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M. DURAISWAMY

v.

MURUGAN BUS SERVICE & ORS.

APRIL 2, 1986

B [E.S. VENKATARAMIAH AND M.P. THAKKAR, JJ.]

Motor Vehicles Act, 1939, ss. 45, 57 and 63 read with Rules 163-A, 163-B and 208 of Tamil Nadu Motor Vehicles Rules 1940 - Inter-regional permit - Application for variation of existing permit involving extension of route/area lying in the C jurisdiction of another RTA - Whether to be made to RTA which granted permit or to RTA which has jurisdiction over area in respect of which extension is sought.

The appellant was the holder of an inter-regional permit in respect of a motor vehicle plying on the town service route D No.1A from Erode Railway Station to Tiruchengode. The major portion of the route mentioned in the permit of the appellant was lying within the jurisdiction of the Regional Transport Authority of Periyar and the smaller portion lay within the District of Salem. The appellant applied to the Regional Transport Authority of the District of Periyar which had E issued the aforesaid permit for its variation involving, inter alia, conversion of the town service into a mofussil service and extension of route from Tiruchengode to Salem. If the route in respect of which extension is sought is added then the major portion of the total route would be within the District of Salem. The Regional Transport Authority after F notifying the application for variation under section 57(3) of the Motor Vehicles Act, 1939 and considering the representations/objections thereto, rejected the application on the ground that it was not proper for it to grant the extension since the entire sector in respect of which the extension was sought lay within Salem District and that the G said sector was well-served by stage carriage services.

Aggrieved by the decision of the Regional Transport Authority at Periyar, the appellant preferred an appeal before the State Transport Appellate Tribunal. The Tribunal allowed the appeal and granted the variation (including the extension)

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applied for with slight modification. Thereupon, some of the objectors to the original application for variation filed before the High Court civil revision petitions and writ petition against the order of the Tribunal. The High Court allowed the petitions holding that the Regional Transport Authority, Periyar had no jurisdiction to entertain the application for variation since the entire route in respect of which extension was sought lay within the jurisdiction of the Salem Regional Transport Authority and, therefore, the proceedings commenced with the said application were liable to be quashed. Hence this appeal by special leave.

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Allowing the appeal on the question whether an application for the variation of an existing permit involving the extension of the route or the area specified in the permit, where the portion of the route or area in respect of which extension is sought lies entirely within the jurisdiction of a Regional Transport Authority which had not granted the permit, should be made to the Regional Transport Authority which had granted the permit or to the Regional Transport Authority within whose jurisdiction the route or area in respect of which extension is sought lies,

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HELD: 1. Section 45 of the Act does not apply to the case of a variation of permit and that when a variation of a permit is sought the application for the grant of such variation should be made to the Regional Transport Authority which has granted the permit even though the entire route or area in respect of which extension is sought lies in another region or a major portion of the entire route (including the new route or area) lies within another region. On such application being made it is the duty of the Regional Transport Authority which has granted the permit to consider whether the variation sought should be sanctioned in the public interest or not. If that Regional Transport Authority grants variation prayed for, then the concurrence of the other Regional Transport Authority would have to be sought in accordance with either section 63(1) of the Act or where there are rules made corresponding to rules 163-A, 163-B and 208 of Tamil Nadu Motor Vehicles Rules, as far as may be, in accordance with such rules. The decision of the High Court is, therefore, liable to be reversed. [96 F-H; 97 A-B]

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1.(ii) The Judgment of the High Court is entirely based on its decision on the question of jurisdiction of the Regional Transport Authority of Periyar District to entertain the application. Since there were other contentions raised by the parties which have not been considered by the High Court, the case is remanded to the High Court to consider the other contentions raised in the case. If the High Court finds it necessary to remand the case either to the Tribunal or to the Regional Transport Authority in the light of the submissions to be made before it, it is open to the High Court to remand the case either to the tribunal or to the Regional Transport Authority, as the case may be. [97 B-D]

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2.(i) Section 45(1) of the Motor Vehicles Act, 1939 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 or vehicles. The first proviso to sub-s. (1) of s. 45 of the Act provides that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles. Sub-s. (8) of s. 57 of the Act (as amended by Tamil Nadu Act No. 3 of 1964) which deals with the procedure to be followed by the holder of a permit who seeks such variation, does not expressly prescribe the Regional Transport Authority to which an application for the variation of a permit has to be made where the route or area in respect of which extension is sought lies outside the jurisdiction of the Regional Transport Authority which has granted the permit but within the jurisdiction of another Regional Transport Authority. The said sub-section is silent about it. It, however, provides that an application for the variation of a permit which involves extension or curtailment of the route or area specified in the permit **should be treated as an application for grant of a new permit.** In sub-s. 2 of s. 58 of the Act a similar language is adopted. That sub-section provides **that a permit may be renewed on an application made and disposed of as if it were an application for a permit.** An application for renewal of a permit and an application for variation of a

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permit have both to be treated as applications for a new permit and in both the cases the procedure prescribed for the grant of a new permit has to be followed. The said procedure includes all the steps mentioned in sub-ss. (3),(4), (5) and (7) of s. 57 of the Act. The application should be advertised, representations and objections thereto should be invited and the application should be considered at a public hearing at which the applicant and the persons making representations and objections thereto should be given an opportunity of being heard either in person or by duly authorised representatives. The question, however, remains whether the words **'shall be treated as an application for the grant of a new permit'** in sub-s. (8) of s.57 of the Act should be read as meaning that the Regional Transport Authority which can entertain an application for variation is the Regional Transport Authority which can entertain an application for a fresh permit in respect of a stage carriage for the entire route including the portion in respect of which extension is sought or that the application for variation can be made to the Regional Transport Authority which had granted the permit, but the procedure prescribed under s. 57 of the Act for the grant of a permit should be followed. [78 E-G; 85 F-H; 86 A-F]

