THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT :—*K. K. Mathew, V. R. Krishna Iyer and A. C. Gupta, JJ.*

Sri Navneetheswaraswami Devasthanam .. *Appellant**

v.

State of Madras .. *Respondent.*

Constitution of India (1950), *Article* 31-A (1), *proviso* 2—*Applicability—Notification by State of Madras in G.O. Ms. No.* 2561, *Revenue, dated* 1*st September,* 1965 *notifying that village of Sellur came under Madras Act XXVI of* 1963—*Validity—If invalid on the ground that proviso* 2 *to Article* 31-*A* (1) *was not complied with.*

The notification made by the State of Madras in G.O.Ms. No. 2561, Revenue, dated 1st September, 1965 published in the Gazette, dated 8th September, 1965 notifying that the village of Sellur be'onging to the Navneetheswaraswami Devasthanam, a religious trust in Tamil Nadu came under the provisions of the Madras Inam Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1963) cannot be struck on the ground that no provision for compensation in accordance with the second proviso to Article 31-A (1) of the Constitution was made.

[*Paras.* 1, 8.]

The provisions of the Madras Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961) is not applicable to lands held by religious trusts of a public nature. It would follow that the provision of that Act fixing the ceiling on ownership of land was not applicable to Navneetheswaraswami Devasthanam. It was only if the ceiling provision was applicable that the second proviso to Article 31-A (1) of the Constitution would be attracted.

[*Para.* 6.]

The Judgment of the Court was delivered by

Mathew, J.—The appellant, Sri Navneetheswaraswami Devasthanam in Tanjore District, Tamil Nadu is a religious trust of a public nature. It filed a writ petition praying for issue of a writ in the nature of *certiorari* quashing the notification made by the State of Madras in G.O. Ms. No. 2561, Revenue, dated 1st September, 1965 published in the Gazette, dated 8th September, 1965 notifying that the village of Sellur belonging to the appellant came under the provisions of the Madras Inam Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1963). The writ petition was originally heard along with a batch of other writ petitions raising similar questions. But during the course of the argument of the petitions, as a special contention was sought to be raised by the appellant, the writ petition was separated from the batch and disposed of

* C.A. No. 1477 of 1969. *7th February,* 1975.

separately. The special contention raised by the appellant in a supplementary affidavit was that the appellant was in personal cultivation of the lands in question and as Act XXVI of 1963 made no provision for compensation in accordance with the second proviso to Article 31-A (1), the notification was bad for that reason alone. The High Court dismissed the writ petition and this appeal, by certificate, is against that order.

2. There is no dispute that the appellant was the sole proprietor of the inam village in question and the inam lands were under the direct possession of the appellant. On 12th April, 1962 the President gave assent to the Madras Public Trusts (Regulation of Administration of Agricultural Lands) Act (Madras Act LVII of 1961) and that was published in the Gazette on 21st April, 1962.

3. By two notifications, dated 21st December, 1963 and 29th March, 1965 the State Government, in the exercise of its power under section 52 of the Madras Act LVII of 1961, exempted the entire extent of the land from the operation of section 6 of that Act which provides that where on the date of the commencement of that Act, any public trust personally cultivating land in excess of twenty standard acres and continuing to so cultivate that land on such date as may be specified in the notification issued by the Government in that behalf, the trustee of the public trust shall, within such period as may be prescribed, from the date specified in such notification, lease out the lands in such excess to a co-operative farming society or the other persons specified therein. The effect of the two notifications was that the appellant was not obliged to lease out any part of the lands covered by the notifications and could personally cultivate the same.

4. The contention of the appellant was that since the lands were exempted from the purview of section 6 of the Madras Act LVII of 1961 by the notifications made under section 52, the appellant was in personal cultivation and, under the second proviso to Article 31-A (1), unless provision is made for payment of compensation at a rate which shall not be less than the market value of the land, the law relating to the acquisition, namely, the provisions of Act XXVI of 1963 cannot be valid.

The second proviso to Article 31-A (1) states as follows :—

> "Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building, or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

5. Therefore, the question is whether there was any law in force which prescribed the ceiling limit applicable to the appellant. Section 2 of the Madras Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961) provides :

> "Subject to the provisions of section 6, nothing contained in this Act shall apply to lands held by religious trusts of a public nature."

6. It would follow that the provision of that Act fixing the ceiling on ownership of land was not applicable to the appellant. It was only if the ceiling provision of that Act was applicable to the appellant that the second proviso to Article 31-A

(1) would be attracted. So, even if the appellant was in personal cultivation of the land, the second proviso to Article 31-A (1) can have no application.

7. Counsel for the appellant submitted that since the law relating to ceiling did not fix any limit to the ownership of land by the appellant, the excepting of the land owned by it itself provided the ceiling on its ownership and therefore the provisions of second proviso to Article 31-A (1) will apply. We are unable to agree. The proviso is clear that unless the law fixing the ceiling limit on the ownership of land is applicable to the appellant, the appellant will not be entitled to the benefit of the proviso.

8. We think the High Court was right in its conclusion and we dismiss the appeal, no costs.

V.K. *Appeal dismissed.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*H. R. Khanna and A. C. Gupta, JJ.*

M. P. Peria Karuppan Chettiar .. *Appellant**

v.

Commissioner of Income-tax, Wealth-tax, Gift-tax, Madras .. *Respondent.*

and

M.R.M. Ramaswami Chettiar .. *Appellant*

v.

Commissioner of Income-tax, Wealth-tax, Gift-tax, Madras .. *Respondent.*

Income-tax Act (XI of 1922), section 66 (i)—Wealth-tax Act (XXVII of 1957), section 27 (1)—Gift-tax Act (XVIII of 1958), section 26 (1)—Reference—Status —"Individual" or "Hindu undivided family"—Gift of self-acquired properties to sons, their "heirs, executors, administrators and assignees"—Whether sons should be assessed in status of "individual" or "Hindu undivided family."

The appellant's father had business interests and other properties both in Ceylon and India. By two deeds, both executed on 26th April, 1932 the appellant's father conveyed by way of gift all his business interests and properties in Ceylon to the appellant and his two brothers "their heirs, executors, administrators and assignees". The appellant's fourth brother who was a minor at the time was given cash and properties in India equal to one-fourth of the value of his father's entire assets. For some time following he execution of he deeds of gift the appellant and his two brothers carried on the business in Ceylon in partnership. The appellant's father died in May, 1982. On 20th December, 1950,

* C.A. Nos. 1090-1092 of 1970 and C.A. Nos. 1093 and 1094 of 1970. *19th November*, 1974

a deed was executed by the four brothers partitioning the residue of their father's properties. Till the assessment year 1957-58, the appellant filed returns in the status of an individual and was assessed as such. For the first time in the assessment year 1958-59 he claimed to be assessed in the status of a Hindu undivided family consisting of himself and his two sons. The Income-tax Officer rejected this claim and the assessment for the aforesaid assessment year became final. Thereafter the appellant transferred to each of his two sons a sum of Rs. 30,000 and Rs. 50,000 on 14th May, 1957 and 12th January, 1958 respectively. In the income-tax assessment for the assessment year 1959-60, the previous year ending on 13th April, 1959, the appellant again claimed the status of a Hindu undivided family. The claim was again rejected by the Income-tax Officer. In the wealth-tax proceeding for the assessment year 1957-58 valuation date being 12th April, 1957, the appellant claimed the status of a Hindu undivided family. The Wealth-tax Officer rejected the claim. In the gift-tax proceeding for the assessment year 1958-59 the previous year ending on 13th April, 1958, the Gift-tax Officer brought under assessment the sums of Rs. 30,000 and 50,000 amounting to Rs. 80,000 which the appellant had transferred to each of his two sons, rejecting the appellant's claims that the aforesaid sums were not transferred to his sons by way of gift but by way of partial partition among the members of the Hindu undivided family consisting of himself and his two sons. The Appellate Assistant Commissioner held that the appellant should have been assessed in the status of a Hindu undivided family and on this view allowed the appellant's claim in the income-tax, wealth-tax and gift-tax proceedings. The Tribunal upheld the Appellate Assistant Commissioner's decision. The High Court answered the reference against the appellant. On appeal to the Supreme Court,

Held, that the status of the appellant was that of an individual.

It is clear from the deeds that the donor's desire was to transfer the properties to the three sons whom he named and described as donees. It was not stated that the donees would take the property as heads of their family units. The sum of the words "heirs, executors, administrators and assignees" in the context in which they appear indicate on the contrary that the gift was to the sons absolutely, the property gifted being both heritable and alienable. There is nothing in the two documents or the surrounding circumstances to suggest that the interest transferred to the sons was limited in any way.

[*Para.* 12.]

Case referred to:—

C. N. Arunachalam Mudaliar v. *C. A Muruganatha Mudaliar and another*, 1954 S.C.R. 243 : 1953 S.C.J. 707 : (1953) 2 M.L.J. 796: A.I.R. 1953 S.C. 495.

Appeals from the judgment and order, dated 19th July, 1968, of the Madras High Court in Tax Cases Nos. 325 and 326 of 1964.

S. T. Desai, Senior Advocate (*B. Parthasarathy*, Advocate, with him), for Appellant.

T. A. Ramachandran and *S. P. Nayar*, Advocates, for Respondent.

The judgment of the Court was delivered by

Gupta, J.—The point for consideration is the same in these two sets of appeals brought on certificate granted by the High Court of Madras. M. P. Peria Karuppan Chettiar, appellant in Civil Appeals Nos. 1090-1092 of 1970, is a brother of M. R. M. Ramaswami Chettiar, appellant in

C.As. Nos. 1093 and 1094 of 1970. The appeals preferred by M.P. Peria Karuppan Chettiar arise out of a reference under section 66 (1) of the Indian Income-tax Act, 1922, section 27 (1) of the Wealth-tax Act, 1957, and section 26 (1) of the Gift-tax Act, 1958 made at the instance of the Commissioner of Income-tax, Wealth-tax and Gift-tax, Madras, for determination of the following questions :

"1. Whether on the facts and in the circumstances of the case, the status of the assessee was correctly determined as Hindu undivided family for the income-tax, wealth-tax and gift-tax assessments of 1959-60, 1957-58 and 1958-59 respectively ?

2. Whether on the facts and in the circumstances of the case, the sum of Rs. 1,60,000 transferred to the account of Muthukaruppan and Palaniappan (sons of Peria Karuppan Chettiar) in the previous year ending on 13th April, 1958, was liable to assessment under the Gift-tax Act ?"

2. The reference under the Income-tax Act relates to the assessment year 1959-60, under the Wealth-tax Act to the assessment year 1957-58, the valuation date being 12th April, 1957 and under the Gift-tax Act to the assessment year 1958-59.

3. The appeal by M.R.M. Ramaswami Chettiar arises out of a reference under section 27 (1) of the Wealth-tax Act at the instance of the Commissioner of Wealth-tax, Madras, for a decision on the following question :

"Whether on the facts and circumstances of the case the assessee's status is that of a Hindu undivided family for the assessment years 1959-60 and 1960-61 ?"

The status of the assessee in either groud of appeals would depend on a correct construction of two documents executed in 1932 by their father Muthukaruppan Chettiar. The relevant facts are briefly as follows :

4. Muthukaruppan Chettiar had business interests and other properties both in Ceylon and India. He had four sons, Narayanan, Ramaswami (Appellant in C.As. Nos. 1093 and 1094 of 1970), Periakaruppan (appellant in C.A. Nos. 1090-1092 of 1970) and Palaniappan. By two deeds, both executed on 26th April, 1932, Muthukaruppan Chettiar conveyed by way of gift all his business interests and properties in Ceylon to his first three sons.

It is stated that the fourth son who was a minor at the time was given cash and properties in India equal to one-fourth of the value of his father's entire assets. For some time following the execution of the deeds of gift, Narayanan, Ramaswami and Periakaruppan carried on the business in Ceylon in partnership. Muthukaruppan Chettiar died in May, 1932. On 20th December, 1950, a deed was executed by the four brothers partitioning the residue of their father's properties. Till the assessment year 1957-58, Peria Karuppan filed returns in the status of an individual and was assessed as such. For the first time in the assessment year 1958-59 he claimed to be assessed in the status of a Hindu undivided family consisting of himself and his two sons Muthukaruppan and Palaniappan. The Income-tax Officer rejected this claim and the assessment for the aforesaid assessment year became final. Thereafter, Peria Karuppan transferred to each of his two sons a sum of Rs. 30,000 and Rs. 50,000 on 14th May, 1957 and 12th January, 1958, respectively. In the income-tax assessment for the assessment year 1959-60 the previous year ending on 13th April, 1959, Peria Karuppan again claimed the status of a Hindu undivided

family. The claim was again rejected by the Income-tax Officer.

5. Also in the wealth-tax proceeding for the assessment year 1957-58, valuation date being 12th April, 1957, Peria Karuppan claimed the status of a Hindu undivided family. The Wealth-tax Officer rejected the claim.

6. In the gift-tax proceeding for the assessment year 1958-59 the previous year ending on 13th April, 1958, the Gift-tax Officer brought under assessment the sums of Rs. 30,000 and 50,000 amounting to Rs. 80,000 which Peria Karuppan had transferred to each of his two sons. According to the assessee the aforesaid sums were not transferred to his sons by way of gift but by way of partial partition among the members of the Hindu undivided family consisting of himself and his two sons. The Gift-tax Officer did not accept this claim.

7. The Appellate Assistant Commissioner on appeals preferred by the assessee held that he should have been assessed in the statuts of a Hindu undivided family and on this view allowed the assessee's claim in the income-tax, wealth-tax and gift-tax proceedings. The Tribunal upheld the Appellate Assistant Commissioner's decision and dismissed the appeals preferred by the Department from his order.

8. Ramaswami Chettiar also was being assessed in the status of an individual for many years even after the deeds of gift were executed. In the assessment year 1959-60 for the first time he claimed before the Income-tax Officer that he should be assessed in the status of a Hindu undivided family. The Income-tax Officer rejected the claim. In the wealth-tax assessment for 1959-60 a similar claim put forward by him was also rejected by the Wealth-tax Officer. On appeal the Appellate Assistant Commissioner held that the property belonged to the Hindu undivided family consisting of the assessee and his son and on this view allowed the assessee's claim. On appeal preferred by the Department, the Tribunal upheld the order of the Appellate Assistant Commissioner.

