than one line of defence available to the plaintiff-company and it is only in cases where the point is clear and unambiguous that it could be permitted to be raised for the first time in second appeal. It would be contrary to the principles of equity and fair play if the claim of the plaintiff is allowed to be defeated on the ground which at least is debatable and so belatedly raised before me in this Court. I, thus, do not see my way clear in this case to permit the appellant to raise this point and I would accordingly dismiss these appeals. I would, however, make no order as to costs of these appeals.

B.R.T.

LETTERS PATENT APPEAL

Before Inder Dev Dua and Shamsher Bahadur, JJ.

BRAHM DUTT AND OTHERS,— *Appellants.*

versus

THE PEOPLES' CO-OPERATIVE TRANSPORT SOCIETY. LTD., AND OTHERS,—*Respondents.*

L.P.A. No. 47-D of 1960.

1960

August 8th.

Letters Patent—Clause 10—Appeal under—Whether competent against an order passed by Single Judge in a petition under Article 226 of the Constitution of India in which further direction is given under Article 227—Letters Patent Appeal—New point of law—Whether and when can be raised—Motor Vehicles Act (IV of 1939)—Section 47—Whether confers unlimited and uncircumscribed power on the Transport Authorities in the matter of issue of permits—Proviso to S. 47(I)—Whether violative of Article 14 of the Constitution of India.

Held, that an order passed only under Article 227 of the Constitution of India cannot be assailed on appeal under Clause 10 of the Letters Patent, but an order passed

by the Single Judge under Article 226 and giving further direction under Article 227 can form the subject-matter of Letters Patent Appeal. A suitor cannot be deprived of his valuable statutory right of appeal against a decision under Article 226 merely because some further directions have been given in exercise of the powers of superintendence under Article 227 of the Constitution. If on appeal the order passed under Article 226 is set aside or reversed, then obviously further directions would automatically fall with it.

Held, that a question of law requiring no evidence and going to the root of the controversy can and normally should be allowed to be raised on appeal for the first time. This indulgence cannot be claimed by the litigant as of right and there is no general rule that this right must be conceded by the Court whenever it is claimed. But the contention that new point of law can never be allowed on Letters Patent Appeal cannot be sustained. When a pure question of law going to the jurisdiction of the Court or challenging the vires or constitutionality of a statutory provision is raised for the first time in appeal, the Court should, in the absence of some supervening consideration, entertain and adjudicate upon it. If an order is made without jurisdiction, it is never too late to give effect to the plea that the order is nullity and in this respect Letters Patent Appeals do not stand on a different footing from other appeals.

Held, that assuming section 47 of the Motor Vehicles Act to be not exhaustive, it does not confer an unlimited and uncircumscribed power on the Transport Authorities to base their conclusions on whatever circumstance or factor that appeals to them. The circumstances which the Transport Authorities are entitled under the law to take into consideration for coming to their conclusion in the matter of granting permits, which function, as is well settled, is quasi-judicial in character, must obviously bear some relation to the advantage or benefit of the travelling public; advantage of the applicant for a permit can scarcely, however, be considered to fall within the scope of Section 47 of the Motor Vehicles Act.

Held, that proviso to Section 47(I) of the Motor Vehicles Act cannot be struck down as violative of Article 14

of the Constitution, because it gives preference to a co-operative society on an individual operator in the matter of grant of permits. Continuity and security of transport service constitute a very relevant factor to be taken into account for the purpose of determining the convenience of the travelling public which is the main and perhaps primary consideration in deciding the question of the grant of permits. A co-operative society might well, therefore, be considered to be better fitted from the point of view of continuity and security of transport service than an individual operator. Similarly, ownership of a bigger fleet of transport vehicles is also not wholly foreign, extraneous or irrelevant, consideration in coming to the conclusion whether or not an applicant who owns such a big fleet should be given preference over those individual owners who own just one or two vehicles. Capacity of a Co-operative Society, as against an individual operator, to build up an economic fleet and therefore to ensure a more economic and satisfactory service to the public is thus clearly suggestive of the impugned provision being constitutional and valid and not discriminatory or hostile piece of enactment.

