

Supreme Court of India

Rameshwar Prasad Etc., Etc vs State Of Uttar Pradesh & Others on 24 February, 1983

Equivalent citations: 1983 AIR 383, 1983 SCR (2) 418

Author: E Venkataramiah

Bench: Venkataramiah, E.S. (J)

PETITIONER:

RAMESHWAR PRASAD ETC., ETC.

Vs.

RESPONDENT:

STATE OF UTTAR PRADESH & OTHERS

DATE OF JUDGMENT 24/02/1983

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

SEN, A.P. (J)

CITATION:

1983 AIR 383 1983 SCR (2) 418

1983 SCC (2) 195 1983 SCALE (1) 152

CITATOR INFO :

D 1992 SC 443 (13,14)

ACT:

Motor Vehicles Act, 1939 as in force in the State of Uttar Pradesh- S. 43-A as amended by U.P. Act 15 of 1976 read with s. 47 as amended by Central Act 47 of 1978 Interpretation of-State Government cannot issue directions under sub-s. (1) of s. 43-A for grant of stage carriage permits to an eligible applicants after amendment of s. 43-A by U. P. Act 15 of 1976-While issuing directions under sub-s. (1) of s. 43-A State Government cannot ignore provisions contained in sub-ss. (1) and (1A) to (1H) of s. 47.

Interpretation - Rule of construction of an amended provision.

Words and Phrases - 'Public interest'-What it means in the context of Motor Vehicles Act, 1939.

HEADNOTE:

A 'stage carriage' under the Motor Vehicles Act, 1939 means a motor vehicle which carries more than six persons for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for stages of the journey and for plying such a vehicle it is necessary to obtain a permit from the appropriate Transport

Authority. While considering an application for such a permit, the Transport Authority must, under cls. (a) to (f) of sub-s. (1) of s. 47, have regard to the interest of the public generally, the advantages to the public of the service to be provided, the adequacy of other passenger transport services operating between the places to be served, the operation by the applicant of other transport services, etc., and also take into consideration the representations made by local or police authorities and by persons already providing passenger transport facilities by any means along or near the proposed route or area. The State Government may, under sub-s. (1) of s. 43, having regard to the advantages offered to the public by the development of motor transport, the desirability of preventing uneconomic competition among motor vehicles, etc., issue appropriate directions to the Transport Authority

The subject matter of regulation of motor vehicles being within the scope of entry 35 of the Concurrent List, the Act in its application to the State of Uttar Pradesh was amended in 1972 by the U.P. Legislature by the introduction of s. 43-A which was a new provision. While sub-s. (1) thereof conferred power on the State Government to issue directions of a general character in public interest in respect of any matter relating to road transport, sub-s.

419

(2) specifically conferred the power to issue directions regarding grant of stage carriage permits to all eligible applicants if the State Government was of the opinion that it was in the public interest to do so. Further, under sub-s. (2) of s. 43-A, the provisions of s. 47 stood amended to the effect that while considering an application for permit, it was no longer necessary for the Transport Authority to have regard to the adequacy of other passenger transport services operating between the places to be served or to the operation by the applicant of other transport services; nor was the Transport Authority required to look into representations made by any one other than local or police authorities. The State Government, acting under s. 43-A, issued directions in March, 1972 for grant of permits to all eligible applicants without any restriction as to the number of permits to be issued on any route. The validity of s. 43-A and the directions issued thereunder were upheld by the Court in *Hans Raj Kehar & Ors v. State of UP. & Ors* [1975] 1 S.C.R. 916. But, within a short time, the State Government realised the necessity of reviewing the policy of issuing permits to all eligible applicants and amended s. 43-A with retrospective effect by the Uttar Pradesh Act 15 of 1976. While sub s. (1) was retained as such, sub-s. (2) was substituted by an entirely new sub-section. The Statement of objects and Reasons appended to the Amending Act stated that it had become necessary to reconsider the policy of granting bus permits liberally with a view to checking unproductive

capital expenditure and unnecessary consumption of fuel, preventing elimination of small operators as a consequence of unreasonable competition, etc. and authorising the State Government to issue necessary directions from time to time in regard to the number of permits that may be granted in respect of any route or area, the preference to be given to specifically deserving categories, etc. The State Government thereafter issued directions to the Transport Authorities to ensure that the operation of the total number of stage carriages on any route was economically viable.

Section 47 was amended by the Central Act 47 of 1978. The proviso to sub-s. (1) of s. 47 was amended by providing that in addition to a registered cooperative society, an application for a stage carriage permit from a person who has a valid licence for driving transport vehicles shall be given preference over applications from individual owners. Parliament also introduced new sub-ss. (1A) to (1H) in s. 47 providing for reservation of certain percentage of stage carriage permits for the Scheduled Castes and Tribes and weaker sections of the community and empowered the State Government to frame rules for implementing sub-ss. (1A) to (1H) of s. 47. These amendments came into force on January 16, 1979.

On January 10, 1981 the State Government issued a notification directing the Transport Authorities to issue stage carriage permits to all eligible applicants and specifying that there should be no upper limit to the number of stage carriages for which permits might be granted. On January 23, 1981, by another notification, of the Transport Authorities were directed to have regard only to matters referred to in cls. (a), (b), (d) and (f) of sub-s. (1) of s. 47 and to take into consideration representations made by local or police authorities only. The appellants challenged the notifications under Article 226.