9. On these facts the questions of law set out above were referrred to the High Court for determination. The High Court was unable to agree with the reasoning and conclusion of the Tribunal that the assessee's claim to be assessed as Hindu undivided families was justified. Accordingly, in Periakauppan's case the High Court answered the first question in the negative and against the assessee, and the second question in the affirmative and against the assessee. On the same reasoning the question referred in Ramaswami's case was answered in the negative and against the assessee.

10. The status of Hindu undivided family was claimed upto the High Court mainly on the assumption that the Ceylon assets conveyed to his three sons by Muthukaruppan Chettiar in 1932 were ancestral property. It has been found, however, that these assets were Muthukaruppan's self-acquired property and not ancestral. In this Court Mr. S. T. Desai appearing for the appellant in both sets of appeals contended that on a proper construction of the two deeds executed by Muthukaruppan in 1932 it would appear that the gift was really not to the sons absolutely but to their respective family branches of which they were the heads. There is no dispute that if the sons only were the donees, what they received by the gift would not be ancestral property in their hands in view of the fact that the Ceylon assets were the self-acquired property of the donor. If, however, the donor wanted to confer, as the High Court puts it, a " cumulative benefit " on the respective family units of the three sons, the property gifted

would be the property of the Hindu undivided family in each case. The question, therefore, is one of construction of the two deeds and, as held by this Court in *C. N. Arunachalam Mudaliar* v. *C. A. Muruganatha Mudaliar and another*[1], in such a case " the Court would have to collect the intention of the donor from the language of the document taken along with the surrounding circumstances in accordance with the well-known canons of construction."

11. The relevant portions of the two deeds are in identical language ; in one of them the donor's business interests in Ceylon and in the other his share in " several estates, plantations and premises " were transferred. The documents state that the donor was desirous of "donating" the properties specified in the documents to his three sons Narayanan, Ramaswami and Periakaruppan, who were referred to in the documents as donees, in consideration of the natural love and affection which the donor had for them and for " diverse other causes and considerations ". Prompted by the desire as stated above, the donor transferred the properties " unto the said donees, their respective heirs, executors, administrators, and assignees". According to Mr. S. T. Desai the words " diverse other causes and considerations " were significant and indicated that the gift was not to the sons absolutely. We are afraid we do not quite see the point of this argument. It was not claimed that these words made any difference to the character of the deeds which were accepted by the Income-tax authorities, the Tribunal and the High Court as deeds of gift. These " diverse other causes and considerations " together with the donor's natural love and affection for his sons prompted him to execute the documents. Whatever the reasons were behind the gift they are not relevant on the question as to who were the objects of the bounty.

12. Mr. Desai further pointed out that the gift was stated to be in favour of the donees and " their respective heirs, executors, administrators and assignees" which, according to him, indicated that really the object of the bounty were the sons as heads of their respective families. We are unable to agree. It is clear from the deeds that the donor's desire was to transfer the properties to the three sons whom he named and described as donees. It was not stated that the donees would take the property as heads of their family units. The use of the words " heirs, executors, administrators and assignees " in the context in which they appear in our opinion, indicate on the contrary that the gift was to the sons absolutely, the property gifted being both heritable and alienable. There is nothing in the two documents to suggest that the interest transferred to the sons was limited in any way. The surrounding circumstances also do not support Mr. Desai's contention. As stated already, for many years following the gift the appellant in either group of appeals used to file returns in the status of an individual and was being assessed as such. In all these years no complaint was made that they should have been assessed in the status of a Hindu undivided family. This fact was sought to be explained by appellant Peria Karuppan, as would appear from the supplementary statement of case submitted by the Tribunal pursuant to the order of this Court, dated 12th April, 1973, by stating that " since the income was not below the limit at which different rates of tax would operate, it was immaterial for income-tax purposes whether the assessee filed the return in his individual capacity or in his capacity as karta of the Hindu undivided family" until the assessment year 1957-58

1. 1953 S.C.J. 707: (1953) 2 M.L.J. 796: 1954 S.C.R. 243: A.I.R. 1953 S.C. 495.

when he became conscious of the position having learnt that under the Wealth-tax Act the exemption limit was Rupees four lakhs for a Hindu undivided family as against Rupees two lakhs in the case of an individual. We do not consider this statement convincing or sufficient to explain why the assessee continued filing returns for so many years in the status of an individual.

13 Mr. Desai further sought to argue that the appellant in either set of appeals threw the property received by gift in the common stock. But there is no evidence on record to support this case of blending which seems to have been argued for the first time in this Court.

14. For the reasons stated above, the appeals fail and are dismissed with costs. One hearing fee in each group of appeals.

T K.K. ——— *Appeals dismissed.*

THE SUPREME COURT OF INDIA.

(Criminal Appellate Jurisdiction.)

PRESENT :—*Y. V. Chandrachud and R. S. Sarkaria, JJ.*

Subramanian and another

.. *Appellants**

v.

State of Tamil Nadu .. *Respondent.*

(A) *Penal Code (XLV of 1860), section 302—Conviction—Sentence of death—Appeal by Special Leave—Testimony of approver—Corroboration by independent evidence—Conviction confirmed—Sentence commuted to life imprisonment.*

(B) *Criminal Procedure Code (V of 1898), section 337.*

(C) *Indian Evidence Act (1 of 1872), section 133.*

Where the convictions of the accused were based on the evidence of the approver which had been adequately corroborated from independent sources, the concurrent findings of the Courts below that the evidence of the approver was reliable and was sufficiently corroborated could not be disturbed and the convictions were right. [*Para.* 46.]

The Judgment of the Court was delivered by

Sarkaria, J.—The appellants were tried by the Sessions Judge, Tirunelveli Division for the murder of Muthiah Pillai, an Ex-Member of Parliament and retired Lecturer of a College. Appellant No. 1 (for short, A-1) was convicted under section 302 read with section 34, Penal Code, while Appellant No. 2 (for short, A-2) was convicted under section 302, Penal Code. Each of them was sentenced to death. A-1 and A-2 were further convicted for offences under sections 457, 392, Penal Code and sentenced to rigorous imprisonment. The High Court of Madras dismissed their appeals, upheld their convictions and confirmed their sentences. The appellants have now come in appeal to this Court after obtaining Special Leave under Article 136 of the Constitution.

2. The deceased was a widower. His only child, a daughter, Balmani, was married to Packiam, P.W. 3, a resident of village Therku Medu. The deceased lived alone in his house in South Car Street, Tirunelveli Town. He owned lands in the revenue estates of Kodikulam and Thiruthu, situate at a distance of a few miles from Tirunelveli town.

3. A couple of days before his murder, the deceased visited village Kodikulam and directed Arunachala Thevar, P.W. 4, a cultivator of his lands, to plough his lands in Thiruthu village on the following day. The deceased then departed from village Kodikulam for his home town at about 5 P.M. Accordingly, on the following day, P.W. 4 and his com-

* Crl.A.No. 58 of 1973. 12*th November*, 1974.

panion ploughed the lands of the deceased in village Thiruthu. The deceased was expected to come to Thiruthu to supervise the ploughing operations and to pay the wages of the workmen. He however, did not turn up. After doing the day's work, therefore, P.W. 4 and his companion came to Tirunelveli and reached the house of the deceased at about 7 P.M. They found the entrance door of the house locked. After waiting in vain outside the house for the deceased, they went back to their village at 8 P.M. P.W. 5, a village Munsiff, also, on that day (16th April, 1971) in the evening, came to the house for collecting kist in respect of the deceased's lands in Thiruthu village. He also found the front door of the house locked. After a futile wait for the deceased to turn up, he went away at 9 P.M.

4. On 17th April, 1971 in the evening, P.W. 4 again came to the house of the deceased to get wages for the ploughing done by him. He found the house locked as before. This aroused his suspicion. He then went to Perumalpuram and informed one Gomathinayagam, a relation of the deceased, as to how he had found the deceased missing and the house locked. On being directed by Gomathinayagam, P.W. 4 reported the matter to P.W. 3, the son-in-law of the deceased at 11 P.M. on 17th April, 1971.

5. On the morning of 18th April, 1971, P.Ws. 4 and 6 and one Dievu Thevar again came and entered the front room of the house of the deceased after breaking open the lock. Driven back by foul smell they came out, and re-entered in the company of P.W. 11, the village Munsiff, who was brought there by P.W. 4. This time they went further into the second room. The entrance door of the third room was lying locked. They broke it open. In the third room lay the dead-body of the deceased wrapped in a carpet and its legs tied with a rope.

6. At the instance of the Village Munsiff, P.W. 4 went to the Police Station along with P.W. 6 and lodged the report, Exhibit P-5, at about 9 A.M. After registering the case, the Sub-Inspector (P. W. 7) sent a copy of the first information report to the Inspector, P.W. 28.

7. The Inspector, accompanied by the Sub-Inspector, reached the scene house at 9-45 A.M. and started investigation. He saw the dead-body in the third room, blood on the floor, and marks of dragging over a length of about 6 ft. He indicated all the facts observed by him at the spot in the mahazar, Exhibit P-12. At about 11-30 A.M., he found the Diary, Exhibit P-3, of the year 1971, which the deceased used to maintain, under the pillows on the cot. He took it into possession as per memo. Exhibit P-13. He then prepared the inquest report, Exhibit P-14, and examined P.Ws. 3, 4, 6 and the daughter of the deceased. At 6 P.M. he detected a blood-stained towel secreted in a pitcher in the 4th room. He then found another diary, Exhibit P-2, of the deceased relating to the year 1970, on the wooden bureau. He examined the entries in the diaries, from which he came to know that the deceased had association with 36 persons mentioned therein. One of them was A-1 with whom the deceased had an intimate connection. The Investigating Officer then searched for A-1 but found him absconding. He called and examined 11 out of those 36 persons mentioned in the diaries.

8. The post-mortem examination of the corpse was performed by Dr. Natarajan on 18th April, 1971. There were multiple stab wounds on the body. Injuries 1 and 2 were located on the left and right side of the chest, and the rest on the abdomen and stomach. The coils of intestines were protruding out of injury

No. 7. Injuries 2 to 7 were individually and cumulatively sufficient to cause death in the ordinary course of nature. The injuries, in the doctor's opinion, could have been caused with a knife at about mid-night on 15th April, 1971.

9. A-1 was, sometime before the occurrence, working as a servant in the house of the deceased. During that period, he stole away several articles on various occasions. When the deceased discovered it, he got executed in his favour, a promissory note (P-24) in the sum of Rupees 1,000 by A-1, towards the value of the stolen property.

10. The deceased used to keep his cash in the big iron-safe which was lying in the scene room. He used to wear two gold rings, M.O. 5 and M.O. 6, and the wrist watch, M.O. 7. These were found missing from the dead-body at the time of its recovery.

11. The prosecution case further is that about two days after the murder, on 17th April, 1971, A-1 pledged the ring, M.O. 5, with P.W. 12 for Rs. 30.

12. A-1 was arrested by P.W. 27, at the Bus Stop near Rastha village on 2nd May, 1971. After making a confessional statement, A-1, whilst in custody, led P.W. 27, in the presence of P.W. 13, to the house of P W. 12. Questioned by P.W. 27, P.W. 12 produced the ring, M.O. 5, which was seized by the Sub-Inspector as per Exhibit P-21. On the same day, in pursuance of the confessional statement, which he had made earlier, A-1 took the Sub-Inspector, in the presence of P.W. 13, to the back-yard of the house of the deceased and produced from a thatched roof the bunch of keys, M.O. 4. It was attached as per Exhibit P. 22. A-1 was then taken to the Police Station where the dhoti, M.O. 11, was removed from his person as per Memo. Exhibit P-23.

13. The big and small safes in the scene room were opened on 3rd May, 1971 at 11 A.M. with the aid of the keys in the bunch (M.O. 4) in the presence of P.Ws. 3, 11 and 21. P.W. 21, the Superintendent of the Finger Print Bureau, found finger and palm prints on the inside of the door of the big iron-safe. Those prints were photographed. The promissory note Exhibit P-24, was lying in the safe. It was taken into possession by the Investigator.

14. On 13th May, 1971, P.W. 27 arrested Narayanan, a part-time servant of the deceased, at village Vadukatachimathel. Narayanan made a confessional statement which was recorded. This information led to the recovery of the wrist watch, M.O. 7, of the deceased, from P.W. 16 with whom Narayanan had pawned it for Rs. 30 on 18th April, 1971. Narayanan then caused the recovery of the fan, M.O. 2 from P.W. 15 to whom he had sold it on 25th March, 1971.

15. A-2 was arrested by P.W. 27 on 22nd May, 1971 from Koilpatti Bus Stand in the presence of P.W. 26. The knife, M.O. 3, was seized from his person. A-2 made the confessional statement Exhibit P-44. He then led to the Police to the recovery of the ring. M.O. 6 from P.W. 19. Pursuant to the same statement A-2 led to the recovery of Rs. 500 in currency notes from P.W. 18.

16. On 14th May, 1971, the Police Sub-Inspector moved the Sub-Magistrate Nanguneri, P.W. 9, for recording the confession of Narayanan who was then in jail. Narayanan was sent for by the Magistrate from jail on 18th May, 1971. After preliminary examination, the Magistrate sent him to the Sub-Jail for reflection. Thereafter, on 19th May, 1971, the Magistrate recorded his confession, Exhibit P-9. On 17th August, 1971, the Executive Magistrate 1st Class, Tirunel-

veli tendered pardon to Narayanan under section 337, Criminal Procedure Code.

17. The conviction of the appellants rests on the testimony of the approver, P.W. 1, corroborated by other evidence, mostly circumstantial.