Appeal under clause 10, Letters Patent against the order of Hon'ble Mr. Justice A. N. Grover, dated 23rd May, 1960, in Civil Writ No. 242-D of 1958 remanding the case to the Chief Commissioner, Delhi, and directing him to rehear and re-decide the case according to law. ..

BHAGWAT DAYAL & RAMESHWAR DAYAL, ADVOCATE, *for the Appellants.*

R. S. NARULA. ADVOCATE, *for the Respondents.*

JUDGMENT

DUA, J.—These two Letters Patent Appeals, Nos. 47-D of 1960 and 48-D/60, will be disposed of by the same judgment because they arise out of same facts and though were the subject-matter of two writ petitions were disposed of by the learned Single Judge by one order. Dua, J.

Brahm Dutt and others, v. The Peoples' Co-operative Transport Society Ltd., and others,

Dua, J.

2. The facts, which are not seriously in dispute, are that on 6th November, 1957, the State Transport Authority, Delhi, invited applications for a stage carriage permit in respect of the route Narela-Bahadargarh, *via* Tikri Kalan in accordance with the provisions of section 57 of the Motor Vehicles Act, 1939. The Peoples Co-operative Transport Society, Ltd., The Delhi Ex-Servicemen Co-operaive Multipurpose Transport Society, Ltd., and Braham Dutt, Munshi Ram and Amar Nath, residents of Najafgarh, were some of the applicants for the aforesaid permit. After scrutiny, the necessary publication according to law was done and the State Transport Authority thereafter proceeded to consider the respecive merits of the various applicants for coming to a final decision. It appears that on 13th September, 1957, the said authority had by means of a resolution laid down certain criteria for the issue of a permit in case of numerous applicants. The State Transport Authority, after considering the qualifications of the candidates, came to the conclusion that The Peoples Co-operative Transport Society, Ltd., and the Delhi Ex-Servicemen Co-operative Multipurpose Transport Society, Ltd., were equally qualified with the result that drawing of lots was considered to be the more desirable course; according to this method, The Peoples Co-operative Transport Society, Ltd., came out to be the lucky one and it was accordingly directed that the permit should be issued to that Society for a period of three years. Four appeals seem to have been preferred against the above order of the State Transport Authority which was dated 14th Mach, 1958, these appeals were heard by the Chief Commissioner. After considering the claims of the rival candidates, it was decided that the permit should be granted to three persons, Braham Dutt,

Munshi Ram and Amar Nath, who were treated as one unit.

3. Against this order, an application under Articles 226 and 227 of the Constitution was presented in this Court for quashing the same. The learned Single Judge, on a consideration of the arguments addressed and after going through the record, came to the conclusion that the Chief Commissioner had taken a wholly extraneous matter into consideration; namely, a promise said to have been held out in 1941 to Braham Dutt and others that their claim in future would be favourably considered. According to the learned Single Judge, the permit under the Motor Vehicles Act has to be granted after following the procedure laid down in the Motor Vehicles Aca and any consideration like honouring a promise made by the Government or by the Chief Commissioner is entirely outside the scope of the statute. Such a promise is calculated to bypass the choice of the most competent person which has to be determined by following the procedure laid down in the Act. Finding support for this view in *New Hind Finance and Transport (P) Ltd. and another* v. *The Chief Commissioner, Delhi, and others* (1), the writ petition was allowed and the impugned order quashed. After quashing the order, the learned Single Judge, in exercise of his power under Article 227 of the Constitution, further directed that there should be a fresh decision of the appeals by the Chief Commissioner, who should rehear and re-decide the matter in accordance with law. It is against this order that the present two Letters Patent Appeals have been preferred.

(1) 1959 P.L.R. 647.

Brahm Dutt and others v. The Peoples' Co-operative Transport Society Ltd., and others

Dua, J.

