A

KARNATAKA STATE ROAD TRANSPORT CORPORATION, BANGALORE

v.

B. A. JAYARAM AND OTHERS

B

January 31, 1984

[D. P. MADON AND SABYASACHI MUKHARJI, JJ.]

Motor Vehicles Act, (Act IV of 1939) Section 57(8) interpretation of—Whether the section creates any legal fiction—Grant of an application for variations in conditions of permit, whether results in grant of a new permit—Existing G *inter-state permit holders exempted under the approved scheme of nationalisation —Grant of request for increase in number of trips or number of vehicles is not inconsistent with the provisions of the scheme—Motor Vehicles Act Section 68FF read with section 57(8) explained.*

On February 2, 1966, the Respondent No. 1, B. A. Jayaram had been granted by the Regional Transport Authority, Bangalore, a stage carriage per- D mit on the inter-state route Cuddapah in the State of Andhra Pradesh to Bangalore in the Karnataka State, which was duly countersigned by the State Transport Authority, Andhra Pradesh. On 10.1.1968, the Mysore (Karanataka) State granted its approval under section 68(D)(2) of the Motor Vehicle Act, 1939, to a scheme, popularly known as the "Kolar Pocket Scheme", to nationalize passanger transport service between Bangalore and various places in the Kolar District, as also certain routes within the Kolar District, covering 87 E inter-state routes referred to in its appendix. Under clause 4 of the "Kolar Pocket Scheme", the existing permit holders on the inter-state routes, were permitted to continue to operate such inter-state routes subject to the conditions that their permit shall be rendered ineffective for the overlapping portions of the notified routes.

The route between Bangalore and Royalpad in the State of Karnataka F formed part of the route between Bangalore and Cuddapah and was covered by the Scheme, with the result that the First Respondent's permit for the said portion of the Bangalore Cuddapah route became ineffective and consequent that the vehicles operated by him could not either pick up or set down passengers on the Bangalore—Royalpad portion of the Bangalore Cuddapah route though they could traverse the said portion. On January 24, 1973, the first G respondent made an application to the Second Respondent the Karnataka State Transport Authority for varying the conditions of the stage carriage permit granted to him by increasing the number of trips on the Bangalore Cuddappah route from one trip per day to two trips per day so as to eliminate one overnight halt at either of the two termini. The said application having been rejected, the First Respondent filed a writ petition No. 3360/74 which was allowed and a mandamus issued to the Second Respondent to dispose of the H application in accordance with law holding that the said Scheme did not ope-

rate as a bar to increasing the number of trips on an existing inter-state route. The Second Respondent accordingly invited representation in connection therewith. In the meantime, the Appellant the Karnataka State Road Transport Corporation, filed on November 27, 1974 a writ petition No. 6399/74 to recall the order made in the said writ petition No. 3360/74 and to rehear it after impleading the Appellant as a respondent thereto. The writ petition was dismissed holding that the appellant was not a necessary party to writ petition No. 3360/74. On December 23/24, 1974, the Second Respondent granted to the first respondent the additional trip applied for by him. Against the order of dismissal of the W.P. 6399/74, the Appellant filed, an appeal No. WA 949/1979 under section 4 of the Karnataka High Court Act, 1961 (Mysore Act V of 1962). On a reference by the Division Bench, the Full Bench by its Judgment delivered on September 19, 1979, opined that "If the condition of a permit for operating a stage carriage over a route is altered by increasing the maximum number of trips over that route specified earlier in the permit such variation of the condition of the permit does not amount to grant of a ner permit."

The Third Respondent who had been granted three stage carriage permits on three different inter-state routes, namely, Bangalore to Cuddapah, Bangalore Kalabasti, and Bangalore to Vellore applied on June 11, 1979 to the Second Respondent for varying the conditions of the said three permits by increasing the number of vehicles by an additional vehicle on each route and by increasing the number of trips from two to four on each route, that is for two round trips, which were granted. The Fourth respondent who did not file any objection to the applications of the Third Respondent filed three writ petitions being writ petitions Nos. 16247-16249 of 1979 in the High Court against the said orders of variations of the Third Respondent's permits. The writ petitions having been dismissed he preferred three appeals being W.A. Nos. 1285-87/1979 and an application to implead himself as a respondent in WA No. 949/74 filed by the appellant, though he had never objected to the grant of the variation to the First Respondent earlier. The writ appeals were dismissed on 22.2.1980. His application to implead himself as a respondent to the said Writ Appeal No. 949/74 was granted. The Fourth Respondent thereafter filed three special leave petitions Nos. 5141-43 of 1979 against the order dated 22.2.1980 dismissing his appeals. He has also filed another special leave petition No. 4771/80 against the Judgment in W.A. No. 949/74 by virtue of his having been allowed to be impleaded by the High Court of Karnataka as third respondent thereto though it was not all necessary since in the writ appeal No. 949 of 1974 which was dismissed on 22.2.1980, the Karnataka High Court granted to the appellant a certificate of fitness to appeal to the Supreme Court.

