

# MAHARASHTRA STATE ROAD TRANSPORT CORPORATION

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v.

## MANGRULPIR JT. MOTOR SERVICE (P) LTD., & ORS.

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April 29, 1971

[J. M. SHELAT AND A. N. RAY, JJ.]

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*Motor Vehicles Act, 1939, ss. 46, 47, 57—Bombay Motor Vehicles Rules, 1959—Applications for permit—Power of Regional Transport Authority to call for additional information and to publish it for objections—Qualifications of applicants to be considered as on date of application for permit or as on date of consideration of applications.*

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The respondents were bus operators who applied for renewal of permits which were to expire on different dates between February 28, 1966 and September 30, 1966. The Maharashtra State Road Transport Corporation (appellant herein) applied for grant of substantive permits in lieu of the renewal applications made by the respondents. On account of litigation the applications of the parties could not be decided for several years. At the meeting of the Regional Transport Authority on July 29, 1970 when all the applications were placed for consideration on merits, a preliminary issue was raised on behalf of the appellant to the effect that in view of the unusually long time which had elapsed since the making of the applications in 1965-66 it had become necessary to call for and consider up to date information about all the applicants. The Regional Transport Authority directed all the applicants to file additional information relating to matters covered by columns 10 to 16 and 19 of the prescribed form of the application by August 21, 1970 and directed their publication and invitation of objections thereon. All the applicants including the respondents tendered additional up to date information about their operations in terms of the order of the Regional Transport Authority. The additional information was published and objections thereto were received. The Authority posted all the applications for consideration on merit at a meeting due to be held on November 26, 1970. The respondents meanwhile moved the High Court for an order on the Regional Transport Authority to forbear from taking into account up to date information while judging the merits of the contending operators and to enjoin the said Authority to consider the applications only on the basis of the information originally filed in the year 1965-66. In appeal by special leave to this Court the questions for consideration were (i) whether the Regional Transport Authority had power to call for additional information as it did; (ii) whether such additional information could be ordered to be published; and (iii) whether the Regional Transport Authority was bound to decide the applications on the basis of the qualifications of the applicants originally given therein.

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**HELD:** (i) In deciding the question of power of the Regional Transport Authority to call for further information it has to be borne in mind that the Regional Transport Authority shall, in considering an application for permit, have regard among other matters to the interests of the public generally, the advantages to the public of the services to be provided, the adequacy of other passenger transport services, the operation

- A** by the applicant of other transport services including those in respect of which applications from him for permits are pending, the benefit to any particular locality or location, likely to be afforded by the service. Therefore in considering public interest if the Regional Transport Authority would find that the answers furnished by any applicant are not full and complete, it will be constricting the exercise of the power of the Regional Transport Authority by denying it authority to ask for additional information for full and detailed consideration of the applications in the interest of the public. No hard and fast rule can be laid down as to how the Regional Transport Authority will act or what the limitations of its powers will be. It is a statutory body. It is to exercise its powers in the public interest. Such public interest will have to be considered with regard to particular matters enumerated in s. 47 of the Motor Vehicles Act, 1939 and the particulars of an application are to be judged with reference to ss. 46 and 47 in particular of the Act. Rule 68(6) of the Bombay Motor Vehicles Rules, 1959 also enables the State or the Regional Transport Authority, as the case may be, to require an applicant to appear before it and to withhold the consideration of the application for the permit until the applicant has so appeared in person if so required or by any recognised agent if so permitted, and until the applicant has furnished such information as may be required by the Regional Transport Authority in connection with the application. The words 'in connection with the application' are important. These words indicate that the Regional Transport Authority will have power to ask for further information. In the absence of the Regional Transport Authority acting under corrupt motive or malafide or for any oblique purpose the discretion which is conferred on the Regional Transport Authority should not be undermined or restricted.