18. The story narrated by the approver at the trial was, as follows :

19. A-1, A-2 and the approver are, all, residents of Tirunelveli Town and were known to each other. The services of A-1, as domestic servant, were dispensed with by the deceased about six months before the occurrence because A-1 had been stealing articles from the house of the deceased. About three months before the occurrence, the approver became a casual servant of the deceased on an *ad hoc* basis. Even after the termination of his employment, A-1 continued to visit the house of the deceased. About three months before this murder, the approver stole away a table-fan from the house of the deceased and sold it to Khaja Barji for Rs. 80 at Pettai. The deceased suspected that the theft had been committed again by A-1. A week before his murder, the deceased told the approver that A-1 had stolen the fan, and, therefore, he was going to lodge a complaint with the Police. The deceased added that he would also file a case against A-1 on the foot of the promissory note for Rs. 1,000. The approver passed on this information to A-1 on 15th April, 1971, as he was afraid that initiation of proceedings before the police would expose him as the thief. He further informed A-1 that the deceased had in his house the sale proceeds of of 25 kotahs (50 bags) of paddy. They therefore, made a plan to murder the deceased on the same night and rob him of the cash and valuables. Accordingly, at 7-15 P.M., A-1 and A-2 joined the approver at a distance of one furlong from the house of the deceased. Perumalsami Naidu, P.W. 2, a passer-by saw them conferring there. All the three then went to the house of the deceased and watched the deceased who was then engrossed in reading a newspaper. A-1 and the approver knew that according to his routine, the deceased would soon go out to take his dinner. After about 15 minutes, the deceased went inside the house, placed the newspaper near the Kali Pooja Room and proceeded further to the well inside for a wash. The approver stealthily followed the deceased into the house and concealed himself behind a bureau. After washing his hands and legs, the deceased went out locking the front door of the house. About 15 minutes thereafter, the approver, as per prior understanding, opened the back door of the house by the side of the well, and let A-1 and A-2 into the house. All the three then hid themselves behind the three big bureaus in the bed room. At about 9-30 P.M., the deceased re-entered the house after unlocking the front door. He relocked that door from inside, came into the bed room, spread the bed-sheet on the floor near the cot and went to sleep. At about midnight when the deceased was snoring loudly, A-1 asked his companions to come out and finish the "job". A-2 then instructed that A-1 should switch on the light and gag the deceased, while the approver would hold the legs of the deceased and A-2 do the rest. Accordingly, A-1 put on the light. The deceased woke up. A-1 immediately covered his face with a piece of cloth. The approver pinned the legs of the deceased to the floor, while A-2 pulled out the knife, M.O. 3, from his belt and stabbed the deceased 7 or 8 times on the chest and stomach. After about 5 minutes, the deceased became still. A-2 then removed the blood-stained dhoti, the bunch of keys M.O. 4 and the gold rings, M.O. 5 and M.O. 6, from the body of the deceased. The wrist-watch, M.O. 7, of the deceased

was lying on the radio. A-2 removed this watch, also. A-2 then wrapped the dead-body with the carpet, M.O. 8, and tied hands and feet with a rope. A-1 placed a towel on the mouth of the deceased. Then all the three dragged the corpse to the southern corner of the room and left it there. A-1 then opened the big iron-safe and took out three bundles of currency notes and passed them on to A-2 who put them in a white cloth bag. A-1 closed the safe and retained the key with him. A-1 and A-2 took the blood-stained dhoti of the deceased and the currency notes and went towards the side of the well. After washing themselves at the well they came back into the bed room and changed their own dhoties with those of the deceased, kept for drying near the Pooja Room. A-1 then opened the front door of the house. A-2 first went out. Next did the approver. A-1 locked the interior doors of the house. He came out last and locked the front door. All the three, as previously agreed, then met for sharing the booty behind the Santhipalliaiyar Temple at a distance of one furlong from the house of occurrence. A-2 gave a few currency notes to A-1, who demanded more. A-2 thereupon gave the gold ring, M.O. 5, to A-1. Similarly, when the approver expressed dissatisfaction at the amount of the money given to him, A-2 gave the watch, M.O. 7, to him. They then dispersed.

20. The approver further stated how he had pledged the watch with Srirangam P.W. and how he had, after his arrest, got it recovered. He also stated that he had made the confession before the Sub-Magistrate.

21. There are concurrent findings of the Courts below that the approver is reliable, and that his testimony has been sufficiently corroborated by the other evidence *qua* each of the appellants.

22. We have heard the arguments of Sarvashri Vanamamalai and R. K. Garg, learned counsel for A-1 and A-2, respectively. Their main contention is two-fold : that, in the first place, the testimony of the approver was inherently unreliable; secondly, the evidence produced to corroborate it was neither sufficient nor cogent enough to connect the appellants with the murder.

23. We have re-produced earlier the substance of the evidence of the approver. We have also gone through his statements on record. Barring inconsequential variations, the substratum of his evidence has throughout been consistent. We do not think that his testimony, in the main, is unreliable, or inherently improbable. The discrepancies or inconsistencies in his statements pointed out by the learned counsel were duly considered by the Courts below. It was found that there were no grounds to reject the testimony of the approver. There is no good reason for us to take a different view.

24. This takes us to the question, whether the evidence of the approver was adequately corroborated by independent evidence *qua* the appellants.

25. We will first take up the case of A-1.

26. The main items of evidence which have been adduced by the prosecution to corroborate the approver may be catalogued as under :

(1) Presence of finger and palm prints inside the door of the iron-safe which, according to Finger-Print Expert, were of A-1 ;

(2) Seizure of dhoti, M.O. 11, belonging to the deceased, from the person of A-1 soon after his arrest by the police on 2nd May, 1971 ;

(3) Two days after the murder, A-1 sold gold-ring, M.O. 5, of the deceased, to P.W. 12, and after his arrest, caused its recovery from P.W. 12 ;

(4) Recovery of the bunch of keys, M.O. 4, at the instance of A-1 from the thatch in the backyard of the deceased.

27. Evidence with regard to item (1) was given by P.W. 21, Superintendent of Finger Print Bureau, and P.W. 22, a photographer. The trial Court accepted that evidence and held that the palm print found on the big iron-safe was proved to be that of A-1. The High Court has reproduced the evidence of P.W. 21 but has not discussed it, possibly because the learned counsel for the State did not stake any argument on it. No useful purpose will therefore be served by burdening this judgment with a discussion of that evidence.

28. Regarding item (2), there is the unanimous finding of the Courts below that the dhoti (M.O. 11) was seized from the person of A-1 by P.W. 27 as per Memo. Exhibit P-23 on 2nd May, 1971 soon after his arrest, and that this dhoti (M.O. 11) was proved to be that of the deceased because it bore the dhobi mark.

29. In this connection, reliance was placed on the evidence of the dhobi, P.W. 8. We are not persuaded to disturb that concurrent finding of facts. This circumstance furnishes useful corroboration of the testimony of the approver in regard to the complicity of A-1 in the crime.

29. As regards item (3), it is noteworthy that this bunch of keys was produced by A-1 from the thatch in the backyard of the deceased on 2nd May, 1971.

30. This evidence, which was not discussed by the Sessions Judge, has been considered by the High Court in these terms :

> "P.W. 1 stated in his evidence that the first appellant told him that he threw away the key of the big iron-safe at the backyard when he went there for washing his hands at the well and he (the first appellant) took with him the bunch of keys, M.O. 4 series and the key of the outer door lock. P.W. 1 also stated that the second appellant after the commission of the offence took M.O. 4 series from the waistcord of Muthiah Pillai, and he (P.W. 1) also stated that those keys were the keys for the drawers in the big Iron Safe. P.W. 27 stated that the first appellant took him to the house of Muthiah Pillai and from the stacked thatch, he produced M.O. 4 series which he received under Exhibit P-22. In cross-examination P.W. 27, stated that after the seizure of M.O. 4 series, he did not put the keys on the iron-safe to find out whether they really suit it. He also stated that he did not ask the first appellant to open the Iron-Safes and that he himself opened the two safes. After the seizure of M.O. 4 series, he took the first appellant to the Police Station and asked him as to how it could be opened and that the first appellant told him how the Iron Safe could be opened. He thereafter opened the Iron Safe. In Exhibit P-9, P.W. 1 stated that when he asked the first appellant as to where the key of the Iron Safe was, he told him that while he was washing his hands, he threw away the same at the back-yard."

31. It was contended before the High Court and that argument has been repeated before us — that if the key had been thrown, as the approver has deposed, by A-1 at the backyard, then it was not explained how that key together with others in the bunch, M.O. 4, could be recovered from the thatch at the instance of A-1. The High Court tried to meet this argument thus :

> "We are unable to see how the evidence relating to the first appellant throwing away the key of the Iron Safe is inconsistent with the possible exis-

tence of another key in M.O. 4 series to suit or open the Iron Safe. It has not been suggested either to P.W. 1 or to P.W. 27 that a duplicate key for the big Iron Safe was not available in M.O. 4 series and that a separate key for the purpose of opening the big Iron Safe has been introduced by the Sub-Inspector of Police, P.W. 27, in the bunch of keys, M.O. 4 series."

32. This finding, it is manifest, does not rest on *terra firma* To prop it,the learned judges had to resort to conjecture. There was no evidence on the record to show that A-1 had a duplicate key of the Iron Safe, apart from the one found in the bunch M.O. 4. This evident gap in the prosecution evidence could not be filled by surmise, howsoever plausible. We therefore, think it unsafe to rely on this piece of evidence.

33. Item (4) is the most telling circumstance that unerringly connects A-1 with the commission of the crime in question. The concurrent findings of the Courts below are :

(*a*) that the gold rings, M.O. 5, and M.O. 6, belong to the deceased who used to wear them and that these rings were found missing from his corpse at the time of its recovery. (On this point, the Courts have *inter alia* relied upon the evidence of P.Ws. 3, 5 and 7).

(*b*) That on 17th April, 1971 at about 9 A.M., A-1 pledged this gold ring (M.O. 5) with P.W. 12 for Rs. 30 and later, on 2nd May, 1971, it was recovered by the Police Sub-Inspector (P.W. 27) in the presence of P.W. 13, from P.W. 12, pursuant to the information and the lead given by A-1.

34. The Courts below have found the evidence of P.Ws. 12, 13 and 27 with regard to the recovery of this ring fully trustworthy. It has not been shown that the evaluation of this evidence made by the High Court suffers from any gross error or material flaw which would necessitate its re-appraisement by this Court.

35. It was argued that the investigation in this case was dishonest ; that the evidence with regard to the finger-prints on the iron-safe, the recovery of bunch of keys and the date of the arrest of A-1, had been fabricated, and that consequently, the Courts should have, as a matter of prudence, held the entire prosecution evidence to be suspect. Reference was also made to certain newspapers reports published on 22nd April, 1971 and 24th April, 1971 to show that A-1 had been arrested on 23rd April, 1971 and that the iron-safe was opened by the police with the key on 22nd April, 1971.

36. We see no merit in this contention. There was no ground to hold that the prosecution evidence with regard to the finger-prints or the recovery of the bunch of keys or that relating to the date of arrest of A-1 and the opening of the iron-sale by the police, was false and fabricated. It was not suggested to the investigating Officer (P.W. 27) that these gold-rings, M.O. 5 and M.O. 6, did not belong to the deceased. On the contrary, the trend of cross-examination of P.W. 12 shows that it was accepted as a fact that this gold-ring (M.O. 5), on which the first initial of the deceased has been engraved, belonged to the deceased. It was suggested to the witness that this inscription should have put him on inquiry as to its ownership.

37. Be that as it may, the Courts below have accepted the evidence of these recoveries. The trial Court found P.Ws. 21 and 22 worthy of credence and held that the palmprint found on the iron safe was of A-1. The High Court also took notice of that evidence, though without comments as to its reliability or otherwise. Nor did the High Court hold that the evidence relating to the recovery of the bunch of keys at the instance of A-1, was unreliable. Rather, it found this evidence worthy of credit. We have chosen not to act on that evidence, only as a matter of abundant caution. The only infirmity in the appraisement of that evidence by the High Court, was that a missing link was sought to be supplied by an inference on speculative premises. This conjecture drawn by the High Court was not altogether implausible in view of the entries in the diary of the deceased that A-1 had on previous occasions, also stolen the keys of the iron-safe. This entry was among those which were relied upon by A-1.

38. The newspaper reports were rightly ruled out by the trial Court. The

reporters concerned were not examined, nor was the source of the information disclosed. The trial Court believed the testimony of P. W. 27 and P.W. 28 that what was open on 22nd April, 1971 was not the iron-safe in the scene room but the iron bureau kept in the fourth room behind the scene room. According to these witnesses, the iron safe in the scene room was opened on 3rd May, 1971, the day following the arrest of A-1 and the recovery of the bunch of keys at his instance. Thus, there was no foundation for the argument that the investigation in this case was conducted in any dishonest manner.

39. Approver had stated how after the murder, the two gold rings, including M.O. 5, were removed by A-2 from the corpse of the deceased and how thereafter M.O. 5 was given by A-2 to A-1 as the latter's share of the booty, On this vital point, the evidence of the approver stood cogently corroborated by the evidence in item 4.

40. Furthermore, there was general corroboration of the approver in regard to the motive and the occasion for committing the crime. Two diaries, Exhibit P-2 and P-3, in the hands of the deceased, were tendered in evidence. Extracts from these diaries were relied upon by A-1 in his written statement. These diaries contain tell-tale entries. They support the prosecution story that A-2 (1) was not only a domestic servant of the deceased but also had homosexual relations with him, A-1 exploited this weakness of the deceased, and frequently stole away cash and other articles from his house. Evidently for fear of exposure, the deceased felt helpless and miserable and suffered in silence the pecuniary losses and indignities inflicted by A-1. There is an entry of 11th November, 1970 showing that Subramanian (A-1) left the service of the deceased on that day. Murder was committed about five months and five days after that date.

41. The subsequent entries in the diaries show that A-1 continued to visit covertly or overtly the house of the deceased. Entires dated, 9th March, 1971 and 20th March, 1971 in the diary, Exhibit P-3 speak of Narayanan (approver). They show that the approver also became a confident of the deceased sometime after A-1 had left the service of the deceased. These entries lend assurance to the evidence of the approver, and that of P.W. 3 in regard to the fact that P.W. 1 was a casual servant or the "errand boy" as the learned Judge describes him, of the deceased.

