is to specify the area for which the permit is required. Primarily an application for a contract carriage has to be made to Regional Transport Authority as transpires from Secs. 50 and 51. It is necessary to notice this fact because an all India tourist permit is none-the-less a contract carriage permit with

747

this difference that its area of operation is the whole of India. It would further transpire from a combined reading of Secs. 49, 50 and 51 that an application for a contract carriage permit with its operational jurisdiction intra-State has to be made to the Regional Transport Authority and if inter-State operation is contemplated, the application has to be made to the State Transport Authority of the region in which the applicant resides or has his principal place of business as contemplated by Sec. 45 (2). This becomes further manifest from the provisions of Sec. 63. (1) which provides that except as otherwise provided, a permit granted by the Regional Transport Authority of any one region shall not be valid in any region, unless the permit

has been counter-signed by the Regional Transport Authority of that other region and a permit granted in any one State shall not be valid in any other State unless counter-signed by the State Transport Authority of that other State or by the Regional Transport Authority concerned. Sub-sec. (6) of Sec. 63 starts with a non-obstante clause and it provides that notwithstanding anything contained in sub-sec. (1). but subject to any rules that may be made under this Act, the Regional Transport Authority of any one region may, for the convenience of the public, grant a special permit in relation to a public service vehicle for carrying a passenger or passengers for hire or reward under a contract, express or implied for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract. 11 Then comes sub-sec. (7) of Sec. 63 which enables the State Transport Authority to grant regular all India tourist permit. It may be extracted:

"Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act, any State Transport Authority may, for the purpose or promoting tourism, grant permits valid for the whole or any part of India, in respect of such number of tourist vehicles as the Central Government may, in respect of that State, specify in this behalf, and the provisions of Sections 49, 50, 51, 57, 58, 59, 59-A, 60, 61 and 64 shall, as far as may be, apply in relation to such permits."

There is a proviso to the section which is immaterial for the present purpose.

Sub-sec. (7) of Sec. 63 which confers power on a State transport Authority to grant regular all India tourist permit makes

748

it obligatory that while granting such permits or in order to grant such permit or with a view to obtain such permit the applicant as well as the concerned authority shall have to act in accordance with Secs. 49, 50, 51, 57, 58, 59, 59-A, 60, 61 and 64 as far as may, apply in relation to such permits.

A reference to Sec. 62 at this stage is necessary because the State Transport Appellate Authority reversed the decision of the Regional Transport Authority and directed grant of temporary all India tourist permit under the erroneous understanding that such temporary permits can be granted under Sec. 62. Sec. 62 reads as under:

"62. Temporary permits-(1) A Regional Transport Authority may without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily-

- (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or
- (b) for the purposes of a seasonal business, or
- (c) to meet a particular temporary need, or
- (d) pending decision on an application for the renewal of a permit, any may attach to any such permit any condition it thinks fit:

Provided that a temporary permit under this section shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit under Section 46 or

Section 54 during the pendency of the application:

Provided further that a temporary permit under this section shall, in no case, be granted more than once in respect of any route or area specified in an application for the renewal of a permit during the pendency of such application for renewal.

749

(2) Notwithstanding anything contained in subsection (1), a temporary permit may be granted there-under in respect of any route or area where-

- (i) no permit could be issued under Section 48 or Section 51 or Section 54 in respect of that route or area by reason of an order of a court or, other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained; or
- (ii) as a result of the suspension by a court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit, in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension.:

Provided that the number of transport vehicles in respect of which the temporary permit is so granted shall not exceed the number of vehicles in respect of which the issue of a permit has been restrained or as the case may be, the permit has been suspended."