2.(ii) Sub-section (1) of s. 63 of the Act, however, provides that except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region. Rules 163-A, 163-B and 208 of the Tamil Nadu Motor Vehicle Rules framed under the Act provide for an alternative procedure to be followed when the motor vehicle is to be operated in two or more regions inside the State of Tamil Nadu as authorised by s. 63(1) of the Act. Rule 163-A says that the Regional Transport Authority of any one region may, subject to the proviso to s.45 of the Act, grant a permit to be valid in any other region within the State without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned and it shall as soon as possible send copies of proceedings to the concerned regions. The Regional Transport Authority granting a permit under sub-rule (1) of Rule 163-A of Tamil Nadu Motor Vehicles Rules is required before granting a permit in case of a stage carriage permit to seek the concurrence of the other

A Regional Transport Authority. Rule 163-B of Tamil Nadu Motor Vehicles Rules provides that the provisions of Rule 163-A may be applied to variation, extension and curtailment of routes and to grant or refusal of endorsement as they apply to the grant of a permit. It is significant that this rule does not say that an application for variation would be subject to the B provisions of s.45 of the Act but the provisions of Rule 163-A shall as far as may be applied to variation of a permit. There is no express requirement in this Rule to comply with the provisions of s.45 of the Act. [94 H; 95 A-D]

2.(iii) The words in sub-s. (8) of s. 57 of the Act "An C. application to vary the conditions of any permit... by the variation, extension or curtailment of the route or the area specified in the permit...shall be treated as an application for the grant of a new permit" create a legal fiction of limited character only for the purpose of making the procedure prescribed in sub-s. (3) to (7) of s.57 applicable. A permit D is a document issued by a certain Regional Transport Authority authorising the use of a transport vehicle in a particular way. That can be varied or modified only by the authority issuing it or by an authority exercising appellate or revisional jurisdiction over it and not by another authority of equal power exercising jurisdiction on another region. In E the case of an inter-regional route also a permit as mentioned earlier should be issued first by the Regional Transport Authority having territorial jurisdiction as provided in s. 45 of the Act. If a part of the route mentioned in that permit lies outside its region but within the jurisdiction of another Regional Transport Authority, the other Regional Transport F Authority may either countersign the permit or may refuse to countersign it under s. 63(1) of the Act. If the other Regional Transport Authority countersigns the permit then on the basis of the said permit it would be open to the holder of the permit to run his vehicle along the portion of the route lying within the other region. If the permit is not so G countersigned he would not be able to do so. But on the permit being countersigned, the permit would not cease to be the permit of the authority which issued it originally. To 'countersign' means 'to sign opposite to, along side of or in addition to another signature 'or' to add one's signature to a document (already signed by another) for authentication or H confirmation'. It follows logically that when a variation of

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the permit is sought the Regional Transport Authority which issued the permit originally must be first approached and it is only after it has accorded its sanction to the variation prayed for, the counter-signature of the permit so varied may be sought under s. 63(1) of the Act from the Regional Transport Authority. It is always open to the Regional Transport Authority within whose jurisdiction the portion of the route or area in respect of which extension is sought lies to refuse to countersign the permit even after an order of variation has been passed by the authority which had granted the permit originally. If it countersigns such a permit, the grant of variation by the Regional Transport Authority which has granted the permit would be effective, otherwise not. At any rate there is opportunity for both the Regional Transport Authorities to consider whether the vehicle in respect of which the permit is given can be allowed to move along the new route or area if the above view is taken. Any other construction of the provisions of the Act would be contrary to the entire scheme of the Act. [90 H; 91 A-H; 92 A-E]

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2.(iv) Where totally a new route is sought to be included by an application to vary the conditions of the permit or the alteration of the route sought by such an application is of such a drastic character that it becomes substantially a new route, the application may be treated as an application for grant of a new permit and may be for that reason rejected by the Regional Transport Authority which originally granted it. But merely because in a given case the entire new route or area which is to be included lies within the jurisdiction of another Regional Transport Authority or a major portion of the total route (including the route in respect of which the extension is sought) lies within the jurisdiction of another Regional Transport Authority, it cannot be said that an application for a new permit has been made and the proviso of s.45 of the Act would be attracted. Then the proceeding would not be a proceeding for variation of the existing permit but would be a proceeding for the grant of a new permit. [93 D-G]

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Shiv Chand Amolak Chand v. Regional Transport Authority & Anr., [1984] 1 S.C.R. 288, relied upon.

Delhi Administration v. State of Haryana & Ors., [1979] 1 S.C.R. 70, referred to.

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In the instant case, the variation that is sought affects both the regions since one part of variation relates to conversion of the town service into a mofussil service and reduction of the number of trips within the Periyar District and another part relates to extension and that extension of the route in the Salem District cannot be granted without B reducing the numbers of trips within the Periyar District. The Regional Transport Authority of Periyar District should have naturally control over its permit and its sanction should be first obtained before seeking the countersignature of the Salem Regional Transport Authority. If the Regional Transport Authority of Periyar District comes to the conclusion that C there is need for doing so it may grant the variation sought for and the said variation would have to be necessarily again countersigned by the Salem Regional Transport Authority since the route between Tiruchengode and Salem lies within the jurisdiction of Salem Regional Transport Authority. Both the Regional Transport Authorities would ultimately be required to D concur for the variation sought. But if the view expressed by the High Court is accepted on the Salem Authority sanctioning the variation sought for by the holder of the permit the proceedings would come to an end and the Regional Transport Authority of Periyar District would have no opportunity to express its views at all. Since there would not be publication E of the application for variation within the jurisdiction of the Periyar Regional Transport Authority, the members of the public, the local authorities, the police authorities etc. within its region would also have no opportunity to express their views on the merits of the case. [92 E-H; 93 A-C]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1126 of 1986.