42. The promissory note, dated 25th August, 1969 for Rs. 1,000 executed by A-1 in favour of the deceased was another item of evidence that confirmed the testimony of the approver *qua* A-1, P.W. 14 not only proved the execution of this note but also the fact that the deceased had got it executed in consideration of the value of the articles stolen by A-1.

43. It is in the evidence of P.W. 7 that some weeks before the occurrence, the deceased had received 75 kotahs of paddy from the cultivators of his lands. He sold that paddy at the rate of Rs. 75 per kotah in Thiruthu village and personally collected the sale proceeds. The approver informed A-1 about the presence of these sale proceeds in the iron-safe of the deceased. He further told A-1 how the deceased had threatened civil and criminal action against A-1. Entry, dated 29th March, 1971 in the diary. Exhibit P-3 indicates that the deceased suspected the hand of A-1 in the theft of his table fan. The approver himself was afraid that if the theft of the fan was reported to the police, he (approver) would also be in trouble. Thus, A-1 and P.W. 1, both, had a motive to do away with the deceased and to rob his valuables.

44. There is still another circumstance which lends support to the evidence of the approver. After the murder, A-1 took out the currency notes from the iron-safe and passed them on to A-2 who subsequently gave a few of them to A-1 and P. W. 1 retaining the most of them with him. As concurrently found by the courts below, A-2, had, in the beginning of April, 1971, borrowed Rs. 500. from Perumal Konar (P.W. 18) of village Kovilpatti; and some days after the murder, A-2 though a person of humble means, was able to return that loan in full in the shape of 50 currency notes of the denomination of Rs. 10 each. After his arrest, A-2 got those very currency notes recovered from P.W. 18. The

Courts below found that P.W. 18 was an independent and reliable witness. We have no reason to differ from that conclusion. This circumstance, though not of a conclusive tendency does lend assurance to the evidence of the approver in regard to the theft of these currency notes.

45. The most important pieces of corroborative evidence *qua* A-2, also, was the circumstance of the recovery of the gold ring (M.O. 6), from P.W. 18 pursuant to the information supplied by A-2. That this gold ring belonged to the deceased and had been found missing from his dead-body, stood fully established on the record. The testimony of P.W. 19 was to the effect that A-2, who was previously known to him, pledged the ring (M.O. 6) with the witness for Rs. 50 about 20 days after the murder of the deceased. Thereafter on 22nd May, 1971, A-2 led the Police Sub-Inspector to the house of the witness. P.W. 19 then handed over the ring, M.O. 6, to the Sub-Inspector.

46. In the light of what has been said above, it is clear that the evidence of the approver had been adequately corroborated from independent sources against both the appellants. They were therefore rightly convicted of the murder of the deceased and allied charges.

47. Now remains the question of sentence. Undoubtedly, the murder was committed in a ghastly manner, and, but for the reason to be stated shortly, the capital sentence would not be inappropriate. But we cannot be oblivious of the tendency to minimise one's own part and to shift and assign the dominant role in the commission of the offence to the accused, that is inherent in the evidence of all accomplices. In the present case, also the approver's testimony cannot be said to be absolutely free from such tendency. Nor has its corroboration—although reliable and adequate enough to make it safe for sustaining the conviction—completely exercised it of that disposition there being a common motive for the approver and A-1 to murder the deceased. On the facts of the case, therefore, the lesser penalty prescribed by law for the offence of murder would meet the ends of justice. Accordingly on the capital count, we would commute the death sentence of each of the appellants to that of imprisonment for life.

48. In the result, the appeal stands dismissed except to the extent indicated above.

R.S. ———— *Order accordingly.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*Hr. R. Khanna, M. H. Beg and V. R. Krishna Iyer, JJ.*

Ajantha Transports (P.) Ltd., Coimbatore, etc. .. *Appellants**

v.

M/s. T. V.K. Transports, Pulampatti etc. .. *Respondents.*

(A) *Motor Vehicles Act (IV of 1939), sections 47 and 64-A—Amendment Act Tamil Nadu Act XVI of 1971—Tamil Nadu Motor Vehicles Rules, R. 155-A (3) (F).*

(B) *Permit, refusal or grant of—Public interests—Dominant purpose—Previous possession or grant of permit—Relevancy of—Civil Procedure Code, section 115—Interference in revision—Constitution of India (1950), Articles 133 (1) (c) and 136—No final orders of High Court passed—Grant of certificate of fitness—Interference under Article 136.*

An exercise of the permit issuing power, under section 47 of the Motor Vehicles Act, must rest on facts and circumstances relevant for decision on the question of public interest, which has to be always placed in the fore-front in considering applications for grant of permits. Consideration of matters which are not relevant to or are foreign to the scope of powers conferred by section 47 will vitiate the grant of a permit under the section. A fact which in certain circumstances, is relevant for a decision on what the public interest demands may become irrelevant where it is not connected with such public interest. Every class of consideration specified in section

* C. A. No. 1402 of 1974 (with C. Misc. Petn. No. 6852 of 1974); C. A. Nos. 2254 of 1969 and 1481-1483 of 1970. *24th September, 1974.*

47 (1) of the Act seems correlated to the interest of the public generally. Section 47 (1) (*a*) gives the dominant purpose and section 47 (1) (*b*) to (*f*) are only its sub-categories or illustrations. If any matter taken into consideration is not shown to be correlated to the dominant purpose or the relationship or the effect of a particular fact, which has operated in favour of a grant is such as to show that it is opposed, on the face of it, to public interest, the grant of permit will be bad. The power to grant permit under section 47 of the Act is limited to the purposes for which it is meant to be exercised. Considerations which are relevant for applying Articles 14 and 19 (1) (*g*) of the Constitution could not be foreign to the scope of section 47 (1) (*a*) which is fairly wide. [*Para.* 23.]

Where the power to grant permits shows that its exercise is meant to be judged on the touchstone of the interests of the public generally, the test being broad enough to take in applications of Articles 14 and 19 (1) (*g*) read with the relevant proviso, which require a just and reasonable balancing and reconciliation of general and individual interests, it would not be correct to hold that the power contained in section 47 of the Motor Vehicles Act can go beyond it or against it, because to take such a view would make the provision itself constitutionally invalid. [*Para.* 24.]

When the main object, to which other considerations must yield in cases of conflict, of the permit issuing powers under section 47 of the Act is the service of interests of the public generally, that any particular fact or circumstance such as a previous recent grant in favour of an applicant or the holding of other permits by an operator, cannot, by itself, indicate how it is related to this object. Unless, there are other facts and circumstances which link it with this object the nexus will not be established. A recent grant or the possession of other permits is neither a qualification nor a disqualification divorced from other circumstances which could indicate how such a fact is related to the interests of the public generally. It is only if there are other facts establishing the correlationship and indicate its advantages or disadvantages to the public generally that it will become a relevant circumstance. But in cases where everything else is absolutely equal as between two applicants which will rarely be the case, it could be said that application of the principle of equality of opportunity which could be covered by Article 14 may enable a person who is not a fresh grantee to obtain a preference. Such a consideration, could not be said to be outside the broad view of the interest of the public generally so as to include within its purview application of tests underlying provisions giving fundamental rights to citizens under Articles 14 and 19 of the Constitution. [*Para.* 25.]

Relevancy or otherwise of one or more grounds of grant or refusal of a permit could be a jurisdictional matter. A grant or its refusal on totally irrelevant grounds would be *ultra vires* or a case of excess of power. If a ground which is irrelevant is taken into account with others which are relevant, or, a relevant ground, which exists, is unjustifiably ignored, it could be said to be a case of exercise of power under section 47 of the Act, which is quasi-judicial, in a manner which suffers from a material irregularity. Both will be covered by section 115, Civil Procedure Code. [*Para.* 27.]

The question whether an order is a final one determining the rights of the parties is material even when considering the question of propriety of interference under Article 136 of the Constitution.

[*Para.* 34.]

Cases referred to :—

N. S. Ghouse Miah v. *R. T. A. Cuddapah*, (1963) 1 An.W.R. 77: A.I.R. 1963 A.P. 263; *Raman and Raman Ltd.* v. *State of Madras*, (1959) 2 S.C.R. (Supp.) 227: A.I.R. 1959 S.C. 694; *Pal Singh* v. *S. T. A. T., U. P.*, A.I.R. 1957 All. 254; *Maharashtra S. R. T. Corporation* v. *Mangrulpir Jt. Motor Service (P.) Ltd.*, 1971 S.C.R. (Supp.) 561: A.I.R. 1971 S.C. 1804; *Patiala Bus (Sirhind) Pvt. Ltd.* v. *S. T. A. T., Punjab*, (1974) 1 S.C.W.R. 679: A.I.R. 1974 S.C. 1174; *Raman and Raman (P.) Ltd. v. Sri Rama Vilas Service Ltd.*, C.A. No. 995 of 1965 *dated* 3rd May, 1968 (S.C.).

The Judgment of the Court was delivered by

Beg, J.—We will detail facts leading up to the five Civil Appeals, which were heard together, before formulating and deciding the common questions of law raised by them.

2. Civil Appeal No. 1402 of 1974 arises out of fourteen applications, including that of the appellant before us, Ajantha Transports (P.) Ltd., which were considered on 29th December, 1971 by the Regional Transport Authority, Coimbatore, for the grant of a stage carriage permit to ply an additional bus on the route from Coimbatore to Sathyamangalam *via* Koilpalayam and some other places. Five of these were rejected on the preliminary ground that the prescribed fees had not been paid. One was withheld from consideration for want of Income-tax Clearance certificate. One applicant was found disqualified, under section 62-A (*c*) of the Motor Vehicles Act as amended by the Tamil Nadu Amendment Act XVI of 1971, because he already had more than ten permits. Out of the remaining seven applicants, the highest scorer, according to the marking system adopted by the Regional Transport Authority of the region, was one Palaniappa Gounder who obtained nine marks. But, Gounder was " by-passed " in favour of the appellant who secured 8.69 marks because Gounder had already been granted a permit on 8th October, 1971. Three appeals, including one by Gounder, were then preferred to the State Transport Appellate Tribunal against the Regional Transport Authority's resolution. Only the appeal of P. V. K. Transports, described as " the second appellant ", succeeded, although this party was awarded only 7.62 marks as against 8.69 of the appellant before us. The break up of the marks allotted, in accordance with Rule 155 (A) of the Tamil Nadu Motor Vehicles Rules, was given as follows :

	"Residence"	B. O. Workshop.	Experience.	Sector.	Viable Unit	Total.
2nd appellant	2	2	2	0.42	1	7.42
Respondent	2	.. 2	1.63	0.06	3	8.69"

3. It appears, from the order of the State Transport Tribunal that the parties did not dispute the correctness of the marks actually assigned under various heads. The contention of the second appellant, M/s. P. V. K. Transports, before the State Tribunal, that two additional marks should also have been allotted to it for its Branch Office, was rejected on the ground that the Regional Transport Authority had rightly refused to grant additional marks for this reason as the Branch Office had not been functioning continuously and was meant only for buses plying under temporary permits. The Tribunal then observed that, if operational qualifications only were taken into account, P. V. K. Transports had secured 6.42 marks as against 5.69 of the Ajantha Transports (P.) Ltd. It pointed out that the respondent before it was given two additional marks under the heading ' Viable Unit ' only because it had three buses running as against one of P. V. K. Transports. It set aside the order of the Regional Transport Authority and preferred the claims of P. V. K. Transports on two grounds stated as follows :

" The Regional Transport Authority had not borne in mind the relevant considerations under section 47 (1) of the Motor Vehicles Act in choosing the best one for the permit. I am of the view that the claim of the 2nd appellant should be upheld as against the respondent on two substantial grounds. Firstly, the respondent was a recent grantee on the date of meeting, having obtained its third permit on 31st July, 1971, about five months prior to it. The 2nd appellant's only permit was got by it on 8th December, 1970. As already noticed, the Regional Transport Authority has chosen to bypass applicant No. 8 (K. Palaniappa Gounder), the top scorer on the only ground that he was a recent grantee. This is a matter for surprise as to why he did not apply the same test to the respondent, also a recent grantee.

That recent grant is a relevant consideration is beyond dispute. Secondly the 2nd appellant is a single permit holder and the respondent is a three permit holder. This being a medium route,

the claim of the former, whose qualifications are almost the same as those of the latter should be preferred. In W.P. No. 120 of 1971 and 2028 of 1971 the Madras High Court has upheld the judgment of the Tribunal preferring a single permit holder as against a two permit holder (*vide* also Judgment in W.P. No. 482 of 1971). I therefore find that the 2nd appellant is best suited for the grant of this permit."

4. The High Court, Madras had rejected the Ajantha Transports' Revision Petition under section 115 of the Civil Procedure Code which was made applicable to decisions of the Tribunal by the Tamil Nadu Motor Vehicles Amendment Act XVI of 1971. It held that there was no error of jurisdiction or material irregularity in the exercise of jurisdiction since the Tribunal had based its decision on relevant considerations. Against this decision the appellant was granted special leave to appeal to this Court.

5. Civil Appeal No. 2254 of 1969 arises out of twenty-one applications which came up for consideration before the Regional Transport Authority. South Arcot, Cuddalore, for grant of a stage carriage permits for the route from Porto Novo to Puliyangudi. The Regional Transport Authority rejected five applications on the ground that they were from new entrants who had no previous experience of this business. One was rejected on the ground that it was from a dissolved company. Another was rejected because the applicant was dead. Six were eliminated because of bad entries on their permits during the preceding year. Five were rejected on the ground that they had either no workshops or not sufficiently equipped workshops. Out of the three remaining applicants, one was considered inferior in merit in comparison with the remaining two, as his knowledge of the route was not so good as of the other two. The joint applicants Chettiar and another at No. 6 were preferred to Natarajan, applicant No. 13, on two grounds : firstly, the applicants at No. 6 were considered as somewhat better acquainted with the routes ; and, secondly, the applicant No. 13 had secured a recent grant of a permit on another route. Hence, it was considered more equitable to drop him so as "not to inflict strain on the same operator by granting him more than one permit at a time".