Translating these various provisions into functional implementation, an applicant who desires to obtain a permit for a tourist vehicle has to make an application under Sec. 63 (7). Such an application has to be processed as required by Sec. 49 which would immediately imprint the application as an application for a contract carriage permit with this difference that it shall have an all India operation. If it is an application simpliciter for a contract carriage permit, Sec. 50 would necessitate the application being made to Regional Transport Authority, but if the contract carriage permit is to be valid for an inter-State operation, obviously, the application will have to be made to State Transport Authority. Sec. 63 (7) also requires that an application for all India tourist permit has to be made to State Transport Authority. Therefore, even though an application for contract carriage permit has ordinarily to be made to Regional Transport Authority, if all India operation is desired in respect

750

of a tourist vehicle, the same has to be made to the State Transport Authority. This application has to be processed according to the procedure prescribed in Sec. 50. A contract carriage permit other than the one having an all India operation must specify the area or the route or routes on which the permit holder can ply the vehicle under the authority of contract carriage permit as required by Sec.

Sl. Permit contemplated by Sec. 63 (7) can be granted and shall be effective without renewal for such period, not less than 3 years and not more than 5 years, as the authority granting the permit may specify. (See Sec. 58). In

view of the power conferred by Sec. 60, the transport authority which granted the permit will have the power to cancel or suspend the same, if one or more of the conditions prescribed in Sec. 60 are satisfied.

Sec. 63 (7) for the first time conferred power on the State Transport Authority in a State to grant a permit which will enable the permit holder to use the tourist vehicle for all India operation without complying with sub-sec. (1) of Sec. 63 which required countersignature of the State Transport Authority or the Regional Transport Authority as the case may be of State or region other than the one by which the permit is granted, to undertake an operation in the area within the jurisdiction of the counter-signing State Transport Authority or Regional Transport Authority as the case may be. Therefore, unquestionably even though the permit contemplated by Sec. 63 (7) has a larger operational area, it is none the less a contract carriage permit, and Sec. 63 (7) mandated that the authority granting such permit will have to comply with all the sections except Sec. 62 which have to be complied with for obtaining a contract carriage permit contemplated by Sec. 49. Why was Sec. 62 omitted from Sec. 63 (7) is the root question?

The High Court in this connection observed that "since subsection (6) of Sec. 63 has provided for grant of special permits for all India operation of contract carriages, it is reasonable to infer that the omission to mention Sec. 62 in the latter part of sub-sec. (7) of Sec. 63 was deliberate and that the legislature did not intend grant of temporary permits for tourist vehicles for all India operation." This view is assailed on behalf of the appellants and the writ petitioners.

It was contended that as an elaborate procedure is prescribed for grant of stage carriage permit or contract carriage permit and that it being a prolix and time-consuming process, Sec. 62 keeping in

751
view the urgent or emergent need to provide transport facilities to travelling public, conferred power on Regional Transport Authority to grant temporary permit to meet a particular temporary need or for purposes of seasonal business or pending decision of an application for the renewal of a permit. It was urged that if either a stage carriage or contract carriage permit can be granted by a Regional Transport Authority to meet a particular temporary need or pending decision of an application for the renewal of a permit, the Regional Transport Authority can as well grant temporary all India tourist permit for the self same reasons.

There are two fallacies in the submissions on behalf of the appellants and the writ petitioners. Sec. 62 confers power on the Regional Transport Authority to grant temporary permit. A Regional Transport Authority is set up for a region. The jurisdiction of the Regional Transport Authority extends over a region which is usually a small part of the State because for the purposes of the Act State has to be divided into regions. Power to grant temporary permit is conferred on Regional Transport Authority, amongst others, meet a particular temporary need. Regional Transport Authority having jurisdiction over a comparatively small area may be able to gauge, notice or appreciate a particular temporary need for which a temporary permit can be granted for a period not exceeding 4 months without following the procedure prescribed in Sec. 57. The same power can be enjoyed pending the renewal of an already granted permit. By its very nature. Sec. 62 caters to a situation where permits

to operate vehicles may be granted for a short period to meet some temporary or emergency requirement or where time is likely to be spent in processing an application for renewal of a permit and in the interregnum the travelling public may not be put to inconvenience on account of non-availability of vehicles with permits. (See. The Madhya Pradesh State Road Transport Corporation v. The Regional Transport Authority, Raipur).(1) An authority having jurisdiction over a comparatively small area is favourably placed to notice a situation as contemplated by Sec. 62. Therefore, the power is conferred on Regional Transport Authority and not the State Transport Authority to grant temporary permit in the circumstances set out in Sec. 62, because State Transport Authority has jurisdiction over the whole State, and the State Transport Authority exercising the power under Sec. 63 (7) will have to have an all India perspective.