From the Judgment and Order dated 20th December, 1985 of the Madras High Court in C.R.P. Nos. 1773, 1774, 1775, 1926, 2040, 2047, 2159 and 2388 of 1985.

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S. Srinivasan for the Appellant.

Dr. Y.S. Chitale and A.T.M. Sampath for the Respondents.

H The Judgment of the Court was delivered by

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VENKATARAMIAH, J. The appellant is the holder of a stage carriage permit in respect of a motor vehicle bearing No.TDL-7755 plying on the town service route No. 1.A from Erode Railway Station to Tiruchengode via P.S. Park, Ex-Clock Tower, Sathy Road, Bus Stand, K.N.K. Road, Pallipalayam, S.P.B. Factory, S.P.B. Colony and Thokkavadi. The existing route length is 23.7 Kms. At present the appellant's bus is performing 12 single trips between Erode Railway Station and Tiruchengode and 8 single trips between Erode Railway Station and S.P.B. Factory. The total kilometerage per day comes to 358 Kms. The said permit had been issued by the Regional Transport Authority of Periyar District, Erode in the State of Tamil Nadu. He applied to the Regional Transport Authority of the District of Periyar which had issued the permit for its variation involving :

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(1) conversion of the town service into a mofussil service;

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(2) curtailment of the sector from Erode Railway Station to Erode Bus Stand via P.S. Park and Sathy Road;

(3) curtailment of 10 single trips between Erode Bus Stand and S.P.B. Factory;

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(4) curtailment of 2 single trips between S.P.B. Factory and Tiruchengode; and

(5) extension of route from Tiruchengode to Salem via Mallasamudram, Attayampatti and Ariyanur.

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It may be mentioned here that while Erode Railway Station, P.S. Park and Bus Stand are in Periyar District, Pallipalayam, S.P.B. Factory, S.P.B. Colony and Tiruchengode are in Salem District of Tamil Nadu. The existing permit is, therefore, an inter-regional permit. The entire route between Tiruchengode and Salem in respect of which extension of the permit was sought is also in Salem District. The application for variation made by the appellant was duly notified under section 57(3) of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') and representations/objections thereto were invited. Thereafter the Regional Transport

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Authority heard the appellant and others who had filed objections and representations and passed a resolution on June 1, 1984 rejecting the said application. It held inter alia that the conversion of the town service into a mofussil service and curtailment of 10 trips between Erode Bus Stand and S.P.B. Factory and 2 trips between S.P.B. Factory and Tiruchengode were not in the public interest. It also held that the entire sector in respect of which the extension was sought lay within Salem District that the said sector was well-served by stage carriage services and that it was not proper for it to grant the extension since the entire route between Tiruchengode and Salem lay within the jurisdiction of the Regional Transport Authority, Salem. On these grounds the Regional Transport Authority of the District of Periyar found that there was no ground for granting the variation prayed for. Aggrieved by the resolution of the Regional Transport Authority of the District of Periyar, the appellant preferred an appeal before the State Transport Appellate Tribunal, Madras (hereinafter referred to as 'the Tribunal'). The Tribunal after hearing the parties allowed the appeal and granted the variation (including the extension) applied for with slight modification. The Tribunal directed that the appellant's bus should perform the following pattern of trips :

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(1) two single trips from Erode Railway Station to Salem;

(2) four single trips from Erode Bus Stand to Salem; and

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(3) four single trips from Erode Railway Station to Tiruchengode.

It directed the Secretary of the Regional Transport Authority, Periyar District at Erode to fix suitable timings within six weeks from the date of the receipt of the order. The appeal was accordingly disposed of on April 19, 1985. In its proceedings dated 4.10.1985 the Secretary, Regional Transport Authority, Periyar District, Erode fixed the timings as directed by the Tribunal but since in the meanwhile a stay order had been issued by the High Court in some civil revision petitions and a writ petition filed by some of the objectors, it directed that the timings fixed would be given effect to as

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and when the order of stay was vacated. The revision petitions and the writ petition filed by some of the objectors against the order of the Tribunal which are referred to above were disposed of by the High Court on December 20, 1985 by allowing them. The High Court held that the Regional Transport Authority, Periyar District at Erode had no jurisdiction to entertain the application for variation since the entire route in respect of which extension was sought lay within the jurisdiction of the Salem Regional Transport Authority and, therefore, the proceedings commenced with the said application were liable to be quashed. On the other contentions raised by the petitioners before it, it expressed no opinion and left them open. Aggrieved by the decision of the High Court the appellant has preferred this appeal by special leave before this Court under Article 136 of the Constitution.

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The short question for decision in this case is whether an application for the variation of an existing permit involving the extension of the route or the area specified in the permit, where the portion of the route or area in respect of which extension is sought lies entirely within the jurisdiction of a Regional Transport Authority which had not granted the permit, should be made to the Regional Transport Authority which had granted the permit or to the Regional Transport Authority within whose jurisdiction the route or area in respect of which extension is sought lies. The answer to this question depends upon the construction of some of the relevant provisions found in Chapter IV of the Act. Section 42 of the Act provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place, whether or not such vehicle is actually carrying any passenger or goods, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or the Inter-State Transport Commission Constituted under section 63-A of the Act, authorising the use of the vehicle in that place in the manner in which the vehicle is being used. The expression 'permit' is defined in sub-section (20) of section 2 of the Act as the document issued by the Commission or a State or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle. We are concerned in this case with a motor vehicle used as a stage

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A carriage vehicle. Sub-section (29) of section 2 of the Act defines a 'stage carriage' as a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. Section 45 of the Act is B the general provision governing the question involved in this case. The material part of that section reads thus :

> "45. General provision as to applications for permits - (1) Every application for a permit shall be made to the Regional Transport Authority of the C region in which it is proposed to use the vehicle or vehicles;
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> Provided that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the D Regional Transport Authority of the region in which the major portion of the proposed route or area lies, and in case the portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle E or vehicles;
> ....."