- E** (ii) Under s. 57 of the Act the application is to be published in order to enable parties to submit representation in connection therewith. In the present case in view of the fact that information was asked for with regard to specific columns of the application it could not be denied that the information was in connection with the application. It was therefore within the competence of the Regional Transport Authority under s. 57 of the Act to publish the application or the substance thereof in order to enable the persons affected thereby to send their representations to the Regional Transport Authority. It would be in fulfilment of the objects and purposes of the Act and advancement of public interest to ensure that the permit is granted to the most meritorious applicant. Therefore it is all the more necessary to publish additional information in order to have the fullest materials on record for proper assessment and evaluation of the merits and demerits.
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- G** (iii) The High Court was in error in holding that the Regional Transport Authority would have to consider the respective qualifications of the applicants as on the date of their applications and not as on the date of the actual consideration by the Regional Transport Authority of the applications for the grant of permit. Normally the Regional Transport Authority would consider the applications for the grant of permits within a short time of the submission of the applications. If for any reason a long time has elapsed as in the present appeal, the Regional Transport Authority will have to consider the various matters enumerated in cl. (a) to (f) of s. 46 of the Act at the time of the consideration of the applications. The death or insolvency of an applicant since the filing of the application cannot be ignored. The public interest stands in the forefront.
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*Maharashtra State Road Transport Corporation v. Babu Goverdhan Regular Motor Service, & Ors.*, [1970] 2 S.C.R. 319, *Dhani Devi v. Sant Bihari & Ors.*, [1969] 2 S.C.R. 507 and *A. S. Jalaluddin v. Balasubramaniar Bus Service (P) Ltd.* C.A. No. 161/65 Dt. 31-10-1967, referred to.

**A** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 117 of 1971.

**B** Appeal by special leave from the judgment and order dated November 20, 1970 of the Bombay High Court, Nagpur Bench in Special Civil Application No. 939 of 1970.

**C** *M. C. Chagla, Santosh Chatterjee and G. S. Chatterjee*, for the appellant.

**D** *B. R. L. Iyengar, M. N. Phadke, Naunit Lal, and Swaranjit Sondhi*, for respondents nos. 1 to 6.

The Judgment of the Court was delivered by

**E** **Ray, J.**—This is an appeal by special leave from the judgment dated 20 November, 1970 of the Bombay High Court directing the Regional Transport Authority to dispose of the applications for stage carriage permits pending before it without any further delay and without any further adjournment at the instance of any party whatsoever.

**F** The principal questions for consideration in this appeal are; first, whether the Regional Transport Authority has power to call for further or additional information from the applicants for the grant of permit at the time of consideration of the applications for the grant of permits under the Motor Vehicles Act, 1939 hereinafter referred to as the Act and secondly whether the Regional Transport Authority will consider the qualifications of the applicants as on the date of the consideration of the applications for grant of permits.

**G** The respondents are private operators. They held substantive permits on various routes. They applied for renewal of permits which were to expire on different dates between 28th February, 1966 and 30th September, 1966. The appellant applied for grant of substantive permits in lieu of the renewal applications made by the respondents.

**H** While those applications were pending before the Regional Transport Authority, Nagpur, some private operators on different routes made an application under Article 226 of the Constitution challenging the validity of the direction of the State Transport Appellate Tribunal to the Regional Transport Authority to allow the State Transport Corporation an applicant for the grant of

- A** permit to furnish complete information in respect of columns 10, 14 and 15 on the prescribed form of their application for grant of permit. The Nagpur Bench of the Bombay High Court by judgment and order dated 5 October, 1967 quashed the order of the State Transport Appellate Tribunal by holding that the application filed by the State Transport Corporation in that case was defective and the Appellate Committee had no jurisdiction to give the State Transport Corporation a fresh opportunity to furnish additional particulars. An appeal was preferred from the judgment of the High Court to this Court being Civil Appeal No. 1297 of 1968 : *Maharashtra State Road Transport Corporation v. Babu Goverdhan Regular Motor Service & Ors.* This Court on 10 September, 1969 held that the Regional Transport Authority would be acting within its jurisdiction in calling upon an applicant to give more complete details and to give an opportunity to the other parties to state their objections.