420

The High Court dismissed the petitions repelling the contention that in the absence of reservation of the required percentage of permits for persons belonging to the Scheduled Castes, the Scheduled Tribes and weaker sections as provided in s. 47 the grant of permits would be vitiated. According to the High Court the question of reservation would arise only in those cases where the seats or articles are limited for distribution or allotment but where there is no limit or no fixed number, the question of reservation would not arise. The High Court said that the Statement of objects and Reasons appended to the Amending Act 15 of 1976 cannot override the clear provisions of s. 43-A as amended by that Act and held that though the two impugned notifications did not follow the procedure prescribed by sub-s. (2) of s. 43-A, they could be sustained under sub-s. (1) of s. 43-A. It relied on the decision in Hans Raj Kehar's case to hold that large number of buses operating on different routes would be for the convenience and benefit of

the travelling public.

Allowing the appeals,

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HELD: Whenever a court is called upon to interpret an amended provision it has to bear in mind the history of the provision, the mischief which the legislature attempted to remedy, the remedy provided by the amendment and the reason for providing such remedy. Section 43-A of the Act as in force in the State of U.P. was amended by the U.P. Act 15 of 1976. By the substitution of the former sub-s. (2) by the new sub-s (2) in s. 43-A the legislature clearly expressed itself against the policy of granting permits to all eligible applicants without any consideration to the needs of any particular locality or route or to the qualifications of applicants. After the amendment, sub-s. (1) of S. 43-A did not comprehend within its scope the power to issue directions for issuing permits to all eligible applicants without any sort of restriction relevant to the scheme of the Act. The sub-section states that the State Government may issue such directions of a general character as it may consider necessary in the public interest. 'Public interest' under the Act does not mean the interests of the operators or of the passengers only. It takes within its fold several factors such as, the maximum number of permits that may be Issued on a route or in any area having regard to the needs and convenience of the travelling public, the non-availability of sufficient number of stage carriages in other routes or areas which may be in need of running of additional services, the problems of law and order, availability of fuel, etc. To say that larger the number of stage carriages in any route or area more convenient it would be to the members of the public is an oversimplification of a problem with myriad facets affecting the general public. The Act itself contains provisions relating to licensing of drivers and conductors, specifications of motor vehicles, co-ordination of road and rail transport, prevention of deterioration of road system, prevention of Uneconomic competition among motor vehicles, etc. Any direction given by the State Government under s. 43-A should, therefore, be in conformity with all matters regarding which the statute has made provision. In this situation to say that any number of permits can be issued to any eligible operator without any upper limit is to overstep the limits of delegation of statutory power. [444 A-H; 445 A-E]

In the instant case, a reading of the two notifications shows that the State Government ignored the legislative policy underlying the U.P. Act 15 of 421

1976 by which the new sub-s. (2) of s. 43-A was enacted in substitution of the former sub-s. (2) with retrospective effect. The new sub-s. (2) was introduced by the State legislature after it had realised the mistake committed by

the State Government in issuing the notification in the year 1972 directing the issue of bus permits liberally in favour of all eligible applicants which had resulted in investment of unproductive capital expenditure and under-utilisation of capital and fuel and in unreasonable competition which eventually eliminated small operators from business. [441 D-F]

(ii) The State Government also ignored the new policy governing the issue of permits introduced by Parliament by amending s. 47 of the Act in 1978. The High Court erred in not noticing that by issuing the notification containing a direction to the Transport Authorities to issue limitless number of permits, the State Government had attempted to circumvent sub-s. (1) and (IA) to (IH) of a s. 47. The observation of the High Court that preferences have to be shown and reservations have to be made only when there is scarcity of permits and since there were no restrictions on the number of permits to be issued there was no necessity to make any such provision is shocking. Preference and reservations have value only when there is a limit on the number of permits to be issued and in the context of the Act there should necessarily be a limit on the issue of permits to operate motor vehicles in respect of any route or area. By the D method adopted by it the State Government has virtually allowed the rich and well-to-do businessman - who can bear the loss for some time to introduce any number of vehicles on a route or in any area until all the small operators who also may take the permits to leave the field owing to the inevitable loss that ensues by the operation of an unlimited number of vehicles. The two notifications in question are clearly outside the scope of the Act. [445 F-H; 446 A-E]

(iii) The observations in Hans Raj Kehar's case are inapplicable to the present cases. In that case the Court was concerned with sub-s. (2) of s. 43-A as it stood then. At that time, the sub-section contained a clear legislative policy which considered that there could be no public prejudice if all eligible applicants were granted permits. Whatever the Court may have observed while considering that provision would not apply now as There is a clear departure made by the legislature from that policy when it enacted the new sub-s. (2) of s. 43-A. In the face of this amendment by which the former sub-s. (2) of s.43-A which specifically authorised the State Government when it was satisfied that it was necessary to do so in the public interest to issue directions to the Transport Authorities to grant permits to all eligible applicants was deliberately taken away by the State legislature, the High Court was wrong in holding that such power was still available under sub-s. (1) of s. 43-A which was widely worded. [443 C-H]

Hans Raj Kehar & Ors. v. State of U.P. & Ors. [1975] 2 S.C.R. 916, held inapplicable.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1269- 71 of 1982.

Appeals by Special leave from the Judgment and order dated 23rd the March, 1982 of the Allahabad High Court in Civil Miscellaneous Writ Petition Nos. 2328, 2424 and 1998 of 1981.

Shanti Bhusan and R.R. Jain for the Appellants. Mrs. Shobha Dikshit for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. In these appeals by special leave filed against the common judgment dated March 23, 1982 of the Allahabad High Court, the validity of two Notifications issued by the Government of Uttar Pradesh under section 43-A of the Motor Vehicles Act, 1939 (Act IV of 1939) (hereinafter referred to as 'the Act') as in force in the State of Uttar Pradesh arises for consideration. The two impugned Notifications are reproduced below:

I. "Notification No. 68 T/XXX-4-15-KM/79 Dated: Lucknow: January 10, 1981.

Whereas, the Government of Uttar Pradesh is of opinion that it is in the public interest to grant stage carriage permits (except in respect of routes or areas for which schemes have been published under section 68-C of the Motor Vehicles Act, 1939) to all eligible applicants:

Now, therefore, in exercise of the powers under section 43.A of the Motor Vehicles Act, 1939, the Governor of Uttar Pradesh is pleased to direct that the stage carriage permits (except in respect of routes or areas for which schemes have been published under section 68-C of the Motor Vehicles Act, 1939) shall be granted according to the provisions of the Act to all eligible applicants and there shall be no upper limit to the number of stage carriages for which permits may be granted.

