expression 'by reason of' goes with the clause relating to compulsory acquisition of property and not with the distribution of capital assets.

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S. K. Das J.

The position seems to us to be so clear that it is unnecessary to labour it or to refer to decided cases. Such decisions of the High Courts as have been brought to our notice are all one way and they take the same view as was taken by the High Court in the decision under appeal (see *Sri Kannan Rice Mills Ltd.* v. *Commissioner of Income-tax, Madras* (1); *Commissioner of Income-tax, Bombay North* v. *Walji Damji* (2); and *Gowri Tile Works* v. *Commissioner of Income-tax, Madras* (3).

For the reasons given above, we see no merit in the appeal and we dismiss it with costs.

Appeal dismissed.

THE PARBHANI TRANSPORT CO-OPERATIVE SOCIETY LTD.

v.

THE REGIONAL TRANSPORT AUTHORITY, AURANGABAD AND OTHERS

1960
March 7

(B. P. SINHA, C. J., JAFER IMAM, A. K. SARKAR, K. N. WANCHOO AND J. C. SHAH, JJ.)

Motor Vehicles—Grant of stage carriage permit to Government under Ch. IV—Constitutional validity—Motor Vehicles Act, 1939 (4 of 1939), as amended by Act 100 of 1956, ch. IV. ss. 42, 47, ch, IVA, s. 68F(1)—Constitution of India, Arts. 19(1)(g), 14.

The petitioner, a registered co-operative society, carrying on the business of plying motor buses as stage carriages, had permits for four routes which were due to expire. The State applied for permits for all these routes under Ch. IV of the Motor Vehicles Act, 1939, as amended by Act 100 of 1956, and the petitioner applied for renewal of its own permits. The Regional Transport Authority rejected the petitioner's applications and granted those of the State. The petitioner's appeal to the State Transport Authority was rejected. But the High Court quashed the said orders under Art. 226 and directed a

(1) [1954] 26 I.T.R. 351. (2) [1955] 28 I.T.R. 914.
(3) [1957] 31 I.T.R. 250.

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reconsideration of the matter. The State published a scheme under s. 68C, Ch. IVA, of the Act. The scheme was not however finalised. Thereafter the Regional Transport Authority, purporting to reconsider the matter as directed by the High Court, rejected the petitioner's applications for renewal and granted those of the State for permits. It was contended on behalf of the petitioner that in view of Ch. IVA of the Act, the State had no right to apply for permits except thereunder and the grant of permits on applications made under Ch. IV was, therefore, illegal and infringed the petitioner's fundamental rights under Arts. 19(1)(g) of the Constitution. It was further contended that the order violated Art. 14 as well.

Held, that both the contentions were without substance and must fail.

The Motor Vehicles Act, 1939, as amended by Act 100 of 1956, lays down two independent sets of provisions relating to running of buses by the Government, one under Ch. IV and the other Ch. IVA of the Act. The latter chapter by s. 68F(1) confers a special advantage on the Government when it proceeds under that chapter and entitles it to the necessary permits as a matter of right. Under Ch. IV of the Act, however, the Government cannot claim any such advantage. It has to compete with other applicants. The powers conferred by the two chapters being thus not one but two different powers, the principle enunciated in *Nazir Ahmad's case* has no application. Since, therefore, the Government had a distinct right to apply for permits under Ch. IV of the Act, no question of applying for permits without the right to do so and thereby infringing the petitioner's fundamental right under Art. 19(1)(g) could arise.

Nazir Ahmad v. *King Emperor,* (1936) L.R. 63 I.A. 372, held inapplicable.

Taylor v. *Taylor,* (1876) 1 Ch. D. 426, distinguished.

Nor could the maxim *expressio unius est exclusio alterius* be of any help to the petitioner. That maxim has its utility in ascertaining the intention of the legislature. Since s. 42(3)(a) of the Motor Vehicles Act leaves no manner of doubt as to that intention by its clear indication that the Government cannot run buses as a commercial enterprise without first obtaining permits under s. 42(1) of the Act, that maxim cannot operate so as to imply a prohibition against applying under Ch. IV of the Act.

There was therefore, no reason for holding that Ch. IVA of the Act contained the only provision under which the Government could be allowed to ply stage carriages.

Viscountess Rhondda's claim, (1922) 2 A.C. 339 and *Motilal* v. *Government of Uttar Pradesh,* (1955) 1 I.L.R. All. 269, considered.