Sub-section (1) of section 45 of the Act provides that every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to F use the vehicle or vehicles. The first proviso to sub-section (1) of section 45 of the Act provides that if it is proposed to use the vehicle or vehicles in two or more regions lying within the same State, the application shall be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies and in case the G portion of the proposed route or area in each of the regions is approximately equal, to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles. In the instant case the appellant had obtained the permit for plying this stage carriage from the Regional Transport Authority of Periyar District, since the major H portion of the route in respect of which the said permit had

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been issued was lying within its jurisdiction. Sub-section (1) of section 63 of the Act, however, provides that except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region. B

The relevant portion of section 63 of the Act is set out below :

> "63. Validation of permits for use outside region in which granted. - (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and C
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> (2) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted. D E
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> (3) The provisions of the Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits....."

Rules 163-A, 163-B and 208 of the Tamil Nadu Motor Vehicles Rules framed under the Act provide for an alternative procedure to be followed when the motor vehicle is to be operated in two or more regions inside the State of Tamil Nadu as authorised by section 63(1) of the Act. They read thus : F

> "163-A: (1) The Regional Transport Authority of any one region may, subject to the provisions of section 45 of the Act, grant a permit to be valid in any other region within the State without the counter-signature of the Regional Transport Authority of the other region or of each of the other regions concerned and it shall as soon as G H

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possible, send copies or proceedings relating to the issue of such permit to the concerned regions :

Provided that no Regional Transport Authority shall grant a permit on routes for which the State Transport Authority as the sole Transport Authority under rule 141 unless such power is delegated by the State Transport Authority under Rule 140-A.

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(2) The Regional Transport Authority granting a permit under sub-rule (1) shall, before granting a permit -

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(a) in case of a stage carriage permit obtain the concurrence of the Regional Transport Authority concerned,

(b) notify, under sub-section (3) of section 57 of the Act, the whole of the route or area which lies within the State and in respect of which an application for the grant of a permit has been received, by publishing it on the notice board of the Regional Transport Authority of that other region and shall hear the applicant or any other person making representations.

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163-B. The provisions of rule 163-A shall, as far as may be apply to variation, extension and curtailment of routes and to grant and renewal of endorsement as they apply to grant of permit.

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208. (a) Upon application made in writing by the holder of any permit, the Transport Authority may, at any time, in its discretion, vary the permit or any of the conditions thereof subject to the provisions of sub-rule (b).

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(b) If the application is for the variation of the permit by the inclusion of an additional vehicle or vehicles or if the grant of variation would authorise transport facilities materially different from those authorised by the original permit the Transport Authority shall deal with the application as if it were an application for a permit.

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Provided that nothing contained in this rule shall prevent the Transport Authority or its Secretary, if authorised in this behalf, from summarily rejecting an application for the variation of a stage carriage permit so as to provide transport facilities on a road which has been or is certified to be unfit for motor vehicular traffic by an officer not below the rank of Divisional Engineer of the Highways Department."

In the instant case it is not disputed that the major portion of the route mentioned in the permit of the appellant was lying within the jurisdiction of the Regional Transport Authority or Periyar and the smaller portion lay within the District of Salem. It is also not disputed that if the route in respect of which extension is sought is added then the major portion of the total route would be within the District of Salem.

An application for a permit in respect of a service of stage carriages or to use a particular motor vehicle as a stage carriage has to be made in accordance with section 46 of the Act and the rules made thereunder. The application should contain the following particulars, namely :

(i) the route or routes or the area or areas to which the application relates ;

(ii) the number of vehicles it is proposed to operate in relation to each route or area and the type and seating capacity of each such vehicle;

(iii) the minimum and maximum number of daily trips proposed to be provided in relation to each route or area and the time table of the normal trips ;

(iv) the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions ;

(v) the arrangements intended to be made for the housing and repair of the vehicles, for the comfort and convenience of passengers and for the storage and safe custody of luggage; and

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(vi) such other matters as may be prescribed by the rules framed under the Act.

When an application is made for a permit in respect of a stage carriage service under section 45 of the Act the Regional Transport Authority concerned has to follow the procedure prescribed in section 57 of the Act. Sub-section (3) of section 57 of the Act reads thus :

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"57(3). On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representation in connection therewith may be submitted and the date, not being 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."

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Sub-section (4) of section 57 of the Act provides that no representation in connection with an application referred to in sub-section (3) thereof 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. When any representation such as referred to in sub-section (3) thereof is made the Regional Transport Authority is required by sub-section (5) thereof to dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative. Section 47 of the Act requires a Regional Transport Authority to have regard while considering an application for a stage carriage permit to the following matters, namely :

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(i) the interest of the public generally ;

(ii) the advantages to the public of the service to be provided, including the saving of time likely to

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be effected thereby and any convenience arising from journeys not being broken ; A

(iii) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served ; B

(iv) the benefit to any particular locality or localities likely to be afforded by the service ;

(v) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending; and C

(vi) the condition of the roads included in the proposed route or area.