By order Karnail Singh, Sachiv II. Notification No. 241 T/XXX-4-15-P/79 Dated: January 23, 1981 The Governor being satisfied that it is expedient in the public interest so to do, is pleased to direct in exercise of the powers under section 43-A of the Motor Vehicles Act, 1939 (Act No. 4 of 1939) that while considering applications for stage carriage permits, the State Transport Authority or a Regional Authority:

(i) shall have regard only to matters referred to in clauses (a), (b), (d) and (f) of sub-section (1) of section 47 of the said Act and shall also take into consideration representations made by the local authority or police authority within whose jurisdiction any part of the proposed route or area lies; and

(ii) shall be deemed to have made sufficient compliance of the provisions of section 57 of the said Act, if it intimates the particulars of the applications to such local authority and police authority for making representations, if any, within a period of

fifteen days from the date of despatch of the intimation with the stipulation that if no representation is received within the prescribed period of time, it shall be presumed that they have no representation to make, and has considered any representation made by such local authority and police authority.

By order Karnail Singh, Sachiv."

The appellants who are stage carriage operators challenged the validity of the above Notifications in the writ petitions filed by them under Article 226 of the Constitution before the High Court inter alia on the ground that they were ultra vires the provisions of the Act under which they had been issued. The High Court dismissed the writ petitions after negating the contentions of the appellants. Aggrieved by the decision of the High Court the appellants have preferred these appeals by special leave as stated above.

It is necessary at this stage to give a resume of the relevant statutory provisions to understand the rival contentions of the parties. On finding that the Indian Motor Vehicles Act, 1914 which was brought into force at an early stage of development of motor transport was inadequate to meet the new situation created by the growth of motor transport by the year 1939, the Central Legislature passed the Act for the purpose of regulating motor traffic in the interests alike of the safety and convenience of the public and of the development of a coordinated system of transport. The Act underwent major alterations in 1956 and 1969. Broadly the Act provided inter alia for registration of motor vehicles, licensing of drivers and conductors, grant of permits to ply public service vehicles and public carriers, operation of road transport service by State transport undertakings in any area or on any route to the exclusion, complete or partial of other persons, construction, equipment and maintenance of motor vehicles, control of traffic, insurance of motor vehicles against third party risks and offences, penalties and procedure. The State Governments were entrusted with the duty of framing rules on various matters connected with the topics dealt with by the Act. The subject of regulation of motor vehicles being within the scope of Entry 35 - mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied-in List III of the Seventh Schedule to the Constitution, various amendments were made from time to time by several State Legislatures with the assent of the President of India either adding to or modifying the provisions of the Act. Chapter IV of the Act which includes section 42 to section 68 contains provisions pertaining to the control of motor vehicles. Section 42 of the Act provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place whether or not such vehicle is actually carrying any passenger or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Commission authorising the use of the vehicle in that place in the manner in which the vehicle is being used. A 'transport vehicle' is defined in section 2(33) of the Act as a public service vehicle or a goods vehicle. A 'public service vehicle' is defined in section 2(25) of the Act as any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage and stage carriage. Section 2(29) of the Act states that a 'stage carriage' means 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. Section 45(1) of the Act prescribes that every application for a permit shall be

made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. When the vehicle is to be used in two or more regions, the applications for permits may be made as provided in the provisos to section 45(1) or section 45(2) of the Act, as the case may be. The constitution of the Regional Transport Authorities and the State Transport Authorities is dealt with by section 44 of the Act. A State Transport Authority or a Regional Transport Authority shall consist of a Chairman who has had judicial experience or experience as an appellate or revisional authority under any law relating to land revenue and in the case of a State Transport Authority, such other officials and non-officials, not being less than two, and, in the case of Regional Transport Authority such other persons (whether officials or not) not being less than two, as the State Government may think fit to appoint. An application for a stage carriage permit shall have to contain the particulars mentioned in section 46 of the Act. Prior to its amendment in 1978, section 47 as amended by Act 100 of 1956 read as follows:

"47. Procedure of Regional Transport Authority in considering application for stage carriage permits.-(1) A Regional Transport Authority shall, in considering an application for a stage carriage permit. have regard to the P following matters, namely:

- (a) the interest of the public generally;
- (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;
- (c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served.
- (d) the benefit to any particular locality or localities likely to be afforded by the service;
- (e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;
- (f) the condition of the roads included in the proposed route or area;

and shall also take into consideration any representations made by persons already providing passenger 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 recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies:

Provided that other conditions being equal, an application for a stage carriage permit from a cooperative society registered or deemed to have been registered under any

enactment in force for the time being shall, as far as may be, be given preference over applications from individual owners. (2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any timetable furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the time-table so as to conform to the said provisions. (3) 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 on any specified area or on any specified route within the region."