6. Against the above mentioned decision of the Regional Transport Authority, there were three appeals before the State Transport Appellate Tribunal, which elaborately considered the claims of each appellant *vis-a-vis* the successful respondents. It preferred the claim of Kannon Motor Transport (P.) Ltd., principally on the ground that it was a local enterprise of persons residing along the route. It seemed to take the view that the mere fact that Kannon Motor Transport (P.) Ltd. had been granted a permit on another route at the same meeting of the Regional Transport Authority was no disqualification. It did not actually hold such a ground to be irrelevant. But, its remarks showed that a recent grant of a permit on another route was not considered by it to be really material. It however, made it clear that the principal ground of its preference was that M/s. Kannon Motor Transport (P.) Ltd. was "a local enterprise" of persons who could be expected to be better acquainted with the needs of the locality.

7. A learned Judge of the Madras High Court refused to quash the order of the State Transport Appellate Tribunal because the main ground for the preference was that the local residence of the parties whose appeal had been allowed by the Tribunal gave them a better claim. In the course of his judgment, however, the learned Judge observed that the State Tribunal could not be compelled to take into account matters which were "external" or irrelevant for the purposes of exercising the power of granting permits. A Division Bench of the Madras High Court, disagreeing with this view, set aside the judgment of the learned Single Judge and remanded the case for reconsideration to the Tribunal on the ground :

> "The Tribunal could well have considered whether in all the circumstances, the first respondent before us, should, having regard to public interest, be granted more than one permit at the same meeting of the Regional Transport Authority. That would be a relevant question."

It pointed out :

" The first respondent altogether got three permits at the hands of the Tribunal. Whether he having got a permit before the Regional Transport Authority it would be consistent with public interest to grant further permits at the stage of appeals was undoubtedly a matter relevant to the consideration and that having not been decided by the Tribunal, its order is vitiated.' '

8. The Civil Appeal No. 2254 of 1969 has come up before this Court after certification of the case by the Madras High Court under Article 133 (1) (*c*) of the Constitution as fit one for an appeal to this Court.

9. Civil Appeals Nos. 1481-1483 of 1970 have resulted from 42 applications made for the grant of a permit to ply on the route Chidambaram to Tirukoilur *via*, Vedalur, Kadampuliyur, Panruti, and some other places, by the Regional Transport Authority, South Arcot. It appears that, after the elimination of a number of applications on various grounds of disqualification, the Regional Transport Authority embarked, ultimately, on a comparison of the relative merits of three applicants :

1. M/s. Prabhu Transports (P.) Ltd. ;
2. Sri Dhanalakshmi Bus Service ;
3. M. R. S. Motor Service.

10. The Regional Transport Authority found on 23rd December, 1965, the qualifications of M/s. Prabhu Transports (P.) Ltd., to be superior to those of its rivals and ordered the grant of the permit to it. Fifteen appeals were filed against the order of the Regional Transport Authority. After setting out the qualifications of each of the appellants before it elaborately, the State Transport Appellate Tribunal considered the case of the appellant before us, M/s. Kannon Motor Transport (P.) Ltd., to be best and overruled the objection that a recent grant on a different route altogether should also be considered material. It said :

" The 9th appellant is M/s. Kannon Motor Transports (P.) Ltd., Chidambaram. It owns 2 route buses. Its main office and residence are at Chidambaram. It has a fully equipped workshop at that place and arrangements for effecting repairs have been made at the other end of the route *i.e.* Tirukoilur. Its experience is from about the beginning of 1961. Its history sheet is perfectly clean. Its route knowledge is limited to 7½ miles. This appellant is a local enterprise who is trying to have a viable unit. It has a fully equipped workshop at one of the termini and at the other termini arrangements for effecting repairs have been made. It has sufficient experience and some knowledge of the route. It thus possesses basic qualifications for the grant. But then it was pointed out that this appellant is a recent grantee of another permit. In W.P. No. 852 and 1049 of 1962, it has been held that where the recent grant relates to a different route altogether and if that is the only circumstance present that in itself may not be relevant as the sole ground for declining the grant of permit. It is not the case of any of the appellants that grant for this appellant is in respect of this identical route. This appellant who has the basic qualifications and who is trying to build up a viable unit in my view is the most suited person to receive this permit, for each of the remaining appellants owns more route buses than what he has ".

11. Three connected Writ Petitions were filed in the Madras High Court against the judgment and order of the State Transport Appellate Tribunal preferring the appellant's claim over those of others on the ground that the appellant should have an opportunity to build up a viable unit as each of " the remaining appellants owns more route buses " than what the appellant had. A learned Single Judge of the Madras High Court, after examining the orders of the State Tribunal in the light of all the facts of cases of the claimants as set out by the Tribunal itself, concluded and ordered :

" There has in reality been no selection, considering the claims of the applicants together. A comparative assessment with reference to relevant and material facts is lacking and the ratio of the decisions relating to the relevancy of recent grants not understood. In the

circumstances the order of the State Transport Appellate Tribunal cannot be sustained. It is, therefore, quashed. The Tribunal has now to take up the matter and consider the claims of the aggrieved applicants, the petitioners in the Writ Petitions and the 1st respondent, afresh, in the light of the observations contained herein."

12. The matter was then taken before a Division Bench of the Madras High Court in these appeals. The Division Bench quoted the following passage from the judgment of the learned Single Judge setting out the main grievance of the petitioners in the High Court :

> " Counsel pointed out that, in the instant case, it is not even a case of recent grant in favour of the common first respondent, and that, ignoring the salutary and essential principle of giving equal opportunity to competent operators, the common 1st respondent has been made to build up his viable unit out of permits granted at the same sitting of the Regional Transport Authority and two by the Tribunal. It is submitted that the petitioners have not been found to be unfit and if they were not otherwise disqualified their claims to build up viable units along with the 1st respondent should have been considered and the permits distributed."

It then gave the following justification of the view of the learned Single Judge and the dismissal *in limine* of the appeal before it :

> " Now it is pointed out to us that the grant of the permits for the routes Porto Novo to Puliyangudi and Chidambaram to Perambalur has been set at large for fresh consideration of the merits of the applicants, by the State Transport Appellate Tribunal. What the learned Judge has done in the present case, relating to the grant of the permit for the route Chidambaram to Tirukoilur, is to set at large the grant of the permit for the route also, that the claims of the rival applicants can be considered bearing in mind also the circumstance mentioned above, which was considered as a relevant circumstance for the grant of the permits more or less at the same time, for different overlapping routes as between competing operators. It is this reason which appears to have weighed primarily with the learned Judge in setting aside the order of the State Transport Appellate Tribunal and remanding the matter to the same Tribunal for fresh disposal. In our opinion the correctness of the principle relied on by the learned Judge for setting the matter at large in the present case cannot be seriously disputed. It was clearly necessary to have the matter regarding the grant of the permit for the route Chidambaram to Tirukoilur also considered afresh, since the grant of the permits for the other routes also has been set at large. The learned Judge in the order now impugned has also restricted the scope of the lower Appellate Tribunals order to the claims of the petitioner and the 1st Respondent in the Writ Petition. To this extent the scope of the fresh enquiry has been narrowed and this will be an advantage to the appellant. In the above circumstances, we see no ground to interfere with the order of the learned Judge in the Writ Petition in these writ appeals which are dismissed *in limine* ".

13. Against the Division Bench judgment and order we have three appeals Nos. 1481-1483 of 1970 before us by grant of Special Leave.

14. Three questions which fall for consideration upon the facts set out above are :

(1) Is possession by or recent grant of another permit to an applicant for a stage carriage permit, either by itself, or, in conjunction with other facts and circumstances, a relevant consideration in either refusing or granting a permit to an applicant ?

(2) If it is, in any particular set of circumstances, a relevant consideration, what is the weight to be attached to it in the assessment of the comparative merits of rival claims ?

(3) Does the High Court's judgment or order in any of the cases dealt with by it call for interference by us in any respect in exercise of our powers under Article 136 of the Constitution ?

15. The questions posed above must, we think, be answered having regard to the provisions of section 47 of the Motor Vehicles Act and such relevant and valid rules as may be framed for laying down the mode of exercising power to grant of permits. Section 47 (1) of the Act reads as follows :

" 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,

(*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;

(*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 ; 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."

16. One of the submissions before us was that the Regional Transport Authority can act on considerations falling even outside the purview of section 47 of the Motor Vehicles Act. But, no case decided by this Court, where such a view may have been taken, was placed before us. Reliance was, however, placed on *M/s. N. S. Ghouse Miah and Abdullah Sheriff* v. *Regional Transport Authority, Cuddapah*[1] and *Pal Singh* v. *State Transport Authority Tribunal, U.P.*[2].

17. In *Ghouse Miah's Case*[1], the Andhra Pradesh High Court had while considering the validity of a rule observed:

" The State Government is surely competent to lay down by way of general guidance certain fundamental principles, which will be according to them in the interests of the public generally. The heading will cover any ground which might not have been expressly mentioned in section 47. It is neither possible nor is it desirable to restrict the discretion of the Regional Transport Authority to grant or refuse a stage carriage permit on consideration of public interest."

It went on to express :

" Even otherwise we do not think that the scope of the section is limited to the factors to be taken into consideration while granting stage carriage permit mentioned in section 47. It is not correct to say that section 47 of the Act forms a complete code or that the factors mentioned therein are exhaustive. In our view that is clear from the words 'shall have regard to' in section 47. The requirement of the section is that the matter specified in the section may be taken into consideration. In other words, the primary duty of the Regional Transport Authority is to take into consideration the matters specified but it does not follow that the hands of the Regional Transport Authority are tied to the consideration of these matters alone and they must shut their eyes to everything else."

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1. A.I.R. 1963 A.P. 263 at 266.
2. A.I.R. 1957 All. 254 at 256.

18. In *Pal Singh's Case*[1], the Allahabad High Court had observed :

> " The law on the subject is not exhaustively contained in section 47 ; any direction given by the State Transport Authority in its appellate jurisdiction is also to be complied with by the Regional Transport Authority. If the State Transport Authority has jurisdiction to pass an order, it must be complied with by the Regional Transport Authority. Therefore our learned brother Gopalji Mehrotra was not correct when he observed that an application for renewal cannot be dismissed except on any of the grounds mentioned in section 47, and that " when a permit had been granted to the petitioner the renewal application cannot be refused on the ground that the original permit itself was illegal."

19. *Pal Singh's Case*[1], was decided before this Court held, in *Raman and Raman Ltd.* v. *The State of Madras*[2], that the administrative directions issued under section 43-A of the Motor Vehicles Act, 1939, as amended by the Motor Vehicles (Madras Amendment) Act, 1948, did not have the force of law in regulating the rights of parties. In *Ghouse Miah's Case*[3], the Andhra Pradesh High Court had, after indicating the amplitude of the " interest of the public generally ", mentioned in section 47 (1) (*a*), held that the use of the words " shall have regard to in section 47 " meant that the section did not exhaustively specify every kind of matter which may be taken into account. The High Court had then tested the rules framed under the Act by the norms provided by Articles 19 (1) (*g*) and 14 of the Constitution. It struck down a part of rule 153 (*d*) for violating Article 14.

20. What the Andhra Pradesh High Court seems to have meant was that powers contained in section 47 of the Act as well as the rule-making powers of the State must be exercised conformably with the constitutional guarantees given to citizens by Articles 14 and 19 (1) (*g*) of the constitution which are certainly not mentioned specifically anywhere in the Act. All powers conferred by the Act, including those given by section 47, must be deemed to be confined to the limits imposed by constitutional guarantees to citizens. Hence, the manner in which a grant would affect guaranteed fundamental rights of citizens could also be considered. If this is all that is meant by laying down that even matters not specified in section 47 of the Act can be taken into account, we think that the view is unobjectionable. Even where powers to be exercised by authorities, which are organs of the State, are not clearly defined, the constitutional guarantees contained in Articles 14 and 19 (1) (*g*) of the Constitution would certainly limit the scope and regulate the exercise of such powers.

21. This Court recently, in *Maharashtra State Road Transport Corporation* v. *Mangrulpir Jt. Motor Service (P.) Ltd.*[1], after setting out the provisions of section 47 of the Act, observed about the manner in which the Regional Transport Authority has to function :

> " 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."

22. More recently, in *Patiala Bus (Sirhind) Pvt. Ltd.* v. *State Transport Appellate Tribunal, Punjab*[2], this Court said with regard to the provisions of section 47 of the Act :

> " The main considerations required to be taken into account are the interest of the public in general and the advantages to the public of the service to be provided, and these would include *inter alia* consideration of factors such as the experience of the rival claimants, their past performance, the availability of stand-by vehicles with them, their financial resources, the facility of well-

1. A.I.R. 1957 All. 254 at 256.
2. (1959) 2 S.C.R. (Supp.) 227: A.I.R. 1957 S.C. 694.
3. A.I.R. 1963 A.P. 263.

1. 1971 S.C.R. (Supp.) 561 at p. 570: A.I.R. 1971 S.C. 1804 at 1809.
2. A.I.R. 1974 S.C. 1174 at 1177.

equipped workshop possessed by them etc. The State Transport Appellate Tribunal, however, failed, to take into account any of these considerations and proceeded as if the stage carriage permits were a largesse to be divided fairly and equitably amongst the rival claimants. We do not find in the order of the State Transport Appellate Tribunal any discussion of the question as to what the interest of the public in general requires and who from amongst the rival claimants would be able to provide the most efficient and satisfactory service to the public. None of the relevant factors is considered, or even adverted to, by the State Transport Appellate Tribunal. The State Transport Appellate Tribunal merely seems to have considered what would be fair as between the appellant and the third respondent and thought that it would be most fair if one stage carriage permit with a return trip were granted to the appellant and one stage carriage permit with return trip were granted to the third respondent. That is a wholly erroneous approach. The question that has to be considered is not as to what would be fair as between the appellant and the third respondent, but what does the interest of the public, which is to be provided with an efficient and satisfactory service, demand. The order of the State Transport Appellate Tribunal, therefore, suffered from an infirmity, in that it failed to take into account relevant considerations and proceeded on the basis of an irrelevant consideration ".

