

Mukh Ram
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 and others
 ———
 Bhandari, C. J.

Nor is there any substance in the contention that the costs which were deposited by the tenant in the treasury were not assessed by the Controller but were determined by the tenant himself. It is common ground, however, that the actual amount deposited was not less than the amount which was subsequently assessed by the Controller.

I entertain no doubt in my mind that the provisions of the law have been substantially complied with. I would accordingly accept the petition, set aside the order of the learned District Judge and dismiss the landlords' application for eviction. The tenant will be entitled to costs here and below.

B.R.T.

CIVIL WRIT

Before I. D. Dua, J.

AMBALA BUS SYNDICATE PRIVATE LTD.,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 161 of 1959.

1959
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 May, 26th

Motor Vehicles Act (IV of 1939)—Sections 44 and 64—State Government—Whether competent to issue directions to Regional Transport Authority in respect of issue of permits—Party heard by Regional Transport Authority but not made a party to the appeal—Whether has right to be heard in revision—Powers of revision—Whether arbitrary—Minister-in-charge of Department hearing revision in which State Transport Undertaking is a party—Whether can be said to be a Judge in his own cause—Order passed by the Minister in revision—Whether mala fide and unconstitutional—Constitution of India (1950)—Article 226—Petition under—High Court—Whether can interfere with the order of the Minister.

Held, that there is nothing illegal or unconstitutional in the Punjab Government issuing directions for the Regional Transport Authority not to issue permits on routes which are parallel to Punjab Roadways without prior advice of the Transport Department. Section 44 of the Motor Vehicles Act, 1939, lays down the constitution of various Transport Authorities and also confers on the State Transport Authority fairly extensive powers of control over the Regional Transport Authorities. The directive in question is thus perfectly valid and legally unassailable in the present proceedings.

Held, that where an order has been passed after hearing a number of parties, if that order is to be attacked on appeal, then everybody who was heard by the first tribunal should be impleaded, as he would presumably and *prima facie*, be a party interested in upholding the impugned order and, therefore, a necessary party. If such a party is not impleaded in appeal and the order of the first tribunal is set aside, he has the right to file a revision.

Held, that under Section 64(h) of the Motor Vehicles Act the Government can even *suo motu* call for the record of any appeal decided by the Appellate Authority and scrutinise it for the purposes of altering, refusing, cancelling or upholding such orders; as to how the matter is brought to the notice of the Government is immaterial. It cannot be argued that the Government must expressly purport to exercise *suo motu* power, and if it does not do so, the order can be assailed under Article 226 of the Constitution.

Held, that the power of revision having been conferred on very high officials cannot be challenged as unconstitutional on the ground that the revisional power is uncontrolled. It is true that the power conferred by section 64(h) empowers the Government to pass any order, it likes, by reversing, modifying, cancelling or altering the order passed by the Appellate Authority. This power must, however, be construed to be limited to interference only if the order of the Appellate Authority is considered to be illegal or improper or unreasonable. It is implicit in this provision that the order of the Appellate Authority is revisable only if it is held to be illegal or improper and such a power is valid.

Held, that merely because the Minister hearing the revision is incharge of the Transport Department and the Punjab Roadways, owned by the Punjab Government, are a party to the revision, it cannot be said that the Minister is a Judge in his own cause. The principle of a person not being a judge in his own cause is meant for an entirely different set of cases and does not apply to an official deciding a matter which may affect his own department. The order passed on revision cannot, therefore, be said to be unconstitutional or tainted by illegal bias.

Held, that it is not open to the High Court to substitute its own opinion for that of the Minister, however, much the Court may disagree on the merits. The Minister has full power and jurisdiction to come to a decision of his own and such a decision cannot be canvassed or found fault with, on the merits, in writ proceedings.

Petition under Articles 226 and 227 of the Constitution of India, praying that writs and directions be issued to the respondents quashing the order of respondent No. 2 as communicated in office memorandum No. 10207-HT-58/3983 dated 6th February, 1959.

