belonging to the Sarswati Sugar Mills situated in the land belonging to those Sugar Mills. I do not think, Grover, J. ever suggested anything of the type which the learned counsel for the State wants to spell out of the judgment of the learned Judge. The observation made above clearly related to the nature of the two types of land and no more. There is no force at all in the argument of the State counsel to the effect that land which is merely capable of being irrigated by water from some well belonging to someone else in his land should be treated as *chahi*. In that sense it could be argued that a well can be dug in the land in dispute and it is, therefore, capable of becoming *chahi* and should accordingly be treated as such. This contention automatically reveals fallacy in it."

There is nothing in the earlier Division Bench Judgment which can possibly support the respondents in this appeal. I think it is entirely fallacious and devoid of reason to class any land as *chahi* which has neither any well in it nor is entitled to be irrigated by well-water obtainable from some neighbouring land or from anywhere else as a matter of right either on account of some binding contract or grant of some other valid and subsisting arrangement of a lasting nature. On the admitted facts of this case no such facility is attached to the land in dispute. It could not, therefore, be treated as *chahi*. The impugned order of the Chief Settlement Commissioner to the contrary suffers from an error of law in this respect which is apparent on its face. That order must, therefore, be quashed.

I, therefore, entirely agree with the reasoning and findings as well as the order proposed in the judgment prepared by my Lord, the Chief Justice in this appeal.

K. S. K.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J,

THE AMBALA BUS SYNDICATE PRIVATE LTD.—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 299 of 1968

March 1, 1968

Motor Vehicles Act (IV of 1939)—Ss. 47, 57 and 62—Grant of temporary stage carriage permits without following procedure prescribed by S. 47—Whether valid—Proviso to S. 57(8)—Meaning of.

Held, that the provisions of section 47 of the Motor Vehicles Act, 1939, have to be followed before the grant of temporary State carriage permits under section 62 of the Act, in the same manner and to the same extent, as is required in the grant of regular stage carriage permits. If no notice is given to a company which is already operating its services on that route the order granting temporary stage carriage permits *ex parte* is bad in law. Obviously the company already operating on that route will be prejudiced if some other company is granted temporary permits. To say the least, the case of the petitioner company also deserved to be considered for those permits before any adverse decision was taken against it. The petitioner company was undoubtedly the aggrieved party and injustice had occurred when the impugned order was passed without issuing any notice to it.

Held, that the proviso to section 57(8) of the Motor Vehicles Act means the holders of stage carriage permits who provided the *only service* on any route. The intention of the legislature also seems to be that if on a particular route there was only one person who provided service, then in his case if the number of services are increased on that route, no body else is going to suffer and it is not necessary to follow the procedure mentioned in section 57. If, on the other hand, there are other people also who are providing service on that route, then in that contingency, if the number of trips is going to be increased in the case of one individual, then others are also bound to be affected and notice to them would be necessary and that is why the procedure mentioned in section 57 has got to be followed.

Petition under Articles 226/227 *of the Constitution of India, praying that a writ of* certiorari, mandamus *or any other appropriate writ, order or direction, be issued, quashing the impugned order, dated 8th January,* 1968 (*Annexure B*) *and further praying that respondents* 1, 2, *and* 3 *be directed to issue permits in accordance with the provisions of the Motor Vehicles Act.*

H. R. Sodhi, and N. K. Sodhi, Advocates, for the Petitioner.

G. R. Majithia, Deputy Advocate-General (Pb.), for Respondents Nos. 1 to 3, J. S. Wasu, and S. S. Dewan, Advocates, for Respondents No. 4.

ORDER.

Pandit, J.—This order will dispose of three connected writ petitions Nos. 299, 300 and 344 of 1968, in which common questions are involved. It is agreed by the counsel for the parties that the decision in the first petition will govern the cases of the other two also. I would, therefore, refer to the facts of C.W. 299 of 1968 only.

The Ambala Bus Syndicate (Private) Ltd., Rupar, has filed a petition under Articles 226 and 227 of the Constitution for quashing the order, dated 8th of January, 1968, passed by the State Transport Commissioner, Punjab, respondent No. 2. The petitioner company was operating on a number of routes mentioned in paragraph 2 of the writ petition. It was case of the petitioner that under the popularly known as 50 : 50 scheme, it was compelled to surrender 1966 daily mileage. It was, therefore, entitled to be compensated by the grant of stage carriage permits and increase in the number of services, on the routes on which it was already operating and other routes. By the impugned order, the State Transport Commissioner took an *ex parte* decision and granted temporary stage carriage permits to the National Transport and General Private Co. Ltd., Ludhiana, respondent No. 4, and also increased their services by regularising the special operations of respondent No. 4 on the four routes covering 468 miles mentioned in that order. No notice whatsoever of the proposed grant of those permits to respondent No. 4 or for the increase of their services on the routes mentioned in the order was ever given to the petitioner. Everything, according to the petitioner, had been done in a clandestine manner without keeping in view the requirements of section 47 of the Motor Vehicles Act, 1939 (hereinafter called the Act). No opportunity was provided to the petitioner or any other private operator to represent his case or raise any objection to the proposed grant of permits. There was no temporary need within the meaning of section 62 of the Act shown in exist justifying the grant of temporary permits to respondent No. 4. According to the petitioner, manifest injustice had been caused to the company as a result of the impugned order and the petitioner had been deprived of the opportunity to be heard by respondent No. 2, which was contrary to law and principles of natural justice. That led to the filing of the writ petition on 29th of January, 1968.