The Regional Transport Authority is also required to take into consideration any representation made by persons already providing transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised by the State Government or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies. Sub-section (3) of section 47 of the Act provides that a Regional Transport Authority, may having regard to the matters mentioned in section 47(1) limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region. Section 48 of the Act provides that subject to the provisions of section 47 of the Act, a Regional Transport Authority may, on an application made to it under section 46 of the Act, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit. It, however, provides that no such permit shall be granted in respect of any route or area not specified in the application. Sub-section (3) of section 48 of the Act authorises the Regional Transport Authority, if it decides to grant a stage carriage permit, to grant it subject to any or

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A more of the conditions mentioned in clauses (i) to (xxiii) in sub-section (3) of section 48 of the Act, one such condition being the condition referred to in clause (xxi) of sub-section (3) of section 48 of the Act which reads thus :

> "(xxi) that the Regional Transport Authority may, after giving notice of not less than one month -
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> (a) vary the conditions of the permit;
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> (b) attach to the permit further conditions ;
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> C Provided that the conditions specified in pursuance of clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometers, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the public convenience and
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> D that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof."

Clause (xxi) of section 48(3) of the Act refers to the E power of variation which the Regional Transport Authority may exercise suo motu.

The duration and renewal of a stage carriage permit are governed by section 58 of the Act. That section provides that a stage carriage permit (other than a temporary permit issued under section 62) shall be effective without renewal for such F period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit. As provided in sub-section (2) of section 58 of the Act a permit may be renewed on an application made and disposed of **as if it were an application for a permit.** A G renewal of a permit is in effect the continuation of the original permit. Section 60 of the Act inter alia provides that the transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit. The H provisions contained in section 60 of the Act apply to

revocation and suspension of counter-signatures of permits by virtue of sub-section (3) of section 63 of the Act.

Since a stage carriage permit is issued for the benefit of the general public, it is obligatory that the holder of a stage carriage permit should operate the stage carriage vehicle in accordance with the conditions of the permit on the route or area in question. If he wishes any alteration in the route or area for which he has obtained a permit he has to get his permit varied in accordance with law. Sub-section (8) of section 57 of the Act (as amended by Tamil Nadu Act No. 3 of 1964) which deals with the procedure to be followed by the holder of a permit who seeks such variation, reads thus :

> "57(8). An application to vary the conditions of any permit, other than a temporary permit, **by the inclusion of a new route or routes or a new area or by the variation, extension or curtailment of the route or the area specified in the permit,** or, in the case of a stage carriage permit, by increasing the number of trips above the specified maximum or by altering the route covered by it or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, **shall be treated as an application for the grant of a new permit."**

(underlining by us)

The controversy involved in this case has arisen primarily on account of the language used in sub-section (8) of section 57 of the Act. It may be noted that sub-section (8) of section 57 of the Act does not expressly prescribe the Regional Transport Authority to which an application for the variation of a permit has to be made where the route or area in respect of which extension is sought lies outside the jurisdiction of the Regional Transport Authority which has granted the permit but within the jurisdiction of another Regional Transport Authority. The said sub-section is silent about it. It, however, provides that an application for the variation of a permit which involves extension or curtailment of the route or area specified in the permit **should be treated as an application for grant of a new permit.** In sub-section

A (2) of section 58 of the Act a similar language is adopted. That sub-section provides **that a permit may be renewed on an application made and disposed of as if it were an application for a permit.** In the case of a renewal of a permit, however, there is no difficulty in determining the Regional Transport Authority to which an application for renewal is to be made. It should be made to the Regional Transport Authority which B has granted the permit originally and there is no room for any controversy in this case. An application for renewal of a permit and an application for variation of a permit have both to be treated as applications for a new permit and in both the cases the procedure prescribed for the grant of a new permit has to be followed. As mentioned earlier the said procedure C includes all the steps mentioned in sub-sections (3), (4), (5) and (7) of section 57 of the Act. The application should be advertised, representations and objections thereto should be invited and the application should be considered at a public hearing at which the applicant and the persons making representations and objections should be given an opportunity of D being heard either in person or by duly authorised representatives. The question, however, remains whether the words **'shall be treated as an application for the grant of a new permit'** in sub-section (8) of section 57 of the Act should be read as meaning that the Regional Transport Authority which can entertain an application for variation is the Regional Transport E Authority which can entertain an application for a fresh permit in respect of a stage carriage for the entire route including the portion in respect of which extension is sought or that the application for variation can be made to the Regional Transport Authority which had granted the permit, but the procedure prescribed under section 57 of the Act for the F grant of a permit should be followed.

The High Court has taken the view in this case that where the entire proposed route or area in respect of which extension is sought lies outside the jurisdiction of the Regional Transport Authority which has granted the primary G permit or where the major portion of the total route (including the route in respect of which extension is sought) is outside it, the application for variation of a permit must be made to that Regional Transport Authority within whose jurisdiction the entire route or area in respect of which extension is sought is lying or the major portion of the total route

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(including the route or area in respect of which extension is sought) is lying, irrespective of the fact that the permit whose variation is sought is issued by a different authority. The relevant portion of the judgment of the High Court is set out below :

> "13. In the case of a new permit, if it is proposed to use the vehicle in two or more regions lying within the same State, if the major portion of (?) a particular Regional Transport Authority, he alone will be the authority to grant the permit. May be, here, we are concerned with a case of variation and not the grant of a new permit. For the grant of a new permit, the Regional Transport Authority within whose region the major portion of the proposed route does not lie, cannot assume jurisdiction to grant the permit. A fortiori we have to take it that he cannot usurp jurisdiction to consider the question of variation where the major portion of the proposed varied route lies within the region of another Regional Transport Authority. Otherwise what cannot be achieved or done while granting a new permit can be achieved or done under the guise of a variation. This is not permissible. This is the incongruity which must be avoided and it is only in this sense, it is consistent with the scheme of the statutory provisions and with the concept of variation itself, to adhere to the limitations or conditions set out in section 45(1) first proviso even in the case of a variation or extension on the facts of the present case. Hence variation in such a contingency will be a misconception and certainly, jurisdiction cannot have foundation on such a misconception. In such a contingency the very question of granting a variation will stand excluded. It need not necessarily be a question of altering the distance covered by the original route by more than any prescribed length. Equally so, it is not a question of considering the generality of the power of variation by referring to rule 208.
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> 14. It is a question of construing the scope of the