H. R. SODHI AND H. S. WASU, for Petitioner.

M. R. SHARMA AND MANMOHAN SINGH GUJRAL, for Respondents.

ORDER

Dua, J.

DUA, J.—The Ambala Bus Syndicate Private Limited, (hereinafter called the Company) was formed and registered in 1943 under the scheme of rationalisation of road transport initiated by the Punjab Government. The promoters and shareholders of the Company are alleged to be old transport operators already engaged in transport business. The Company is admittedly running several passenger bus services on various routes, Rupar-Ambala, Rupar-Kalka and Rupar-Sarhind being some of them. In the petition Rupar-Chandigarh is also one of the routes mentioned by the Company but the Government have in their written statement denied that the Company holds any permit for Rupar-Chandigarh route. It is admitted

that while going from Rupar to Ambala and Rupar to Kalka the buses of the Company do pass through Chandigarh. The Company has alleged in the petition that since 1955, there has been a growing public demand for its services on the Rupar-Chandigarh route meaning thereby that such service should only run between Chandigarh and Rupar. As a result of the public demand, the Managing Director of the Company applied for extension of its Rupar-Kharar route permit up to Chandigarh. This application is said to have been duly published in accordance with law and objections invited. No one raised any objection to the extension sought; not even the Punjab Roadways respondent No. 4. The Regional Transport Authority was inclined in favour of the grant of the necessary extension, but, the present writ petition proceeds, as the Provincial Transport Controller had issued some instructions directing the Regional Transport Authority not to allow extension of route permits to any private operator on a route which runs parallel to the Punjab Roadways without the previous advice of the Transport Department; the Regional Transport Authority did not itself grant the extension but forwarded the case to the Provincial Transport Authority, Punjab, with a favourable recommendation, according to which the extension prayed for was considered to be in public interest. The Provincial Transport Controller, however, who was desirous of conferring special benefits on the Punjab Roadways, rejected the recommendation of the Regional Transport Authority in utter disregard of public interest. In the meantime the Sub-Divisional Officer, Rupar, some M.L.As. from the locality, the Municipal Committee, Rupar, and the Congress Committee, Chandigarh, also made a representation to the Regional Transport Authority supporting the proposed extension; but the Regional

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Ambala Bus Transport Authority, this time, after coming to
 Syndicate, Pri- know of the views of the Provincial Transport
 vate Ltd. Controller, also rejected the prayer for extension.
 v. The Company preferred an appeal to the Appel-
 The State late Authority against the rejection by the Re-
 of Punjab gional Transport Authority. After hearing the
 and others Company, the Appellate Authority allowed the
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 cordance with the original recommendation of the
 Regional Transport Authority. Against this order
 the Punjab Roadways went up in revision to the
 State Government under section 64(h) of the
 Indian Motor Vehicles Act, 1939, as amended by
 the Punjab Amendment Act of 1948. This revi-
 sion, according to the writ petition, was initially
 heard by the Secretary, Transport Department,
 Punjab Government, to whom the power of hear-
 ing appeals had been delegated. The petition pro-
 ceeds, that the Punjab Roadways had no *locus
 standi* to file the revision because it had never ob-
 jected to the grant of the permit at the time when
 objections were invited by the Regional Trans-
 port Authority. The revision was heard by the
 Secretary on 30th of November, 1958, and orders
 reserved. Instead of announcing final orders on
 the revision, the case was, however, later taken to
 the Hon'ble Minister, who again heard the parties
 and set aside the order of the Appellate Authority.
 By means of the present writ petition the order of
 the Hon'ble Minister incharge is being assailed as
 without jurisdiction, *ultra vires, mala fide* and
 based on abuse of power ; it is also impugned as
 violative of Article 14 of the Constitution.