- D** During the pendency of appeal in the case of *Babu Goverdhan Regular Motor Service*, the respondents except respondent No. 4 moved the High Court by Writ Petitions in the year 1969 for hearing of their applications for grant of permit. Those Writ Petitions were disposed of by the High Court by consent order dated 20 March, 1969 by which it was agreed that till the decision of this Court in *Babu Goverdhan Regular Motor Service*, the renewal applications of the respondents and the applications of the appellant in lieu of renewal would be postponed for consideration.

- F** After the decision of this Court in *Babu Goverdhan Regular Motor Service* the Regional Transport Authority held a meeting on 28 October, 1969 to consider the applications. The appellant at that meeting sought permission to file additional information in the light of the above decision of this Court. The Regional Transport Authority adjourned the proceeding till 27 November, 1969. At the meeting held on 27 November, 1969 respondent No. 6 contended that the Regional Transport Authority must, before proceeding to consider that application, fix the limit of the number of permits under section 47(3) of the Act. This step was to be taken before consideration of the applications for the grant of permit. The Regional Transport Authority postponed the consideration of the applications and fixed the next meeting on 12 December, 1969, so that it would comply with the provisions of section 47(3) of the Act. No meeting could however be held for want of quorum and the next meeting was fixed for 8 January, 1970.

The appellant meanwhile by a letter dated 29 December, 1969 addressed to the Regional Transport Authority gave additional information in respect of columns 10, 11, 12, 14 and 15 of the prescribed form and called upon the Regional Transport Authority to publish the said information to enable the contending or competing operators to file objections. The appellant gave up to date information in order to enable the Regional Transport Authority to judge the respective merits of the applicants which, according to the appellant, could not be done on the basis of information furnished in the application filed in the year 1966. The appellant simultaneously furnished copies of the additional information to the respondents who were the private operators.

At the meeting of the Regional Transport Authority on 21 March, 1970 the appellant requested the Regional Transport Authority for publication of the additional information. The Regional Transport Authority acceded to the request and directed the Secretary of the Regional Transport Authority to publish additional information. Some of the respondents who had initially objected to the receipt and publication of additional information ultimately withdrew the objections.

At about the time of the application of the information one of the respondents applied to the High Court for an order that the Regional Transport Authority was unduly delaying consideration of the applications on merits. The High Court by an order dated 30 April, 1970 directed the Regional Transport Authority to commence consideration of the applications as expeditiously as possible and within two months from the date of the order. The High Court further observed that the applications for the grant of permits were ripe for hearing and it was not the stage at all for publishing any information which the appellant might have lodged with the Regional Transport Authority. The High Court took the view that the Regional Transport Authority might call for additional information but it was not the case there because the appellant of its own sent additional information and it amounted to an amendment of their application which was not permissible under the Act and also in view of the decision of this Court in *Babu Goverdhan Regular Motor Service case*<sup>(1)</sup>.

The Regional Transport Authority held the meeting on 29 July, 1970 and all the applications were placed for consideration on merit. At that meeting a preliminary issue was raised on behalf of the appellant on the basis of an application filed on 23 July, 1970 with the Regional Transport Authority to the effect that in view of the unusually long time which had elapsed since the making of the applications in the year 1965-66 for the grant of permits it had become necessary to call for and consider up to

(1) [1970] 2 S.C.R. 319.

**A** date information about all the applicants. The Regional Transport Authority directed all the applicants to file additional information relating to matters covered by columns 10 to 16 and 19 of the prescribed form of the application by 21 August, 1970 and directed their publication and invitation of objections thereon.

**B** All the applicants including the respondents tendered additional up to date information about their operations in terms of the order of the Regional Transport Authority. Additional information was published. Objections thereto were received. The Regional Transport Authority posted all the applications for consideration on merit at a meeting due to be held on 26 November, 1970.

**C** The respondents meanwhile moved the High Court for an order on the Regional Transport Authority to forbear from taking into account up to date information while judging the merits of the contending operators and to enjoin the Regional Transport Authority to consider the applications only on the basis of the information originally filed in the year 1965-66, and not on the basis of any up to date information. The High Court by judgment and order dated 20 November, 1970 directed the Regional Transport Authority to dispose of all the applications at the meeting on 26 November, 1970 and not to postpone consideration and disposal of the applications on any ground whatsoever. This is the judgment out of which the present appeal arises.