It was not correct to say that the State was not intended to compete with private citizens in obtaining permits under Ch. IV of the Act. Section 47 of the Act lends no support to such a proposition and Art. 19(6) of the Constitution indicates that the Government can enter into such competition without infringing any of the fundamental rights.

The Regional Transport Authority in granting permits acts in a quasi-judicial capacity. If its decision was in any way erroneous having regard to the proviso to s. 47(1) of the Act, that could not amount to a violation of Art. 14 of the Constitution. The petitioner had other remedies open to him. Nor could Ch. IV of the Act be said, in view of Art. 19(6) of the Constitution, to offend that Article by permitting open competition between the State and a private citizen.

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ORIGINAL JURISDICTION: Petition No. 110 of 1959.

Writ Petition under Article 32 of the Constitution of India for enforcement of Fundamental rights.

B. R. L. Iyengar and *Shankar Anand,* for the petitioners.

M. C. Setalvad, Attorney General for India, B. Sen, R. Gopalakrishnan R. H. Dhebar and *T. M. Sen,* for the respondents.

1960. March, 7. The Judgment of the Court was delivered by

Sarkar J.

SARKAR, J.—The petitioner is a co-operative society duly registered and it carries on the business of plying motor buses as stage carriages on the public highways in the State of Bombay. Its case in this petition is that it has been deprived of its right to carry on this business and has also been subjected to discriminatory treatment in the matter of the grant of permits to run its buses. It complains of the infringement of its fundamental rights under arts. 19(1)(g) and 14 of the Constitution.

The questions raised in this matter turn on some of the provisions of the Motor Vehicles Act, 1939, as amended by Act 100 of 1956. These provisions have to be examined before proceeding to discuss the questions that arise. We are concerned only with Chapters IV and IVA of the Act. Chapter IV comprises ss. 42 to 68 and Chapter IVA, which was in its entirety introduced by the amending Act, consists of ss. 68A to 68I.

Taking Chapter IV first, we find that s. 42(1) provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of a permit granted under the Act. A "transport vehicle" is defined in s. 2(33) as a public service vehicle or a goods vehicle. Clause (a) of sub-sec. (3) of s. 42 as it originally stood

provided that sub-sec. (1) of that section would not apply to any transport vehicle owned by or on behalf of the Central Government or a State Government other than a vehicle used in connection with the business of a railway. So under it the Government could ply stage carriages on the public highways without having to obtain permits in respect of them. The amending Act of 1956 substituted a new clause (a) in s. 42(3) for the old clause. The new cl. (a) provides that sub-sec. (1) shall not apply to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise. Since the amendment, therefore, the Government cannot run stage carriages on the public highways without a permit, just as a private owner of stage carriages cannot do, because such use of the vehicles will not be for a purpose unconnected with a commercial enterprise. Section 44 authorises a State Government to constitute a State Transport Authority and Regional Transport Authorities for different areas in that State to carry out the duties specified. Section 45 provides that every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle. Section 47 specifies the matters to which a Regional Transport Authority shall have regard in considering an application for the grant of a permit.

We now come to Chapter IVA. Section 68A(b) defines a "State transport undertaking" for the purpose of the Chapter to mean an undertaking providing road transport service, carried on, among others, by a State Government. Section 68B provides that the provisions of Chapter IVA shall have effect notwithstanding anything to the contrary contained in Chapter IV. Section 68C is in these terms:

68C. Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof

should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct.

Section 68D provides for the preferring of objections to the scheme published under s. 68C, consideration of such objections and final approval of the scheme by the State Government. The terms of s. 68F(1) are as follows :—

S. 68F. (*1*) Where, in pursuance of an approved scheme, any State transport undertaking applies in the manner specified in Chapter IV for a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified route, the Regional Transport Authority shall issue such permit to the State transport undertaking, notwithstanding anything to the contrary contained in Chapter IV.

The respondents to this petition are (1) The Regional Transport Authority, Aurangabad, (2) The State Transport Authority, Bombay, (3) The Divisional Controller of State Transport, Marathwada and (4) The State of Bombay. Aurangabad and Marathwada are both in the State of Bombay. The first and second respondents are the authorities set up under s. 44 of the Act by the Government of Bombay. It is the duty of the first respondent to consider applications for and to grant, permits for stage carriages to be plied in Aurangabad region and the second respondent hears appeals from the decisions of the first respondent. The third respondent is the head of a department of the Government of the State of Bombay and is in charge of public transport work in Marathwada.