In their written statement the State Govern-
 ment have admitted the recommendation of the
 S.D.O., Rupar, and other prominent persons to the
 proposed extension, but it is submitted that the

order of the Hon'ble Minister on revision is perfectly valid, *intra vires* and within his power and competence. It is also stated that the Secretary, Transport Department, being, more or less, directly concerned with the Punjab Roadways felt that it would not be proper if the revision petition were decided by him. It is for this reason that the case was sent to the Hon'ble Minister for decision. Reliance is also placed on the directive, No. 2715-16/T, dated 4th of March, 1952, of the Provincial Transport Authority by which the Regional Transport Authority could not allow the extension of the route without the approval of the former. This directive, according to the reply, was issued under section 44(4) of the Motor Vehicles Act. It is finally pleaded that refusal of the extension has done no harm or injustice to the Company whose permits on Rupar-Kharar route were not reduced; public interest has also not suffered because adequate road transport services on Rupar-Chandigarh route already exist. Respondent No. 4 has also opposed the present writ petition and, in its written statement, it is asserted that the Hon'ble Minister is in no way in charge of the Punjab Roadways on the commercial side, which is managed by the Joint Provincial Transport Controller. It is emphatically denied that the Hon'ble Minister, Transport, by deciding this revision became a Judge of his own cause. It is also asserted that respondent. No. 4 had not been impleaded in the appeal filed by the Company though the former had been heard by the Regional Transport Authority and was also vitally interested in opposing the grant of extension to the Company.

The counsel for the petitioner has assailed the order of the Hon'ble Minister and has sought to make the following main points—

- (1) that the Punjab Roadways not being a party to the proceedings had no right

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to come up in revision against the order of the Appellate Authority ;

- (2) that the provision of clause (h) added by the Punjab Amendment of the Motor Vehicles Act (E.P. Act No. XXVIII of 1948) to section 64 of the Motor Vehicles Act is *ultra vires* and void because it confers a wholly unregulated power on the Government to alter, revise, cancel or uphold any orders passed on appeal decided by the Appellate Authority ; and
- (3) that the order passed by the Minister is biased and *mala fide* inasmuch as it is inspired by the interests of the Punjab Roadways alone and not by the interests of the general public.

The counsel for the respondents have met these points by submitting that the Regional Transport Authority did actually hear the Punjab Roadways, as a party entitled to be heard, and it was on appeal that the petitioner, Ambala Bus Syndicate Private Limited, did not implead the Punjab Roadways. It is submitted that if in the initial stages the Punjab Roadways was considered to be a party entitled to be heard, then it had a *locus standi* to approach the Government against the order of the Appellate Authority passed at its back. In so far as the validity of clause (h) added by the Punjab Amendment Act to section 64 is concerned, it is contended that overall supervision over the appeals decided by the Appellate Authority can validly be conferred on the Government. Regarding the plea of bias and *mala fides* alleged against the Minister, it is submitted that the Minister has kept the public interest in view while

deciding the revision and merely because the interests of the Punjab Roadways have also been safeguarded, it does not necessarily imply that considerations of public interest have been excluded or ignored by the Minister.

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While developing the contentions mentioned above, Mr. Sodhi laid great stress on the directive said to have been issued by the Provincial Transport Controller directing the Regional Transport Authority not to allow extension of route permits of any private operator on a route which is parallel to the Punjab Roadways unless previous advice of the Transport Department is obtained. The counsel contended that there is no provision of the Act which authorises such a directive to be issued and in any case, no favoured treatment can, under the law, be accorded to the Punjab Roadways to the prejudice of other private operators.

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Mr. M. S. Gujral, on behalf of the Punjab Roadways, has submitted that under section 44(3) of the old Act such a directive could clearly be issued. This provision is in the following terms :—

“44. (1) * * * *

(2) * * * *

(3) A Provincial Transport Authority shall exercise and discharge throughout the province the following powers and functions, namely—

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the province ;

(b) to perform the duties of a Regional Transport Authority where there is

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no such Authority, and if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions ;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities ; and

(d) to discharge such other functions as may be prescribed.

