

**Rajmal Vs. State Transport Appellate Tribunal and ors.**

**LegalCrystal Citation :** [legalcrystal.com/498257](http://legalcrystal.com/498257)

**Court :** Madhya Pradesh

**Decided On :** Dec-04-1981

**Reported in :** AIR1982MP69

**Judge :** G.G. Sohani, ;R.K. Vijaywargiya and ;K.N. Shukla, JJ.

**Acts :** [Motor Vehicles Act, 1939](#) - Sections 47(3), 57 and 57(8)

**Appeal No. :** M.P. No. 159 of 1980

**Appellant :** Rajmal

**Respondent :** State Transport Appellate Tribunal and ors.

**Advocate for Def. :** V.S. Dabir, Adv.

**Advocate for Pet/Ap. :** S.K. Kemkar and ;S.K. Jain, Adv.

**Judgement :**

Vijaywargiya, J.

1. This Full Bench has been constituted to consider the following question referred to it by the Division Bench:

'Whether the provisions of Section 47 (3) of the [Motor Vehicles Act, 1939](#), are attracted while dealing with an application for grant of extension of a permit, which is required to be treated as an application for the grant of a new permit, by virtue of the provisions of Section 57(8) of the Act?'

2. The material facts which have given rise to the aforesaid question briefly stated are as follows : The petitioner who is a passenger transport operator holds a stage carriage permit which is valid up to 4th June, 1982, for the route Jobat-Meghnagar, covering a distance of 72 kms. On 6th Mar., 1978 the petitioner applied to the Regional Transport Authority (hereinafter referred to as the RTA) Indore for extension of his permit up to Petalawad beyond Meghnagar -- the proposed extension covering a distance of 52 k. ms. The application submitted by the petitioner was published as required by Section 57 (3) of the [Motor Vehicles Act, 1939](#) (hereinafter referred to as the Act), and after hearing the representations, the R. T. A. by its order dated 9-1-1980 granted the ex-tension applied for by the petitioner. The respondents Nos. 3 and 4 filed revisions against the order of the R. T. A. before the State Transport Appellate Tribunal (hereinafter referred to as the Tribunal). These revisions along with a number of other similar revisions involving the question of legality of the orders passed by the R. T. A. granting extension of permits in such

cases came up for consideration before the Tribunal. The Tribunal allowed the revisions and remanded the case to the R. T. A. to first examine the question as to whether any order under Section 47 (3) of the Act was passed by the R. T. A. limiting the number of stage carriages and in case such a limit was fixed, then to further examine the question as to whether the extension prayed for could be granted by the R. T. A. in view of the limit so fixed. The petitioner has challenged the order of the Tribunal in this petition under Articles 226 and 227 of the Constitution.

3. This petition came up for hearing before a Division Bench of this Court. Before the Division Bench the petitioner relied upon the Division Bench decisions of this Court in *M. P. S. R. T. Corpn., v. S. T. A. Authority*, (AIR 1974 Madh Pra 136), *Hazarilal v. S. T. A. Authority*, (AIR 1970 Madh Pra 220) and the unreported judgment *Deewan-chand v. S. T. Authority*, Gwalior, (M. P. No. 416 of 1968 -- Jabalpur -- decided on 27-9-1968), in support of the contention that under the provisions of Section 57 (8) of the Act, though an application for extension of a permit was required to be treated as an application for the grant of a new permit, yet the provisions of Section 47 (3) of the Act were not attracted while considering the question of grant of extension of a permit under the provisions of Section 57(8) of the Act. Learned counsel contended that the fiction created by Sub-section (8) of Section 57 of the Act in treating an application to vary the conditions of a permit as an application for grant of a new permit, was for purposes of the procedure provided in Section 57 of the Act and the fiction could not be extended for attracting the provisions of Section 47 (3) of the Act.

4. On the other hand the learned counsel for the respondent No. 3 placed reliance upon another Division Bench decision of this Court in *Daluram v. S. T. A. T.*, Gwalior, (AIR 1977 Madh Pra 87) for the contention that the fiction introduced by the provisions of Section 57(8) of the Act that the application for extension of a permit would be treated as an application for the grant of a new permit, necessarily carried with it the applicability of the provisions of Section 47 (3) of the Act.

5. As there is apparent conflict in the aforesaid Division Bench decisions of this Court the Division Bench which heard this petition was of the opinion that the decision of this Court in *Deewanchand's* case requires reconsideration, the Division Bench recommended constitution of a Pull Bench for consideration of the question referred to above, that is how this Full Bench is constituted by the Chief Justice for consideration of the aforesaid question.