23. Thus, decisions of this Court have made it clear that an exercise of the permit issuing power, under section 47 of the Act, must rest on facts and circumstances relevant for decision on the question of public interest, which has to be always placed in the fore-front in considering applications for grant of permits. Consideration of matters which are not relevant to or are foreign to the scope of powers conferred by section 47 will vitiate the grant of a permit under section 47. A fact which, in certain circumstances, is relevant for a decision on what the public interest demands may become irrelevant where it is not connected with such public interest. Indeed, every class of consideration specified in section 47 (1) of the Act seems correlated to the interests of the public generally. It appears that section 47 (1) (*a*) gives the dominant purpose and section 47 (1) (*b*) to (*f*) are only its sub-categories or illustrations. If any matter taken into consideration is not shown to be correlated to the dominant purpose or, the relationship or the effect of a particular fact, which has operated in favour of a grant is such as to show that it is opposed, on the face of it, to public interest, the grant will be bad. The power to grant permits under section 47 of the Act is limited to the purposes for which it is meant to be exercised. Considerations which are relevant for applying Articles 14 and 19 (1) (*g*) of the Constitution could not be foreign to the scope of section 47 (1) (*a*) which is fairly wide.

24. Where the power to grant permits shows that its exercise is meant to be judged on the touchstone of the interests of the public generally, the test being broad enough to take in applications of Articles 14 and 19 (1) (*g*), read with the relevant proviso, which require a just and reasonable balancing and reconciliation of general and individual interests, we think that it would not be correct to hold that the power contained in section 47 can go beyond it or against it, because, to take such a view, would make the provision itself constitutionally invalid. Therefore, we hold that permits-issuing power under section 47 is restricted to service of interests of the public generally in a broad enough sense to include due respect for guaranteed fundamental rights of citizens. Indeed, service of interests of the public generally is the expressed object of even section 68-C in Chapter IV-A of the Act authorising framing of schemes of nationalisation of transport services. Such an object underlies the whole machinery of regulation by issue of permits for plying motor vehicles on hire.

25. It should be clear, when the main object, to which other considerations must yield in cases of conflict, of the permits-issuing power under section 47 of the Act is the service of interests of the public generally, that any particular fact or circumstance, such as a previous recent

grant in favour of an applicant or the holding of other permits by an operator cannot, by itself, indicate how it is related to this object. Unless, there are other facts and circumstance which link it with this object the nexus will not be established. For instance, an applicant may be a recent grantee whose capacity to operate a transport service efficiently remains to be tested so that a fresh grant to him may be premature. In such a case, another applicant of tested efficiency may be preferred. On the other hand, a fresh grantee may have, within a short period, disclosed such superiority or efficiency or offer such amenities to passengers that a recent grant in his favour may be no obstacle in his way at all. Again, the fact that an applicant is operating other motor vehicles on other permits may, in one case indicate that he had exceeded the optimum, or, has a position comparable to a monopolist, but, in another case, it may enable the applicant to achieve better efficiency by moving towards the optimum which seems to be described as a " Viable Unit " in the rules framed in Madras in 1968. Thus, it will be seen that, by itself, a recent grant or the possession of other permits is neither a qualification nor a disqualification divorced from other circumstances which could indicate how such a fact is related to the interests of the public generally. It is only if there are other facts establishing the correlationship and indicate its advantages or disadvantages to the public generally that it will become a relevant circumstance. But, in cases where everything else is absolutely equal as between two applicants which will rarely be the case, it could be said that an application of principle of equality of opportunity, which could be covered by Article 14, may enable a person who is not a fresh grantee to obtain a preference. Such a consideration, as we have indicated above could not be said to be outside the broad view of the interest of the public generally which we are taking so as to include within its purview application of tests underlying provisions giving fundamental rights to citizens under Articles 14 and 19 of the Constitution.

26. We think that the Madras High Court while rejecting the application for a certificate of fitness of the case for appeal to this Court in cases which form the subject-matter of Civil Appeals Nos. 1481 to 1483 of 1970 rightly observed :

> " Whether a particular circumstance is relevant or not has to depend on the facts of each case. What is not relevant in particular circumstances of grant or refusal of a permit may be relevant in another set of circumstances."

27. Relevancy or otherwise of one or more grounds of grant or refusal of a permit could be a jurisdictional matter. A grant or its refusal on totally irrelevant grounds would be *ultra vires* or a case of excess of power. If a ground which is irrelevant is taken into account with others which are relevant, or, a relevant ground, which exists, is unjustifiably ignored, it could be said to be a case of exercise of power under section 47 of the Act, which is quasi-judicial, in a manner which suffers from a material irregularity. Both will be covered by section 115, Civil Procedure Code.

28. Therefore, our answers to the three questions formulated above are :

(1) The relevance of the previous possession or grant of a permit appears only when other facts and circumstances, connecting it with and showing either the adverse or beneficial effects of its impact, in a particular case, on the interests of the public are shown to exist. Unless and until these other facts and circumstances, indicating the nexus or connection with public interest, appear, such a fact, by itself, should not affect an application for a permit.

(2) The weight to be attached to such a consideration will, obviously, depend upon the totality of all such facts and circumstances viewed in a proper perspective.

(3) The answer to the third question has been indicated already by the broad and general propositions which we now proceed to apply to each case before us.

29. In Civil Appeal No. 1402 of 1974, Mr. Chitaley, appearing for the appellant, contended that, as section 47 (1) (*e*) was omitted altogether by a Madras State amendment, at the relevant time,

the State Appellate Tribunal should not have taken into account the alleged disadvantage, almost raised to the level of a disqualification, of a recent or previous grant of a permit.

30. We, therefore, examined the provisions of the Motor Vehicles Tamil Nadu (Amendment) Acts X and XVI of 1971 and found that they do not omit section 47 (1) (*e*) at all, although there were two Ordinances Nos. 4 and 6 of 1971 which had substituted amended provisions of section 47 from which section 47 (1) (*e*) was omitted. But, the Ordinances were repealed by the Tamil Nadu Acts X and XVI of 1971 so that the provisions of section 47 (1) (*e*) of the Act in their application to Madras were intact at the time of the grant. The contention was, therefore, unsound.

31. It was then contended, in Civil Appeal No. 1402 of 1974, that the State Transport Appellate Tribunal had held two extraneous or irrelevant circumstances to be decisive. These were : that the respondent grantee before it was a recent grantee and that he held three permits altogether whereas the second appellant before it, to which the permit was granted by it, held only one permit. It was urged that these considerations were applied mechanically without showing their correlationship at all with the interests of the public generally as though the Appellate Tribunal was entrusted with the tasks of distributing favours and had to do this equitably on grounds which, however, laudable, are extraneous to the purposes of section 47 of the Act. Furthermore, it was pointed out that, at the relevant time, certain rules had been validly framed by the State Government under section 133 (1) of the Act the effect of which was *inter alia*, that possession of more than one vehicle was, an item, so to say, on the credit side instead of an item on the debit side of the balance-sheet prepared on the basis of marks. The grievance was that the Tribunal had converted into a demerit what was according to the rules, an additional ground to support a grant. The relevant sub-rule (3) of Rule 155-A, providing for giving the marks, contains the provision :

" (F) *Viable Unit* : The applicant who operates not more than four stage carriages excluding spare buses, shall be awarded marks at the rate of one mark for each stage carriage in order to have a viable unit of five carriages excluding spare buses."

32. In reply, it was pointed out that, although Rule 4 required that the applicants shall be ranked according to the total numbers of marks obtained by them, yet " the application shall be disposed of in accordance with the provisions of sub-section (1) of section 47 ". This contention pre-supposes an indication of the relevance of any fact taken into account to matters all of which seem to us to be covered by the broad class of " interests of public generally ". On the view we are adopting, section 47 (1) (*a*) is wide enough to include all categories of public interest including those laid down by valid rules. Clause (F) of sub-rule (3) of Rule 155-A, set out above, should, therefore, have been taken into account, and, unless there was good enough reason to depart from it, the rule should have been followed. Had this been done, it is clear that every additional stage carriage upto four would give an applicant an additional mark so as to help him to make up the " Viable Unit " of five. A recent grant could not, considered by itself and singly, be converted into a demerit as the Appellate Tribunal seems to us to have done. Inasmuch as disposal of the claims before the Appellate Tribunal seems to us to have taken place in a rather mechanical fashion by ignoring clause (F) of sub-rule (3) of Rule 155-A and without showing the correlationship facts mentioned by it to any of the categories of public interest found in section 47 (1) of the Act or to constitutional guarantees contained in Articles 14 and 19(1) (*g*) of the Constitution, the observance of which must also be in public interest, the order of the Appellate Tribunal was, in our opinion, vitiated by a material irregularity. The High Court should, therefore, have interfered even in the exercise of its power under section 115, Civil Procedure Code, which has been made applicable to such cases.

33. In Civil Appeal No. 2254 of 1969, a preliminary objection was taken to the

grant of a certificate of fitness of the case under Article 133 (1) (*c*) of the Constitution in such a case when there was no final order passed by the High Court. Reliance was placed upon *M/s. Raman and Raman (P.) Ltd., Kumbakonam* v. *Sri Rama Vilas Service Ltd., Kumbakonam*[1] where this Court said :

> " We are of the view that the High Court was in error in granting the certificate when nothing was decided by their judgment. The order was not final. The order of the High Court did not determine the rights and obligations of the parties : it merely set aside the order of the Appellate Tribunal and directed the Tribunal to deal with and dispose of the question according to law. The appeal is liable to fail on that limited ground alone."

No satisfactory answer has been given to the preliminary objection. But, as we could, if the case deserved it, grant special leave to appeal, even at this stage, we will refer to the merits also.

34. In this case, we find that the Division Bench of Madras High Court had only sent back the case to the Tribunal for disposal after determining the impact of considerations placed before the Tribunal on public interest. The relative merits of rival claimants must be compared after testing the very criterion of merit adopted on the anvil of public interest. The High Court only held that the fact that an applicant is a recent grantee may be a relevant consideration. As we have pointed out, the relevance or irrelevance of such a consideration will depend upon the totality of facts and circumstances which must correlate such a ground to public interest. It was contended, not without force, that the Appellate Tribunal had discussed all the relevant facts and circumstances sufficiently to indicate the impact of each of these upon public interest without expressly saying so and that the Division Bench need have done no more than to have pointed out that the observation of the learned Single Judge, to the effect that the question of a recent grant of a permit in favour of an applicant was extraneous to the considerations contained in section 47 of the Act was incorrect, or, to have explained that what this really meant was that, without showing other facts and circumstances connecting a recent grant with public interest, a recent grant of a permit was not material. However, as the Division Bench had sent back the case to the Appellate Tribunal, without determining the rights of the parties, we do not think that the mere fact that two views could be taken on the advisability of such a course would not, in our opinion, justify interference by us under Article 136 of the Constitution. Therefore, we are not disposed to grant special leave at this stage on the question raised. The question whether the order is a final one determining the rights of the parties is material even when considering the question of propriety of interference under Article 136 of the Constitution. We have no doubt that, in view of the clarification of the law by us here, the Tribunal will dispose of the case in accordance with law and deal with all the facts and circumstances which have bearing on public interest, including facts and circumstances which may have come into existence between the time when the grant was made and the time when the Tribunal reconsiders the claims to which the case is confined.

35. In Civil Appeals Nos.1481-1483 of 1970, we find that the High Court has given good enough grounds to justify reconsideration of the claims by the State Transport Appellate Tribunal. The High Court seems to us to have rightly hinted that, where the results of exercise of power to grant permit shows that permits are, without sufficient grounds for a discrimination or preference based on an appraisement of merits or requirements of public interest, being invariably granted to one particular party the powers are not fairly or impartially exercised. Quasi-judicial powers have to be exercised fairly, reasonably, and impartially. Capricious or dishonest preferences on purely personal grounds are necessarily excluded here. We have no doubt that the Tribunal will reconsider claims in conformity with needs of public interest as they exist at

1. C.A. No. 995 of 1965, dated 3rd May, 1968 (S.C.).

the time of reconsideration by the Tribunal. We do not think that these cases justify interference by this Court in exercise of its power under Article 136 of the Constitution.

36. The result is: We allow Civil Appeal No. 1402 of 1974 and set aside the order and judgment of the High Court as well as of the State Appellate Tribunal and direct to reconsider the cases of the parties concerned in the light of the law on the subject as laid down and explained by us. Civil Miscellaneous Petition No. 6852 of 1974 for an interim order has become infructuous and is hereby dismissed. The parties will bear their own costs throughout.

37. We dismiss Civil Appeals Nos. 2254 of 1969, and Nos. 1481-1483 of 1970, with costs. One hearing fee.

R.S. ——— *Order accordingly.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT.—*K.K. Mathew, P.N. Bhagwati and N.L. Untwalia, JJ.*

Messrs. Gajendra Transport (P.) Ltd. .. *Appellant**

v.

The Anamallias Bus Transport (P.) Ltd. and another .. *Respondents.*

Motor Vehicles Act (IV of 1939), sections 47, 48 and 57—Notification inviting applications for additional bus on existing route under section 57 (2)—Decision of Regional Transport Authority—Decision whether an order under section 47 (3).

The decision of the Regional Transport Authority to introduce one more bus on a route must be regarded as an order under section 47 (3) of the Motor Vehicles Act. Since the notification under section 57 (2) was issued by the Regional Transport Authority inviting applications for grant of stage carriage permit for an additional bus on the route, it represented a determination of the Regional Transport Authority as to the number of stage carriages on the route under section 47 (3). There was clearly a valid order under section 47 (3) fixing the limit of the number of stage carriages for which permits might be granted on the route before the applications were taken up for consideration and the order was made granting stage carriage permits. [*Para.* 3.]