It appears that the petitioner had permits to run buses on four routes in Aurangabad and that these

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permits were due to expire on October 1, 1958. The third respondent who really represents the Government of the State of Bombay and who may be conveniently referred to as the State of Bombay, had permits for two of these routes. On May 19, 1958, the State of Bombay applied for permits for all these four routes under Chapter IV of the Act. On May 27, 1958, the petitioner applied for renewal of its existing permits. The first respondent rejected the application of the petitioner and granted those of the State of Bombay. The petitioner appealed to the second respondent but its appeal was rejected. In the meantime on some date which does not appear on the record, the petitioner had been granted temporary permits up to December 31, 1958. On the expiry of its temporary permits on December 31, 1958, the petitioner would have been unable to run any of its buses and it therefore moved the High Court at Bombay under art. 226 of the Constitution and the High Court quashed the orders of respondents Nos. 1 and 2 and directed the applications of the petitioner and the State of Bombay for the permits to be reconsidered. With the reasons of this order of the High Court we are not concerned. Respondent No. 1, however, without re-considering the applications as directed by the High Court, granted temporary permits to the State of Bombay. The petitioner again moved the High Court which thereupon quashed the order of respondent No. 1 granting temporary permits to the State of Bombay. Thereafter, on March 20, 1959, the respondent No. 1 granted temporary permits to the petitioner which were later extended to July 20, 1959. On June 1, 1959, the State of Bombay published a scheme under s. 68C in Chapter IVA of the Act. Various objections were filed against the scheme and nothing further appears to have been done to make the scheme final. On July 18, 1959, respondent No. 1 purporting to carry out the directions of the High Court, reconsidered the petitioner's applications for renewal and the applications of the State of Bombay for permits and rejected the petitioner's applications while allowing those of the State of Bombay. On July, 20, 1959, the petitioner's temporary permits

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having expired, it ceased to operate its buses. On August 27, 1959, the petitioner filed the present petition in this Court under art. 32 of the Constitution for appropriate writs quashing the order of respondent No. 1 dated July 18, 1959, restraining the State of Bombay from applying for permits save under the provisions of Chapter IVA and respondent No. 1 from entertaining any application by the State of Bombay under Chapter IV and directing respondent No. 1 to hear the petitioner's applications for permits according to law. Various grounds have been advanced in support of the petition and these will now be discussed.

The petitioner first contends that in view of Chapter IV-A the State of Bombay had no right to apply for permits under Chapter IV of the Act as it had done. It says that the order of the first respondent granting permits to the State of Bombay under Chapter IV was therefore illegal and affected its fundamental rights under art. 19(1) (g).

The first question then is whether the State of Bombay was entitled to apply for permits under Chapter IV. The petitioner says that special provisions having been made in Chapter IVA to enable the Government to run its buses the Government's right to run buses was restricted to those provisions and the Government was not entitled to resort to the other provisions of the Act. In support of this contention reference was made to the case of *Nazir Ahmad* v. *King Emperor*(1) where it was observed that "where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all." But this principle can apply only where one power is given and has no application where more powers than one are conferred. If a statute contains provisions giving more than one power, then the rule cannot be applied so as to take away the powers conferred by anyone of these provisions. As pointed out in *Taylor* v. *Taylor* (2) referred to by the Judicial Committee in *Nazir Ahmad's case* (1) "When a statutory power is conferred for the first time upon a Court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted."

1. (1936) L.R. 63 I.A. 372. 381. (2) ((1876) 1 Ch. D. 426, 431.

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Now the position here is different. The Government has of course the power to do any business it likes and therefore the business of running stage carriages. We have earlier drawn attention to the change made in cl. (a) of s. 42(3) by the amendment of 1956. Previously, it was not necessary for the Government to obtain permits under s. 42(1) for buses that it intended to run as stage carriages. Since the amendment the Government can no longer run transport vehicles for commercial purposes without obtaining permits under s. 42(1). Now the plying of buses as stage carriages is a commercial enterprise and for such buses, therefore, under the sections as they stand, the Government would require permits as any one else. That being so, the sections clearly contemplate that the Government may apply for and obtain permits for its buses run as stage carriages. The rule applied in *Nazir Ahmad's case* (1) does not permit the ordinary meaning of s. 42, sub-s. (1) and sub-s. (3), cl. (a) to be cut down because of the provisions of Chapter IVA. The Act lays down two independent sets of provisions in regard to the running of buses by the Government, one under Chapter IV and the other under Chapter IVA. Chapter IVA was intended to give the Government, a special advantage. When the Government chooses to proceed under that chapter, it becomes entitled as a matter of right under s. 68F (1) to the necessary permits. Under Chapter IV the Government does not have any such advantage; it has to compete with other applicants, to secure permits to be able to run its buses. The powers under the two Chapters are therefore different. To such a case the principle of *Nazir Ahmad's case* (1) cannot be applied.

