

Sampuran Singh now seek to obtain from the Pepsu Land Commission.  
*v.*  
 The State In the view which we have taken of this matter,  
 through Pepsu it is needless to examine the question whether the  
 Land Commis- Pepsu Land Commission should have gone into the  
 sion, Chandigarh claim for exemption which has been directly made  
 and another before it by the petitioner. *Prima facie*, the role of  
 Shamsher the Pepsu Land Commission is advisory and the Col-  
 Bahadur, J. lector is bound to have the benefit of the opinion of  
 the Commission and this has to be annexed with the  
 draft statement.

The petition would, therefore, be allowed and the Collector directed to seek the advice of the Pepsu Land Commission with regard to the exemptions claimed by the petitioner in accordance with law. There would be no order as to costs.

Mahajan, J. D. K. MAHAJAN, J.—I agree.

B.R.T.

#### LETTERS PATENT APPEAL

*Before D. Falshaw, C.J., and Harbans Singh, J.*

THE STATE OF PUNJAB AND OTHERS,—Appellants.

*Versus*

GURCHARAN SINGH AND OTHERS,—Respondents

Letters Patent Appeal No. 293 of 1960.

1963  
 Dec., 10th.

*Motor Vehicles Act (IV of 1939)—Ss. 64 and 64A—  
 Punjb Motor Vehicles Rules (1940)—Rule 4.37A (i)—  
 Secretary to Government, Punjab, Transport Department,  
 constituted Revising Authority—Minister-in-charge, Trans-  
 port Department—Whether can exercise power of revision—  
 S. 61—Order allowing transfer of permit—Whether appeal-  
 able—Revision against such order—To whom lies—Letters  
 Patent—Clause X—Tribunal whose order is quashed—  
 Whether competent to file appeal under.*

*Held*, that according to Rule 4.37 A (i) of the Punjab Motor Vehicles Rules, 1940, the Revising Authority, for the purpose of exercising the powers of revision under clause (h) of section 64 of the Motor Vehicles Act, 1939, is the Secretary to Government, Punjab, Transport Department and no other person can exercise these powers. The State Government, in view of the delegation of powers under the said Rules, does not retain the power of revision. Delegation of powers by administrative instructions is one thing and prescribing an authority by statutory rules is quite another. Once a statutory rule is notified to the effect that a particular person will exercise the power of revision, that would exclude the exercise of that power by any other person.

*Held*, that the transfer of a permit is done under section 61 of the Act and no appeal lies against such an order under any of the clauses of section 64 of the Act nor is any revision competent under clause (h) of section 64 as the revision under that section is confined only to cases in which an appeal lies under other clauses of this section. A revision against an order under section 61 can, therefore, be filed only to the State Transport Authority as provided in section 64-A of the Act.

*Held*, that where the order of a tribunal is quashed on the ground that it had no jurisdiction to deal with the revision and pass any orders, it cannot be said that the tribunal or the State of Punjab is not an aggrieved party inasmuch as the position taken by them in the writ, in which they were all made respondents, was that the State Government acting through the Minister Incharge of the Department, could exercise power of revision under clause (h) of section 64 of the Act. The said Tribunal and the State of Punjab are, therefore, competent to file an appeal under clause X of the letters Patent.

*Letters Patent appeal under Clause X of the Letters Patent from the order dated 2nd May, 1960, passed by the Hon'ble Mr. Justice Daya Krishan Mahajan, in C.W. No. 99 of 1960.*

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Appellants.

D. S. NEHRA AND H. L. SIBAL, ADVOCATES, for the respondents.

## JUDGMENT

**Harbans Singh.**  
J.

HARBANS SINGH, J.—This appeal under clause 10 of the Letter Patent against the decision of Mahajan, J., has arisen in the following circumstances: There was a stage carriage permit in the name of Nahar Singh, father of Gurcharan Singh, respondent, in this appeal and petitioner before the learned Single Judge (hereinafter referred to as the respondent). Nahar Singh died in 1953, and Gurcharan Singh being a minor the permit continued to be renewed in the name of Nahar Singh and no steps were taken to get the transfer effected under section 61 of the Motor Vehicles Act (hereinafter referred to as the Act). Later, on 1st of March, 1958, an application was made for such a transfer being effected and the Regional Transport Authority, Patiala, after taking all the circumstances into consideration, transferred the vehicle and the permit in the name of the son. Before the Regional Transport Authority, the Pepsu Road Transport Corporation (hereinafter referred to as the Corporation) which had opposed the grant of the application filed an appeal under section 64 of the Act, which however, was dismissed as barred by time. A revision filed under section 64(h) was disposed of by the Minister Incharge, Transport Department, who, accepting the revision, set aside the order of the Regional Transport Authority and cancelled the transfer of the permit. Gurcharan Singh filed a writ petition against this order which was accepted by the learned Single Judge and the order of the Minister was quashed. The State of Punjab, Minister Incharge, Transport Department, Punjab, and the Regional Transport Authority have filed this appeal against the order of the learned Single Judge.

A preliminary objection was raised on behalf of the respondent that the State was not competent to file this appeal because the person aggrieved was only

the corporation which has been merely impleaded as a *pro forma* respondent in this appeal. I, however, feel that there is not much force in this argument. The learned Single Judge has quashed the order of the Minister Incharge, Transport Department, holding that he had no jurisdiction to deal with the revision and pass any orders. In these circumstances, it cannot be said that the Minister or the State of Punjab is not an aggrieved party inasmuch as the position taken by them in the writ, in which they were all-made respondents, was that the State Government acting through the Minister Incharge of the Department, could exercise power of revision under clause (h) of section 64 of the Act.