The impugned order consists of three parts. The first one deals with the regularisation of special trips of respondent No. 4 on four routes mentioned therein covering 468 miles. The second part mentions the grant of temporary permits to respondent No. 4 for a priod of four months on the four routes mentioned there covering 672 miles. The third part speaks of the grant of 17 temporay stage carriage permits to the Punjab Roadways on Chandigarh-Ludhiana route, for plying 17 return trips daily for a period of four months to cover their special operations which had been regularised. In

the present writ petition, the Punjab Roadways has not been made a party and the first two parts of the impugned order are being challenged by the petitioner company.

The only contention raised by the learned counsel for the petitioner was that the impugned order was liable to be quashed on the ground that no notice was ever given to the petitioner-company before passing the same and it had resulted in manifest injustice to it. This action of the State Transport Commissioner was contrary to law and principles of natural justice. While making that order, the State Transport Commissioner was exercising quasi-judicial functions and he should have given notice to all the parties who were affected by the impugned order, before passing it.

It was conceded by the counsel for the parties that it had been held by two learned Judges of this Court that the provisions of section 47 of the Act had to be followed before the grant of temporary stage carriage permits under section 62 of the Act, in the same manner and to the same extent, as was required in the grant of regular stage carriage permits. It was further held that it necessarily followed that a statutory duty was cast on the Regional Transport Authority, to take into consideration any representation made by the persons already providing passenger transport facilities by any means along or near the proposed route. The only way in which it could be made possible for such interested persons to make representations and to press them, was to give them a notice of the proposed grant of temporary permits. This was so held by Narula, J., in C. W. 1525 of 1967 (*Prem Bus Service Private Ltd., Barnala* v. *The Regional Transport Authority, Patiala and another* (1)) decided on 13th October, 1967. This ruling was followed by Tek Chand J., in C. W. 1265 of 1967 (*Patiala Bus Service Private Ltd., Sirhind,* v. *The Regional Transport Authority, Patiala and others* (2)), decided on 15th December, 1967. Admittedly, no notice had been given to the petitioner company before the impugned order was passed. It follows that there was this apparent error of law committed by respondent No. 2 and the order had been passed by him against the principles of natural justice. It was contended by the learned counsel for respondent No. 4 that even if that was so, the said order could not be quashed, unless the petitioner-company further established that the impugned order, had resulted in manifest injustice to it. That had not been proved by the petitioner-company in the instant case.

(1) C.W. No. 1525 of 1967, decided on 13th October, 1967.

(2) C.W. No. 1265 of 1967 decided on 15th December, 1967.

On the other hand, argued the counsel, it was clear from paragraph 6 of the return filed by the State that the petitioner-company had, on its own, surrendered a daily mileage of 1066 in favour of the State transport undertakings under the so-called 50 : 50 scheme. It had, however, since been allowed daily mileage of 1964 as a result of new development under clause 5 of the 50 : 50 scheme on lucrative routes, which was much more than the mileage surrendered. Respondent No. 4 had also surrendered a daily mileage of 734 and it had been admitted that they had been allowed daily mileage of 1,140. That meant that both the petitioner and the respondent had been equally compensated for the mileage surrendered by them and no injustice had been done to the petitioner. It was also argued by the learned counsel that similar *ex parte* orders had been passed by respondent No. 2 on 12th of January, 1967 and 23rd of May, 1967, in favour of the petitioner-company and it had been granted temporary stage carriage permits for a period of four months. Under these circumstances, it was contended by the learned counsel for respondent No. 4 that no injustice had been done to the petitioner-company in passing similar *ex parte* order in favour of respondent No. 4.

Learned counsel for the petitioner, on the other hand, submitted that when an order had been passed behind the back of a person against the principles of natural justice, then it was not necessary for him to show that manifest injustice had resulted thereby. For this, he placed his reliance, *inter alia,* on the decision of Narula, J., in the case of *Prem Bus Service, Private Ltd.* (1), wherein the learned Judge had set aside the order on that ground alone.