Dismissing tha appeal, the Court

HELD : 1 : 1. Section 57(8) of the Motor Vehicles Act, 1939 does not create a legal fiction and grant of an application for variations in the conditions of a permit in respect of matter set out in section 57(8) does not rasult in the grant of a new permit. Admittedly the language of sub-section (8) is not one which is normally used by legislatures in creating a legal fiction for sub-s. (8) does not state that an application of the nature referred in that sub-section is to be *deemed to be* an application for the grant of a new permit. [787D-E]

1 : 2. Section 57 is a procedural section. Its various sub-sections form

A an integral whole providing for the manner in which an application for variation of certain conditions of a permit is to be made, the mode of inviting objections thereto and the disposal of such applications and objections. [787E-F]

1 : 3. Reading sub-section (8) in the context of sub-sections (3) to (7) and in juxtaposition with them, it is clear that the legislative intant in enacting that sub-section was to prescribe the procedure to be followed when an application for variation of the conditions of a permit referred to in that sub-section is made, this procedure being the same as is laid down in sub-sections (3) to (7) with respect to an application for a new stage carriage permit or a new public carrier's permit. It is for the purpose of providing that the procedure to be followed in the case of an application made under sub-sections (8) is to be the same as the procedure to be followed in the case of an application for a new permit that sub-section (8) uses the words "shall be treated as an application for the grant of a new permit." By the use of these words what sub-section (8) does is to incorporate in it the provisions of sub-sections (3) to (7). This is a very different thing from enacting a legal fiction. [787B-D]

East Eng. Dwelling Co. Ltd. v. *Finsbury Borough Council*, [1951] 2 All. E.R. p. 587, 589 H.L.; quoted with approval.

State of Bombay v. *Pandurang Vinayak Chaphalkar and Others*, [1953] S.C.R. p. 773, 778-9; *M/s. Shivchand Amolakchand* v. *Regional Transport Authority and Anr.* [1984] 1 S.C.R. 288=A.I.R. 1984 S.C. 9; followed.

1 : 4. Assuming that the application for variation of the conditions of a permit referred to in sub-section (8) of section 57 is to be deemed to be by a fiction of law to be an application for a new permit, the question to be considered is for what purpose is such an application to be deemed to be an application for grant of a new permit. Reading sub-sections (3) to (8) of section 57 as a whole, it is clear that the only purpose is to apply to such an application for variation the procedure prescribed by sub-sections (3) to (7) of section 57 and not for the purpose of providing that when the application for variation is granted, the permtt so varied would be deemed to be a new permit. If the permit so varied were to be deemed to be a new permit, the result would be anomalous. [789A-C]

Ex-parte Walton, In Re Levy L.R. [1881] 17 Ch. D. 743; 756 CA; *Arthur Hill* v. *East and West Dock Co.* L.R. [1884] 9 A.C. 455, 456; *The Bengal Immunity Co. Ltd.* v. *The State of Bihar and Others*, [1955] 2 S.C.R. 603, 647; *The Commissioner of Income-tax, Bombay City, Bombay* v. *Amarchand N. Shroff*, [1963] Supp. 1 S.C.R. 699, 709; *Maharani Madalasa Devi* v. *M. Ramnarayan (P) Ltd. and Others*, [1965] 3 S.C.R. 421, 424; *Commissioner of Income-tax, Gujarat* v. *Vadilal Lallubhai*, [1973] 1 S.C.R. 1058, 1064; referred to.

2. In the case of an existing inter-state permit exempted under the said Scheme an increase in the number of trips or the number of vehicles allowed to be operated under such a permit would not be inconsistent with the provisions of the said Scheme. There is no inconsistency between an increase in the number of vehicles or trips allowed under such a permit and the provisions of the said scheme. So far as the portions of the inter-stata route covered by the said scheme are concerned, the permits of the existiug permit-holders hav e bean

rendered ineffective. Further by the said Scheme as notified by a notification dated January 10, 1980, the existing permit-holders are not allowed to pick up or set down passengers on these portions of the notified routes. Whether one vehicle or more traverse these portions or whether the same vehicle traverses such portion more than once cannot in any manner affect the services operated by the Appellant on such portions since no passengers are allowed to be picked up or set down on such portions. All that would happen is that these vehicles, in the course of their inter-state operation, would traverse these portions of the notified routes without in any way operating as stage carriages for such portion. [790C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 891 of 1980.

From the Judgement and Order dated the 22nd February, 1980 of the Karnataka High Court in Writ Appeal No. 949 of 1974.

K. Parasaran, Soliciter General, *Vineet Kumar*, *Naresh Kumar* and *Miss Deepika Saxena* for the appellant.

K.K. Venugopal, *K.N. Bhat*, *M. Rangaswamy*, *MRV.Achar*, *S. Ravindra Bhatt* and *Nanjappa Ganapathy* for the respondents.

The Judgment of the Court was delivered by

MADON, J. This Appeal has been filed by the Karnataka State Road Transport Corporation pursuant to a certificate granted by the Karnataka High Court against its Judgment and Order in Writ Appeal No. 949 of 1974 on the following two questions of law :—

"1. Whether the conditions of a permit can be varied so as to increase the number of trips and/or the number of vehicles allowed to be operated under that permit ?

2. Whether the conditions of a permit held by an existing operator on an inter-State route exempted under the Kolar Pocket Scheme, can be varied so as to allow an increase in the number of vehicles operating under that permit ?