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jurisdiction of an authority to grant variation. We need not trouble ourselves with the provision of section 57(8) of the Act when it speaks about the inclusion of a new route or routes while varying the conditions of a permit other than a temporary permit. A new route or routes may get included by varying the conditions of any permit. But the question is, "When the new route or routes completely fall outside the region of the Regional Transport Authority who is granting the permit or varying the permit, can he assume jurisdiction to indulge in such powers?" With regard to the grant of a new permit, there could not be any ambiguity in view of the express provisions of the statute. The same interdict must govern the question of variation also. Rule 163-A has not altered the position. Countersignature after or concurrence before the grant from the other authority has nothing to do with the primary jurisdiction to consider the very grant which has been clearly set in section 45(1) first proviso. At the risk of repetition, it must be pointed out, rule 163A is subject to the provisions of section 45 and by the force of rule 163B read with rule 163A, the implications of section 45(1) first proviso will necessarily govern even the question of variation. Hence under the guise of variation the Regional Transport Authority who granted the permit cannot indulge in variation or extension so as to annex to the original permit a new route or routes the major portion of which or the totality of which lies outside his region."

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Section 45 of the Act deals with the territorial jurisdiction of a Regional Transport Authority. As far as their powers and responsibilities are concerned, all Regional Transport Authorities have the same powers and responsibilities under the Act. Any order passed by a Regional Transport Authority either granting a permit or refusing to grant the permit is appealable under section 64 of the Act to the State Transport Appellate Tribunal. Any person aggrieved by any variation of the conditions attached to a permit may also prefer an appeal against the order of a Regional Transport

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Authority to the Tribunal. Thus the Tribunal has the power to control the actions of every Regional Transport Authority within the State. Sub-section (8) of section 57 of the Act provides for the procedure to be followed in connection with a variation, extension or curtailment of the route or the area specified in the permit. It also states that an application seeking such variation, extension or curtailment should be treated as an application for the grant of a new permit, and the effect of this clause has been explained by this Court in **Shiv Chand Amolak Chand v. Regional Transport Authority & Anr.**, [1984] 1 S.C.R. 288 at pages 297 to 300 thus :

> "There can be little doubt that under terms of sub-section (8) of section 57, this application of the appellants was liable to be 'treated as an application for the grant of a new permit.' But the question is : for what purpose and what of the provisions of the Act could be said to be attracted to this application by reason of the requirement that it should be treated as an application for the grant of a new permit. The argument of the respondents was that no application for grant of a new permit can be entertained by the Regional Transport Authority under section 48, unless the number of stage carriages for which permits may be granted for the particular route is first determined by the Regional Transport Authority under sub-section (3) of section 47, and, therefore, the consequence of treating the application of the appellants for extension of the route as an application for grant of a new permit was that no extension could be granted by the Regional Transport Authority unless the requirement of section 47 sub-section (3) was first complied with and the number of stage carriages for which permits may be granted on the extended route was determined under that provision. But we do not think this argument is well-founded.
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> But we do not think that the prescription in sub-section (8) of section 57 that an application for varying the condition of a permit by extension

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of the route shall be treated as an application for grant of a new permit has the **effect of equating such an application with an application for grant of a new permit for all purposes so as to attract the** applicability of sub-section (3) of section 47. Section 57 deals with the procedure in applying for and granting permits and sub-sections (3) to (7) lay down the procedure which must be followed in considering and deciding, inter alia, an application for grant of a stage carriage permit. Sub-section (8) follows upon sub-sections (3) to (7) and is part of the same section which has a definite object and scheme of providing the procedure for considering and granting an application and, therefore, when it provides that an application to vary the conditions of a permit by the inclusion of new route or routes or new area or by increasing the number of trips above the specified maximum or by altering the route covered by it shall be treated as an application for grant of a new stage carriage permit **it is obviously intended to incorporate and make applicable the procedure set out in the preceding sub-sections (3) to 7 to such an application. The context in which sub-section (8) occurs and its juxtaposition with sub-sections (3) to (7) in section 57 clearly indicate that what is sought to be made applicable to an application referred to in sub-section (8) by treating it as an application for grant of a new permit, is the procedure set out in sub-sections (3) to (7) of section 57 and nothing more....."**

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(underlining by us)

This Court ultimately in the above case came to the conclusion that an application for variation of a permit by the inclusion of a new route could be considered without following the procedure prescribed under sub-section (3) of section 47 of the Act which was otherwise a mandatory requirement in the case of an application for a permit in respect of a route or a specified area within a region made for the first time. The words in sub-section (8) of section 57 of the Act "An application to vary the conditions of any