The learned counsel for the petitioner also referred to the maxim *expressio unius est exclusio alterius* and contended that since the Act by Chapter IVA provided that the Government would be entitled to run buses under a scheme it impliedly prohibited the running of buses by the Government otherwise. It does not seem to us that this maxim carries the matter further. It is a maxim for ascertaining the

(1) [1936] L.R. 63 I.A. 372, 381

intention of the legislature. Where the statutory language is plain and the meaning clear, there is no scope for applying the rule. Section 42(3) (a) appears to us to be perfectly plain in its terms. It contemplates that the Government has to apply for permits under s. 42(1) to run buses as a commercial enterprise. That being so, the maxim cannot, be resorted to for ascertaining the intention of the legislature and implying a prohibition against the Government applying for permits under Chapter IV.

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The learned counsel then referred to the case of *Viscountess Rhondda's claim* (1), where it was observed at p. 365 that "The words of the statute are to be construed so as to ascertain the mind of the Legislature from the natural and grammatical meaning of the words which it has used, and in so construing them the existing state of the law, the mischiefs to be remedied, and the defects to be amended, may legitimately be looked at together with the general scheme of the Act." His point is that Chapter IVA was introduced by the amendment of 1956 to meet the observations made in *Moti Lal* v. *Government of Uttar Pradesh* (2) and some other cases that s. 42(3)(a) was discriminatory in that it exempted the Government from the requirement of a permit and was hence void as offending art. 14 of the Constitution. It is said that Chapter IVA must, therefore, be construed as containing the only provisions enabling the Government to run a stage carriage. It is difficult to appreciate this contention. The observations in the cases referred to, had been made in regard to cl. (a) of s. 42(3) as it stood before its amendment in 1956. That section has been amended and as it now stands it is not discriminatory. The evil pointed out no more exists and no question of reading the Act keeping in view that evil of discrimination, arises. We find nothing in *Moti Lal's case* (2) or any other case which points to an evil nor has the learned counsel drawn our attention to any, which the Act can be said to have intended to remedy. We, therefore, find no justification for reading Chapter IVA as containing

(1) (1922) 2 A.C. 339. (2) (1951) 1 I.L.R. All. 269.

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the only provisions under which the Government can ply stage carriages.

It is next said s. 42 contemplates the owner of a transport vehicle obtaining a permit and a "State transport undertaking" cannot apply for a permit under Chapter IV as it cannot be such owner. But here we are not concerned with a State transport undertaking for that comes into existence for the purposes of Chapter IVA and that Chapter has not been resorted to by the Government yet. Here the Government applied for the permits under Chapter IV. The Government can of course be the owner of transport vehicles. We have earlier said that in view of cl. (a) of s. 42(3) the Government has to apply for permits under s. 42(1) as any other owner. Therefore the Act contemplates the Government as owner of transport vehicles. Further, under s. 68A a "State transport undertaking" has been defined as an undertaking providing road transport service carried on by a state Government. Such an undertaking is really a department of a Government and in order to be able to provide transport service, it must be able to own transport vehicles. In fact s. 68F(1) requires the State transport undertaking to apply for permits under Chapter IV and therefore contemplates it as an owner of a transport vehicle for the purposes of s. 42 which is contained in that Chapter.

The learned counsel then referred to the concluding portion of s. 47(1) which makes it incumbent on the authority considering applications for permits to take into consideration the representations made by the persons therein mentioned. He said that the persons there mentioned did not include the Government and therefore the intention is clear that applications for permits by the Government were not intended to be considered under s. 47 and if Government could not come under s 47, it could not come under Chapter IV at all. But assume that representations by the Goverment are not contemplated by s. 47. That does not show that applications for permits by the Government are also not contemplated by that section.