Before embarking on a discussion of the above questions, it will be convenient to relate the facts which have given rise to this Appeal. On February 2, 1966, the First Respondent, B.A. Jayaram,

A had been granted by the Regional Transport Authority, Bangalore, a stage carriage permit on the inter-State route Cuddapah in the State of Andhra Pradesh to Bangalore in the State of Karnataka for one trip only and a stage carriage permit no. 20/65-66 in respect of this route was issued to him on March 16, 1966. This permit was counter-signed by the State Transport Authority, Andhra Pradesh, on March 21, 1967. By Notification No. S.O. 111 dated January 10, 1968, published in the Mysore Government Gazette dated January 25, 1968, the Government of Mysore (now Karnataka) granted its approval under sub-section (2) of section 68-D of the Motor Vehicles Act, 1939 (IV 1939) (hereinafter referred to as "the said Act") to a scheme set out in the Schedule to the said Noti-
C fication. The said Scheme covered 87 intra-State routes in the State of Karnataka set out in the Appendix to the said Scheme. The effect of the said Scheme was to nationalize passenger transport service between Bangalore and various places in the Kolar District as also certain routes within the Kolar District. For this reason, the said Scheme was popularly known as the 'Kolar Pocket Scheme'.
D The class of service covered by the said Scheme was "Stage Carriages, Mofussil". Clause 4 of the said Scheme *inter alia* provided as follows :

> "Whether the services are to be operated by the State Transport Undertaking to the exclusion, complete or par-
E tial, of other persons or otherwise :
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> The State Transport Undertaking will operate services on all the routes, to the complete exclusion of other persons except that : (a) that existing permit holders on the inter-
F State routes, may continue to operate such inter-State routes subject to the conditions that their permit shall be rendered ineffective for the overlaping portions of the notified routes..."

The said Scheme was implemented with effect from January
G 1, 1969, by issuing a stage carriage permit to the Appellant under sub-section (1) of section 68-F of the said Act.

The route between Bangalore and Royalpad in the State of Karnataka formed part of the route between Banglore and Cuddapah and was covered by the said Scheme. Accordingly, the First Res-
H pondent's permit for the said portion of the Bangalore Cuddapah

route became ineffective with the result that the vehicles operated by the First Respondent could not either pick up or set down passengers on the Bangalore-Royalpad portion of the Bangalore-Cuddapah route though they could traverse the said portion. On January 24, 1973, the First Respondent made an application to the Karnataka State Road Transport Authority, the Second Respondent before us, for varying the conditions of the stage carriage permit granted to him by increasing the number of trips on the Bangalore-Cuddapah route from one trip per day to two trips per day. This was apparently done to eliminate an overnight halt at either of the two termini. The said application was rejected by the Second Respondent on April 22, 1974, as not being maintainable in view of the said Scheme, without publishing it for inviting objections thereto. The First Respondent thereupon filed a writ petition in the Karnataka High Court, being Writ Petition No. 3360 of 1974, against the said order of the Second Respondent. On September 25, 1974, the said writ petition was allowed and the court issued a writ of *mandamus* to the Second Respondent to dispose of the First Respondent's said application in accordance with law, holding that the said Scheme did not operate as a bar to increasing the number of trips on an existing inter-State route. In pursuance of the said order of the High Court, the Second Respondent published the First Respondent's said application inviting representations in connection therewith. In the meanwhile the Appellant filed on November 27, 1974, a writ petition in the Karnataka High Court, being Writ Petition No. 6399 of 1974, to recall the order made in the said Writ Petition No. 3360 of 1974 and to rehear the said writ petition after impleading the Appellant as a respondent thereto. A learned Single Judge of the said High Court dismissed the Appellant's said writ petition on December 2, 1974, holding that the Appellant was not a necessary party to the said Writ Petition No. 3360 of 1974. On December 23/24, 1974, the Second Respondent granted to the First Respondent the additional trip applied for by him. Against the order of the learned Single Judge dismissing its writ petition, the Appellant filed an intra-Court appeal under section 4 of the Karnataka High Court Act, 1961 (Mysore Act V of 1962), being Writ Appeal No. 949 of 1979. The Division Bench, which heard the said appeal, referred the following question to a larger Bench for its opinion:

A B C D E F G H

> "If the condition of a permit for operating a stage carriage over a route is altered by increasing the maximum number of trips over that route, specified earlier in that

A permit, does such variation of the condition of the permit amount to grant of a new permit ?"

By its Judgment delivered on September 19, 1979, the Full Bench answered the said question as follows :

B "If the condition of a permit for operating a stage carriage over a route is altered by increasing the maximum number of trips over that route specified earlier in the permit such variation of the condition of the permit does not amount to grant of a new permit."

C We will now relate the circumstances in which the Third Respondent, S. Joginder Singh, the sole proprietor of Janatha Travels, Bangalore, and the Fourth Respondent, D.P. Sharma, sole proprietor of Sharma Transport, Bangalore, made their entry on the stage of this litigation. The Third Respondent had been granted three stage carriage permits on three different inter-state routes, D namely, Bangalore to Cuddapah, Banglore to Kalahasti and Bangalore to Vellore. After coming into force of the said Scheme, the Third Respondent made applications on June 11, 1979, to the second Respondent for verying the conditions of the said three permits by increasing the number of vehicles by an additional vehicle on each route and by increasing the number of trips from E two to four on each route, that is, for two round trips. These applications were granted by the Second Respondent. The Fourth Respondent did not file any objections to the said apptications for variation made by the Third Respondent, nor does it appear that he had filed any objection to the said application for variation made by the First Respondent. The Fourth Respondent, however, filed F three writ petitions, being Writ Petitions Nos. 16247 to 16249 of 1979, in the Karnataka High Court against the orders of the Second Respondent granting variation of the Third Respondent's said permits. The said writ petitions were dismissed by a learned Single Judge of the Karnataka High Court and against these orders of dismissal the Fourth Respondent preferred three writ appeals, G being Writ Appeals Nos. 1285 to 1287 of 1979. He also made an application to implead himself as a respondent in the said Appeal No. 949 of 1974 out of which the present appeal before us arises. The Fourth Respondend's said application was granted and he was impleaded as Fourth Respondent to the said Writ Appeal No. 949 of 1974. The Third Respondent before us was the Third Respon- H dent in the said Writ Appeal No. 949 of 1974.