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The learned Single Judge held in favour of the contesting respondent on three different grounds, namely,—

First, that under clause (h) of section 64 read with rule 4.37A of the statutory rules made under the Act, it is only the Secretary to Government, Punjab, Transport Department, who has been constituted as the Revising Authority and that the Minister had no jurisdiction to deal with any revision under this clause;

Secondly, that the order of the Regional Transport Authority, which was the subject-matter of an appeal and revision filed by the Corporation, was an order of transfer of permit under section 61 of the Act and that such an order is not appealable under section 64 of the Act and consequently, no revision was competent under clause (h) of section 64; and

Thirdly, that the Minister had taken into consideration extraneous matters for setting

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aside the order of the Regional Transport Authority.

The contention of the learned Additional Advocate-General was that the order under appeal is not sustainable on any of these three grounds.

With regard to the first point, clause (h) of section 64 of the Act, as amended by the Punjab Legislature, is to the following effect:—

“Government may ask the Appellate Authority prescribed under the Rules framed under this section to forward for its consideration any of the appeals decided by the Appellate Authority and may alter, revise, cancel or uphold any such orders.”

Rule 4.37(i) of the Punjab Motor Vehicles Rules, 1940, made under the Act, provides as follows:—

“A person desirous of seeking relief under clause (h) of section 64 of the Act, as inserted by section 11 of the Motor Vehicles (East Punjab Amendment) Act, 1948, shall within 30 days of the receipt of the order of the Appellate Authority, prefer a memorandum (in duplicate) to the Secretary to Government, Punjab, Transport Department (hereinafter referred to as the revising authority), setting forth concisely the grounds of objection to the order of the Appellate Authority together with a certified copy of that order.”

According to this rule made under the statute, which, as was observed by the Supreme Court in *State of Uttar Pradesh and others v. Babu Ram Upadhya* (1),

(1) A.I.R. 1961 S.C. 751

“must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act,” the Revising Authority, for the purposes of exercising the powers of revision under clause (h) of section 64, is the Secretary to Government, Punjab, Transport Department. Reading the provisions of the Act and the rule together, it is clear that no other person can exercise these powers. The contention of the learned Additional Advocate-General that the State Government, notwithstanding the delegation of powers under the rules to the Secretary, still retains the power of revision under clause (h) aforesaid, cannot be sustained. Delegation of powers by administrative instructions is one thing and prescribing an authority by statutory rules is quite another. Once a statutory rule is notified to the effect that a particular person will exercise the power of revision, that would exclude the exercise of that power by any other person. No decision taking the opposite view was cited before us. The facts of this case are, more or less, similar to those in *Ghaio Mal & Sons v. State of Delhi* (2). In that case, under rule 1 of Chapter 5 of the Delhi Liquor License Rules, 1935, framed under section 59 of the Punjab Excise Act, as extended to Delhi, the Chief Commissioner of Delhi was the only competent authority empowered to grant L-2 license for wholesale and retail vend of foreign liquor to the public. It was found as a matter of fact in that case that the Chief Commissioner never passed any order. The order was passed, however, by the Chief Minister, who was apparently incharge of the Excise Department also, and this decision was conveyed by the Under-Secretary in the name of the Chief Commissioner. It was held by the Supreme Court that although the letter was properly authenticated on behalf of the Chief Commissioner, yet it did not embody

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any orders of the Chief Commissioner and the Court could go into this matter, and having gone into this matter, quashed the order as invalid. In the present case also, the statutory authority, which could hear, or pass any order in revision altering the one passed by the Appellate Authority, was the Secretary to Government, Punjab, Transport Department, who was constituted the revising authority under the statutory rules. The judgment of the learned Single Judge on this point, therefore, is correct and the impugned order was properly quashed on this short ground.

There appears to be some force in the second point also. The transfer of a permit is done under section 61 and admittedly no appeal lies against such an order under any of the clauses of section 64. There appears to be force in the contention that clause (h) of Section 64, revision under which is confined only to cases in which appeal lies under other clauses of section 64, is not applicable to the present case. Against an order under section 61, a revision can be filed only to the State Transport Authority as provided in section 64A of the Act.

With regard to the third point, apart from the question of the Minister having taken extraneous matters into consideration, into which it is not necessary to go, it was urged that the appeal filed by the Corporation being barred by time under section 64, there was no option to the Appellate Authority but to dismiss the appeal for the simple reason that section 5 of the Limitation Act is not applicable and time could not be extended by the Appellate Authority. In this respect reliance was placed on two Division Bench authorities, one of Patna and the other of Nagpur (*Kawal Singh v. Baldeo Singh* (3), and *Ramnath Prasad v. S.T.A. Authority* (4)). These

(3) A.I.R. 1957 Nag. 57

(4) A.I.R. 1957 Pat. 117

two authorities do lend support to the contentions of the learned counsel for the respondent. From this, it was urged that if the Appellate Authority could not extend the time, the same thing could not be done by the revisional authority. There appears to be force in this argument but in view of the fact that the judgment of the learned Single Judge is sustainable even on the first two points, it is not necessary to go into this matter.

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The learned counsel for the respondent further urged that this appeal, to all intents and purposes, has become infructuous for the simple reason that the period of three years prescribed under the Act for the permit that had been granted by the Regional Transport Authority, had already expired and on an application made for renewal of the same, no objections were raised either by the Corporation or anybody else and the permit has, consequently, been renewed. The permit against the grant of which the appeal and revision were filed, which are matters in dispute in the present appeal, is no longer in operation. We heard the learned Additional Advocate-General because he insisted on a finding being given on the question of the jurisdiction of the Minister to deal with such revisions.

For the reasons given above, therefore, there appears to be no force in this appeal and the same is hereby dismissed with costs.

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

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