4. Mr. Narula has, on behalf of the respondents, raised a preliminary objection that the direction given by the learned Single Judge, being under Article 227 of the Constitution, is not appealable under Clause 10 of the Letters Patent. He has in this connection placed reliance on *Waryam Singh and another* v. *Amarnath and another* (1), where it it laid down that the material part of Article 227 substantially reproduces the provisions of section 107 of the Government of India Act, 1915, except that the power of superintendence has been extended by the Article also to tribunals. It has been contended that just as an order under section 107 of the Government of India Act, 1915, could not be the subject-matter of an appeal under Clause 10 of the Letters Patent, an order passed under Article 227 of the Constitution is similarly not subject to appeal under this Clause. He has also made a reference to *Nagendra Nath Bora and another* v. *Commissioner of Hills Divisions and Appeals, Assam, and others* (2), but I do not think this decision advances the matter any further. The third decision from which the counsel sought support is *Sukhendu Bikash Barua* v. *Hare Krishana De and others* (3), where a Division Bench of the Calcutta High Court has laid down that Clause 15 of the Letters Patent of the Calcutta High Court, excludes a judgment pronounced by a Single Judge in exercise of the powers of revision or in exercise of the powers of superintendence under Article 227 of the Constitution, with the result that such orders cannot be appealed against under the said Clause. I may here state that Clause 15 of the Letters Patent of the Calcutta High Court is equivalent to Clause 10 of the Letters Patent of the Punjab

(1) A.I.R. 1954 S.C 215.
(2) A.I.R. 1955 S.C. 398
(3) A.I.R. 1956 Cal. 636.

High Court for the purposes of the present controversy. I am, however, also aware of a Division Bench decision of this Court in *Raj Kishan Jain* v. *Tulsi Dass, etc.*, (1), which is a direct authority in support of the contention that an order under Article 227 of the Constitution of India cannot be the subject-matter of an appeal under Clause 10 of the Letters Patent. The head-note of this case states the law thus :—

> "No Letters Patent Appeal under Clause 10 of the Letters Patent is competent against the judgment of a Single Judge of the High Court when an order has been passed in the exercise of power of superintendence, whether in consonance with the provisions of section 107 of the Government of India Act, 1915, or in accordance with the provisions of Article 227 of the Constitution of India. as it is covered by the exception given in Clause 10 of the Letters Patent. Reference to section 107 of the Government of India Act, 1915, in Clause 10 of the Letters Patent is to be construed as reference to Article 227 of the Constitution of India."

It is true that in this case, on its own facts, it was considered that the judgment of the learned Single Judge also amounted to dismissal of the petition under Article 226 of the Constitution and, therefore, as such appealable under Clause 10 of the Letters Patent, but the position nevertheless remains that if an order is held to have been passed only under Article 227 of the Constitution, then such an order cannot be assailed on appeal under

(1) I.L.R. 1959 Punjab 859.

Brahm Dutt and others
v.
The Peoples' Co-operative Insurance Ltd. and others

Dua, J.

Clause 10 of the Letters Patent. In the present case, however, the learned Single Judge, after quashing the impugned order, expressed himself in the following words:—

> "Although there can be no directions under Article 226 that the Chief Commissioner should re-hear and re-decide the appeals, I have given due thought and consideration to the facts and circumstances of the present cases and I am of the view that there should be a fresh decision of the appeals by the Chief Commissioner. In exercise of my powers under Article 227, therefore, I direct that the appeals should be re-heard and re-decided by the Chief Commissioner in accordance with law."

Placing reliance on these observations, Mr. Bhagwat Dayal has contended that by the impugned order the learned Single Judge has quashed the order of the Chief Commissioner under Article 226 of the Constitution and this decision, according to him, can clearly from the subject-matter of an appeal under Clause 10 of the Letters Patent. The counsel proceeds that merely because some further directions have been given by the Single Judge, under Article 227, which directions cannot by themselves form the subject-matter of an appeal under Clause 10 of the Letters Patent, should not be construed to operate as a bar or to take away the right of appeal in so far as the order of the learned Judge quashing the order of the Chief Commissioner under Article 226 is concerned. There is certainly force in this contention and I would feel disinclined to deprive a suitor of this valuable statutory right of appeal against a decision under Article 226 merely be-

cause some further directions have been given in exercise of the powers of superintendence under Article 227 of the Constitution. If on appeal, the order passed under Article 226 is set aside or reversed, then obviously further directions would automatically fall with it and the order of the Chief Commissioner would in law be revived. Although, as at presnt advised, I am inclined to take this view, but since we have decided, as would appear hereafter, to dismiss the appeal on the merits, I should not like to express any considered and final opinion on this point.