By Notification HD 45 TMI 76 dated January 10, 1980, the said Scheme was modified by substituting clause (d) thereof. The substituted clause (d) *inter alia* provided as follows :

> "The State Transport Undertaking will operate the services on all routes to the complete exclusion of other persons except the following :—
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> × × × × ×
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> (c) The operation of services by the permit holders who have already been granted permits by the Transport Authorities on the date of publication of the modified scheme on inter-State routes which are included in the inter-State agreement entered into by the Government of any other State provided that the operator on such route shall not be entitled to pick up and set down passengers in such portion of the Notified routes."

By its Judgment and Order dated February 22, 1980, a Division Bench of the Karnataka High Court dismissed the said writ appeals filed by the Fourth Respondent. The Division Bench held that in view of the opinion given by the Full Bench in the said Writ Appeal No. 949 of 1974 it was permissible under sub-section (8) of section 57 of the said Act to vary the conditions of a stage carriage permit in respect of a route so as to increase the number of trips on that route allowed under such permit ; that increase in the number of trips on a route can be effected either by increasing the frequency of operation of the existing number of vehicles playing on that route without increasing the existing number of vehicles operating on that route or by increasing the number of vehicles operating on that route ; and that the Fourth Respondent was not an existing inter-State Permit holder nor had filed any objection before the Second Respondent to the applications for variation made by the Third Respondent and had, therefore, no *locus* to file the said writ petitions. By its Judgment and Order, made on the same day, the said Division Bench dismissed the Appellant's said Writ Appeal No. 949 of 1974 with no order as to costs and granted to the Appellant a certificate of fitness to appeal to this Court on the two questions which we have set out earlier ; in pursuance of which the present Appeal has been filed. The Fourth Respondent has also filed in this Court a petition for special leave to appeal, being Special Leave Petition No. 4771 of 1980, against the said Judgment and Order in the said Writ Appeal No. 949 of 1974. He has also

A filed three other petitions for special leave to appeal to this Court, being Special Leave Petitions Nos. 5141 to 5143 of 1980 against the common Judgment and Order of the said High Court in the said Writ Appeals Nos. 1285 to 1287 of 1979. These petitions have been ordered to be listed after the disposal of this Appeal and will accordingly be disposed of by separate orders.

B

We now turn to the rival contentions raised before us at the hearing of this Appeal. On behalf of the Appellant, it was submitted that under sub-section (8) of section 57 an application to vary the conditions of a permit in respect of a matter specified in that sub-section "shall be treated as an application for the grant of C a new permit." Sub-section (8), therefore, creates a legal fiction and a legal fiction must be taken to its logical conclusion. An application to vary the conditions of a permit in respect of a matter specified in sub-section (8) when granted would, therefore, result in the grant of a new permit. One of the matters specified in sub-section (8) is a variation of the conditions of a stage carriage permit D by increasing the number of trips above the specified maximum. If such variation were permitted, by the result of the operation of the statutory fiction enacted in sub-section (8) of section 57 the permit so varied would in law be a new permit. Under section 68-FF of the said Act no permit can be granted except in accordance with the provisions of a scheme. The said Scheme prohibits of a E new permit and, therefore, to vary the conditions of a stage carriage permit by increasing the number of trips or the number of vehicles would be tantamount to granting a new permit which would be contrary to the said Scheme and thus not permissible under section 68-FF. According to the Appellant, the Judgment of the learned Single Judge in the said Writ Petition No. 3360 of 1974 filed by the F First Respondent allowing the said Writ Petition No. 3360 of 1974 and setting aside the order of the Second Respondent rejecting as not maintainable the First Respondent's said application for varying the conditions of his inter-State carriage permit by increasing the number of trips by one and directing the Second Respondent by a writ of *mandamus* to dispose of the said application in accordance G with law was erroneous as also the decision of the Full Bench in the said Civil Appeal No. 949 of 1974, holding that such variation did not amount to grant of a new permit. It was further submitted that increasing the number of vehicles on a route resulted in an increase in the number of trips and an application for varying the conditions of a permit by increasing the number of vehicles allowed to ply on H the route in respect of which such permit was given was, therefore,

equally an aplication for the grant of a new permit and such an application could not, therefore, be granted in respect of a portion of a route covered by the said Scheme. A

On the other hand, it was submitted on behalf of the contesting Respondents that sub-section (8) of section 57 did not create a legal fiction and all that it did was to provide that the procedure for considering an application for varying the conditions of a permit in respect of the matters specified in that sub-section was to be the same as the procedure for considering an application for granting a new permit. In the alternative, it was submitted that if sub-section (8) of section 57 created a legal fiction, it was only for the purpose of the procedure to be followed in processing an application for a variation in the conditions of a permit in respect of a matter specified in that sub-section and cannot be extended beyond that purpose so as to create another legal fiction, namely, that a permit the conditions of which were so allowed to be varied would be deemed to be a new permit. It was further submitted that the said Scheme, both prior to and after its modification, permitted the existing permit holders on inter-State routes to continue to operate on such routes subject to the condition that their permits be rendered ineffective for the overlapping portions of the notified routes only, with the result that they could not pick up and set down passengers on such portions only. It was also submitted that increasing the number of trips or vehicles on such inter-State routes was not in any manner inconsistent with the provisions of the said Scheme, whether prior to or after its notification. B C D E