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permit....by the variation, extension or curtailment of the route or the area specified in the permit.....shall be treated as an application for the grant of a new permit" create a legal fiction of limited character only for the purpose of making the procedure prescribed in sub-sections (3) to (7) of section 57 applicable. A permit is a document issued by a certain Regional Transport Authority authorising the use of a transport vehicle in a particular way and in this case it is issued for the purpose of operating a stage carriage by a transport authority. That can be varied or modified only by the authority issuing it or by an authority exercising appellate or revisional jurisdiction over it and not by another authority of equal power exercising jurisdiction on another region. In the case of an inter-regional route also a permit as mentioned earlier should be issued first by the Regional Transport Authority having territorial jurisdiction as provided in section 45 of the Act. If a part of the route mentioned in that permit lies outside its region but within the jurisdiction of another Regional Transport Authority, the other Regional Transport Authority may either countersign the permit or may refuse to countersign it under section 63(1) of the Act. If the other Regional Transport Authority countersigns the permit then on the basis of the said permit it would be open to the holder of the permit to run his vehicle along the portion of the route lying within the other region. If the permit is not so countersigned he would not be able to do so. But on the permit being countersigned, the permit would not cease to be the permit of the authority which issued it originally. To 'countersign' means 'to sign opposite to, along side of or in addition to another signature 'or' to add one's signature to a document (already signed by another) for authentication or confirmation'. It follows logically that when a variation of the permit is sought the Regional Transport Authority which issued the permit originally must be first approached and it is only after it has accorded its sanction to the variation prayed for, the counter-signature of the permit so varied may be sought under section 63(1) of the Act from the other Regional Transport Authority. It is always open to the Regional Transport Authority within whose jurisdiction the portion of the route or area in respect of which extension is sought lies to refuse to countersign the permit even after an order of variation has been passed by the authority which had granted the permit originally. If it

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countersigns such a permit, the grant of variation by the Regional Transport Authority which has granted the permit would be effective, otherwise not. At any rate there is opportunity for both the Regional Transport Authorities to consider whether the vehicle in respect of which the permit is given can be allowed to move along the new route or area if the above view is taken. On the other hand, if the view taken by the High Court is accepted, it would be enough if an application is made for sanctioning variation of the permit by the inclusion of a new route or area in the permit to the Regional Transport Authority within whose jurisdiction the new route or area lies and if that authority sanctions such variation it would be unnecessary to seek the approval of the Regional Transport Authority which had granted the permit originally to such variation because there is no provision which requires the holder of the permit to approach the original authority at all corresponding to section 63(1) of the Act which compels him to approach the original authority after seeking the approval of the Regional Transport Authority within whose jurisdiction the new route or area is situated. The construction of the provisions of the Act in this way would be contrary to the entire scheme of the Act. To illustrate the above point let us take the facts of this very case. The Regional Transport Authority of Periyar District had granted the permit originally taking into consideration the needs of the people along the route between Erode Railway Station and Tiruchengode and it had also fixed the number of trips to be made on the different sectors of the same route within its region. If an application for variation for the said permit is made to that authority it would be open to it to consider in the light of the needs of the people of the locality whether it is in the public interest to grant extension beyond Tiruchengode upto Salem or not after curtailing the number of trips on certain sectors. If the Regional Transport Authority of Periyar District comes to the conclusion that there is need for doing so it may grant the variation sought for and the said variation would have to be necessarily again countersigned by the Salem Regional Transport Authority since the route between Tiruchengode and Salem lies within the jurisdiction of Salem Regional Transport Authority. Both the Regional Transport Authorities would ultimately be required to concur for the variation sought. But if the view expressed by the High Court is accepted on the

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Salem Authority sanctioning the variation sought for by the holder of the permit the proceedings would come to an end and the Regional Transport Authority of Periyar District would have no opportunity to express its views at all. Since there would not be publication of the application for variation within the jurisdiction of the Periyar Regional Transport Authority, the members of the public, the local authorities, the police authorities etc. within its region would also have no opportunity to express their views on the merits of the case. It may happen in a given case that people for whose benefit the route was opened and the permit was given originally may be denied the transport facilities altogether by virtue of the variation of the permit being sanctioned by another Regional Transport Authority without their knowledge. Virtually the order of the Salem Regional Transport Authority granting variation would amount to the grant of a fresh permit altogether and not the variation of a permit granted originally by Periyar Regional Transport Authority. In an appropriate case, as observed in **Shiv Chand Amolak Chand's** case (supra) that where totally a new route is sought to be included by an application to vary the conditions of the permit or the alteration of the route sought by such an application is of such a drastic character that it becomes substantially a new route, the application may be treated as an application for grant of a new permit and may be for that reason rejected by the Regional Transport Authority which originally granted it. But merely because in a given case the entire new route or area which is to be included lies within the jurisdiction of another Regional Transport Authority or a major portion of the total route (including the route in respect of which the extension is sought) lies within the jurisdiction of another Regional Transport Authority, it cannot be said that an application for a new permit has been made and the proviso of section 45 of the Act would be attracted. Then the proceeding would not be a proceeding for variation of the existing permit but would be a proceeding for the grant of a new permit. If it is an application for a fresh permit in respect of the same bus, then the question would be different as observed by this Court in **Delhi Administration v. State of Haryana & Ors.**, [1979] 1 S.C.R. 70. In that case Haryana Roadways held inter-State permits to operate stage carriages between Delhi and Karnal. These permits had been countersigned by Delhi Administration. Haryana Roadways then obtained fresh permits

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to ply the same stage carriages from Karnal to Chandigarh from the Regional Transport Authority at Karnal. It was contended that it amounted to variation of the original inter-State permit and without the concurrence of Delhi Administration the stage carriages could not be operated from Delhi to Chandigarh with the aid of the fresh permits referred to above. This Court negatived it by observing at pages 77 & 78 thus :

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> "5. We also find no force in the plea that the plying of vehicles by the Haryana Roadways beyond the inter-State route under valid permits issued by the competent authority would amount to an 'extension' of the route such as is prohibited by the Act. Reliance in support of the plea was placed on sub-s. (8) of s. 57 of the Act which lays down :
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> .....
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> As pointed out by the High Court, the language of the sub-section applies only to a case where the permit-holder applies for the variation of the conditions of his permit by inclusion of a new route or routes or a new area or by increasing the number of services above the specified maximum. In the case before us this situation does not arise at all inasmuch as the Haryana Roadways has not applied for the variation of any permit in any way and has, on the other hand, taken and exploited quite another permit for an entirely different route from another competent authority. Apart from sub-sec. (8) abovementioned, we have not been referred to any provision of the Act in support of the plea under consideration which, therefore, fails."