5. Coming to the merits of the case, the learned counsel for the appellants has laid great stress on the contention that the learned Single Judge was in error in holding that the Chief Commissioner had based his order on extraneous consideration or a consideration which is outside the statute. It is submitted that it was within the competence of the Chief Commissioner to grant a permit to the present appellants on the grounds that they had been actually in the transport industry and were in fact acting as operators as early as 1940, and that they also possessed a bus for the purposes of plying on the route in question. Merely because by granting them a permit, the Chief Commissioner felt that he would thus also be honouring a promise or an assurance given to them as far back as 1941 was an additional circumstances and not the sole or the main basis of the impugned decision of the Chief Commissioner, which has been quashed by the learned Single Judge. The argument, as stated, is certainly attractive and tends to appeal to one's moral sense, but after going through the order of the learned Chief Commissioner I regret my inability to uphold the contention. The order of the

Brahm Dutt
v.
and others
The Peoples' Co-operative Society Ltd., and others

Dua, J.

learned Chief Commissioner, read as a whole, in my view, clearly suggests that the principal consideration, which weighed with and influenced the Chief Commissioner in granting the permit to the present appellants was that as far back as 24th of January, 1941, a hope had been held out to them by the then Chief Commissioner that their case would be considered sympathetically and carefully when other routes fell vacant within the Delhi State and under the jurisdiction of the State Transport Authority. The Chief Commissioner also made a note of the fact that the applicants had then purchased a bus for the purposes of operating on the Delhi-Najafgarh route and Delhi-Dansa route, but for technical reasons the decision in their favour was later upset by the High Court and the route was lost to them. The following quotation from the order of the learned Chief Commissioner throws considerable light on the point :—

> "There is the case of Brahm Datt and others, who had been operating on the Delhi-Najafgarh route in 1940, and who were displaced in favour of the G.N.I.T. Co. The Chief Commissioner, before whom they filed an appeal, had assured them, in his order, dated 24th January, 1941, that their case would be considered sympathetically and carefully, when other routes fell vacant within the jurisdiction of the S.T.A. Apparently, the S.T.A. has never chosen to honour this assurance and in fact, the failure to do so has been used as an argument against them by saying that they were not now qualified to get any route, as they had not been in the

bus trade from 1940 to 1954. I consider this palpably unfair. This action taken in 1940, for which the Administration intended that the applicant should be compensated, was obviously meant to be fulfilled, even though it may not amount to a contract, legally binding on Government. The actions of a Government have not only to be according to law, but also in conformity with morality, so that the subject may have complete confidence in the professions and promises of Government. I consider that assurances or undertakings given by Government or a public body should be fulfilled, unless in the altered circumstances, it is physically impossible for Government or the public body to fulfil them."

After these observations, the Chief Commissioner considered this to be an exceptional circumstance, which, according to him, justified the grant of the route permit to the present appellants. I have thus no hesitation in holding in agreement with the learned Single Judge, that the order of the learned Chief Commissioner, is vitiated on account of his having been mainly influenced by the factum of the promise or hope held out to the present appellants in 1940, or 1941 this factor being wholly extraneous and outside the statute. This circumstance, in my opinion, should not have been permitted to influence the decision of the Chief Commissioner, in the quasi-judicial matter which he was called upon to determine. The interest of the public, more particularly of the travelling public, and the advantages to it of the service to be provided are the basic and important

Brahm Dutt and others
v.
The Peoples' Co-operative Society Ltd., and others

Dua, J.

factors to be taken into consideration in the matter of granting or refusing permits. Whether an applicant can reasonably be depended upon to efficiently manage his transport business, with special attention to the convenience of the travelling public, is the foremost and dominating factor to be kept in view.