On the above rival contentions, two main questions arise for our consideration, namely,

(1) Whether sub-section (8) of section 57 creates a legal fiction by reason of which the grant of an application for variation in the conditions of a permit in respect of a matter set out in that sub-section results in the grant of a new permit ? F

(2) Whether an increase in the number of trips or the number of vehicles above the maximum specified in an existing inter-State stage carriage permit would be inconsistant with the provisions of the said Scheme ? G

In order to determine these questions, it is necessary to refer to the relevant provisions of the said Act. Chapter IV of the said H

A Act, which consists of sections 42 to 68, provides for control of transport vehicles. A "transport vehicle" is defined by clause (33) of section 2 as meaning "a public service vehicle or a goods vehicle". A "public service vehicle" is defined by clause (25) of section 2 as meaning "any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, B contract carriage, and stage carriage". The expression "stage carriage" is defined by clause (29) of section 2 as follows :

> "(29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire C or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey."

As the said Scheme and its modification relate only to stage carriages, we are not concerned in this Appeal with contract carriages or D goods vehicles and it is unnecessary to look at the definitions of those expressions or the provisions of the said Chapter IV relating to these types of vehicles.

Under section 42 no owner of a transport vehicle can use or permit the use of the vehicle in any public place (whether or not E 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 Commission, that is, the Inter-State Transport Commission constituted under section 63-A, authorizing the use of the vehicle in that place in the manner in which the vehicle is being used. F Section 43 confers power upon the State Government to control road transport by issuing directions to the State Transport Authority in the form of notifications in the Official Gazette. Section 44 empowers the State Government by notification in the Official Gazette to constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in sub- G section (3) of section 44 and in like manner to constitute Regional Transport Authorities to exercise and discharge throughout specified areas the powers and functions conferred on Regional Transport Authorities by the said Chapter IV. The said Chapter IV provides for grant of different permits, namely, stage carriage permits, contract crriage permits, private carrier's permits, public H carrier's permit and temporary permits, as also for applications to

be made in respect of these classes of permits, the procedure to be followed in dealiug with such applications, for cancellation and suspension of permits and other cognate matters. Section 45 sets out the general provisions with respect to applications for permits irrespective of the type of permits applied for and it prescribes the authority to whom an application for a permit is to be made. Under sub-section (3) of section 45 every applicant for the grant of a new stage carriage permit or public carrier's permit is required to deposit, by way of security, with his application an amount in such manner and at such rate not exceeding Rs. 200 per motor vehicle, as the State Government may, with reference to each class of vehicle, by notification in the Official Gazette, specify. Under sub-section (4) of section 45 the security so furnished is liable to be forfeited in whole or in part by the transport authority if it is satisfied that the application was made for the purpose of preventing the issue of a temporary permit under section 62. The whole or part of the security deposit as has not been forfeited is to be refunded to the applicant, as soon as may be, after the disposal of his application. Other sections in the said Chapter IV make special provisions with respect to applications for different types of permits. Section 46 deals with an application for a stage carriage permit. Such an application is to contain the particulars specified in clauses (a) to (f) of the said section 46. The particulars required to be specified by clauses (a) to (c) of the said section 46 are material for our purpose and it will be, therefore, convenient to reproduce these clauses These clauses provide as follows :

> "(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.
>
> *Explanation*—For the purposes of this section 57, "trip" means a single journey from one point to another, and every return journey shall be deemed to be a separate trip."

A Section 47 prescribes the matters which a Regional Transport Authority is to have regard to in considering an application for a stage carriage permit. It also requires the Regional Transport Authority to take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the route or area or by any association repre-
B senting persons interested in the provision of road transport facilities recognized 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. The said section also provides for reservation of certain percentage of stage carriage permits for the Scheduled Castes, and the Scheduled Tribes and
C persons belonging to economically weaker sections of the community. Under section 48, subject to the provisions of section 47, a Regional Transport Authority may, on an application made to it under section 46, grant a stage carriage permit in accordance with the application or with such modifications as it deemed fit or refuse to grant such a permit. Sub-section (3) of section 48 provides for
D conditions which may be attached to a stage carriage permit. Amongst the conditions which can be attached are conditions that the vehicle or vehicles be used only in a specified area or on a specified route or routes, the minimum and maximum number of daily trips to be provided in relation to any route or area generally or on specified days and occasions and a condition that within
E municipal limits and such other areas and places as may be prescribed, passengers or goods shall not be taken up or set down except at specified points. Sections 49 to 51 deal with contract carriage permits, sections 52 and 53 with private carrier's permits and sections 54 to 56 with public carrier's permits. Section 57 is important since the answer to the first question which we have to determine
F in this Appeal depends upon the true interpretation of sub-section (8) thereof and in order to understand the scope and effect of that sub-section, it is necessary to reproduce section 57. The said section 57 provides as follows :

"27. *Procedure in applying for and granting permits*—
G (1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the per-
H mit shall take effect, or if the Regional Transport Autho-

rity appoints dates for the receipt of such applications, on such dates. A

(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 representations 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 : B C

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

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

(5) When any representation such as is referred to in sub-section (3) is made, the Regional Transport Authority shall 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. G

(6) When any representation has been made by the persons or auththorities referred to in section 50 to the effect that the number of contract carriages for which permits have already been granted in any region or any area H

within a region is sufficient for or in excess of the needs of the region or of such area, whether such representation is made in connection with a particular application for the grant of a contract carriage permit or otherwise, the Regional Transport Authority may take any such steps as it considers appropriate for the hearing of the representation in the presence of any persons likely to be affected thereby.

