A

B. PRABHAKARA RAO

v.

DESARI PANAKALA RAO & OTHERS

April 5, 1976

[Y. V. CHANDRACHUD, V. R. KRISHNA IYER & N. L. UNTWALIA, JJ.]

B

Motor Vehicles Act, 1947—*Ss.* 47 *and* 57—*Andhra Pradesh State Transport Appellate Tribunal Rules*, 1971, *r.*15—*Validity of.*

Tribunal—If had power to admit evidence beyond the time limited by s. 57(4).

Rule 15 of the Andhra Pradesh State Transport Appellate Tribunal Rules, 1971, states that parties to the appeal or application shall not be entitled to C produce additional evidence, whether oral or documentary, before the Tribunal except in cases stated therein but it empowers the Tribunal to allow evidence or documents to be produced or witnesses to be examined for any other sufficient reason.

The Regional Transport Authority granted a stage carriage permit to the appellant. Before the State Transport Appellate Tribunal another applicant produced certain information against the appellant which was not mentioned either in his history sheet or in the representations of any party under s. 57(3) D of the Act. Rejecting the appellant's objection that such new grounds could not be heard from an objector at the stage of appeal, the State Transport Appellate Tribunal cancelled the appellant's permit and gave it to respondent No. 2.

On appeal it was contended that a representation under s. 57(4) could not be made at the appellate stage beyond the time limited by that section and if rule 15 permitted it, it violated the substantive provisions of the Act.

E Dismissing the appeal,

HELD : Rule 15 is *intra vires* and it merely makes patent what is otherwise latent in the statutory provisions. Rule 15 does not entitle *parties to the appeal or application* to produce additional evidence but clothes the Tribunal with discretionary power to allow such evidence. What is received is not *qua* representation under s. 57(4) but *qua* evidence with public interest flavour. [1041F; 1039C]

F *United Motor Works*, A.I.R. 1964 Pat. 154 and *Cumbum Roadways*, A.I.R. 1965 Mad. 79, approved.

(a) Public interest is the paramount consideration in transport business while private rights apparently constitute a quasi-lis for decision. The touchstone of better merit is solely the ability to serve the public and the hierarchy of transport tribunals, bearing true faith and allegiance to s. 47 of the Motor Vehicles Act, 1948 have the duty and, therefore, the power to consider all factors pertinent to the larger scheme of efficient public transport. The duplex scheme of the statute is the holding of a public enquiry to determine who will G serve public interest best but ordinarily activated into that enquiry by private applicants for permits. The *pro bono publico* character of the hearing cannot be scuttled in the name of competitive individual rights and narrow procedural trappings. [1033E-G]

(b) Section 47 enjoins upon the Regional Transport Authority to have regard to the presiding idea of public interest generally and in its ramifications as set out in s. 47(1)(a) to (f). In addition, the RTA shall *also* receive represen- H tations as mentioned therein and take them into the reckoning. It is not as if the sole source of decision-making materials consists of the representations made under s. 57(3) within the time stipulated in s. 57(4). The primary channel is the information that the RTA may gather bearing on matters touched upon in s. 47(1)(a) to (f) supplemented by facts stated in representation referred to in

s. 57(3). Under s. 47 passengers' associations, police officers, local authorities and existing operators who may have nothing directly to do with the rivalry for a permit have a place in the scheme and may make representations on a variety of matters. So also, in an appeal, the RTA itself may be heard. Thus, the considerations going into the judicial verdict are dominated by public interest; non-parties who have only to present points germane to public interest are allowed to represent their point of view. [1038C; 1035B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1989 of 1975.

Appeal by Special Leave from the Judgment and Order dated the 28th November 1975 of the Andhra Pradesh High Court in Writ Appeal No. 1038 of 1973.