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But in the present case, the application is not for a fresh permit, but for the variation of an existing permit. The High Court tried to distinguish the decision in **Shiv Chand Amolak Chand's** case (supra) by observing that in the State of Madhya Pradesh from which the said case arose there might not have been rules corresponding to rules 163-A, 163-B and 208 of the Tamil Nadu Motor Vehicles Rules. In our view the presence of such rules would not make any difference at all. These Rules provide for a procedure alternative to what is prescribed by section 63(1) of the Act. Rule 163-A says that

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the Regional Transport Authority of any one region may, subject to the proviso to section 45 of the Act, grant a permit to be valid in any other region within the State without the counter-signature of the Regional Transport Authority of the other region or of each of the other regions concerned and it shall as soon as possible send copies of proceedings to the concerned regions. The Regional Transport Authority granting a permit under sub-rule (1) of rule 163-A of Tamil Nadu Motor Vehicles Rules is required before granting a permit in case of a stage carriage permit to seek the concurrence of the other Regional Transport Authority. Rule 163-B of Tamil Nadu Motor Vehicles Rules provides that the provisions of rule 163-A may be applied to variation, extension and curtailment of routes and to grant or refusal of endorsement as they apply to the grant of a permit. It is significant that this rule does not say that an application for variation would be subject to the provisions of section 45 of the Act but the provisions of rule 163-A shall as far as may be applied to variation of a permit. There is no express requirement in this rule to comply with the provisions of section 45 of the Act. In any event it is difficult to accept the view of the High Court that when the new route or routes in respect of which variation is sought completely falls outside the region of the Regional Transport Authority which has granted the permit or where the major portion of the total route lies outside its jurisdiction its power to grant variation stands excluded. This view is directly contrary to the express provision contained in section 57(8) of the Act which authorises every Regional Transport Authority to grant the variation of a permit by the inclusion of a new route. The incongruities that may arise from the view expressed by the High Court would become more obvious when we take some illustrations for consideration. Take the case of an inter-regional route which is 70 kilometres in length out of which a portion measuring 50 kilometres lies within region 'A' and remaining portion measuring 20 kilometres in region 'B' and the permit is granted by the Regional Transport Authority having jurisdiction over region 'A'. Let us assume that the holder of the permit applies for an extension of the route by 10 kilometres which entirely lies in the region 'B'. In this case, if the view of the High Court is to be accepted as correct, the application for the variation of the permit granted by the Regional Transport Authority having

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A jurisdiction over region 'A' would have to be made to the Regional Transport Authority having jurisdiction over region 'B', even though an application for a fresh permit to ply a stage carriage on the entire route can be made to the Regional Transport Authority of region 'A' as the major portion of the route would still be in region 'A'. Secondly in a case like the one before us the variation that is sought affects both B the regions since one part of variation relates to conversion of the town service into a mofussil service and reduction of the number of trips within the Periyar District and another part relates to extension and that extension of the route in the Salem District cannot be granted without reducing the C numbers of trips within the Periyar District. In this case the Regional Transport Authority of Periyar District should have naturally control over its permit and its sanction should be first obtained before seeking the counter-signature of the Salem Regional Transport Authority. Let us assume that by the application the holder of a permit seeks the variation of his D permit by the curtailment of a portion of the route which entirely lies within the jurisdiction of the Regional Transport Authority which has not granted the permit but only countersigned the permit. If the view of the High Court is to be accepted even in such a case the application for grant of variation by curtailment may have to be made to the other E Regional Transport Authority and not to the Regional Transport Authority which has granted the permit since the portion in respect of which curtailment is sought lies exclusively within the jurisdiction of that authority. More than all, the permit granted by one authority cannot be allowed to be modified by another. In view of these considerations we hold that section F 45 of the Act does not apply to the case of a variation of a permit and that when a variation of a permit is sought the application for the grant of such variation should be made to the Regional Transport Authority which has granted the permit even though the entire route or area in respect of which extension is sought lies in another region or a major portion G of the entire route (including the new route or area) lies within another region. On such application being made it is the duty of the Regional Transport Authority which has granted the permit to consider whether the variation sought should be sanctioned in the public interest or not. If that Regional Transport Authority grants variation prayed for then the H concurrence of the other Regional Transport Authority would

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have to be sought in accordance with either section 63(1) of the Act or where there are rules made corresponding to rules 163-A, 163-B and 208 of Tamil Nadu Motor Vehicles Rules, as far as may be in accordance with such rules. The decision of the High Court is, therefore, liable to be reversed.

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It is seen that the judgment of the High Court is entirely based on its decision on the question of jurisdiction of the Regional Transport Authority of Periyar District to entertain the application. We are informed that there were other contentions raised by the parties which have not been considered by the High Court. We, therefore, set aside the Judgment of the High Court and remand the case to the High Court to consider the other contentions raised in the case. If the High Court finds it necessary to remand the case either to the Tribunal or to the Regional Transport Authority in the light of the submissions to be made before it, it is open to the High Court to remand the case either to the Tribunal or to the Regional Transport Authority, as the case may be.

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The appeal is accordingly allowed. There will be no order as to costs.

M.L.A. Appeal allowed.