6. We have heard the learned counsel for the parties. Shri G. M. Chafekar learned counsel for the petitioner and Shri V. S. Dabi v learned counsel for the respondent No. 3 reiterated the contentions respectively raised by them before the Division Bench and relied upon the decisions referred to above. Shri G. L. Athavale learned counsel for the intervener supported the petitioner.

7. At this stage it would be useful to briefly refer to the relevant provisions of the Act. Section 45 of the Act provides that every application for a permit shall be made to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles. If the vehicle is proposed to be used in two or more regions lying within the same State, the application has to be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies. Section 46 of the Act provides that an application for a permit in respect of a service of stage carriages or to use a particular motor vehicle as a stage carriage shall, as far as may be, contain the particulars set out in Clauses (a) to (f). Section 47 of the Act provides

that the Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the matters specified in Clauses (a) to (f) of Sub-section (1) and shall take into consideration any representation made by persons providing passenger transport facilities along or near the proposed route or area.

8. Section 47 (3) of the Act reads as follows:

'47 (3). A Regional Transport Authority may, having regard to the matters mentioned in Sub-section (1), limit the number of stage carriages generally or of any specified type for which stage carriage permits may be granted in the region or on any specified area or on any specified route within the region.'

Sub-section (1) of Section 48 of the Act provides that subject to the provision 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 deems fit or refuse to grant such a permit. By Sub-section (2) it is provided that every stage carriage permit shall be expressed to be valid only for a specified route or routes or for a specified area. By Sub-section (3) it is provided that the Regional Transport Authority may grant a permit for a stage carriage of a specified description or for one or more particular stage carriages and may, subject to any rules that may be made under the Act, attach to the permit any one or more of the conditions Nos. (i) to (xxiii) set out in that sub-section, and by condition (xxi) the Regional Transport Authority may, after giving notice of not less than one month (a) vary the conditions of the permit; and (b) attach to the permit further conditions,

9. Section 57 of the Act provides for the procedure in applying for and granting permits. The relevant provisions of Section 57 are reproduced below:

'57.(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 permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representation in connection therewith may be submitted and the date, not being less than thirty days from such application, on which, and the time and place at which the application and any representations received shall be considered.' The proviso to this sub-section provides that, if the grant of any permit in accordance with the application or with modifications would have the effect of increasing the number of vehicles operating in the region, or in 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 procedure laid down in this sub-section. Sub-section (8) of Section 57 of the Act provides : '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

vehicles covered by the permit, shall be treated as an application for the grant of a new permit.' The province to Sub-section (8) provides that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route in any area to increase the frequency of the service so provided without any increase in the number of vehicles.

10 Now it is well settled that the R. T. A. has first to fix the limit of the number of stage carriages generally or on any specified route within the region under Section 47 (3) of the Act and after having done so consider the application or the representations in connection therewith in accordance with the procedure laid down under Section 57 of the Act.

11. The Supreme Court held in *Mohd. Ibrahim v. State Transport Appellate Tribunal, Madras*, (AIR 1970 SC 1542), following the earlier decisions in *Abdul Mateen v. Ram Kailash Pandey* (AIR 1963 SC 64), *M/s. Jaya Ram Motor Service*, Section A. No. 95 of 1965, D/- 27-10-1967=(1967) 2 SCWR 857), *Balaram v. State Transport Appellate Authority*, M. P. Section A, No. 727 of 1965, D/- 22-3-1968 (SC) and *R. Obliswami Naidu*, (1969) 3 SCR 730 : (AIR 1969 SC 1130) as follows (a) P- 1548):