**E** The High Court held that applications filed under section 46 of the Act could not be permitted to be amended and calling for additional information by the Regional Transport Authority would have the effect of granting amendment of applications. Secondly, the High Court held that the order of the Regional Transport Authority dated 29 July, 1970 virtually permitted amendment of the applications by the private operators as well as by the appellant and this course was contrary to law and was opposed to the previous directions given by the High Court on 30 April, 1970 to the Regional Transport Authority, to dispose of the applications within two months.

Thirdly, the High Court held that the Regional Transport Authority had to consider the respective qualifications of the applicants as on the date of their applications and not as on the date of the actual consideration by the Regional Transport Authority. Fourthly, the High Court held that while considering the applications the Regional Transport Authority under section 47 of the Act could call for such specific information as it needed from a particular applicant, but in the present case full information from all the applicants had already been called for and was now on the record of the Regional Transport Authority and therefore the Regional Transport Authority should dispose of the applications pending before it for five years without further delay.

The first question which falls for consideration is whether the Regional Transport Authority can call for further or additional information from the applicants. The applications for stage carriage permit are to contain particulars mentioned in section 46 of the Act and in clauses (a) to (f) thereof which are as follows :—

*“Application for stage carriage permit.—An application for a permit in respect of a service of stage carriages or to use a particular motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall, as far as may be, contain the following particulars namely:—*

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

(b) 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 ;

(c) 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 ;

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

(e) 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 ;

(f) such other matters as may be prescribed.”

An application for stage carriage permit is under the Bombay Motor Vehicles Rules 1959 to be made in the form prescribed by rule 80 and described as form P. St. S. A. The prescribed form of the application contains 22 columns. In the present appeal, the columns which are relevant for consideration are columns 10 to 16 and 19. These columns are as follows:—

“10. Number of vehicles kept in reserve to maintain the service regularly and to provide for special occasion.....

11. Arrangements made for housing and repair of vehicles (to be given in detail).....

12. Arrangements made for convenience and comfort of passengers.....

**A** 13. Arrangements made for storage and safe custody of luggage.....

14. Particulars of any stage or contract carriage permit valid in the State, held by the applicant.....

**B** 15. Particulars of any permit held by the applicant in respect of the use of any transport vehicle in any other State.....

16. Whether any of the permits stated above has been subject of an order of suspension or cancellation in last four years. If so, give details.....

**C** 19. I am at present in possession of..... vehicles available for use under the permit applied for."

Section 47 (1) of the Act which deals with the power of the Regional Transport Authority to grant permits is as follows :—

*"Procedure of Regional Transport Authority in considering application for stage carriage permit : (1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely :*

(a) the interests of the public generally ;

**E** (b) the advantages to the public of the service to be provided including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken ;

(c) 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 ;

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

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

(f) the condition of the roads included in the proposed route or area ;

**G** and shall also take into consideration any representations made by persons already providing passenger 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 in this behalf by the State Government,

or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies;

Provided that other conditions being equal an application for a stage carriage permit from a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, as far as may be, be given preference over applications from individual owners."

The other section relevant for purposes of grant of permits is section 57 of the Act which deals with the procedure of the Regional Transport Authority in considering applications for stage carriage permit. There are 10 sub-sections of section 57. The two important sub-sections for the purposes of the present appeal are section (2) and (3). Sub-section (2) deals with the time for making applications for grant of permits. No dispute arises on that sub-section in the present appeal. Sub-s. (3) provides that on receipt of an application for stage carriage permit the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the applications or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being 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. The only question which arises on sub-section (3) of section 57 of the Act in the present appeal is whether further or additional information as may be called for by the Regional Transport Authority will also have to be published.

In the case of *Babu Goverdhan Regular Motor Service*(<sup>1</sup>) this Court held that the form prescribed by the Rules requiring the furnishing of information on the various particulars and matters referred to therein was valid and section 46 of the Act, Rule 80 of the Bombay Motor Vehicles Rules and the prescribed form would all have to be read together in order to find out the scheme of the Act on the question of power of the Regional Transport Authority to ask for full and complete information.