The procedure in applying for and granting permits is set out in section 57 of the Act. Section 48 of the Act provides that subject to section 47, a Regional Transport Authority may, on an application made to it under section 46, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit. If the Regional Transport Authority decides to grant a stage carriage permit, it may attach to it all or any of the conditions mentioned in section 48(3) of the Act. The proceedings before a Regional Transport Authority are quasi judicial in character. While considering the application for the grant of a stage carriage permit the Regional Transport Authority has to consider all representations referred to in section 57(3). Sub-section (5) of section 57 of the Act provides that when any representation such as is referred to in sub-section (3) thereof is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the persons making the representations shall have an opportunity of being heard either in person or by a duly authorised representative. Representations can be made among others by any person who is providing transport facilities on the route or in the area, any rival applicant, police authorities and local authorities. Any person who satisfies the qualifications mentioned in section 64 of the Act and who is aggrieved by the resolution of the Regional Transport Authority may file an appeal before the State Transport P Appellate Tribunal which should consist of a wholetime judicial officer not below the rank of a District Judge. An order of a Regional Transport Authority or of a State Transport Authority against which no appeal can be filed is subject to revision by the State Transport Appellate Tribunal under section 64-A of the Act. Subsection (1) of section 43 of the Act which confers power on the State Government to control transport reads thus:

"43. Power to State Government to control transport-

(1) A State Government having regard to:

(a) the advantages offered to the public, trade and industry by the development of motor transport,

(b) the desirability of coordinating road and rail transport.

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among motor vehicles, may, from time to time, by notification in the official Gazette, issue directions to the State Transport Authority:

(i) regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carriages, contract carriages and public carriers;

(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods, by private or public carriers,

(iii) regarding the grant of permits for alternative routes or areas, to persons In whose cases the existing permits are not renewed in pursuance of the provisions of sub-section (1-D) of section 68-F, or are cancelled or the terms thereof are modified in exercise of the powers conferred by clause

(b) or clause (c) of sub-section (2) of section 68-F;

(iv) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its coordination with A other means of transport and the conveying of long distance goods traffic:

Provided that no such notification shall be issued unless a draft of the proposed directions is published in the official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard."

In the year 1972, however, the Act was amended by the Legislature of the State of Uttar Pradesh introducing a new section being section 43-A by the Motor Vehicles (U.P. Amendment) Act, 1972 with the assent of the President. The material part of section 43-A which was newly introduced by the said amending U.P. Act read as under:

"43-A. (1) The State Government may issue such directions of a general character as it may consider necessary or expedient in the public interest in respect of any matter relating to road transport to the State Transport Authority or to any Regional Transport Authority, and such Transport Authority shall give effect to all such directions.

(2) Without prejudice to the generality of the fore going power, where the State Government is of opinion that it is in the public interest to grant stage carriage permits (except in respect of routes or areas for which schemes have been published under section 68(C) or contract carriage permits or public carrier permits to all eligible applicants, it may by notification in the Gazette issue a direction accordingly, and thereupon all transport authorities as well as the State Transport Appellate Tribunal constituted under section 64 shall proceed to consider and decide all applications, appeals and. revisions in that behalf (including any pending applications, appeals and revisions) as if-

(a) in section 47-

(i) for sub-section (1) the following sub-

sections were substituted:

(ii) A Regional Transport Authority shall in considering an application for a stage carriage permit, have regard to the following matters, namely-

(a) the interest of the public generally;

(b) the advantage to the public of the service to be provided including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the benefit to any particular locality or localities likely to be afforded by the service;

and shall also take into consideration any representation made by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies; and sub-section (3) were omitted The above U.P. Act was preceded by the U.P. Ordinance which contained more or less the same provisions. The ordinance was substituted by the said U.P. Act. The object of enacting section 43-A of the Act was set out in the Statement of objects and Reasons attached to the relevant U.P. Bill which read as follows:

"Objects and Reasons-operators engage in the race for securing permits for stage carriage on non-nationalised routes. Due to limitation on the number of permits this business is controlled by a few persons. Complaints in this regard are made every other day. Therefore, with a view to making it easier to secure permits in respect of non-nationalised routes and to introducing simplicity in procedure and to providing greater employment and securing equitable distribution thereof it was considered necessary to amend sections 47, SO, SS and 64 of the Motor Vehicles Act, 1939, suitably. Accordingly, in the public interest and with the aforesaid object in view, the Motor Vehicles (Uttar Pradesh Amendment) ordinance, 1972, was promulgated. This

Bill is introduced to replace the said ordinance.

Pursuant to the power conferred on it by section 43-A of the Act, the Government of the State of Uttar Pradesh issued the following directions on March 30, 1972 by a Notification, the relevant part of which reads as under:

"Whereas the State Government is of opinion that it is in the public interest to grant stage carriage permits (except in respect of routes or areas for which schemes have been published under section 68-C of the Motor Vehicles Act, 1939) contract carriage permits and public carrier permits to all eligible applicants. Now, therefore, in exercise of the power conferred by section 43-A of the Motor Vehicles Act, 1939 the Governor is pleased to direct that stage carriage permits (except in respect of routes or areas aforesaid) contract carriage permits and public carrier permits shall be granted according to the provisions of the said Act to all eligible applicants."

The validity of section 43-A of the Act introduced by the U. P. Legislature and of the Notification dated March P 30, 1972 issued by the Government of Uttar Pradesh pursuant to that section was questioned in some writ petitions filed by some motor operators in the High Court of Allahabad. Those petitions were dismissed. On appeal this Court upheld the validity of section 43-A of the Act as well as the Notification by its judgment in Hans Raj Kehar & Ors. v. The State of U.P. & Ors.(1) which was delivered on December 4, 1974. Within about three and half years from the date of the above said notification the Government of Uttar Pradesh realised that it was necessary to review the whole question of issuing permits to all eligible applicants. Accor-

dingly the State Government issued a Notification on September 24, 1975 which ran as follows:

"Whereas, in exercise of the power conferred by Section 43-A of the Motor Vehicles Act, 1939 the State Government was by notification No. 1188-T/XXX-4, dated March 30, 1972, pleased to direct that stage carriage permits (except in respect of routes or areas aforesaid) contract carriage permits and public carrier permits shall be granted according to the provisions of the said Act to all eligible applicants: And whereas, on further consideration the State Government is of opinion that the policy of granting such permits to all eligible applicants requires review with a view to:

- (a) Preventing unproductive expenditure and under utilization of capital and fuel.
- (b) Preventing elimination of small operators due to unfair competition resulting from the issue of more permits than required for a route.
- (c) Facilitating long term planning of passenger road transport services.