'The next question which falls for determination is the point of time when a Regional Transport Authority will under Section 47 (3) of the Act fix the limit of number of stage carriage permits. This Court in *Abdul Mateen's case* (1963) 3 SCR 523 : (AIR 1963 SC 64) said that the general order by the Regional Transport Authority under Section 47 (3) of the Act in regard to the limit of number of stage carriage permits can be modified only by the Regional Transport Authority when exercising the jurisdiction under Section 47 (3) of the Act. The Regional Transport Authority while acting under Section 48 of the Act in regard to the grant of permits has no jurisdiction and authority to modify any order passed by the Regional Transport Authority under Section 47 (3) of the Act. In other words, the limit fixed by the Regional Transport Authority under Section 47 (3) of the Act cannot be altered by the Regional Transport Authority at the time of grant of permits. It is, therefore, established that the determination of limit of number of permits is to be made before the grant of permits. That is why Section 48 of the Act is prefaced with the words 'subject to the provisions of Section 47 of the Act' meaning thereby that the jurisdiction of the Regional Transport Authority to grant permits is subject to the determination of the limit of number of permits under Section 47 (3) of the Act. This Court stated the legal position in *M/s. Jaya Ram Motor Service's case*, C. A. No. 95 of 1965, D/- 27-10-1967: ((1967) 2 SCWR 857) and said 'it is therefore clear that the authority has first to fix the limit and after having done so consider the application or the representations in connection therewith in accordance with the procedure laid down in Section 57 of the Act.' Again in the case of *R. Obliswami Naidu*, (1969) 3 SCR 730 : (AIR 1969 SC 1130) this Court considered the submission in that case as to whether the Regional Transport Authority could decide the number of permits while considering applications for permits. This Court did not accept the submission because such a view could allow an operator who happened to apply first to be in a commanding position with the result that the Regional Transport Authority would have no opportunity to choose between competing operators and public interest might suffer. In the same case it is again said that the determination of the number of stage carriages for which stage carriage permits may be granted for the route is to be done first and thereafter applications for permits are to be entertained.'

12. Thus, in regard to the grant of new permits the position is well settled that the R.

T. A. has fast to fix the limit under Section 47(3) of the Act for which permit can be granted and thereafter applications for stage carriage permits can be considered in accordance with the procedure prescribed under Section 57 of the Act. The object of fixing the limit first and then to consider the applications is held to be avoidance of manipulations by interested parties. What is then the justification for holding that, when Section 57 (8) of the Act provides that an application to vary the condition of any permit by the inclusion of a new route or routes or a new area shall be treated as an application for the grant of a new permit, only the procedure laid down in Section 57 of the Act should apply to it and that Section 47 (3) of the Act will not be attracted to such an application(?) The decisions relied upon by the petitioner proceed on the basis that a fiction is created by Section 57 (8) of the Act that an application to vary the condition of any permit shall be treated as an application for the grant of a new permit and it is not made an application for the grant of a new permit. With respect we are unable to follow the reasoning adopted in those decisions. It is the mandate of the legislature that although an applicant may style his application as one to vary the condition of any permit but if the application is for varying the conditions of any permit by the inclusion of new route or new area, it shall be treated as an application for the grant of a new permit. If such an application has to be treated as an application for the grant of a new permit there is no escape from holding that all the provisions of the Act applicable to an application for the grant of a new permit are attracted to such an application. In our opinion there is no scope for argument that a fiction is created by Section 57 (8) of the Act. What is provided therein is that an application to vary the conditions of a permit of a particular type i. e. by inclusion of a new route or routes or a new area shall be treated as an application for the grant of a new permit. Applications to vary the other conditions of a permit are not to be treated as application for the grant of a new permit.

13. Section 57 (8) of the Act further provides that an application to vary the conditions of a permit by increasing the number of trips above the specified maximum or by altering the route covered by it shall also be treated as an application for the grant of a new permit. The proviso to that section makes it clear that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service in any route or in any area to increase the frequency of the service so provided without any increase in the number of vehicles. So, in what case an application to increase the frequency of service on a route shall not be treated as an application for the grant of a new permit is also provided by the proviso to Section 57 (8) of the Act. In our opinion therefore, there is no scope for the argument that a fiction is created by Section 57 (8) of the Act by which an application to vary the conditions of a permit by the inclusion of a new route etc. has to be treated as an application for the grant of a new permit and therefore it has to be processed in accordance with the procedure laid down by Section 57 of the Act in regard to the representation and hearing etc. and that as it is not made an application for the grant of a new permit the other provisions of the Act applicable to the application for the grant of a new permit are not attracted to it. We are further of the opinion that even if a fiction is created by Section 57 of the Act it has to be carried to its logical conclusion. If such an application has to be treated as an application for the grant of a new permit all the provisions of the Act which apply to an application for the grant of a new permit, are also attracted to it.