6. But then Mr. Bhagwat Dayal argues that section 47 of the Motor Vehicles Act is not exhaustive and the Transport Authorities can legitimately take into account other factors as well. Assuming section 47, not to be exhaustive, it does not, in my opinion, confer an unlimited and uncircumscribed power on the Transport Authorities to base their conclusions on whatever circumstance or factor that appeals to them. The circumstances which the Transport Authorities are entitled under the law to take into consideration for coming to their conclusion in the matter of granting permits, which function, as is well settled, is quasi-judicial in character, must obviously bear some relation to the advantage or benefit of the travelling public; advantage of the applicant for a permit can scarcely, however, be considered to fall within the scope of section 47 of the Motor Vehicles Act. I would, therefore, feel no hesitation in concurring with the opinion of the learned Single Judge.

7. Mr. Bhagwat Dayal next sought to raise a new point of law which had admittedly not been raised before the learned Single Judge. He argued that the proviso to section 47(1) of the Motor Vehicles Act is unconstitutional, because it is violative of Article 14 of the Constitution which guarantees to every person equality before, and equal protection of the law. According to

the counsel, preferential treatment provided in the impugned proviso in favour of Co-operative Societies registered or deemed to have been registered under any enactment, is hit by Article 14, because there is neither any reasonable classification nor is there any nexus or connection between the preferential treatment prescribed in the proviso in favour of the Co-operative Societies and the object which the statute seeks to achieve. Reference in this connection has been made to *Charanjit Lal Chowdhury* v. *The Union of India and others* (1), and stress is particularly laid on the following passage in the judgment of Fazal Ali, J. :—

> "There can be no doubt that Article 14, provides one of the most valuable and important guarantees in the Constitution which should not be allowed to be whittled down, and while accepting the statement of Professor Willis as a correct exposition of the principles underlying this guarantee, I wish to lay particular emphasis on the principle enunciated by him that any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed."

Reference has also been made in this connection to *G. Verrapa Pillai* v. *Raman and Raman, Ltd., and others,* (2).

(1) A.I.R. 1951 S.C. 41.
(2) A.I.R. 1958 S.C. 192.

Brahm Dutt and others
v.
The Peoples' Co-operative Society Ltd., and another

Dua, J.

8. Mr. Narula has, on the other hand, stongly contended that this new point, though of law, should not be permitted to be raised on Letters Patent Appeal and in support of his contention he has referred us to *Bhup Singh* v. *Prem Singh and others* (1), an exceedingly brief judgment by a Division Bench of the Lahore High Court, disallowing, on Letters Patent Appeal, a point not raised before the learned Judge in Chambers. Whether or not the point sought to be raised there was a pure question of law and went to the root of the matter is not clear from the judgment, which consists of only about 8/9 lines. Reliance is also placed on *Mewa Singh* v. *Tara Singh and others* (2), where again the point sought to be raised obviously did not go to the root of the matter. In *Capt. Inder Singh* v. *The Deputy Commissioner, Jullundur, and others* (3), the head-note is in the following terms :—

> "An appellant cannot be permitted in Letters Patent Appeal to question the facts, the existence of which was assumed before the Single Judge or to complain of an error for the commission of which he himself was responsible."

Obviously, this decision is not of much assistance in deciding whether or not to permit the question of *vires* to be raised before us.

9. In *Connecticut Fire Insurance Co.* v. *Kavanagh* (4), Lord Watson made the following instructive observations :—

> "When a question of law is raised for the first time in a Court of last resort upon

(1) A.I.R. 1925, Lahore 281 (1).
(2) A.I.R. 1933, Lahore 685.
(3) 1956 P.L.R. 567.
(4) 1892 A.C. 473.

the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact in considering which the Court of ultimate review is placed in a much less advantageous position than the Courts below. But their Lordships have no hesitation in holding that the course ought not in any case to be followed undence upon which they are asked to less the Court is satisfied that the evidecide, establishes beyond doubt that the facts if fully investigated would have supported the new plea."