752

Therefore, the statute did not confer such power on State. Transport Authority because by its very nature the Regional Transport Authority having jurisdiction over a comparatively smaller area would be better equipped to appreciate and deal with the needs of the travelling public of a temporary character or pending the renewal of a permit. There is intrinsic evidence in the language of Sec. 62 that it was meant to be used by Regional Transport Authority for dealing with a situation within its small area. If Regional Transport Authority is not competent to grant regular all India tourist permit, no canon of construction would permit the Court to clothe him with power to grant temporary all India tourist permit. Even if the dictum that the power to grant final relief inheres the power to grant interim relief can be extended to executive authority, yet when the Regional Transport Authority has no power to grant regular all India tourist permit, it would be impossible to hold that such authority has none the less the power to grant temporary all India tourist permit. Therefore, the very language of Sec. 62 on which the High Court substantially relied in support of its conclusion would be sufficient to negative the contention canvased on behalf of the appellants and the petitioners.

It was, however, urged that Sec. 44 (3) contemplates a situation where a State Transport Authority has to perform the duties of Regional Transport Authority and, therefore, the expression 'Regional Transport Authority' in Sec. 62 would either comprehend State Transport Authority or would not atleast exclude the power conferred on the lower authority to be enjoyed by the higher authority. Sec. 44 (3) would not render any help in this behalf because it merely provides that a State Transport Authority can perform the duties of a Regional Transport Authority where there is no such Authority or where, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect - of any route common to two or more regions. None of these conditions under which a State Transport Authority can perform the functions and discharge the duties of a Regional Transport Authority are satisfied, and therefore, it is difficult to accept the submission that the expression 'Regional Transport Authority' used in Sec. 62 will comprehend State Transport Authority. It is equally not possible to accept the submission that when a power is conferred on a lower authority that power can always be enjoyed by the authority higher in the hierarchy in relation to the lower authority. There is no express provision in the statute which provides that the State Transport Authority

can always and

753

without any fetter enjoy the power of the Regional Transport Authority and in the absence of such provision it is difficult to read merely on the basis of vertical hierarchy wherever the lower authority is mentioned in the statute, the higher authority be included therein. Viewed from this angle, we do not propose to undertake the exercise of ascertaining whether State Transport Authority can be said to be the higher authority in relation to Regional Transport Authority.

It was urged that temporary permit can be granted pending decision of an application for a renewal of a permit; and that as in the State of Karnataka out of a quota of 50 permits granted by the Central Government under Sec. 63 (7), only 36 have been issued, the State Transport Authority can grant temporary permit for the vacancies till regular all India tourist permits are granted. Support was sought to be drawn for the submission from cl. (d) of sub-sec. (1) of Sec. 62 which provides that temporary permit can be granted pending decision on an application for the renewal of a permit. The section does not provide for grant of temporary permits pending grant of a regular permit. On the contrary the first proviso to Sec. 62 (1) makes what is implicit in the cl. (d) explicit by providing that a temporary permit under Sec. 62 shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit under Section 46 or Sec. 54 during the pendency of the application. It may be recalled that Sec. 46 provides for an application for a stage carriage permit and Sec. 54 provides for an application for public carriers permit. Therefore, in no case a temporary permit can be granted under the section pending grant of or renewal or a contract carriage permit. Sub-sec (2) of Sec. 62, however, carves out an exception where a temporary contract carriage permit can be granted in respect of any route or area where no permit could be issued by reason of an order of the court or, other competent authority restraining the issue of the same. That is not the case here. Therefore, there is no power to grant a temporary contract carriage permit and ipso facto the temporary all India tourist permit under Sec. 62 and the contention stands negated by the very language of Sec. 62 Accordingly there is no merit in the submission.