Section 46 of the Act which deals with applications for stage carriage permit enumerates the particulars to be given in the applications. The prescribed form is with reference to these particulars. In the case of *Babu Goverdhan Regular Motor Service*(<sup>1</sup>) the State Transport Corporation in filling up columns 14 and 15 with regard to particulars of stage or contract carriage permits held by the applicant in the State and in any other State did not give full particulars of permits and ended by using the word "et cetera". The

- A** High Court in the case of *Babu Goverdhan Regular Motor Service* held that the application of the appellant in that case was invalid because the application did not give full and complete details in respect of columns 14 and 15. This Court held that the applicant in that case should have given an exhaustive list of the other permits held by it in the State or in any other State and therefore the State-authorities could call upon a party to give complete details. The High Court in the present case expressed the view that giving of details would amount to an amendment of the application and that this Court in the case of *Babu Goverdhan Regular Motor Service*(<sup>1</sup>) held that there could be no amendment of an application. The decision of this Court is not to that effect. If particulars will be furnished these particulars will become part of the application. The application is to that extent amended.

- B** In deciding the question of power of the Regional Transport Authority to call for further information it has to be borne in mind that the Regional Transport Authority shall, in considering an application for permit, have regard among other matters to the interests of the public generally, the advantages to the public of the services to be provided, the adequacy of other passenger transport services, the operation by the applicant of other transport services including those in respect of which applications from him for permits are pending, the benefit to any particular locality or localities likely to be afforded by the service. Therefore in considering public interest if the Regional Transport Authority would find that the answers furnished by any applicant are not full and complete, it will be constricting the exercise of power of the Regional Transport Authority by denying it authority to ask for additional information for full and detailed consideration of the applications in the interest of the public. No hard and fast rule can be laid down as to how the Regional Transport Authority will act or what the limitations of their powers will be. It is a statutory body. It is to exercise statutory powers in the public interest. Such public interest would have to be considered with regard to particular matters enumerated in section 47 of the Act and the particulars of an application are to be judged with reference to sections 46 and 47 in particular of the Act. Reference may also be made to rule 68(6) of the Bombay Motor Vehicles Rules which enables the State or the Regional Transport Authority, as the case may be, to require an applicant to appear before it and to withhold the consideration of the application for the permit until the applicant has so appeared in person if so required or by any recognised agent if so permitted, and until the applicant has furnished such information as may be required by the Transport Authority in connection with the application. The words "in connection with the application" are important. These words indicate that the Regional

Transport Authority will have power to ask for further information. A

In the present case, on 29 July, 1970 the Regional Transport Authority found that the applications which had been submitted in the year 1965-66 would hardly represent the real merits of the operators in the year 1970. The Regional Transport Authority therefore directed the applicants to file additional information relating to matters covered by columns 10 to 16 and 19 of the prescribed form. The further direction was that the information would be filed before 21 August, 1970, and would be published and objections would be called for within 15 days from the date of publication. Counsel for the respondents submitted that the information supplied by the applicants pursuant to the direction of the Regional Transport Authority would be voluminous and the publication would take a long time. Under section 57 of the Act the application is to be published in order to enable parties to submit representation in connection therewith. Publication therefore is a statutory obligation. In view of the fact that information was asked for with regard to specific columns of the application it cannot be denied that the information was in connection with the application. It will therefore be within the competence of the Regional Transport Authority under section 57 of the Act to publish the application or the substance thereof in order to enable the persons affected thereby to send their representations to the Regional Transport Authority. B

The Regional Transport Authority is entrusted by the statute to consider the applications for the grant of permit. Applications are on a printed form. It will be in the interest of the applicants to furnish all information. If however for any reason, the Regional Transport Authority will require further information, it will depend upon the facts and circumstances of each case as to whether the power is exercised *bona fide*, and whether the discretion that is conferred on the Regional Transport Authority is exercised properly and judiciously. In the absence of the Regional Transport Authority acting under any corrupt motive or *mala fide* or for any oblique purpose the discretion which is conferred on the Regional Transport Authority should not be undermined and restricted. C