This passage was re-produced by Lord Tomlin, who prepared the judgment of the Privy Council in *The Official Liquidator of M. E. Moola Sons Ltd.* v. *Perin Re Burjorjee* (1).

10. In my opinion, a question of law requiring no evidence and going to the root of the controversy can and normally should be allowed to be raised on appeal for the first time. It is true that this indulgence cannot be claimed by the litigant as of right and there is no general rule that this right must be conceded by the Court whenever it is claimed; at the same time I find it exceedingly difficult to sustain the contention that it can never be allowed on Letters Patent Appeal, as is contended on behalf of the respondents. When a pure question of law going to the jurisdiction of the Court or challenging the vires or constitutionality

(1) A.I.R. 1932 P.C. 118.

Brahm Dutt and another
v.
The Peoples' Co-operative Society Ltd., and another

Dua, J.

of a statutory provision is raised for the first time on appeal, the Court should, in the absence of some supervening consideration, entertain and adjudicate upon it. If an order is made without jurisdiction, it is never too late to give effect to the plea that the order is a nullity and in this respect Letters Patent Appeals do not, in my view, stand on a different footing from other appeals.

11. Merely because Clause 10 of the Letters Patent of this Court, provides an appeal from the order of a Single Judge, to a Division Bench of two Judges of the same Court, does not, in my view, make any real difference and indeed Mr. Narula, has not been able to point out or formulate any sound and well-recognised principle justifying the distinction sought to be made by him. I would, therefore, unhesitatingly permit, Mr. Bhagwat Dayal, to raise the question of vires of the proviso.

12. The challenge to the constitutionality of the proviso in question is confined to Article 14 of the Constitution. It is argued that the object of granting permits under the Motor Vehicles Act, is to secure the advantage or benefit of the travelling public. This benefit or advantage, according to the counsel, can by no means be better secured by providing preferential treatment in favour of the Co-operative Societies.

13. This contention, in my opinion, is not well-founded. Continuity and security of service can certainly constitute a very relevant factor to be taken into account for the purpose of determining the convenience of the travelling public which, as already stated, is the main and perhaps primary consideration in deciding the question of

the grant of permits. A co-operative Society might well, therefore, be considered to be better fitted from the point of view of continuity and security of transport service than an individual operator. Similarly, ownership of a bigger fleet of transport vehicles is also not wholly foreign, extraneous or irrelevant, consideration in coming to the conclusion whether or not an applicant who owns such a big fleet should be given preference over those individual owners who own just one or two vehicles. Capacity of a Co-operative Society, as against an individual operator, to build up an economic fleet and therefore to ensure a more economic and satisfactory service to the public is thus clearly suggestive of the impugned provision being constitutional and a valid and not discriminatory or hostile piece of enactment.

14. After considering the arguments of Mr. Bhagwat Dayal, I have not been able, as at present advised, to find any substance in the contention that the impugned proviso must be struck down as violative of Article 14 of the Constitution. It is well settled that there is always a presumption with respect to the validity and constitutionality of a law and it is for those who attack its vires to establish their contention. Thus the appellants have, in my opinion, failed to do. It is of course undeniable that the grant of permit is a justifiable matter and indeed it has been so held in the latest decision of the Supreme Court in *Parbhani Transport Co-operative Society, Ltd.* v. *The Regional Transport Authority, Aurangabad, and others* (1). In *Messrs Raman and Raman Ltd* v. *The State of Madras, etc.* (2), *inter alia* a citizen's fundamental right to ply motor vehicles on public pathways under Article 19(1)(g) and

(1) A.I.R. 1960 S.C. 801.
(2) A.I.R. 1959 SC. 694.

Brahm Dutt and others
v.
The Peoples' Co-operative Society Ltd., and others

Dua, J.

quasi-judicial character of proceedings before tribunals issuing permits under the Motor Vehicles Act, were considered to be well established. But in the case in hand, except for the attack on the validity of the above-mentioned proviso to section 47 of the Motor Vehicles Act, no other constitutional challenge has been urged by the appellants.