14. Now let us consider the consequences of the position that only the procedure prescribed under Section 57 (2) (3) (4) (5) and (6) of the Act applies to an application under Section 57 (8) of the Act which has to be treated as an application for the grant

of a new permit. It cannot be disputed that Section 57 (3) of the Act provides procedure for processing the applications for the grant of a permit. The proviso to Sub-section 57 (3) of the Act provides that if the grant of any permit in accordance with the application or with modifications would have the effect of increasing the number of vehicles operating in the region, or in 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 R. T. A. may summarily refuse the application without following procedure laid down in this sub-section. So, while entertaining an application to vary the conditions of any permit by the inclusion of a new route etc. the R. T. A. has to take into consideration the limit fixed under Section 47 (3) of the Act, and if the application for variation would have the effect of increasing the number of vehicles operating in the region or in any area or on any route within the region beyond the limit fixed the R. T. A. is enjoined to summarily refuse the applications

15. In this view of the matter also the provisions of Section 47 (3) of the Act are attracted to an application made under Section 57 (8) of the Act to vary the conditions of any permit by the inclusion of a new route or a new area etc. This position is made clear by the following observations of the Supreme Court in Delhi Transport Undertaking v. Zamindar Motor Transport Co., (AIR 1970 SC 466) wherein in para 11 of the judgment it is held as follows :

'By Section 48 (3) (xxi) it is open to the Regional Transport Authority, after giving notice of not less than one month, (a) to vary the conditions of the permit and (b) to attach to the permit further conditions. But an application was made by the D. T. U. for variation of the conditions of the permit including a new route or routes or a new area had to be treated as an application for the grant of a new permit under Section 57 (8) of roe Act and the State Transport Authority could not ignore the provisions of Section 57, Sub-sections (3), (4) and (5).'

16. We also find support for the view taken by us from a Division Bench decision of the Patna High Court in Baikunth Singh V. North Bihar Regional Transport Authority, (AIR 1979 Pat 164). After quoting the provisions of Section 57 (8) of the Act in para 5 of the judgment it is held as follows:

'Reading the above provisions it is clear that any change in the terms and conditions of the permit, including the extension of a new route, shall be treated as an application for the grant of a new permit, the only exception being that it will not be considered as a new permit if the frequency of the permit holder who provides the only service on any route or in any area is increased. In the instant case, according to the chart which has been given above, the original route was different and the extension sought for completely changed the nature of the original permit. The word 'route' has been defined in Section 2 (28-A). 'Route' means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another. Therefore, in my opinion, if the original route is changed by bringing in a new route by extension, it shall be treated as an application for grant of a new permit and all the formalities and procedures which are followed for the grant of a new permit have also to be followed in such cases. The limit has to be fixed under Section 47 (3), and then it has to be published in the gazette' for inviting objections under Section 57(3).'

17. In view of the above we find ourselves unable to agree with the view taken by the Division Bench of this Court in Deewanchand v. Section T. Authority Gwalior, (M. P. No. 416 of 1968, Jabalpur, decided on 27-9-1968) that a ceiling order restricting the grant of new permits did not affect the grant of extension of an existing permit and similar view taken by another Division Bench of this Court in New M. P. Transport Co. v. The Regional Transport Authority, Rewa, (M. P. No. 319 of 1964, Jabalpur decided on 9-10-1964).

18. It is difficult to appreciate that an application for the grant of a new permit would be subject to the limit fixed by Section 47 (3) of the Act and Ibe R. T. A. would have no jurisdiction to grant such an application if it violates the limits fixed; but the R. T. A. would have jurisdiction to entertain and allow an application by a permit holder to vary the conditions of his permit by the inclusion of a new route or routes or a new area without having regard to the limit fixed under Section 47 (3) of the Act. If this is allowed the purpose for enacting Section 57 (8) of the Act would be frustrated. The legislature in clear terms has provided that an application to vary the conditions of any permit by the inclusion of a new route or routes or new area etc. shall be treated as an application for the grant of a new permit and therefore all the provisions including Section 47 (3) of the Act thereof which are applicable to applications for the grant of a new permit are attracted to applications under Section 57 (8) of the Act which are treated as applications for the grant of a new permit.

19. For the aforesaid reasons our answer to the question referred to us is that the provisions of Section 47 (3) of the Act are attracted while dealing with an application for grant of extension of a permit, which is required to be treated as an application for the grant of a new permit, by virtue of the provisions of Section 57 (8) of the Act.

20. The petition may now be fixed for hearing before the Division Bench in accordance with the opinion given by us.

**LegalCrystal - Indian Law Search Engine - [www.legalcrystal.com](http://www.legalcrystal.com)**