(7) When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.

(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, 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 vihicles covered by the permit, shall be treated as an application for the grant of a new permit.

Provided that it shall not be necessary to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service so provided, without any increase in the number of vehicles.

(9) A Regional Transport Authority may, before such date as may be specified by it in this behalf, replaee any stage carriage permit or public carrier's permit or public carrier's permit granted by it before the said date by a fresh permit conforming to the provisions of Section 48 or section 51 or section 56, as the case may be, and the fresh permit shall be valid for the same route or routes or or the same area for which the replaced permit was valid ;

Provided that no condition other than the condition which was already attached to the replaced permit or which could have been attached thereto under the law in force when that permit was granted shall be attached to the fresh permit except with the consent in writing of the holder of the permit.

((10) Notwithstanding anything contained insection 58, a permit issued under the provisions of sub-section (9) shall be effective without renewal for the remainder of the period during which the replaced permit would have been so effective."

We will first conclude our survey of the relevant provisions of the said Act before proceeding to ascertain the correct interpretation to be placed upon sub-section (8) of section 57. Section 58 provides that a stage carriage permit or a contract carriage permit, other than a temporary permit issued under section 62, shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit. A private carrier's permit or a public carrier's permit otherthan a temporary permit is to be effective without renewal for a period of five years. Under sub-section (2) of section 58 an applications for renewal of a permit is to be made and disposed of as if it were an applicat on for a permit. Sub-section (2) also prescribes the time-limit within which applications for renewal are to be made and it further provides that other conditions being equal, an application for renewal shall be granted preference over new applications for permits. Section 59 prescribes the general conditions to be attached to all permits. Section 60 deals with cancellation and suspension of permits. It is unnecessary to refer to the other provisions of the said Chapter IV.

Chapter IV-A of the said Act provides for nationalization of road transport service. Under section 68-B the provisions of Chapter IV-A and the rules and orders made thereunder are to have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the said Act or any other law for the time being in force or in any instrument having effect by virtue of any such law. Section 68-C deals with the preparation of a scheme by a State Transport Undertaking for the purpose of providing an efficient, adequate, economical and property co-ordinated road transport service. Such a scheme is to be published in the Official Gazette and also in such other manner as the State Government may direct. Section 68-D provides for filing of objections to a proposed scheme. Under Sub-section (2) of section 68-D, after considering the objections which may have been made to a proposed scheme and after giving an opportunity to the objector or his representatives and the representatives of the State Transport Undertaking to be heard in

A the matter, the State Government may approve or modify the scheme. The scheme as approved or modified is to be published in the Official Gazette and it is thereupon to become final and is to be called the approved scheme and the area or route to which it relates is to be called the notified area or notified route. Section 68-F provides for cancellation or modification of approved schemes. B Section 68-F provides for issue of a stage carriage permit or a public carrier's permit or a contract carriage permit in respect of a notified area or notified routes to the State Transport Undertaking. Section 68-FF provides as follows :

> "*68—FF—Restriction on grant of permits in respect of* C *a notified area or notified route.*—Where a scheme has been published under sub-section (3) of section 68-D in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the Provisions of the scheme."

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There is a proviso to the said section 68-FF with which we are not concerned.

We now turn to a consideration of the scope and effect of sub-section (8) of section 57. That sub-section does not apply to E applications to vary any of the conditions of a permit but applies only to applications to vary certain conditions of a permit. These applications are :

(1) an application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new F route or routes or a new area ;

(2) an application to vary the conditions of a stage carriage permit by increasing the number of trips above the specified maximum ;

(3) an application to vary the conditions of a stage G carriage permit by altering the route covered by it ;

(4) an application to vary the conditions of a contract carriage permit by increasing the number of vehicles covered by the permit ; and

H (5) an application to vary the conditions of a public carrier's

permit by increasing the number of vehicles covered by the permit.

In all these five cases, sub-section (8) provides that the application "shall be treated as an application for the grant of a new permit". As seen above, under section 68-FF when a scheme has been approved and published under sub-section (3) of section 68-D in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, is prohibited from granting any permit except in accordance with the provisions of that scheme. The said Scheme confers a right upon the Appellant to operate the services on all routes mentioned in the appendix to the said Scheme to the complete exclusion of all other persons except existing permit holders on inter-State routes with the condition that the permits of such existing permit holders were to be rendered ineffective for the overlapping portions of the notified routes and they would not be entitled to pick up or set down passengers on such portions of the notified routes. If the effect of sub-section (8) of section 57 were as contended for by the Appellant, that is, if the said sub-section (8) were to create a legal fiction by which an application for variation of the conditions of a permit of the nature referred to in that sub-section is to be deemed to be an application for the grant of a new permit and such variation when granted would result in the grant of a new permit, then clearly by reason of the prohibition contained in section 68-FF, the granting of such application would be inconsistent with the provisions of the said Scheme and would not be permissible in law. Considerable emphasis were placed on behalf of the Appellant on the words "shall be treated as an application for the grant of a permit occurring in the said sub-section (8) and on the basis of this phraseology, it was submitted that an application for variation of a condition of a permit referred to in sub-section (8) of section 57 was by a fiction of law put on the same footing as an application for the grant of a new permit and it, therefore, followed as a corollary that such an application if granted would result in the grant of a new permit.