And whereas, such review is likely to take some time and in the mean time it is necessary to stay the disposal of all pending applications for permits or entertainment of fresh applications. Now, therefore, in exercise of the powers

conferred by the said Section 43-A of the Motor Vehicles Act, 1939, read with Section 21 of the U.P. General Clauses Act, 1904, the Governor is pleased to direct that:

1. The Notification No. 1198 T/XXX-4, dated 30th March, 1972 be and is hereby rescinded with immediate effect.
2. The consideration of applications for stage carriage permits pending with any Transport Authority shall stand postponed until further directions are issued in this behalf by the State Government.
3. No fresh applications for such permits shall be entertained until further directions are issued in this behalf by the State Government."

The above Notification shows that as a consequence of the policy of granting permits to all eligible applicants, necessity had arisen to take measures (i) to prevent unproductive expenditure and under utilisation of capital and fuel, (ii) to prevent elimination of small operators due to unfair competition resulting from the issue of more permits than required for a route; and (iii) to embark upon long term planning of passenger road transport services.

It is stated that by U.P. Ordinance 35 of 1975, Section 43-A was amended. This ordinance was replaced by the Uttar Pradesh Act 15 of 1976. By this Act, sub-section (2) of section 43-A. which had been added in 1972 was substituted with retrospective effect from the date of its original enactment. Section 43-A after it was amended by the U.P. Act 15 of 1976 read as under:

"43-A. Power of State Government to issue directions to Transport Authorities-(1) The State Government may issue such directions of a general character as it may consider necessary or expedient in the public interest in respect of any matter relating to road transport to the State Transport Authority or to any Regional Transport Authority, and such Transport Authority shall give effect to all such directions. (2) Without prejudice to the generality of the provisions of sub-section (1) such directions may be given in respect of any of the following matters, namely:

(a) the number of stage carriage or contract carriage permits that may be granted in respect of any route or area.

(b) the preference or the order of preference to be given to or the quota to be fixed for, specially deserving categories, such as Ex. Army personnel, educated unemployed persons, such persons holding driving licences as are members of cooperative societies formed for passenger transport business, persons belonging to the Scheduled castes and Scheduled Tribes.

(c) the procedure for grant of permits, and for selection from among the applicants, including selection by drawing of lots from among persons belonging to the same category. (3) Any direction under sub-section (1) may be issued with retrospective

effect.

(4) Where any direction is issued under sub- section (1) to any Transport Authority, then any appeal or revision pending before the State Transport Appellate Tribunal shall also be decided in such manner as to give effect to such directions. (5) Where any direction is issued under sub- section (1) with retrospective effect then

(a) any Transport Authority or the State Transport Appellate Tribunal may review any order passed earlier by it with a view to making it conform to such direction and may for that purpose cancel any permit already issued.

(b) any Transport Authority may apply to the High Court earlier with a view to enabling such authority to comply with such direction. (6) The provisions of this section shall have effect notwithstanding anything contained in sections 47, 50 and 57."

The policy behind the above amendment was stated in the Statement of objects and Reasons placed before the State Legislature as follows:

"(5) In 1972 the State Government had accepted a policy of granting bus permits liberally. Reconsideration of the said policy however, became necessary with a view to checking unproductive capital expenditure and unnecessary consumption of fuel and preventing the elimination of small operators as a consequence of unreasonable competition and to removing difficulties in the implementation of long term plans pertaining to passenger road transport services. It was accordingly considered necessary to amend the Motor Vehicles Act, 1939, to authorise the State Government to issue directions from time to time in regard to the number of permits that may be granted in respect of any route or area, the preference to be given to specially deserving categories and the procedure for grant of permits."

Pursuant to the said amended section 43-A of the Act, the Government of Uttar Pradesh issued a Notification containing directions on March 12, 1976 in the following terms:

"Whereas, in exercise of the powers conferred by section 43-A of the M.V. Act, 1939, the State Government had by a notification No. 4251-T/XXX-4-9P/72 dated September 24 1975, as amended by notification No. 4530-T/ XXX-4-75 dated October 6,1975 postponed the consideration of applications for permits by any transport authority in respect of non-notified routes until further directions in this behalf of the State Government.

Now, therefore, in exercise of the powers conferred by the said section 43-A (2) of the M.V. Act, 1939 read with section 21 of the General Clauses Act, 1904, the Governor is pleased to direct: (1) That the S.T.A. and R.T. As. while fixing the number of Additional Stage Carriage permits to be issued at a given time on non-notified routes,

shall in addition to the consideration of the matter mentioned in sub-section (1) of section 47 of the M.V. Act, ensure that the operation of the total number of stage carriages on any route, taking into consideration the existing as well as the additional permits proposed to be issued, would be economically viable on the existing fare-structure as per the norms as laid down by the State Government from time to time"

The above notification also contained directions regarding the principle to be followed in determining the number of permits that could be issued and reservation of permits for operators displaced by nationalisation, educated unemployed, members belonging to the Scheduled Castes, the Scheduled Tribes and other backward classes, unemployed army drivers and cooperative societies.

These directions were superseded by the issue of a fresh notification under section 43-A by the State Government on October 12, 1977 which was superseded by a Notification dated October 15, 1978.

Within a fortnight from the date of the last Notification referred to above Parliament amended the Act by enacting The Motor Vehicles (Amendment) Act, 1978 (Act 47 of 1978) which inter alia amended the proviso to subsection (1) of section 47 of the Act and inserted sub-sections (1A) to (1H) in that section. After this amendment, the proviso to sub-section (1) of section 47 of the Act reads thus:

"47. (1).....