(4) * * * * *

(5) * * * * *”

Mr. Sodhi has referred me to *Moti Lal and others v. The Government of the State of Uttar Pradesh and others* (1), for the proposition that Regional Transport Authority is a quasi-judicial body and all applications for permits must be considered by it on the merits in an impartial and independent manner and also that it must act primarily in the interest of travelling public. It has also been observed in this case that merely because the State Government intends to run its own buses is no ground for refusing permanent permits to the applicants. *Sri Rama Vilas Service Ltd. v. The Road Traffic Board, Madras* (2), has also been cited by the counsel where an owner of buses had applied for renewal of permit after the expiry of the original period ; at that time the Government intended to put its own buses on hire and as those buses were not available at that time the applicant was granted a temporary permit to ply his buses during the period preceding the date when the

(1) A.I.R. 1951 All. 257

(2) A.I.R. 1948 Mad. 400

Government hoped to obtain its own vehicles and put them into use. A division Bench of the Madras High Court considered the grant of temporary permits as misuse of the provision of the Act solely for the benefit of the Government. In this case the interests of the public were construed to mean interests of the travelling public for whose convenience and needs such carriages are provided.

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Mr. Sodhi then referred me to sections 43 and 44 of the Motor Vehicles Act. Section 43 lays down the powers of the State Government to control road transport and it is empowered to issue directions to the State Transport Authority having regard, among other things, to the desirability of preventing uneconomic competition among motor vehicles. Section 44 similarly authorises the State Transport Authority to control the functioning of the Regional Transport Authority subject to the directions issued by the Government under section 43.

After considering the arguments advanced at the Bar, in my view, there is nothing illegal or unconstitutional in the Punjab Government issuing directions for the Regional Transport Authority not to issue permits on routes which are parallel to Punjab Roadways without prior advice of the Transport Department. Section 44 lays down the constitution of various Transport authorities and also confers on the State Transport Authority fairly extensive powers of control over the Regional Transport Authorities. The directive in question is thus perfectly valid and legally unassailable in the present proceedings. I am also inclined to hold that the Punjab Roadways had a *locus standi* to move the Government under section 64(h) of the Motor Vehicles Act. It is not denied that the Regional Transport Authority did actually hear the Punjab Roadways at the time of

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consideration of the extension of the petitioner's permit from Kharar to Chandigarh. Normally speaking, where an order has been passed after hearing a number of parties, if that order is to be attacked on appeal, then everybody who was heard by the first tribunal should be impleaded, as he would presumably and *prima facie*, be a party interested in upholding the impugned order and therefore, a necessary party. This view also finds support from the reasoning in *Ebrahim Aboobakar and another v. Custodian-General of Evacuee Property, New Delhi* (1), In the instant case, the petitioner having tried to secure reversal of the order of the Regional Transport Authority without impleading the Punjab Roadways, the latter were justifiably aggrieved by the Appellate Authority's order and had a clear *locus standi* to approach the Government on revision. In any case, under section 64(h) the Government could even *suo motu* call for the record of any appeal decided by the Appellate Authority and scrutinise it for the purposes of altering, refusing, cancelling or upholding such orders : as to how the matter is brought to the notice of the Government is immaterial. It is futile on the part of the counsel for the petitioner to argue that the Government must expressly purport to exercise *suo motu* power, and if it does not do so, the order can be assailed under Article 226 of the Constitution. With respect to the argument based on this revisional power being uncontrolled, it is sufficient to observe that the power being conferred on very high officials its constitutionality on this score cannot be successfully challenged. *C. S. S. Motor Service, Tenkasi and others v. The State of Madras and another* (2), on which Mr. Sodhi has placed reliance is hardly of much