In the instant case, admittedly the petitioner-company was operating on Nangal-Ludhiana *via* Rupar, Kurali, Morinda, Samrala route after obtaining regular permits. If temporary permits had to be granted on that very route, obviously they would be prejudiced if some other company was granted those permits. To say the least, the case of the petitioner-company also deserved to be considered for those permits before any adverse decision was taken against it. The petitioner-company was undoubtedly the aggrieved party and injustice had occurred when the impugned order was passed without issuing any notice to it. If some *ex parte* orders in favour of the petitioner-company had been passed on 12th of January and 23rd of May 1967, respondent No. 4 could have, at that time, challenged them. An illegal order could not be justified on

the ground that previously also an order of that kind had been made by respondent No. 2 and advantage of which had been taken by the petitioner-company. It is pertinent to mention that in the connected writ No. 344 of 1968, it was conceded by the State that the claim of the petitioner-company in that writ petition, for compensation on account of overlapping services was still pending and was under examination by the Transport Department. That being so, their case could be considered for the grant of temporary permits on the four routes in question. This part of the order, therefore, deserved to be quashed.

Now coming to the first part of the order referred to above, it was argued by the learned counsel for the petitioner-company that the same also deserved to be set aside on the simple ground that the procedure mentioned in section 57 of the Act had not been followed by respondent No. 2 before the grant of additional trips to respondent No. 4 by regularising their special operations on the routes mentioned therein. A notice, according to the learned counsel, had to be given to the petitioner-company also before making that order and that not having been done, injustice had occurred to it.

It is undisputed that no notice had been given to the petitioner-company before passing the impugned order. It was, on the other hand, argued by the learned counsel for respondent No. 4 that its case was covered by proviso to section 57(8) of the Act and that being so, the procedure mentioned in section 57 had not been observed.

Section 57(8) runs as under :—

> "An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of services above the specified maximum, or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit :
>
> Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area

to increase the frequency of the service so provided, without any increase in the number of vehicles."

The point for consideration, therefore, is whether respondent No. 4 was the holder of a stage carriage permit which provided the only service on the four routes in question which were mentioned in part I of the impugned order. According to respondent No. 4 out of the four routes in question, three were its monopoly routes and in the fourth, another person was also operating, but he had not made any grievance against the impugned order. On this point, the position of the Government was that "respondent No. 2 could allow additional trips in favour of respondent No. 4 without following the procedure prescribed in section 57(8) of the Act (which) provides that the procedure of publication need not be followed where the application from the holder of a stage carriage permit, who provided the only service on any route, is being considered." The Counsel for the petitioner contended that his client was admittedly operating on Nangal-Ludhiana *via* Rupar, Kurali, Morinda, Samrala route and, therefore, the petitioner-company was also the holder of a stage carriage permit which provided service on Samrala-Morinda route mentioned in part I of the impugned order. That being so, it was argued, the case of respondent No. 4 was not covered by the proviso to section 57(8) as it did not provide the only service on the said route.

A plain reading of the proviso to section 57(8) would show that it would apply to the holder of a stage carriage permit which provided the only service on any route. Is respondent No. 4 the holder of a stage carriage permit which provided the only service on the Samrala-Morinda route ? The reply would be in the negative, because the petitioner-company was also the holder of a stage carriage permit and was providing service on that route, inasmuch as it used to operate on Ludhiana-Nangal *via* Rupar, Kurali, Morinda and Samrala and admittedly Samrala-Morinda was a part of that longer route. It was common ground that the buses of the petitioner-company could also pick up passengers from Samrala, Morinda as well as other places which fell within that route. The petitioner-company, therefore, also served the travelling public on that route and thus provided service there. The contention of the learned counsel for respondent No. 4 was that it was only his client who was covered by the proviso, because it was he alone who was the only holder of a stage carriage permit for Samrala-Morinda route. But this is

not what the proviso means. The language employed therein does not signify that the application must be made by the only holder of a stage carriage permit who provided service on a particular route. The word 'only' does not figure between the words 'the' and 'holder' in the proviso, but it qualifies 'service'. The language in the proviso, in my opinion, is clear and it means the holders of stage carriage permits who provided the *only service* on any route. The intention of the legislature also seems to be that if on a particular route there was only one person who provided service, then in his case if the number of services are increased on that route, nobody else is going to suffer and it is not necessary to follow the procedure mentioned in section 57. If, on the other hand, there are other people also who are providing service on that route, then in that contingency, if the number of trips is going to be increased in the case of one individual, then others are also bound to be affected and notice to them would be necessary and that is why the procedure mentioned in section 57 has got to be followed. I would, therefore, hold that respondent No. 4 was not covered by the proviso, as he was not the holder of a stage carriage permit which provided the only service on the four routes in question, which were mentioned in the impugned order. It was, thus, necessary to follow the procedure prescribed by section 57 and a notice had to be given to the petitioner-company also. That admittedly not having been done, this part of the impugned order also deserved to be set aside.

In C.W. 300 of 1968, third part of the impugned order has been challenged by the Ambala Bus Syndicate Private Ltd. By this part, as already mentioned above, 17 temporary stage carriage permits had been granted to the Punjab Roadways on Chandigarh-Ludhiana route for plying 17 return trips daily for a period of four months to cover their special operations which had been regularised. For the reasons recorded above in C.W. 299 of 1968, this part of the order also deserves to be quashed.

In view of what I have said above, the writ petitions are accepted and the impugned order is quashed. There will, however, be no order as to costs.

B. R. T.

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