Provided that other conditions being equal, an application for a stage carriage permit from a co- operative society registered or deemed to have been registered under any enactment in force for the time being and an application for a stage carriage permit from a person who has a valid licence for driving transport vehicles shall, as far as may be, be given preference over applications from individual owners."

The new sub-sections (1A) to (1H) of section 47 of the Act read:

"47. (1)

(1A) The Government of a State shall reserve in that State certain percentage of stage carriage permits for the Scheduled Castes and the Scheduled Tribes. Explanation-In this section and in sections 55 and 63, 'Scheduled Castes,' and 'Scheduled Tribes' have the meanings respectively assigned to them in Article' 366 of the Constitution.

(1B) The reservation of permits under sub-section (1A) shall be in the same ratio as in the case of appointments made by direct recruitment to public services in the State.

(1C) The Government of a State may, having regard to the extent to which persons belonging to economically weaker sections of the community have been granted stage

carriage permits in that State:-

(a) reserve in that State such percentage of stage carriage permits, as may be prescribed, for persons belonging to economically weaker sections of the community, or

(b) notwithstanding anything contained in the proviso to sub-section (1), give preference, in such manner as may be prescribed, to applications for stage carriage permits from such person Explanation I-In this section and in sections 55, 63 and 68, a person shall be deemed to belong to economically weaker section of the community, if and only if, on the prescribed date:-

(a) the annual income of such person together with the annual income, if any, of the members of his family; or G

(b) the extent of land (whether in one class or in different classes), held by such person together with that, if any, held by the members of his family, or

(c) the annual income and the extent of land aforesaid, does, or do not exceed such limit as may be prescribed.

Explanation II.- For the purposes of Explanation I, "family", in relation to an individual, means the wife or husband, as the case may be, of such individual and the minor children of such individual. (1D) The number of permits reserved under sub-section (1B) and clause (a) of sub-section (1C), shall not exceed fifty per cent of the total number of stage carriage permits granted during a calendar year. (1E) In giving effect to the provisions of sub- section (1B) and clause (a) of sub-section (1C) the Regional Transport Authority or the State Transport Authority may, if it considers necessary or expedient so to do, group the various routes within its jurisdiction.

(1F) Where any stage carriage permit is to be granted from the quota reserved under sub-section (1B) or clause(a) of sub-section (1C) to any cooperative society registered or deemed to have been registered under any enactment in force for the time being or any firm to which the provisions of the Indian Partnership Act, 1932 (9 of 1932), apply, no permit shall be granted to such society or firm unless the members of the co-operative society or the partners of the firm belong to the Scheduled Castes, the Scheduled Tribes or economically weaker sections of the community: Provided that where the members of such co- operative society or the partners of such firm are partly from the Scheduled Castes, partly from the Scheduled Tribes and partly from the economically weaker sections of the community, or from any two of these categories, any permit under this sub-section shall be granted to such society or firm only from the quota reserved for the category to which the largest number of members of the co-operative society, or as the case may be, partners of the firm belong:

Provided further that where no reservation has been made in the State for economically weaker sections of the community under clause (a) of sub-section (1C), no permit under this sub-section shall be granted to a co-operative society or firm unless the members of such society or partners of such firm belong to the Scheduled Castes or the Scheduled Tribes or partly to the Scheduled Castes and partly to the Scheduled Tribes and the permit to such society or firm shall be granted only from the quota reserved for the Scheduled Castes or the Scheduled Tribes according as to whether the larger number of the members of the co-operative society, or partners of the firm, belong to the Scheduled Castes or the Scheduled Tribes. (1G) The circumstances under which, the manner in which, and the extent to which, reservation under sub- section (1A) and clause (a) of sub-section (1C) may be carried forward shall be such as may be prescribed. (1H) Notwithstanding anything contained in this section, an application for stage carriage permit from a State transport undertaking for operating in any inter-State route shall be given preference over all other applications: Provided that the authority shall not grant a permit under this sub-section unless it is satisfied that the State transport undertaking would be able to operate in the inter-State route without detriment to its responsibility for providing efficient and adequate road transport service in any notified area or notified route as is referred to in sub section (3) of section 68D where the undertaking operates the service.

Explanation.-For the purposes of this sub-section, 'inter-State route' means any route Lying continuously in two or more States."

By the amendment of section 47 of the Act as stated above, Parliament directed that the Regional Transport Authority while considering applications for stage carriage permits should, provided that other conditions being equal? give preference to an application from a person who has a valid licence for driving transport vehicles over applications from individual owners. Parliament also provided for reservation of certain percentage of permits for state carriages in favour of persons belonging to the Scheduled Castes and the Scheduled Tribes in the same ratio as in the case of appointments made by direct recruitment by a State Government to public services in that State. Since it was considered necessary to promote the well being of economically weaker sections of the community, the State Government was empowered under certain circumstances either to reserve certain percentage of permits for stage carriages for persons belonging to economically weaker sections of the community or to give preference to them in the prescribed manner. It was however, provided that the number of permits reserved under section 47(1B) and (1C)(a) of the Act should not exceed fifty per cent of the total number of stage carriage permits granted in a calendar year. It was also provided that if a State Transport Undertaking applied for a stage carriage permit operating in any inter-State route, such application should be given preference over all other applications provided the authority was satisfied that the Undertaking would be able to operate in the inter-State route without detriment to its responsibility for providing efficient and adequate road transport service in any notified area or notified route as is referred to in sub section (3) of section 68-D of the Act where the Undertaking operated its service. By the very same amending Act of 1978 Parliament also amended section 68 of the Act by inserting clauses (ci), (cii), (ciii) and (civ) enabling the State