M. N. Phadke and *B. Kantarao*, for the Appellant.

V. S. Desai, K. R. Chaudhury, S. L. Setia and *Mrs. V. Khanna*, for Respondent No. 1.

The Judgment of the Court was delivered by

KRISHNA IYER, J. Counsel for the appellant—a jolted transport operator—has assertively argued for an untenable position, heedless of the true nature of 'transport permit' jurisprudence. The sole issue on which limited leave has been granted to him by this Court under Art. 136 lends itself to straight forward resolution, once we grasp the public character of the litigation and public purpose of the jurisdiction where permits regulating the plying of stage carriages are awarded or refused. The conscience of this branch of public law is justice to the public, although, in the process of adjudication, private claims to carry on transport business through permits are comparatively evaluated. Public interest is the paramount consideration, while private rights, fundamental though, apparently constitute the quasi-*lis* for decision. The touchstone of better merit is solely the ability to serve the public, and the hierarchy of transport tribunals, bearing true faith and allegiance to s. 47 of the Motor Vehicles Act, 1948 (for short, the Act) have the duty and, therefore, the power to consider all factors pertinent to the larger scheme of efficient public transport. To equate—and thereby hamstring—this jurisdiction and processual law with what governs a civil proceeding under the Civil Procedure Code, is to miss the policing policy of the law and maim the amplitude of the power-duty complex. In other words, the duplex scheme of the statute is the holding of a public enquiry to determine who will serve public interest best but ordinarily activated into that enquiry by private applicants for permits. The *pro bono publico* character of the hearing cannot be scuttled in the name of competitive individual rights and narrow procedural trappings.

The minimal facts. The appellant and the 1st respondent, among others, applied for permits to ply a stage carriage on a specified route in the Krishna District, Andhra Pradesh. Although there were two permits for issuance, one was given to R2 and that has become final. We are now concerned only with the other permit which had been granted by the Regional Transport Authority (acronymically, RTA) to the appellant but was switched over to the 1st respondent by the

A State Transport Appellate Tribunal (STAT) or taking into consideration a fresh ground and supporting evidence to the effect that the appellant was guilty of a transport tax violation and had compounded that offence under s. 60(3) of the Act. The power in this behalf was stated to be based on r. 15 of the Andhra Pradesh State Transport Appellate Tribunal Rules, 1971 (hereinafter referred to as the Appellate rules), which reads :

B

"15. *Additional Evidence* (i) The parties to the appeal or application shall not be entitled to produce additional evidence whether oral or documentary before the Tribunal but,—

(a) if the authority from whose order the appeal or application is preferred has refused to admit evidence C which ought to have been admitted, or

(b) if the party seeking to adduce additional evidence satisfies the Tribunal that such evidence, notwithstanding the exercise of due diligence was not within his knowledge or could not be produced by him at or before the time when the order under appeal was D passed; or

(c) if the Tribunal requires any documents to be produced or any witnesses to be examined to enable it to pass just orders; or

(d) for any other sufficient reason, the Tribunal may allow such evidence or documents to be produced E or witnesses examined :

Provided that where such evidence is received the other party shall be entitled to produce rebutting evidence, if any.

(ii) If the Tribunal is of opinion that any witness should be examined in connection with any case before it, it may instead of examining him before itself, issue a commission F to the concerned Regional Transport Authorities or the State Transport Authority as the case may be, or to an Advocate or such other suitable person as it may deem fit, in the circumstances of the case."

The vires of this rule was challenged before us and we will examine the contention. But, to continue the narrative, when the appellate authority deprived the appellant of his permit he attacked the order G without avail, before the High Court at both tiers. Undaunted, he has carried the appeal to this Court where the controversy is confined to the validity of r. 15, although we have heard arguments on a wider basis to appreciate the point made by counsel. The argument of *ultra vires* urged before us rests on the scope of ss. 57(4) and 64 of the Motor Vehicles Act and the fitment of r. 15 into the purpose and text of these provisions.

H

Having heard counsel on both sides, we are disinclined to accede to the submission of Shri Phadke for the appellant. Why? We will proceed to answer.

Rulings galore, of this Court and the High Courts, have focussed on s. 47 of the Act to emphasize that the quasi-judicial bodies entrusted with the work of issuing stage-carriage permits must be conscious of the brooding presence of public interest, in the midst of the sparring contest of private applicants. A casual perusal of that provision brings home this juristic under-pinning of the jurisdiction. Against this background, we may notice the meaning of the clauses which broaden the nature of the enquiry and mark it off from a traditional civil litigation. Passengers' associations, police officers, local authorities and existing operators who may have nothing directly to do with the rivalry for a permit have a place in the scheme and may make representations on a variety of matters. So also, in an appeal, the RTA itself may be heard. Thus, the considerations going into the judicial verdict are dominated by public interest; non-parties who have only to present points germane to public interest are allowed to represent their point of view. Why? Because the object of the regulatory statute is to promote smooth public transport and subject to the weighty factors bearing thereon set down in s. 47(1) of the Act and, indeed, with a view to serve the public the better, applicants are chosen in recognition of their fundamental right under Art. 19 canalised by reasonable restrictions in public interest. To imprison such an enquiry into the familiar mould of a civil proceeding in ordinary courts is to be pathological, if one may say so. A freer, healthier, approach is the prescription. Of course, Shri Phadke is right in that any representation, ground or evidence presented by anyone prejudicing the right of an applicant has to be considered only subject to the canons of natural justice and in the discretion of quasi-judicial authority. Justice to the public and the parties can and must be harmonised. Such is the simplistic statement of the law.