A few days after the arguments were concluded and the matter stood over for Judgment, Mr. K. N. Bhatt, learned counsel for some of the petitioners submitted a written brief in which it was stated that the Motor Vehicles Act, 1939 in its application to the State of

754

Karnataka was amended by the Motor Vehicles (Mysore Amendment Act, 1973 (Karnataka Act No. 25 of 1975) which, after receiving the assent of the President came into force on January 12, 1974, has introduced the following sentence at the end of sub-sec. (2) of Sec. 45. The sentence reads as under:

"When such a notification is issued, reference to the Regional Transport Authority in Sections 47, 48, 50, 51, 53, 54, 55, 56, 57, 58, 62, 63 and 68 shall, in respect of the application for permit for using a vehicle in two or more regions lying in different States, be construed as reference also to the State Transport Authority."

By the same Amending Act sub-sec. (2A) has been added in Sec. 45 which reads as under:

"Notwithstanding anything contained in sub-section (1), the State Government may, by notification in the official Gazette, direct that in the case of any vehicle or vehicles proposed to be used in two or more regions lying in the State, the application under that sub-section shall be made to the State Transport Authority. When such a notification is issued, reference to the Regional Transport Authority in sections 47, 48, 50, 51, 53, 54, 55, 56, 57, 58, 62, 63 and 68F shall in respect of applications for permit for using a vehicle in two or more regions lying in the State, be construed as reference also to the State Transport Authority."

Relying on these amendments it was urged that as far as the State of Karnataka is concerned on the issue of a notification under sub-sec (2A) of Sec 45 the expression 'Regional Transport Authority' in Sec. 62 will also comprehend State Transport Authority and therefore, the submission of the appellants and the petitioners cannot be negatived on the ground that only Regional Transport Authority is empowered to issue temporary permits. Though no notification as required under sub-sec. (2A) of Sec. 45 was brought to our notice we are prepared to proceed on the assumption that such a notification has been issued. But even if in the application of the Motor Vehicles Act to the State of Karnataka, Sec. 62 would also enable State Transport Authority to issue temporary permit, it can only be done in the circumstances and eventualities mentioned in that.

755

section. It will be presently pointed out that power to grant temporary permit under Sec. 62 in the circumstances and eventualities therein mentioned would not comprehend the power to grant temporary all India tourist permit because none of the conditions under which the same can be granted would be attracted and State Transport Authority of a State will have no material for satisfaction of one or the other condition set out in Sec. 62 which would enable it to grant such a permit. Therefore, this amendment would hardly make any difference in the outcome of the matter.

It was urged that the High Court was in error in attaching importance to the omission of Sec. 62 from array of sections subject to which an application for an all India tourist- permit has to be processed which according to the High Court clearly manifests the legislative intention that there was no question of granting under any circumstances temporary all India tourist permit. It was contended that omission of Sec. 62 is quite logical because if it was placed amongst the array of sections subject to which applications for all India tourist permit have to be processed, it would have become incongruous. Proceeding along this line it was submitted that Sec. 63 (7) provides that 'such permit' as contemplated by Sec. 63 (7) will be granted in accordance with the various provisions set out therein, the expression 'such permit' can only mean regular or all India tourist permit and the temporary all India tourist permit was not to be catered to by Sec. 63 (7) but by Sec. 62 and therefore it was rightly omitted from the array of sections set out in sec. 63 (7). If one were to conclude from the mere omission of Sec. 62 from amongst the array of sections subject to which an application for permit under sec. 63 (7) will have to be processed that no temporary all India tourist permit can be granted, there would have been some force in the submission on behalf of

the appellants and the writ petitioners. But we would presently point that the whole concept of granting temporary all India tourist permit is foreign to the concept of all India tourist permit and that this conclusion gets reinforced by the omission of Sec. 62 from the array of various sections subject to to which a permit under Sec. 63 (7) can be granted.