In a passage which has become a classic Lord Asquith in the House of Lords in the case of *East End Dwellings Co. Ltd.* v *Finsbury Borough Gouncil*(1) said :

(1) [1951] 2 All. E.R. 587, 599 H.L.

A "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consquence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it...The statute says that you must imagine a certain state of affairs ; it does not
B say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

This passage has been referred to or quoted with approval in a number of decisions of this Court. One of the earliest of them was
C the *State of Bombay* v. *Pandurang Vinayak Chaphalkar and others.*(1)

It is unnecessary to refer to other cases of this Court in which this passage was cited and approved. The question, however, is whether sub-section (8) of section 57 creates a legal fiction. Admittedly, the language of that sub-section is not one which is normally
D used by legislature in creating a legal fiction. Sub-section (8) does not state that an application of the nature referred to in that sub-section is to be *deemed to be* an application for the grant of a new permit, which would have been the case were the intention of Parliament to create a legal fiction. The arguments on behalf of the Appellant are founded upon a basis which has no relation to the
E purpose underlying sub-section (8). Section 57 is a procedural section, Its various sub-sections form an integral whole providing for the manner in which an application for variation of certain conditions of a permit is to be made, the mode of inviting objections thereto and the disposal of such applications and objections. Sub-section (1) provides when an application for a contract carriage
F permit or a private carrier's permit can be made. Sub-section (2) provides when an application for a stage carriage permit or a public carriers permit should be made. Thus, these two sub-sections deal with the time when applications for grant of certain classes of permits can be made. Sub-sections (3) to (7) prescribe the procedure to be followed by the Regional Transport Authority
G when it receives an application for a stage carriage permit or a public carrier's permit. Sub-section (8) deals with applications to vary certain conditions of particular permits. Sub-section (9) confers power upon the Regional Transport Authority to replace a stage

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H (1) [1953] S.C.R. 773, 778-9.

carriage permit, contract carriage permit or public carrier's permit granted by it by a fresh permit and sub-section (10) provides that such fresh permit shall be effective without renewal for the remainder of the period during which the replaced permit would have been so effective. Sub-section (8) comes immediately after sub-sections (3) to (7) and when read in the context of these sub-sections and in juxtaposition with them, it is clear that the legislative intent in enacting that sub-section was to prescribe the procedure to be followed when an application for variation of the conditions of a permit referred to in that sub-section is made, this procedure being the same as is laid down in sub-sections (3) to (7) with respect to an application for a new stage carriage permit or a new public carrier's permit. It is for the purpose of providing that the procedure to be followed in the case of an application made under sub-section (8) is to be the same as the procedure to be followed in the case of an application for a new permit that sub-section (8) uses the words "shall be treated as an application for the grant of a new permit." By the use of these words what sub-section (8) does is to incorporate in it the provisions of sub-sections (3) to (7). This is a very different thing from enacting a legal fiction. We find that in a recent case, namely, Civil Appeal No. 3787 of 1983—*M/s Shivchand Amolakchand v. Regional Transport Authority and another*(1)—sub-section (8) of section 57 has been interpreted in the same way as we have done. In that case too there was a modification made in an approved scheme whereby plying of stage carriages by private operators upon a portion of the notified route connecting a district headquarter and not more than 20 kms. in length was permitted. On the said modification being made, the applicants whose permits for a portion of the notified route, namely, from Shivpuri to Santawana, had become ineffective on the coming into force of the approved scheme applied to the Regional Transport Authority for the extension of the route specified in their permit so as to include the route from Shivpuri to Santawana. The Regional Transport Authority rejected the said application *inter alia* on the ground that no extension of the route could be granted without following the procedure laid down in sub-section (3) of section 47 of the said Act. In the writ petition filed by the appellants before the High Court of Madhya Pradesh, the High Court took the same view. This Court allowed the appeal and set aside the Judgment and Order of the

(1) [4984] I.S.C.R. 288.

A High Court. In that case too, this Court had to consider the effect of sub-section (8) of section 57. The Court observed :

> "The context in which sub-section (8) occurs and its juxtaposition with sub-section (3) to (7) in section 58 clearly indicate that what is sought to be made applicable to an B 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 58 and nothing more ...An application to vary the conditions of a permit as set out in sub-section (8) of section 57 is undoubtedly to be treated as an application for grant of a new permit, but that C is only for the purpose of applying the procedure set out in sub-sections (3) to (7) of the said section. It is not an application for a new permit and if it is granted, the permit for the extended route does not become a new permit in the hands of the applicant. It is the same permit which now, after the granting of the application, covers the extended D route."

Even if sub-section (8) of section 57 can be viewed as creating a legal fiction, the question which would arise would be for what purpose such legal fiction was created. As was observed by Lord James in *Ex Parte Walton, In re Levy*(1) ;

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> "When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."