A few more facts and some more law are necessary.

As stated earlier, the appellant got the permit from the RTA although both the contestants before us were equally qualified, having obtained equal marks on the basis of the Andhra Pradesh Motor Vehicles Rules (for short, the MV rules). The appellate result went against the appellant because another applicant who had filed an appeal before the STAT produced, at that stage, a certificate from the concerned authority to prove that the present appellant had used a contract carriage as a stage-carriage on a trip to Tirupati and had compounded this offence by payment of a fee of Rs. 2,340/-. This circumstance was regarded by the STAT as a blot on the history-sheet of the appellant, although inadvertently omitted from the history-sheet prepared officially for the consideration of the RTA. It is admitted on all hands that this semi-punishment had not been mentioned in the representations of any party under s. 57(3) of the MV Act. Therefore, an objection was raised before the STAT that this ground was new, although the episode which formed its basis existed prior to the disposal of the applications by the RTA. It was further urged that such new grounds could not be heard from an objector who had not included it in his representation made within the time limited by s. 57(4) of the Act. However, the STAT over-ruled these objections and proceeded on the footing that this was material information

A relevant to s. 47(1) and used it, after giving a fair opportunity to the affected appellant to meet it. Consequentially, he upset the award of the permit to the appellant since this factor tilted the scales against the appellant. We cannot, in this Court, and especially on a limited leave, look into the evaluation.

These foundational facts are common ground, but the divergence B arises on the exercise of the power under r.15 of the Appellate Rules. Shri Phadke contended that a representationist, under s. 57(3) & (4), had to abide by the time-limit discipline of the provision and could not transgress it by making an additional representation at the appellate stage beyond the time limited by s. 57(4). If r. 15 permitted such a course, it violated the substantive provision of the Act. Since a stream cannot rise above its source and rules cannot go be- C yond the sections of the Act, this Court must hold the said rule void. Any way, if s. 57(3) & (4) had a more spacious connotation than was attributed to it by Shri Phadke, r. 15 could have full play and be accommodated within the parent provision in the Act regulating procedure. This was the counter-contention of Shri V. S. Desai for the contesting respondent.

D Before proceeding further, it is useful to extract s. 57(3) and (4) and test whether the rule-making power has exceeded the ambit of s. 57 or gone counter to it in framing r. 15 (earlier extracted) :

"57. *Procedure in applying for and granting permits.*—

x x x x

(3) On receipt of an application for stage carriage per- E mit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the auhority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being F less than thirty days from such publication, on which and the time and place at which, the application and any representations received, will be considered :

Provided that, if the grant of any permit in accordance with the application or with modifications would have the effect of increasing the number of G vehicles operating in the region, or in any area or on any route within the region, under the class of permits to which the applications relate, beyond the limit fixed in that behalf under sub-section (3) of Section 47 or sub-section (2) of Section 55, as the case may be, the Regional Transport Authority may summarily refuse the application without following H the procedure laid down in this sub-section.

(4) No representation in connection with an application referred to in sub-section (3) shall be considered

by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation." A

We unhesitatingly agree with Shri Phadke that natural justice—that fine facet of judicial ethos—must broadly inform exercise of power by administrative tribunals. This obligates such bodies to give an affected party a fair opportunity to meet any evidence obnoxious to his case if it is to be pressed into service against him. In the present instance, it is not disputed, as the High Court has noted, that the canons of natural justice have been conformed to. The surviving issue therefore is as to whether there is any soundness in the submission that s. 57(3) & (4) read with s. 47 builds barricades against receiving any information by the STAT from any representator beyond the time fixed in the above sub-sections of s. 57. B C