It is also said that the matters to which the authority granting the permits is required to have regard in

considering applications for permits under s. 47 are such that if the State enters into competition with citizens for the grant of permits the State must necessarily get them. Therefore, it is said that it could not have been intended that the State would compete with the citizens in the matter of obtaining permits under Chapter IV. We are unable to assent to this contention. There is nothing in s. 47 which leads to the conclusion that whenever the Government applies along with private citizens for permits, the Government must get them. Indeed, if that were so, then it would not have been necessary to provide by s. 68F (1) that when the Government, that is, its State transport undertaking, applied in pursuance of an approved scheme for a permit, the authority concerned would be bound to grant such permit. Section 68F (1) clearly contemplates that without the provision made therein it may so happen that the authority acting under s. 47 may think it fit to grant the permit to a private operator in preference to the Government. It also seems to us that there is nothing in our law to prevent the Government from entering a business in competition with private citizens. Indeed, Art. 19(6) by providing that nothing in art. 19(1)(g) shall affect the application of any existing law in so far as it relates to, or prevent the State from making any law relating to the carrying on by the State of any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise, would seem to indicate that the State may carry on any business either as a monopoly, complete or partial, or in competition with any citizen and that would not have the effect of infringing any fundamental rights of such citizen.

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Our attention was then drawn to the proviso to s. 47(1) under which other things being equal a co-operative society is entitled to preference over individual owners in the matter of grants of permits. It is said that the Government is not an individual owner and therefore it is not contemplated as an applicant for a permit under s. 47. It seems to us that if the Government is not an individual owner—as to which we are not called upon to say anything—it does not

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follow that that section does not contemplate the Government as an applicant for permit. If Government is not an individual owner, then all that will happen in view of the proviso to s. 47(1) will be that a co-operative society will not be able to claim any preference over the Government. All that the proviso does is to give a co-operative society a preference over individual owners. It is not concerned with stating who can apply for permits.

It seems to us therefore that the petitioner's contention that the Government cannot apply for a permit under Chapter IV of the Act is unsustainable. The petitioner cannot complain of the Government having applied under that Chapter. We are not called upon, therefore, to discuss the further question, whether any fundamental right of the petitioner under art. 19(1)(g) would have been affected by the Government having applied for and obtained permits under Chapter IV without having the right to do so. This disposes of the contentions concerning the infringement of the petitioner's fundamental rights under art. 19(1)(g) of the Constitution.

We will now consider the question of the violation of art. 14 of the Constitution. The first contention in this regard was based on the proviso to s. 47(1). It is said that in the circumstances of this case, as a co-operative society the petitioner was entitled to preference over the Government, considered as an individual owner, and had not been given that preference. It is contended that respondent No. 1 relying on various promises made by the State of Bombay to repair roads and to give other facilities to the travelling public had held that the other conditions were not equal while under the proviso, it was entitled to rely only on the existing conditions. It is contended that thereby the provisions of Art. 14 had been infringed. This contention is in our view clearly untenable. The decision of respondent No. 1 may have been right or wrong and as to that we say nothing, but we are unable to see that that decision offends Art. 14 or any other fundamental right of the petitioner. The respondent No. 1 was acting as a quasi judicial body and if it has made any mistake in its decision there are appropriate

remedies available to the petitioner for obtaining relief. It cannot complain of a breach of Art 14.

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The other contention of the petitioner is that if Chapter IV permits the State to compete with a private citizen, it offends Art. 14 because in view of the vast resources of the State a private citizen is bound to lose in such competition. This point is clearly unfounded. Article 19(6) as it now stands, contemplates such a competition as we have earlier pointed out. The petitioner can base no grievance on such competition.

For these reasons we think that this petition must fail and hence it is dismissed with costs.

Petition dismissed.

M/s. U. P. ELECTRIC SUPPLY CO., LTD.
v.
THE WORKMEN OF M/s. S. N. CHOUDHARY, CONTRACTORS AND ANOTHER

1960

March 8

(P. B. Gajendragadkar and K. N. Wanchoo, JJ).

Industrial Dispute—Tribunal deciding issue not referred to it—Jurisdiction—U.P. Industrial Dispute Act, 1947 (XXVIII of 1947), ss. 34 (proviso) 5, 8.

The appellant company used to employ Messrs. S. M. Choudhary as its contractors for doing certain work for it and the contractors in their turn used to employ some workmen to carry out the work which they took on contract. A dispute having arisen between the contractors and their workmen an application was made before the conciliation board by the workmen in which both the company and the contractors were parties and four matters were referred, namely, non-grant of bonus for two years, non-grant of festival holidays, non-fixation of minimum wages of those workmen at par with the workmen of the company and non-abolition of the contract system. As conciliation failed the Government referred the dispute to the Industrial Tribunal under the U.P. Industrial Disputes Act in which only three points out of the four mentioned above were referred and the question of non-abolition of the contract system was not referred. The parties to this reference were the contractors and their workmen and not the appellant company. By a subsequent notification, however, the Government impleaded the Company as a party to the dispute but did not amend the previous referring order by