Governments to frame rules for implementing subsections (1A) to (1H) of section 47 of the Act. The above said amendments made to sections 47 and 68 came into force on January 16, 1979. It is conceded by the learned Attorney General who appeared for the State Government that these amendments which were made by Parliament would have an over riding effect on section 43-A of the Act introduced earlier by the State Legislature and that section 43-A should be read subject to those later amendments made by Parliament. Curiously the State Government issued on January 10, 1981 and January 23, 1981 the impugned notifications which are set out at the commencement of this judgment. By the first notification, the State Government directed the Regional Transport Authorities of the State of Uttar Pradesh to issue stage carriage permits (except in respect of routes or areas for which schemes had been published under section 68-C of the Act) to all eligible applicants and that there should be no upper limit to the number of stage carriages for which permits might be provided. By the second impugned notification dated January 23, 1981, the State Government directed the State Transport Authority and the Regional Transport Authorities to have regard only to matters referred to in clauses (a), (b), (d) and (f) of sub-section (1) of section 47 of the Act and should also take into consideration representation made by the local authority or police authority within whose jurisdiction any part of the proposed route or area lay. It also directed that section 57 should be deemed to have been complied with if the Transport Authority concerned intimated the particulars of the applications to such local authority and police authority for making representations, if any, within a period of fifteen days from the date of despatch of the intimation with the stipulation that if no representation was received within the prescribed period of time, it would be presumed that they had no representation to make and considered any representation made by such local authority and police authority;

A reading of these two notifications shows that the State Government ignored, first, the legislative policy underlying the Uttar Pradesh Act 15 of 1976 by which the new sub-section (2) of section 43-A was enacted in substitution of the former sub section (2) with retrospective effect. As stated earlier, the State Legislature introduced the new sub-section (2) of section 43-A after it realised the mistake committed by the State Government in issuing the notification in the year 1972 directing the issue of bus permits liberally in favour of all eligible applicants which had resulted in investment of unproductive capital expenditure and under utilisation of capital and fuel and in unreasonable competition which eventually eliminated small operators from business. The State Government also ignored the new policy governing the issue of permits introduced by Parliament by amending section 47 of the Act. It was argued on behalf of the State Government before the High Court that the State Government did not contravene either section 43-A, or the provisions of section 47 as amended in the year 1978. The High Court dismissed the writ petitions observing that the Statement of objects and Reasons attached to the Bill which was ultimately enacted as the U.P. Act 15 of 1976 could not over-ride the clear provisions of section 43-A as amended by that Act. The High Court upheld the notification dated January 10, 1981 and further observed that since the schemes of grant of free permits had been upheld by it 'the State Government had the power to prescribe the procedure to be followed in granting the same which has been provided for by the Notification dated January 23, 1981'. Repelling the contention of the writ petitioners that in the absence of reservation of the required percentage of permits for persons belonging to the Scheduled Castes, the Scheduled Tribes and weaker sections as provided in section 47 as amended by Parliament in 1978, the grant of permits would be vitiated, the High Court observed as follows:

"The question of reservation, however, arises only in those cases where the seats or articles are limited for distribution or allotment but where there is no limit or no fixed number, the question of reserved on will not arise. In that event, every body would be served according to his need and aspiration. Hence, if under section 43-A a direction has been made for grant of stage carriage permit to all eligible applicants without putting any fixed number for the vehicles to ply, the interest of the Scheduled Castes and Scheduled Tribes would be sufficiently safeguarded. A member of the Scheduled Caste or Scheduled Tribe as well as economically weaker section of the community would as much be entitled to get a permit to run his vehicle as a member of any other community. It is where the seats are limited that the legislature thought of making a provision to reserve the grant of permits in their favour to the extent of 25 per cent. The principle behind reservation in the grant of stage carriage permits employed by the Parliament appears to be the same as in reserving appointment in the Government service. If today government services are available in abundance, the question of reservation would not arise. It is only on account of the posts being limited that the question of reservation has arisen. So we are not able to agree with the submission of the petitioner's learned counsel that there is a conflict between section 43-A, as inserted by the U.P. Legislature and the amendments made in section 47 by Parliament in the Motor Vehicles Act ."

The High Court further proceeded to observe that though the tow impugned notifications did not follow the procedure prescribed by sub-section (2) of section 43-A as it is now in force in the State of Uttar Pradesh, they could be sustained under sub-sec. (1) of section 43-A which authorised the State Government to issue such directions of a general character as it might consider necessary or expedient in the public interest in respect of any matter relating to road transport to the State Transport Authority or to the Regional Transport Authority and which required such authority to give effect to any such directions. The High Court also relied upon the decision of this Court in Hans Raj Kehar's case (supra) to hold that larger number of buses operating on different routes would be for the convenience and benefit of the travelling public.

We may here state that any observations made in Hans Raj Rehar's case (supra) would be inapplicable so far as these cases presently before us are concerned. In that case the Court was concerned with sub-section (2) of section 43-A of the Act as it stood then which was a provision enacted by the Legislature. That sub- section provided that without prejudice to the generality of the power contained in section 43-A(1) of the Act where the State Government was of opinion that it was in public interest to grant stage carriage permits (except) in respect of routes or areas for which schemes have been published under section 68 (C) or contract carriage permits or public carrier permits to all eligible applicants it may issue appropriate directions as stated therein. That sub-section contained a clear legislative policy which considered that there could be no public prejudice if all eligible applicants were granted permits. Without saying anything more on the point, it may be stated that whatever this Court may have observed while considering that provision would not apply now as there is a clear departure made by the Legislature from that policy when it enacted the new sub-section (2) of section 43-A. In the face of this amendment by which the former sub-section (2) of section 43-A which specifically authorised he State Government when it was