Administrative law—a growing branch of Indian jurisprudence —has a mission. Where the trellis work of technical procedures and rules of evidence usually applicable to ordinary courts under the Code contains too many taboos regarding pleadings and too many prescriptions regarding trials, administrative bodies, manned by lay and legal men, charged with duties which are wider than decision of individual disputes between specific parties and operating quasi-judicially at the public-interest level, have to enjoy more liberal powers and less formal and more flexible processes if they are to fulfil the statutory behest efficaciously. To over-judicialize is to undermine. In the construction of statutes establishing administrative agencies and defining their powers, there is little scope for the deep-rooted shibboleth that into the statute must be, read, by lawyer's instinct, the requirements of the trial of a civil suit or the hearing of an appeal by the ordinary courts of the land. This may result in defeating their obvious purpose. We will therefore briefly examine the legislative goal of the statute under construction, the general policy of the legislature in enacting the relevant sections and the definition of the sources from which information or evidence may be sought by the tribunal working within the framework of the Act. Mr. Justice Frankfurter has aptly stated that 'the answers to the problem of an art are in its exercise' and John Chipman had said that the process of statutory construction is a practical art (See : Extrinsic Aid in the Construction of Statutes—by V. S. Deshpande—Journal of Indian Law Institute—Vol. II, April-June 1969, p. 123, 126). Thus, the true test of the amplitude and correct interpretation of s. 57(3) & (4) is to be found in a study of its area and its exercise, as intended by its makers. The oft-quoted saying of Mr. Justice Holmes that 'the meaning of a sentence it to be *felt* rather than to be *proved*' also helps us to feel our way through the public law area sketched by s. 57(3) & (4) understood in the background of s. 47 and the conspectus of other provisions. We have to shake off from our minds that the type of litigation contemplated by s. 57 is the thrust and parry in a civil suit or appeal. With these observations we may take a bird's eye view of the relevant provisions of the Act to give us a hang of the subject and help us interpret adequately. D E F G H

A Section 42 of the Act insists on a permit being taken by every transport operator. Section 44 lays down how the RTA is to be constituted. It has a mixed composition of lay and judicially-trained men, the reason being that the process of adjudication is not purely legal pugilis but a broader search taking note of public considerations which may not be brought to its notice by contenders for permits. The nature of the enquiry is reflected in the very structure B of the body. Section 46 speaks of applications for stage-carriage permits. When we reach s. 47, we have to take a close-up of that provision. Properly understood, s. 47 enjoins upon the RTA to have regard to the presiding idea of public interest generally and in its ramifications as set out in s. 47(1) (a) to (f). In addition, the RTA shall *also* receive representations as mentioned therein and take them into the reckoning. It is not as if the sole source of decision-C making materials consists of the representations made under s. 57(3) within the time stipulated in s. 57(4). The primary channel, it looks, is the information that the RTA may gather, bearing on matters touched upon in s. 47(1) (a) to (f), supplemented by facts stated in representations referred to in s. 57(3). Once we grasp this essential truth, the resolution of the conflict raised in this case is easy. The focus is not on who, as between A and B, has the title D to the permit, but on who, as between A and B, should be preferred to better serve the public interest.

We may, as a result of the above discussion, set down the following five propositions :

1. Stage-carriage permits are granted for providing an E efficient public transport system.

2. The adjudicatory content has dual elements—public interest in the best stage-carriage service and private title to better serve the public.

3. The procedure is flexible, free from the rigidity of court trials, and this flexibility flows from the duty of the F tribunal, charged with the task of picking out him who has the best plus points for plying a good bus service, to discharge it properly. A people-conscious power cannot be pared down in a self-defeating manner.

4. An activist tribunal (RTA, and, in exceptional cases, G even the STAT) may even collect useful information bearing on considerations set out in s. 47 and, after public exposure of such information at the hearing and reasonable opportunity to meet it, if anyone is adversely affected, put it into the crucible of judgment.

H 5. The antithesis is not between the right of representation within the time limited by s. 57(4) and beyond it but between representations by statutorily authorised entities under ss. 47 and 57 and receipt of relevant

A

> evidence or information from any source whatsoever at any stage whatsoever but subject to the wholesome rules of natural justice.

These fivefold guidelines squarely accommodate r. 15 within the framework of ss. 47, 57 and 54 of the Act and there is no spill-over breaching the banks of the provisions. The rule merely gives effect to what the sections intend and is not therefore *ultra vires.* B