(1) A.I.R. 1952 S.C. 319

(2) A.I.R. 1953 Mad. 279

avail. In that case section 64A of the Motor Vehicles Act was assailed on the ground that it conferred unduly wide powers of revision on the State Transport Authority, but the Madras High Court upheld its validity, observing that the revisional authority was constituted to consider the propriety or the legality of the orders of the Regional Transport Authority and that the section in fact conferred the power to consider the reasonableness of the impugned order. The contention of the counsel before me is, that section 64A was upheld solely because it laid down certain definite grounds on which alone the revising authority could interfere with the orders of the Regional Transport Authority. In the present case, it is submitted, that the power conferred by section 64(h) is arbitrary and absolute without laying down any guiding principles. Reliance in this connection has particularly been placed on para 41 of this judgment at page 293 of the report. He has also relied on *Raman and Raman, Ltd. v. State of Madras and another* (1), where the Supreme Court considered the scope of section 64-A, Motor Vehicles Act, as amended by the Madras State. It is true that the power conferred by section 64(h) empowers the Government to pass any order, it likes, by reversing, modifying, cancelling or altering the order passed by the Appellate Authority. In my opinion, however, this power must be construed to be limited to interference only if the order of the Appellate Authority is considered to be illegal or improper or unreasonable. Without finding the order to be improper I do not see why the Government should vary or cancel it. I would, therefore, hold that it is implicit in this provision that the order of the Appellate Authority is revisable only if it is held to be illegal or improper and such a power has admittedly been held to be valid by the Madras High

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(1) A.I.R. 1956 S.C. 463

Ambala Bus Court and was not knocked down by the Supreme
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With respect to the allegation of *mala fides*, in my opinion, the Minister is not shown to have entertained or to have been influenced by, any bias against the present petitioner. The mere fact that the Minister thought that interest of the travelling public would not be advanced by extending the present petitioner's route from Kharar to Chandigarh because there were fair number of services, of the Punjab Roadways and also of the petitioner, passing through Kharar and Chandigarh does not make his order assailable in the present proceedings. It is not open to this Court to substitute its own opinion for that of the Minister, however, much this Court may disagree on the merits. The Minister has full power and jurisdiction to come to a decision of his own and such a decision cannot be canvassed or found fault with, on the merits, in writ proceedings. At this stage I may also notice one other argument advanced by Mr. Sodhi. He submitted that the case had first been heard by the Secretary but instead of announcing orders the case was forwarded to the Minister for decision. The State has replied that because the Secretary was more directly concerned with the Commercial Department which controlled the Punjab Roadways, therefore, to avoid his embarrassment, the case was forwarded to the Minister for decision. I do not think there is anything wrong or even improper with this procedure. At any rate, it can hardly be a ground for interference by this Court by means of a prerogative writ. The argument that the Minister being the Head of the Commercial Department was a judge in his own cause is merely to be stated to be rejected. The principle of a person not being a judge in his own cause is meant for an entirely

different set of cases and does not apply to an official deciding a matter which may affect his own department. No authority has been cited by the counsel in support of his contention. While considering the question of the grant of a permit or of its extension regard may legitimately be had to its effect on the existing services. It is both reasonable and lawful to do so; the order is thus neither unconstitutional nor tainted by illegal bias.

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For the reasons given above, I would dismiss this writ petition, but in the circumstances of the case leave the parties to bear their own costs.

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CIVIL WRIT

Before I. D. Dua, J.

NATIONAL TRANSPORT ENGINEERING Co.,
(PRIVATE) LTD., PATIALA,—Petitioner

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No. 233 of 1959.

Motor Vehicles Act (IV of 1939)—Section 64—Right of appeal—Aggrieved party—Meaning of—Motor Vehicles Act as amended by the East Punjab Amendment Act (XXVIII of 1948)—Section 64(h)—Powers of the Government under—Extent of—Appellate Authority holding an appeal to be incompetent—Decision—Whether revisable by the Government—Constitution of India (1950)—Article 226—Writ of certiorari—Nature of—When can be issued—Facts disputed—High Court—Whether will inquire into in a writ petition.

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Held, that Section 64 of the Motor Vehicles Act, 1939, deals with the right of appeal. Under clause (f) of this section an association providing transport facilities which