Cases referred to:—

Mohd. Ibrahim v. *State Transport Appellate Tribunal, Madras,* (1971) 1 S.C.R. 474 : (1971) 1 S.C.J. 525: (1971) 1 M.L.J. (S.C.) 76 : (1971) 1 An.W.R. (S.C.) 76 : A.I.R. 1970 S.C. 1542; *R. Obliswami Naidu* v. *Additional State Transport Appellate Tribunal, Madras,* (1969) 3 S.C.R. 730 : (1969) 2 S.C.J. 654 : A.I.R. 1969 S.C. 1130 ; *Messrs. Jaya Ram Motor Service* v. *S. Rajarathinam,* (1967) 2 S.C.W.R. 857; *Abdul Mateen* v. *Ram Kailash Pandey,* (1963) 3 S.C.R. 523: A.I.R. 1963 S.C. 64.

K.S. Ramamurthy, Senior Advocate (*V. Subrahmanyam* and *Vineet Kumar,* Advocates with him), for Appellant.

The Judgment of the Court was delivered by

Bhagwati, J.—This appeal, brought by special leave, relates to grant of a stage carriage permit for the route Pollachi to Tiruppur via Kamanaickenpalayam and Palladam in Coimbatore District. It appears that a traffic survey had been conducted during the period from 1st June, 1966 to 15th July, 1966 on various routes in Coimbatore District and it was found as a result of this traffic survey that the load on the route Pollachi to Tiruppur via Kamanaickenpalayam and Palladam was heavy and it was, therefore, decided to introduce one more bus on this route. The Regional Transport Authority accordingly issued a notification under section 57, sub-section (2) of the Motor Vehicles Act, 1939 inviting applications for the grant of a stage carriage permit for one additional bus on this route. There were forty-two applications received in response to this invitation. The Regional Transport Authority considered these applications as also the representations received in connection with them and by an order dated

* C. A. No. 1484 of 1970.

11*th December,* 1974.

4th November, 1967 granted a stage carriage permit to the appellant to ply an additional bus on the route. The first respondent being aggrieved by the refusal of the Regional Transport Authority to grant a stage carriage permit to him preferred an appeal to the Additional State Transport Appellate Tribunal under section 64 (1) (*a*) of the Act. At the hearing of the appeal, the first respondent raised, for the first time, a contention that the Regional Transport Authority had no jurisdiction to proceed with consideration of the applications under section 48 (1) read with section 57 (3), since no prior order limiting the number of stage carriages for which permits might be granted on the route was made under section 47 (3). The Tribunal allowed this contention to be raised, though it had not been taken before the Regional Transport Authority, and taking the view that it was well-founded, held that no valid order limiting the number of stage carriages for which permits might be granted on the route had been made by the Regional Transport Authority under section 47 (3) before considering the applications and representations in connection therewith and the order made by the Regional Transport Authority granting stage carriage permit to the appellant was, therefore, without jurisdiction. On this view, the Tribunal by an order dated 11th June, 1968 allowed the appeal of the first respondent and setting aside the order of the Regional Transport Authority granting stage carriage permit to the appellant, remitted the matter to the Regional Transport Authority " for being proceeded with in accordance with law ". The appellant challenged the validity of this order made by the Tribunal by a petition filed under Article 226 of the Constitution in the High Court of Madras. The petition came up for admission before a Single Judge of the Madras High Court who summarily rejected the petition. This led to the filing of a Letters Patent appeal before a Division Bench of the Madras High Court. The Division Bench considered various decisions of this Court and held that it was not competent to the Regional Transport Authority to exercise the power to grant stage carriage permit under section 48 (1) read with section 57 (3) without first fixing the limit of the number of stage carriages for which permits might be granted on the route under section 47 (3) and since in the present case there was no order under section 47 (3), the Regional Transport Authority had no power to grant stage carriage permit under section 48 (1) read with section 57 (3) and the order granting stage carriage permit to the appellant was bad as rightly held by the Tribunal. The Division Bench accordingly upheld the order passed by the Tribunal and dismissed the appeal. The appellant thereafter preferred the present appeal after obtaining special leave from this Court.

2. The question arising in this appeal lies in a narrow compass and stands concluded by a recent decision of this Court in *Mohd. Ibrahim* v. *State Transport Appellate Tribunal, Madras*[1]. This decision was given in a batch of appeals against the judgments of the Madras High Court in similar cases where the same Division Bench, which decided the appeal in the present case, took the view that since there was no valid order made by the Regional Transport Authority under section 47 (3) prior to the grant of stage carriage permits, the orders of the Regional Transport Authority granting such stage carriage permits to one or the other applicants were invalid. This Court, speaking through Ray, J., as he then was, after referring to the earlier decisions of the Court, stated the law on the subject in the following terms :

> " This Court in *Abdul Mateen's case*[2], 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

1. (1971) 1 S.C.J. 525: (1971) 1 S.C.R. 474 : A.I.R. 1970 S.C. 1542.
2. (1963) 3 S.C.R. 523; A.I.R. 1963 S.C. 64.

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*[1] 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. Obluwami Naidu*[2], 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 would 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."

The learned Judge then proceeded to add that the earlier decisions of the Court established two propositions, namely :

"First, that the Regional Transport Authority should fix the limit of number of stage carriage permits under section 47 (3) of the Act and after having done so the Regional Transport Authority will consider the application for grant and representations in connection therewith in accordance with the procedure laid down in section 57 of the Act. Secondly, when a new route is opened for the first time and an advertisement is issued calling for applications for such a new route specifying the number of vacancies for it, it would be reasonable to hold that the number of vehicles is specified as the limit decided upon by the Regional Transport Authority,"

and towards the end, the learned Judge pointed out that where the Regional Transport Authority issued a notification under section 57 (2) inviting applications for a permit on a new route or a permit for an additional bus on an existing route, it can reasonably be held that the Regional Transport Authority has arrived at a decision as to the limit of the number of permits as required under section 47 (3), because it is not the form but the substance of the order that has to be considered. It is in the light of this statement of the law that we must consider whether the Regional Transport Authority acted without jurisdiction in granting stage carriage permit to the appellant as found by the Tribunal and affirmed by the Division Bench of the Madras High Court.

3. It appears from the order of the Tribunal that according to it the Regional Transport Authority did not fix or revise the number of stage carriages for which permits might be granted on the route before taking up the applications for consideration and it was only at the hearing of the applications that he decided the need for an additional bus on the route and that was in breach of the requirement of law. The Division Bench of the Madras High Court also took the view that "there was no order under section 47 (3) relevant to the route". But this finding that there was no order fixing the limit of the number of stage carriages for which permits might be granted on the route, is clearly erroneous. Paragraph 4 of the order of the Tribunal is very illuminating in this connection. It says:

"The facts are that as can be seen at page 1 of the Regional Transport Authority's file a traffic survey had been conducted during the period

1. (1967) 2 S.C.W.R. 857.
2. (1969) 2 S.C.J. 654: (1969) 3 S.C.R. 730: A.I.R. 1969 S.C. 1130.

from 1st June, 1966 to 15th July, 1966 on various bus routes in Coimbatore District, and the load factor on the route in question was found to be high and therefore it was proposed to introduce one more bus on this route. Applications were accordingly invited by means of the notification under section 57 (2) of the Motor Vehicles Act for the grant of a permit for one bus....."

This statement in the order of the Tribunal clearly shows that before the notification under section 57 (2) was issued inviting applications for grant of a stage carriage permit for plying one additional bus on the route, a decision had already been taken by the Regional Transport Authority on the basis of the traffic survey conducted during the period from 1st June, 1966 to 15th July, 1966 that one additional bus should be introduced on the route. It is true that a formal order was not passed, by the Regional Transport Authority revising the limit of the number of stage carriages by the addition of one more bus on the route, but, as pointed out by this Court in *Mohd. Ibrahim* v. *State Transport Appellate Tribunal, Madras*[1], "an order under section 47 (3) of the Act is not a matter of mere form but of substance." The decision of the Regional Transport Authority to introduce one more bus on the route must be regarded as an order under section 47 (3). It would also be reasonable to hold on the strength of the decision in *Mohd. Ibrahim* v. *State Transport Appellate Tribunal, Madras*[1], that since the notification under section 57 (2) was issued by the Regional Transport Authority inviting applications for grant of stage carriage permit for an additional bus on the route, it represented a determination of the Regional Transport Authority as to the limit of number of stage carriages on the route under section 47 (3). There was, thus, clearly a valid order under section 47 (3) fixing the limit of the number of stage carriages for which permits might be granted on the route before the applications were taken up for consideration and the order was made granting stage carriage permit to the appellant. The Tribunal was, therefore, not right in setting aside the order of the Regional Transport Authority on the ground that there was no valid order under section 47 (3) and the Single Judge as well as the Division Bench of the Madras High Court were also in error in confirming the order made by the Tribunal.

4. We, therefore, allow the appeal and set aside the order of the Tribunal and since the appeal preferred by the first respondent against the order of the Regional Transport Authority has not been heard on merits, we remit the matter to the Tribunal for hearing the appeal before it on merits. There will be no order as to costs.

R.S. *Appeal allowed.*

1. (1971) 1 S.C.J. 525: (1971) 1 S.C.R. 474: A.I.R. 1970 S.C. 1542.

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT :—*V. R. Krishna Iyer, P. K. Goswami and A. C. Gupta, JJ.*

Food Corporation of India .. *Appellant**

v.

M/s. Thakur Shipping Co. and others .. *Respondents.*

Arbitration Act (*X of* 1940), *section* 34—*Plaintiff writing to defendant to refer matter in suit to arbitration—No reply—Suit by plaintiff—Application by defendant to stay suit—Application rejected by trial Court—High Court granting stay—Whether proper.*

Where a party to an arbitration agreement chooses to maintain silence in the face of repeated requests by the other party to take steps for arbitration, the case is not one of mere "inaction". Failure to act when a party is called upon to do so is a positive gesture signifying unwillingness or want of readiness to go to arbitration. [*Para.* 5.]

It is clear on the authorities and from the terms of section 34 of the Arbitration Act,

*C.As. Nos. 1518 and 1519 of 1974.
19*th December*, 1974.

1940, that the readiness and willingness must exist not only when an application for stay is made but also at the commencement of the legal proceedings. [*Para.* 6.]

Cases referred to :—

Mickael Golodetz v. *Serajuddin and Co.*, (1964) 1 S.C.R. 19: (1963) 2 S.C.J. 471: (1963) 2 An.W.R. (S.C.) 106 : (1963) 2 M.L.J. (S.C.) 106: A.I.R. 1963 S.C. 1044; *Anderson Wright* v. *Moran & Co.*, (1955) 1 S.C.R. 862 : 1955 S.C.J. 200 : (1955) 1 M.L.J. (S.C.) 113 : A.I.R. 1955 S.C. 53; *Subal Chandra* v. *Md. Ibrahim*, 47 Cal. W.N. 570 : A.I.R. 1943 Cal. 484.

M. Krishna Rao, Senior Advocate, (*B. Parthasarathy*, Advocate, with him), for Appellant in C.A. No. 1518 of 1974.

Niren De, Attorney-General for India (*B. Parthasarathy*, Advocate, with him), for Appellant in C.A. No. 1519 of 1974.

Ghatate and *S. Bala Krishnan*, Advocates, for Respondent No. 1, in C.A. No. 1518 of 1974 and *S. T. Desai* (Senior Advocate), *N. M. Ghatate* and *S. Bala krishnan*, Advocates with him, for Respondent in C.A. No. 1519 of 1974.

The judgment of the Court was delivered by

Gupta, J.—In these two appeals by special leave the appellant, Food Corporation of India, challenges the correctness of two orders passed by the High Court of Madras staying under section 34 of the Arbitration Act two suits for damages it had instituted in the Court of the Subordinate Judge at Tuticorin. The question for consideration is whether the first respondent in each of these two appeals, who is the first defendant in the respective suits out of which these appeals arise, was "ready and willing to do all things necessary to the proper conduct of the arbitration" as required by section 34. This is really a question of fact and the trial Court found that in neither case the defendant who applied for stay satisfied this test. On appeal, the High Court stayed the suits reversing the decision of the trial Court by two separate orders passed on the same day. Whether the High Court acted rightly would depend upon the facts and circumstances of the two cases which are essentially similar. It is necessary therefore to state briefly the facts leading to the institution of the suits.

2. The appellant Food Corporation of India, referred to hereinafter as the Corporation, chartered two ships belonging respectively to M/s. Thakur Shipping Co. Ltd. and the Great Eastern Shipping Co. Ltd., for carrying rice from Thailand to India. The charter-party between the Corporation and the shipping companies contained a clause, namely clause 42, which reads as follows :—

> "Any dispute under this charter to be referred to arbitration in India one Arbitrator to be nominated by the owners and the other by the charterers and in case the Arbitrators shall not agree then to the decision of an umpire to be final and binding upon both parties."

The bills of lading provided *inter alia* that the contract between the parties was subject to the Indian Carriage of Goods by Sea Act, 1925 and that the provisions of the Act would be deemed as incorporated in the bills of lading. The bills of lading contained a clause that "no suit shall be maintained unless instituted within one year after the date on which the ship arrived or should have arrived at the port of discharge notwithstanding any provision of law of any country or State to the contrary". The Indian Carriage of Goods by Sea Act, 1925 in clause 6 of Article III of the Schedule also provides *inter alia* that "the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when goods should have been delivered."