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This passage was quoted with approval by the House of Lords in *Arthur Hill* v. *East and West India Dock Company*(2). This principle of statutory interpretation has been accepted by this Court. In *The Bengal Immunity Co. Ltd.* v. *The State of Bihar and Ors*(1) it was held that "a legal fiction is to be limited to the purpose for G which it was created and should not be extended beyond that legitimate field." This was reiterated in *The Commissioner of Income-*

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(1) L.R. [1981] 17 Ch.D. 741, 756 C.A.
(2) L.R. [1984] 9 A.C. 455, 456.
H (1) [1955] 2 S.C.R. 603, 646.

tax, Bombay City, Bombay v. *Amarchand N. Shroff*(1), *Maharani Mandalsa Devi* v. *M. Ramnarain P. Ltd. and others*(2) and *Commissioner of Income-tax, Gujarat* v. *Vadilal Lallubhai*(3). Assuming, therefore, that an application for variation of the conditions of a permit referred to in sub-section (8) of section 57 is to be deemed by a fiction of law to be an application for the grant of a new permit the question to which we must address ourselves is for what purpose is such an application for variation deemed to be an application for grant of a new permit. Reading sub-sections (3) to (8) of section 57 as a whole, it is clear that the only purpose is to apply to such an application for variation the procedure prescribed by sub-sections (3) to (7) of section 57 and not for the purpose of providing that when the application for variation is granted, the permit so varied would be deemed to be a new permit. If a permit so varied were to be deemed to be a new permit, the result would be anomalous. As we have seen, under sub-section (3) of section 45 every application for the grant of a new stage carriage permit or a public carrier's permit is to be accompained by a deposit by way of security of an amount not exceeding Rs. 200 per motor vehicle as the State Government may, with reference to each class of vehicle, by notification in the Official Gazette, specify. The object of providing for such a deposit is made clear by sub-section (4) of section 45. The object is that if the transport authority is satisfied that such application was made for the purpose of preventing the issue of a temporary permit under section 62, then it can forfeit the whole or part of the security deposit. This consideration does not and cannot be applied to an application for variation of the conditions of a permit referred to in sub-section (8) of section 57. Further, under sub-section (1) of section 58 a stage carriage permit or a contract carriage permit, other then a temporary permit, is to be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit. Under sub-section (2) of section 58, an application for renewal of a stage carriage permit or a public carrier's permit is to be made not less than 120 days before the date of its expiry and an application for renewal of a permit in any other case is to be made not less than 60 days before the date of its expiry. Under sub-section (3) a permit may be renewed on an application made and

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(1) [1963] Supp. 1 S.C.R. 699, 709.
(2) [1965] 3 S.C.R. 421, 424.
(3) [1973] 1 S.C.R. 1058, 1064.

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A disposed of as if it were an application for a permit. If a permit in respect of which a condition referred to in sub-section (8) of section 57 is allowed to be varied is to be deemed to be a new permit, it would automatically follow that such a permit would get extended for a further period even though no application for its renewal was made and that in granting such variation, the Regional B Transport Authority would have to specify for what period, not less than three years, the permit so varied would be effective. Such a result could not have been in the contemplation of Parliament and has not been provided for.

Even though when the condition of a permit is allowed to be C varied on an application made under sub-section (8) of section 57, the permit so varied is not a new permit, the question still remains whether in the case of an existing inter-State permit exempted under the said Scheme an increase in the number of trips or the number of vehicles allowed to be operated under such a permit would not be inconsistent with the provisions of the said Scheme. We fail D to see any inconsistency between an increase in the number of vehicles or trips allowed under such a permit and the provisions of the said Scheme. So far as the portions of the inter-State route covered by the said Scheme are concerned, the permits of the existing permit-holders have been rendered ineffective. Further, by the said Scheme as modified, the existing permit-holders E are not allowed to pick up or set down passengers on these portions of the notified routes. Whether one vehicle or more traverse these portions or whether the same vehicle traverses such portion more than once cannot any manner affect the services operated by the Appellant on such portions since no passengers are allowed to be picked up or set down or such portions. All that would happen is F that these vehicles, in the course of their inter-State operation would traverse these portions of the notified routes without in any way operating as stage carriages for such portions.

It is, therefore, clear that the Second Respondent was in error in rejecting the First Respondent's said application for variation G without following the procedure laid down in sub-sections (3) to (7) of section 57 merely on the ground that granting such application would be to grant a new permit and would be inconsistent with the provisions of the said Scheme. The learned Single Judge was, therefore, clearly right in allowing Writ Petition No. 3360 of 1964 filed by the First Respondent and in issuing a writ of *mandamus* against H the Second Respondent directing him to dispose of the First Res-

pondent's said application according to law. We are further of the opinion that the High Court was right in dismissing the said Writ Appeal No. 949 of 1974 filed by the Appellant. A

We would like to observe that it is difficult to understand how a certificate was granted by the High Court with respect to the first question contained in it. The question as framed does not bring out the actual controversy between the parties. The controversy was not whether the conditions of a permit can be varied so as to increase the number of trips or the number of vehicles allowed to be operated under that permit as mentioned by the High Court in the certificate granted by it. The real controversy was whether when the condition of a permit is varied so as to increase the number of trips or the number of vehicles allowed to be operated under that permit it would amount to the grant of a new permit, the grant of which would not be in accordance with the provisions of the said Scheme by reason of the provisions of section 68-FF. B C

For the reasons set out above, this Appeal fails and is dismissed. The Appellant will pay to Respondent Nos. 1 to 3 the costs of this Appeal. Respondent No. 4 will bear and pay his own costs of this Appeal. D

S.R. *Appeal dismissed.*