Sub-section (7) was introduced in Sec. 63 in 1970. The object underlying the introduction of sub-sec. (7) becomes manifest from the language used therein. Till the introduction of sub-sec. (7), the situation was that the Regional Transport Authority can grant contract carriage permit valid for the area under its jurisdiction or when counter-signed by the State Transport Authority of the other State

756

then the vehicle can be operated in that other State. Now with a view to promoting tourism, it was decided to clothe State Transport Authority with power to issue a permit which without the necessity of obtaining counter-signature of other Transport Authority of other State valid for operating the vehicle throughout the length and breadth of the country. With a view to providing uninterrupted flow of tourist traffic, thereby expanding tourist facilities which would promote tourism in the country, a contract carriage permit with all India operation was conceived and power was conferred on the State Transport Authority subject to the quota prescribed by the Central Government for each State to grant such permit. Every State had the prescribed quota and we were informed that at present each State has a quota of 50 permits. Within the quota, State Transport Authority in each State can grant a contract carriage permit in respect of a tourist vehicle for all India operation. A contract carriage permit can as well be granted under Sec. 51 in respect of a vehicle which carries a passenger or passengers for hire or reward under a contract express or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum etc. Any ordinary vehicle meeting the requirements of law can be operated under a contract carriage permit granted under Sec. 51. But when it comes to granting of a contract carriage permit available for all India operation, it has to be in respect of a tourist vehicle. Tourist vehicle has been defined to mean a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as the State Government, may, by notification in the official Gazette, specify in this behalf. We were told that some special arrangements for comfortable journey over long distances has to be provided in a tourist vehicle. What is the distinction ? An all India tourist permit is none-the-less a contract carriage permit but while contract carriage permit can be granted for any vehicle not required to be specially adapted for the purpose, a contract carriage permit for all India operation as envisaged by Sec. 63 (7) can only be granted in respect of tourist vehicle, and it appears that it requires a substantial financial investment for adapting a vehicle as a tourist vehicle. This intrinsic evidence shows that such huge or heavy outlay cannot be imposed on an applicant by giving him temporary all India tourist permit which cannot be granted for a period extending 4 months.

If Sec. 62 were to be a proviso to Sec. 63 (7) and therefore, one can conceive of granting a temporary all India tourist permit for meeting a particular temporary need, it is difficult to envisage a particular temporary need of an all India variant which can be

757

noticed by State Transport Authority of one State and such authority can proceed side-tracking all relevant provisions to grant temporary all India tourist permit. Can there conceivably be a particular temporary need felt throughout India at the same time ? If the answer is in the affirmative, all the States can grant temporary permits. There will be more vehicles and less travellers. Further a State Transport Authority of one State may believe that there exists a particular temporary need but the view of the other State Transport Authority can be exactly to the contrary, and State Transport Authority. Of one State can open the flood-gates of temporary permits permitting tourist vehicles to invade other States. It may be that a particular temporary need may arise in one State but that can be catered to by the Regional Transport Authority of the region or the State Transport Authority of the State giving direction to Regional Transport Authority to grant contract carriage permit under Sec. 51. It is not necessary to have recourse to Sec. 63 (7) in such a situation, and if one State cannot cater to the particular all India need, other States having their own quota can fill in the bill.

Having thus examined the whole concept of all India tourist permit, the question of granting of a tourist permit to cater to a particular temporary need appears to be foreign to the very concept of all India tourist permit. For this additional reason, we are of the opinion that the High Court was perfectly justified in reaching the E conclusion that there is no power to grant temporary all India tourist permit and the High Court rightly set aside the decision of the State Transport Appellate Authority. No case is therefore, made out for interfering with the same. Accordingly all these appeals, special leave petitions and writ petitions fail and each of which is dismissed with costs where appearance has been entered into on the other side.

All interim orders are vacated.

H.L.C.

Appeals and petitions dismissed.

758