3. The ship belonging to M/s. Thakur Shipping Co., Ltd., first respondent in C.A. No. 1518 of 1974 and first defendant in Suit No. 103 of 1970 out of which this appeal arises, arrived at Tuticorin Port, which is the port of discharge, on 31st August, 1969 and discharge of cargo was completed on 13th September, 1969. The Corporation made a claim for damages for short delivery, provisionally on 29th November, 1969 and finally on 24th January, 1970. On 2nd July, 1970 the Corporation sent a telegram to the second defendant in the suit, M/s. Pent Ocean

Steamship Private Ltd., Bombay, who were the Operating Managers of the ship concerned, asking them to confirm whether they were agreeable to refer the dispute as to short delivery to the sole arbitration of the Director-General Shipping, Bombay, stating that the matter was "most immediate". It is to be noted that the proposed reference to the sole arbitration of Director-General Shipping was a deviation from Clause 42 of the charter-party. There was no reply to this telegram. On 8th July, 1970 another telegram repeating the earlier proposal was sent to the second defendant again emphasizing the urgency of the matter. On 9th July, 1970 the second defendant sent a reply saying that they were no longer the Operating Managers and asking the Corporation to contact the first defendant for further advice. The Corporation then sent a telegram on 10th July, 1970 to the first defendant seeking to know if they were agreeable to have the dispute referred to the sole arbitration of Director-General Shipping, Bombay, repeating that the matter was "most urgent". The first defendant chose not to answer the telegram. Any reminder after this, one expected, would be sent to the first defendant but on 25th July, 1970 the Corporation telegraphically asked the second defendant again to nominate an arbitrator in terms of Clause 42 of the charter party in case the proposal for arbitration by the Director-General Shipping, Bombay, was not acceptable. In this telegram it was stated that the time within which the claim should be made was to expire shortly and that failure on the part of the other side to take prompt action for reference of the dispute to arbitration would compel the Corporation to take legal proceedings. Failing to get any response from the other direction, the Corporation on 31st August, 1970 instituted Suit No. 103 of 1970 in the Court of the Subordinate Judge at Tuticorin for recovery of Rs. 1,57,724-73p. on account of short delivery and damage to the rice shipped. A few days' more delay would have barred the claim. Served with the summons of the suit, the first defendant applied under section 34 of the Arbitration Act for stay of the suit. As stated already, the trial Court rejected the application; on appeal the High Court reversed that decision and allowed the prayer for stay on the view that the trial Court had failed to exercise its discretion properly. C.A. No. 1518 of 1974 arises out of this order.

4. The facts in C.A. No. 1519 of 1974 are these. The ship belonging to the first respondent in this appeal, the Great Eastern Shipping Co., Ltd. arrived at Tuticorin Port from Thailand on 15th August, 1969 and discharge of cargo was completed on 27th August, 1969. By a letter, dated 29th November, 1969 addressed to the steamer agents of the first respondent, the clearing agents of the Corporation made a claim for short delivery and damage in respect of the consignment of rice. The steamer agents, who figure as the second respondent in this appeal, replied to this letter on 2nd December, 1969 stating: "We have referred the matter to our principals and shall revert on hearing from them". After waiting for about four months, the clearing agents of the Corporation again wrote to the second respondent asking them to contact their principals and to "settle the claims immediately". The reply sent to this letter by the second respondent on 9th April, 1970 repeated: "We have referred the matter to our principals and shall revert on hearing from them". Having heard nothing for about a month, the clearing agents of the appellant wrote again to the second respondent on 11th May, 1970 wanting to know the attitude of the first respondent regarding the claim adding that if the claim was not settled in time the appellant would have to take legal action to recover the amount of claim. By their letter, dated 14th May, 1970 the second respondent acknowledged receipt of that letter and repeated for the third time that they had referred the matter to their principals and "shall revert on hearing from them". Thereafter on 9th July, 1970 the second respondent wrote again to the appellant's agents only to know how the appellant had disposed of the damaged rice adding that this information would enable them to advise their principals. Finally on 29th July, 1970, the District Manager, Food Corporation of India, Tuticorin, wrote to the first respondent stating, *inter alia*, that if the claim was not "settled

on or before 13th August, 1970 the appellant would be constrained to take legal action. From the dates given above, it would appear that the claim was going to be barred in a few days. To this letter there was no reply. On 14th August, 1970 the Corporation instituted Suit No. 101 of 1970 in the Court of the Subordinate Judge at Tuticorin for recovery of a sum of Rs. 1,12,420-70 p. impleading as the first and second defendant respectively the first and second respondent of this appeal. Receiving the summons of the suit, the first defendant applied for stay under section 34 of the Arbitration Act. The trial Court declined to stay the suit and rejected the application. On appeal the High Court held that the decision of the trial Court was perverse and allowed the application for stay. C.A. No. 1519 of 1974 is directed against this order of the High Court.

5. The trial Court held that the fact that in either case the first defendant took no steps for referring the matter to arbitration in spite of being urged to do so by the plaintiff indicated that the defendants were not ready and willing to go to arbitration and were only waiting for the claim to be barred by lapse of time. As stated already, the bills of lading contained a provision that no suit to enforce such claims would be maintainable after one year from the date of arrival of the ship at the port of discharge. The Indian Carriage of Goods by Sea Act also provides in clause 6 of Article III of the Schedule that " the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered". The High Court reversed the decision of the trial Court relying on a decision of the Calcutta High Court in *Subal Chandra Bhur* v. *Md. Ibrahim*[1]. In that case S.R. Das, J., as his Lordship then was, observed at one place in his judgment : " Mere inaction prior to the commencement of the legal proceedings cannot, in my opinion, be in construed as want of readiness and willingness to go to arbitration at the commencement of the legal proceedings ". The proceeding sought to be stayed in that case was a partnership action and the observation was made in repelling a contention that there should be no stay as none of the partners thought fit to take advantage of the arbitration clause for a long time after the partnership came to an end. Apparently, in this case inaction did not affect in any way the matter proposed to be referred to arbitration. But the two suits out of which the instant appeals arise were instituted just before the plaintiff's claim in either case was going to be barred by time ; it is not disputed that after the lapse of one year from the date when the goods were to be delivered the defendants would have been discharged from all liability in respect of any loss or damage and there would have been no live dispute to be referred to arbitration. Where a party to an arbitration agreement chooses to maintain silence in the face of repeated requests by the other party to take steps for arbitration the case is not one of " mere inaction ". Failing to act when a party is called upon to do so is a positive gesture signifying unwillingness or want of readiness to go to arbitration. The aforesaid observation in *Subal Chandra Bhur's case*[1], does not therefore appear to have any application on the facts of the cases before us.

6. The High Court pointed out that in each of these two suits, the first defendant applied for stay under section 34 as soon as they received the summons of the suit stating in the application that they were ready and willing to have the dispute settled by arbitration. The High Court held that the requirement of section 34 is satisfied if the defendant expresses his willingness to go to arbitration at the earliest opportunity after the suit is instituted. In our opinion the High Court was wrong in taking this view. Section 34 of the Arbitration Act reads :

> " Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time

1. 47 Cal. W.N. 570: A.I.R. 1943 Cal. 484.

1. 47 Cal. W.N. 570 : A.I.R. 1943 Cal. 484.

before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings ; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was at the time when the proceedings were commenced and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings."

The observation of Das, J., in *Subal Chandra Bhur's case*[1], on which the High Court relied is preceded by the following sentence : " Further, the readiness and willingness required by section 34 of the Act has to exist at the commencement of the legal proceedings and has to continue up to the date of the application for stay." In *Anderson Wright Ltd.* v. *Moran and Co.*[2] this Court enumerating the conditions that should be fulfilled before a stay may be granted under section 34 notes as one of the conditions that the applicant for stay " should satisfy the Court not only that he is but also was at the commencement of the proceedings ready and willing to do everything necessary for the proper conduct of the arbitration." It is thus quite clear on the authorities and from the terms of section 34 that the readiness and willingness must exist not only when an application for stay is made but also at the commencement of the legal proceedings. From the conduct of the first defendant in either of these two suits the trial Court found that they were not ready and willing to go to arbitration at the time when the suits were instituted. This is a finding of fact and we are afraid there was no valid ground in either case for interference with this finding. From the letters written on behalf of the Corporation to the agents of the first defendant in the suit giving rise to C.A. No. 1519 of 1974 urging them to take steps for referring the dispute to arbitration and the evasive replies sent to these letters, the trial Court came to the conclusion that the first defendant was not ready and willing to go to arbitration at the time when the suit was instituted. We do not think this was an arbitrary or perverse conclusion as the High Court characterized it. In our opinion the High Court went wrong in disregarding relevant and significant material, namely, the correspondence that passed between the parties, as innocuous " and erred in disturbing the finding of fact for no valid reason.

7. As regards the suit which gives rise to C.A. No. 1518 of 1974, the trial Court repelled the contention that as the Corporation's proposal to refer the dispute to the sole arbitration of the Director-General Shipping, Bombay was different from what clause 42 of the charter-party provided, the defendant was justified in not replying to the telegrams or doing anything for the proper conduct of the arbitration. The argument that the trial Court rejected found favour with the High Court. That the Corporation's proposal was a deviation from clause 42 of the charter-party was hardly a valid excuse for the first defendant to remain silent and inactive. If the first defendant were ready and willing to go to arbitration, one would have expected them, as the trial Court observed, to reply to the telegrams saying that they were not agreeable to any departure from the terms of clause 42 and would insist on compliance with that clause. But they did not reply to the telegrams or do anything for reference of the dispute to arbitration as provided in clause 42. Silence and inaction on their part may in these circumstances very well justify the inference that they were not ready or willing to go to arbitration. The finding of the High Court that the trial Court had exercised its discretion not judicially cannot therefore be supported. And in this case really no question arises as to exercise of discretion. Granting stay under section 34 is of course discretionary as the section indicates but the occasion for the exercise of discretion does not arise unless all the conditions stated in the section are fulfilled. In this case the trial court found as a fact that the first defendant was not ready and willing to go to arbitration when the suit was instituted and we have held that the finding is not perverse

1. 47 Cal W.N. 570 : A.I.R. 1943 Cal. 484.
2. 1955 S.C.J. 200: (1955) 1 M.L.J. (S.C.) 113; (1955) 1 S.C.R. 862: A.I.R. 1955 S.C. 53.

or arbitrary ; one of the requirements of the section not having been fulfilled, section 34 could not be invoked in this case.

8. Mr. Desai for the respondent relied on certain observations of this Court in *Michael Golodetz* v. *Serajuddin and Co.*[1] in support of the proposition that the Court should not allow a party to an arbitration agreement to proceed with the suit in "breach of the solemn obligation to seek resort to the Tribunal selected by him". It is however made clear in that decision that these observations are subject to the terms of section 34, one of which is that the other party to the agreement must remain "ready and willing to do all things necessary for the proper conduct of the arbitration". The legal position is explained in that decision as follows :

> "The Court ordinarily requires the parties to resort for resolving disputes arising under a contract to the Tribunal contemplated by them at the time of the contract. That is not because the Court regards itself bound to abdicate its jurisdiction in respect of disputes within its cognizance, it merely seeks to promote the sanctity of contracts, and for that purpose stays the suit. The jurisdiction of the Court to try the suit remains undisputed ; but the discretion of the Court is on grounds of equity interposed ..... it is for the Court, having regard to all the circumstances, to arrive at a conclusion whether sufficient reasons are made out for refusing to grant stay. Whether the circumstances in a given case make out sufficient reasons for refusing to stay a suit is essentially a question of fact."

9. For the reasons stated above we think that the appeals must succeed. Accordingly, we allow both the appeals and set aside the order of the High Court and restore that of the trial Court in each of these two cases. In C.A. No. 1519 of 1974 the appellant will be entitled to its costs in this Court and in the High Court against the contesting respondent. In C.A. No. 1518 of 1974, considering all aspects, we direct the parties to bear their own costs throughout.

V. K. *Appeals allowed.*

1. (1963) 2 S.C.J. 471: (1963) 2 An.W.R. (S.C.) 106: (1963) 2 M.L.J. (S.C.) 106: (1964) 1 S.C.R. 19; A.I.R. 1963 S.C. 1044.

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT :—*A.N. Ray, C.J., K. K. Mathew and A. Alagiriswami, JJ.*

Secretary to Government of Home Department, Tamil Nadu and others .. *Appellants**

v.

Salem Dharmapuri Omnibus Association and others .. *Respondents.*

Madras Motor Vehicles Taxation Act (III of 1931), section 4—Imposition of tax by G.O.M.S. No. 923, *Home, dated 19th April,* 1969 *and G.O. Ms.* No. 434, *Home, dated 27th Febraury,* 1970—*Validity.*

The High Court was clearly wrong in striking down the two G.Os. namely, G.O. Ms. No. 923, Home, dated 19th April, 1969 and G.O.Ms. No. 434, Home, dated 27th February, 1970 for the reason that the levy of tax under the G.Os. was not an exercise of the power of taxation but was a measure for eliminating competition of the permit-holders of contract carriages. [*Para.* 4.]

Case referred to:—

G.K. Krishnan v. *State of Tamil Nadu,* A.I.R. 1975 S.C. 583.

The Judgment of the Court was delivered by

Mathew, J.—The only point in these appeals is whether the High Court was right in striking down the two G.Os., namely, G.O. Ms. No. 923, Home, dated 19th April, 1969 and G.O.Ms. No. 434, Home,

* C.As. Nos. 1405 to 1409 of 1971.
12th November, 1974.

dated 27th February, 1970, for the reason that the levy of tax under the G.Os. was not an exercise of the power of taxation but was a measure for eliminating competition of the permit-holders of contract carriages.

2. We have already indicated in our judgment in *G.K. Krishnan* v. *State of Tamil Nadu*[1], that if the Government has power to impose the tax, the motive or the purpose with which that power has been exercised is quite immaterial. Section 17 gives power to the State Government to amend schedule II or III by rules. A draft of any rule has to be laid on the table of the Legislative Assembly and the rule shall not be made unless the Assembly approves the draft. Neither the draft of the rule approved by the Assembly nor the rule as framed by Government contained the purpose of imposing a higher tax on contract carriages. It was only when the rule was published that the purpose of imposing the tax *viz.*, to eliminate the unhealthy competition from contract carriages, was added. If the tax was otherwise legal, it would not become illegal merely because it was intended to be used also as an instrument to regulate an activity within the power of the State.

3. We have already held in our judgment referred to in the preceding paragraph that the tax imposed on contract carriages by notification No. 2044, Home, dated 20th September, 1971 is compensatory in character and, therefore, the Government, in the exercise of its delegated power was competent to impose the same without, in any way, restricting the freedom of trade, commerce and intercourse, If that be so, we see no reason to hold that the tax imposed by the two notifications in question is not compensatory in character and it was not contended otherwise before the High Court or here.

4. The High Court was clearly wrong in declaring that the tax imposed by the two notifications was not an exercise of the power to tax. The judgment of the High Court in these appeals is set aside and the appeals allowed but, in the circumstances, without any order as to costs.

V.K. ——— *Appeals allowed.*

[END OF VOLUME (1975) II M.L.J. (S.C.)]

1. A.I.R. 1975 S.C. 583.