15. It may, however, incidentally be mentioned that in the *Parbhani Transport Co-operative Society's* case, this very proviso came up for some discussion and the attention of the Supreme Court was specifically drawn to the preference which it gives to the Co-operative Societies, over individual owners. But since the precise aspect of the question canvassed before us was not raised in the Supreme Court, naturally this aspect did not directly call for consideration and adjudication, though the Supreme Court actually noticed the impugned preference which was relied upon by the *Parbhani Transport Co-operative Society*, (1) as against the Government considered as an individual owner. It is thus hardly fruitful or necessary to make any more reference to this decision and I would leave the matter at that.

16. In view of the foregoing discussion, as at present advised, I am not convinced that the impugned proviso has been shown to be unconstitutional for creating irrational or unreasonable classification. But this apart, if on the merits the grant of the permit to the appellants by the Chief Commissioner, has been correctly held by the learned Single Judge, to be vitiated, then the present appeal must, in any case, fail. I would accordingly dismiss the appeal but make no order as to costs.

(1) A.I.R. 1960 S.C. 601.

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—I agree with the conclusion of my learned brother that this appeal ought to be dismissed. The determining consideration in this appeal is whether a transport authority can travel beyond the scope of section 47 of the Motor Vehicles Act in granting stage carriage permits. The relevant provisions is to this effect :—

> "47. (1). A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters namely :—
>
> (a) the interests 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;

Brahm Dutt and others
v.
The Peoples' Co-operative Society Ltd., and another

Shamsher Bahadur, J.

(f) the condition of the roads included in the proposed route or area;

* * * *
* * * *

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 shall, as far as may be, be given preference over applications from individual owners."

The Chief Commissioner granted permits to the appellants who were individual owners out of regard for the promise which had been held out to them as far back as January, 1941. These individuals operators had been out of the transport business between 1941 and 1954. The general principle accepted by the Legislature, and which should be defended scrupulously by Courts, is that in granting a permit, the transport authority shall take into consideration only the interests of the travelling public and the matters which have been enumerated in clauses (b) to (f). A promise or assurance given by Government many years ago, however, laudable it may be for the appropriate authority to honour it, is not a valid ground for the grant of permit under section 47. Applying the touchstone of legislative intention, I regard this as a plain case. None of the clauses specified in section 47 can be invoked in aid of the appellants in this case and the rule of *ejusdem generis* cannot extend the scope of section 47 to justify the grant of permit to the appellant for the reasons assigned by the Chief Commissioner.

The preliminary objection that no appeal is competent, is devoid of force. Substantially, the learned single Judge, has set aside the order of the Chief Commissioner in the exercise of Jurisdiction under Article 226 of the Constitution. The direction that the Chief Commissioner may rehear the matter before him is only of an ancillary nature and has undoubtedly been given under the supervisory powers of this Court under Article 227. The entire case hangs on the correctness of the decision given by the learned Judge, under Article 226. Untrammelled by any authorities on this question, it seems to me to be common sense that an appeal should lie in such a situation.

For the reasons stated by my learned brother, it is not a case in which there has been any violation of the constitutional guarantee enshrined in Article 14 of the Constitution. The preference which has been given to co-operative societies by the proviso to section 47 involves a classification which is relatable to the ultimate object and the welfare of the travelling public. I agree that the appeal ought to be dismissed and there should be no order as to costs.

K.S.K.

APPELLATE CIVIL

Before G. D. Khosla, C.J. and Gurdev Singh, J.

KALYAN SINGH,—*Appellant.*

v.

TEJ KAUR,—*Respondent.*

First Appeal from order No. II(M) of 1959.

Punjab Courts Act (VI of 1918)—Ss. 38 and 39—Appeal from an order of the Subordinate Judge deciding application under S. 10 of Hindu Marriage Act (XXV of 1955)—Whether lies to the High Court or to the Court of the District Judge.