Here the certificate of payment of compounding fees was filed by one of the appellants before the STAT and was received not as a representation under s. 57(4) but as some information the STAT regarded had a bearing on matters falling under s. 47. It is important to note that r. 15 does not entitle *parties to the appeal or application* to produce additional evidence but clothes the tribunal with discretionary power to *allow* such evidence. What is received is not *qua* representation under s. 57(4) but *qua* evidence with public interest flavour. The rule is good and covers familiar ground to enable *just* orders being passed. A reference to order XLI, rule 27 C.P.C. and s. 540 Crl. P.C. proves this point. Justice to the public is the keynote of ss. 47, 57 and r. 15. We are not lobbying for unconventional procedures of quasi-judicial tribunals but interpreting the relevant provisions according to well-established canons. We must listen to the signature tune of quasi-judicial justice to appreciate the note. We may also highlight the basic principle that subject to statutory regulations, each tribunal has its inherent power to device its own procedure. Novelty, if it improves purposeful efficiency, is not anathema. But caution must be exercised in going against time-tried procedures lest processual law prove a charter for chaos. Likewise, it is necessary to mention that while a 'representator' under s. 47, read with s. 57, has a *right* to make representations and be heard, subject to the limitations written into those provisions, those who fall under it or outside it have no *right* to bring in evidence or urge grounds as and when they please or at all unless the tribunal, in its discretion, chooses to accept such extra information. The first is a *right of the 'representator'* the second is the *power of the tribunal.* C D E F

We are strengthened in our general approach and particular construction by a ruling of this Court in *New Prakash Transport*(1) and two rulings of the High Courts, one of a Full Bench of the Madras High Court (AIR 1965 Madras 79) and the other a Division Bench of the Patna High Court to which one of us (Untwalia, J.) was a party (AIR 1964 Patna 154). G

In *United Motor Works*(2), the Patna Case, the Court observed :

> "It was also pointed out by the Supreme Court in that case that the Motor Vehicles Act and the rules framed thereunder do not contemplate anything like a regular hearing in a Court of Justice and no elaborate procedure has been prescribed as to how the parties interested have to be heard either before the Regional Transport Authority or H

(1) [1957] S.C.R. 987. (2) A.I.R. 1964 Pat 154.

A before the Appellate Transport Authority. The principle is well established that in the absence of any such prescribed procedure the appellate authority may adopt any procedure which it thinks best for hearing the appeal provided always that the rules of natural justice are observed. The matter has been clearly put by Lord Loreburn in the B course of his speech in *Board of Education* v. *Rice* (1911 AC 179) as follows :

> "Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes C a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve a matter of law as well as a matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to D both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting E any relevant statement prejudicial to their view."

Ramaswami C. J., (as he then was) also laid down :

> "It is... manifest that the power of the appellate authority is co-extensive with the power of the Regional Transport Authority in this respect, and there is no reason why the appellate authority should not take these matters F into consideration in deciding the appeal under s. 64 of the Act."

It is trite that an appeal is a re-hearing and ordinarily appellate power is as wide as original power. The facts of the *Patna case (supra)* bear a close parallel to our case.

Another point with which we are not concerned and also decided G in the Patna judgment (one of the two writ petitions heard together) was challenged in the Supreme Court and reversed. That bears upon the inter-state routes which does not arise in the instant appeal before us.

In *Cumbum Roadways*(1) Kailsam J. (as he then was), speaking for the Full Bench, stressed the same view. The headnote in the H Report is sufficiently explicit and we quote :

> "The representator, who makes the representation otherwise than under s. 57(4) will not have a right to have his

(1) A.I.R. 1965 Mad. 79.

objection heard and considered, but there is no prohibition against the authority taking the information furnished by the objector and acting on it after giving an opportunity to the affected party, to prove that the information is false or that it should not be acted upon. The jurisdiction of the Regional Transport Authority or the Appellate Tribunal to act upon any information, whether it was brought to its notice by the objector or by the Transport Authority cannot be questioned. But it is within the discretion of the Regional Transport Authority or the Appellate Tribunal to accept the information taking into account the relevant circumstances under which the information was brought before it. If the authority decides to accept, it is bound to give a reasonable opportunity to the affected person to show cause as to why the information should not be acted upon. When the authority is acting on the information, but not as a representation by the objector, the person affected cannot object to the authority considering the information on the ground that it was brought to its notice by one of the objectors without including the information in the representation made by the objector. The right of the representator as such is no doubt limited, for, he has no right to insist that any representation made otherwise than under s. 57(4) should be considered in the manner prescribed under s. 57(5). But that does not in any way debar the authority under s. 47(1) of the Act from taking the information into account for deciding to whom the permit should be given in the interests of the public."

The decision of the Assam High Court (AIR 1959 Assam 183) brought to our notice by Shri Phadke does not really consider the issue from the position we have delineated and turns on approach which is not quite correct.

Our conclusion therefore is that r. 15 is *intra vires* and, further that the said rule merely makes patent what is otherwise latent in the statutory provisions. The appeal accordingly, fails and is dismissed with costs.

P.B.R. *Appeal dismissed.*