satisfied that it was necessary to do so in the public interest to issue directions to the Transport Authorities to grant permits to all eligible applicants was deliberately taken away by the State Legislature, the High Court was wrong in holding that such power was still available under sub-section (1) of section 43-A of the Act which was widely worded. The High Court shut its eyes to the realities of the situation when it observed that in this case the contents of the Statement of objects and Reasons were irrelevant as the provisions of section 43-A (1) were very clear. Even without the aid of the Statement of objects and Reasons it has to be held that by the substitution of the former sub-section (2) by the new sub-section (2) in section 43-A the Legislature clearly expressed itself against the policy of granting permits to all eligible applicants without any consideration to the needs of any particular locality or route or to the qualification of applicants. It is a well settled rule of construction of statutes that whenever a court is called upon to interpret an amended provision it has to bear in mind the history of that provision, the mischief which the Legislature attempted to remedy, the remedy provided by the amendment and the reason for providing such remedy. Therefore, after the amendment at any rate it has to be held that sub-section (1) of section 43-A of the Act did not comprehend within its scope the power to issue direction, for issuing permits to all eligible applicants without any sort of restriction relevant to the scheme of the Act. What does section 43-A(1) after all say ? It says that the State Government may issue such directions of a general character as it may consider necessary in the public interest. What is the meaning of the term 'public interest' ? In the context of the Act, it takes within its fold several factors such as, the maximum number of permits that may be issued on a route or in any area having regard to the needs and convenience of the travelling public, the non-availability of sufficient number of stage carriage services in other routes or areas which may be in need of running of additional services, the problems of law and order, availability of fuel, problems arising out of atmospheric pollution caused by a large number of motor vehicles operating in any route or area, the condition of roads and bridges on the routes, uneconomic running of stage carriage services leading to elimination of small operators and employment of more capital than necessary in any sector leading to starvation of capital investment in other sectors etc. Public interest under the Act does not mean the interest of the operators or of the passengers only. We have to bear in mind that like every other economic activity the running of stage carriage service is an activity which involves use of scarce or limited productive resources. Motor Transport involves a huge capital investment on motor vehicles, training of competent drivers and mechanics establishment of workshops, construction of safe roads and bridges, deployment of sufficient number of policemen to preserve law and order and several other matters. To say that larger the number of stage carriages in any route or area more convenient it would be to the members of the public is an over simplification of a problem with myriad facts affecting the general public. If we run through the various provisions of the Act it becomes clear how much attention is given by it to various matters affecting public interest. There are provisions relating to licensing of drivers on the basis of their competence, licensing of conductors, specifications to which the motor vehicles should conform, coordination of road and rail transport, prevention of deterioration of the road system, prevention of uneconomic competition among motor vehicles, fixation of reasonable fare, compliance by motor vehicles with the prescribed time table, construction of bus stands with necessary amenities, maintenance of standards of comfort and cleanliness in the vehicles, development of inter-State tourist traffic and several other matters with the object of making available adequate and efficient transport facilities to all parts of the country. Any direction given by the State Government under section 43-A of the Act should therefore, be in

conformity with all matters regarding which the statute has made provision. In this situation to say that any number of permits can be issued to any eligible operator without any upper limit is to overstep the limits of delegation of statutory power and to make a mockery of an important economic activity like the motor transport.

It is surprising that the High Court has reached the conclusion that the preferences and reservations to be observed while granting permits as stated in the proviso to sub-section (1) to section 47 and in sub sections (1A) to (1H) of section 47 have not been contravened as there is no restriction on the number of permits to be issued. The observation of the High Court that preferences have to be shown and reservations have to be made only when there is scarcity of permits and since there are no restrictions on the number of permits to be issued there is no necessity to make any such provision really shocks us. The High Court erred in not noticing that it was dealing with a vital economic activity which could be carried on at a huge cost both to the operator and to the Government and that by issuing the notification containing a direction to the Transport Authorities to issue limitless number of permits, the State Government had attempted to circumvent sub-sections (1) and (1A) to (1H) of section 47 of the Act. Preferences and reservations have value only when there is a limit on the number of permits to be issued and in the context of the Act there should necessarily be a limit on the issue of permits to operate motor vehicles in respect of any route or area. By the method adopted by it the State Government has virtually allowed the rich and well-to-do businessman who can bear the loss for some time to introduce any number of vehicles on a route or in any area until all the small operators who also may take the permits to leave the field owing to the inevitable loss that ensues by the operation of an unlimited number of vehicles. The learned Attorney General while conceding that the amendment made in 1978 to section 47 of the Act should prevail contended that they had not been violated by the impugned notifications. We do not agree with the above submission. We are clearly of the view that the State Government has transgressed the provisions contained in sub-section (1) and sub-sections (1A) to (1H) of section 47. It has failed to comply with the duty imposed on it by those provisions.

We are of the view that the two notifications are clearly outside the scope of the Act. The first notification which directs that all eligible applicants shall be granted permits and that there shall be no upper limit to the number of permits to be issued for stage carriages and the second notification which says that the Transport Authorities shall have regard only to matters referred to in clauses (a), (b),

(d) and (f) of sub-section (1) of section 47 of the Act and thereby precludes the Transport Authorities to take into consideration matters contained in the proviso to section 47(1) and in sub-section (1A) to (1H) of section 47 of the Act are ultra vires the Act and they are liable to be struck down.

We, therefore, allow these appeals, set aside the judgment of the High Court in each of these cases and declare that the Notification No. 68 T/XXX-4-15 KM/79 dated January 10, 1981 and the Notification No. 241 T/XXX-4-15- P/79 dated January 23, 1981 issued by the Governor of the State of Uttar Pradesh under section 43-A of the Act are ultra vires and, therefore, void and, ineffective.

In the circumstances of the case. there will be no order as to costs.

H.L.C.

Appeals allowed.