The High Court was in error on the second question in holding that the Regional Transport Authority would have to consider the respective qualifications of the applicants as on the date of their applications and not as on the date of the actual consideration by the Regional Transport Authority of the applications for the grant of permit. Normally, the Regional Transport Authority would consider the applications for the grant of permits within a short time of the submission of the applications. If for any reason, D

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- A a long time elapses as in the present appeal, the Regional Transport Authority will have to consider the various matters enumerated in clauses (a) to (f) of section 46 of the Act at the time of consideration of the applications for the grant of permits. The public interest stands in the forefront. If the Regional Transport Authority will find that the applicant has become insolvent subsequent to the submission of the application it cannot be expected that the Regional Transport Authority will yet have to grant a permit to the insolvent applicant. In refusing the grant of permit the solvency of the applicant will enter the area of appreciation and assessment of the merits and demerits of the applicant. Again, if an applicant died subsequent to the submission of the application the Regional Transport Authority will have to consider at the time of the grant of permit whether it will allow the heirs or legal representatives to stand in the shoes of the deceased applicant. This question arose before this Court in *Dhani Devi v. Sant Bihari & Ors.* (1). This Court held that the Regional Transport Authority would have power to substitute the heirs/successors in place of the deceased applicant in the records of the proceedings and allow the successors to prosecute the application.

- E In the unreported decision of this Court in *A. S. Jalaluddin v. Balasubramaniar Bus Service (P) Ltd. and Anr.* (2) the Regional Transport Authority refused to grant permit to an applicant on the ground that he did not have either main office or branch office or residence on the route applied for. The applicant preferred an appeal to the State Appellate Tribunal. The Tribunal set aside the order and granted the permit to the appellant. Before the Tribunal the appellant's counsel in that case stated that the applicant had sent to the Regional Transport Authority in advance of the date fixed for consideration of the application for the grant of permit a letter stating that the appellant had secured a branch office on the route in question. The finding of the Tribunal was challenged by writ petitions in the High Court. The learned Single Judge of the High Court held that the finding of the Tribunal could not be challenged but the Division Bench held that the finding of the Tribunal as to possession of branch office and residence on the route by the appellant was without evidence. This Court set aside the Bench decision of the High Court and restored the judgment of the learned Single Judge by holding that there was material before the Tribunal that the appellant had secured a branch office. This decision establishes two propositions: First, that an applicant can furnish additional or further information in connection with the application before the Regional Transport Authority and secondly that the Regional Transport Authority is competent to

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(1) [1969] 2 S.C.R. 507. (2) C. A. No. 161 of 1965 decided on 31-10-1967.

act on such information at the time of consideration of the applications for the grant of permits. It will always have to be found out in the facts and circumstances of each case as to the nature of information, the manner of furnishing it in order to decide whether the Regional Transport Authority was entitled to ask for such information and the applicant was entitled to furnish it.

If the Regional Transport Authority will have at the date of the consideration of the grant of permit information which may disentitle the applicant by reason of conviction, insolvency, loss of fleet, lack of facilities, or any subsequent event of importance as would affect the grant of permit to an applicant, it would be in fulfilment of the objects and purposes of the Act and advancement of public interest to ensure that the permit is granted to the most meritorious applicant. Therefore it is all the more necessary to publish additional information in order to have the fullest materials on record for proper assessment and evaluation of the merits and demerits.

The High Court was wrong in directing the Regional Transport Authority to proceed on the basis of applications submitted in the year 1965-66. The Regional Transport Authority will dispose of the applications on the basis of further information forwarded by the applicants and published by the Regional Transport Authority and representations by parties in connection therewith as expeditiously as possible. The obvious need not be stressed that long time has elapsed and the Regional Transport Authority should proceed in accordance with law without further delay. The appeal is accepted. The judgment of the High Court is set aside. Each party will pay and bear their own costs.

G. C.

*Appeal allowed.*