Akhil Bharatiya Grahak Panchayat (Bombay Branch) and Others Vs State of Maharashtra and Others

Court: Bombay High Court

Date of Decision: Nov. 23, 1983

Acts Referred: Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 â€" Section 1
Bombay Municipal Corporation Act, 1888 â€" Section 125, 460 KK, 460 LL
Constitution of India, 1950 â€" Article 14, 226
Motor Vehicles Act, 1939 â€" Section 43

Citation: AIR 1985 Bom 14

Hon'ble Judges: Kantharia, J; Dharmadhikari, J

Bench: Division Bench

Advocate: C.G. Kalsekar, U.P. Bobade and V.M. Malvankar, for the Appellant; M.V. Paranjape, S.M. Shah, S.A. Hegde, G.S. Hegde, K.K. Singhavi and C.J. Sawanth, instructed by . Crawford Bailey and Co., for the Respondent

Judgement

Dharmadhikari, J.
Petitioner 1, which is a brand of an All India Corporation known as Akhil Bharatia Grahak Panchayat (hereinafter

called panchayat) and its office bearers and members have challenged the validity and /or legality and propriety of fare hike, effect by the State of

Maharashtra, in consultation with the State Transport Authority vide final notification dt. 5th Jan. 1981, fixing fares for the State carriages plying

within the municipal areas or in mofussil area, in exercise of the powers conferred upon it under S.43 of the Motor Vehicles Act.

2. By and large it is an admitted position that the Maharashtra State Road Transport Corporation is operating buses to the exclusion of other

private operators, excepting in certain parts of the State and qua some routes, where private bus operators are still permitted to ply their buses.

Thus, the State Transport Corporation has by now virtually eschewed competition and eliminated all private operators from the field except in

certain areas or on certain routes. So far as the city buses plying within the Municipal Corporation area are concerned, they are controlled by the

local authorities, or by MSRTC. Prior to the impugned notification, fare rise was sanctioned for the State Transport on or about 17th of Nov.

1975 and for Best on 25-9-1979. Thereafter it appears proposals were received by the State Government from the Maharashtra State Road

Transport Corporation (hereinafter called the MSRTC) for raising the maximum and minimum limits of fares in both the mofussil and city areas and

from the Best Undertaking, Pune Municipal Transport Undertaking, Kolhapur Municipal Transport Undertaking and Solapur Transport

Undertaking in respect of city areas. After these proposals were received, draft notifications were issued by the State Government on 2-10-1980

and 6th Oct. 1980 inviting objections. Petitioner 2, Shri V.S.Bapat, on behalf of himself and several other citizens filed an objection vide letter dt.

2nd July 1979. He also presented the case of the citizens at the hearing fixed by the Honourable Minister for Transport. It appears that the

objections raised by petitioner No.2 and others were negatived by the Honourable Minister by his order dated 24th Dec. 1980 and thereafter final

notifications were issued on 5th of Jan. 1981. As already observed, it is these final notifications fixing the maximum and minimum fares which are

challenged in this writ petition by the petitioners.

3. Shri Kalsekar, learned Counsel appearing for the petitioners contended before us that the respondent State Government has failed to follow the

condition precedent laid down by S. 43 of the Act, before issuing directions to the State Transport Authority regarding fixing of fares. According

to Shri Kalsekar, members of the public were not given a reasonable opportunity to raise objections to the draft notifications. No data or material

on the basis of which the proposals for fare hike were made, was ever disclosed to the petitioners. In substance there was no public hearing in the

eye of law or within the meaning of S. 43(1) proviso of the Act. He also contended that respondent No.4, Minister for Transport was not

competent to decide the issue of fare rise since MSRTC is a Government Undertaking which enjoys a virtual monopoly in running the State

carriages. Further, it appears that fare hike was proposed by the State Government itself. This being the position, the Minister for Transport, being

part and parcel of the State Government was ex facie disqualified from hearing the objections. Hearing of the objections by the Minister practically

amounted to deciding the matter by the proposer. This is contrary to the principles of natural justice. Therefore, the order passed by the Minister

and the notifications issued by the Government are wholly illegal. According to the learned Counsel there is nothing in S. 43 of the Act, which

makes it incumbent upon the Minister to be the sole arbiter of the issue regarding fixing of the fares and such a question should have been left to an

independent authority, such as Fare Commission consisting of experts and representatives of ""interest affected"" persons, which must include

representatives of commuters. He then contended that even otherwise it is quite clear from the order of the Honourable Minister that he failed to

apply his mind to various objections raised and has granted the fare hike mechanically at the instance of MSRTC and BEST. While doing so he

had not taken into consideration interest of the general public or advantages offered to the public. It was also contended by Shri Kalsekar that the

Honourable Minister committed an error in overruling the objections based on the provisions of the Bombay Motor Vehicles (Taxation on

Passengers) Act, 1958. According to the learned Counsel, the provisions of the said Tax Act are unconstitutional and are also discriminatory. It

makes invidious discrimination between the passengers travelling within the Municipal limits and those travelling outside municipal areas and the

reason given by the State for higher rate outside municipal limits, namely, that funds are needed for development of rural roads is merely a sham

excuse. Further, from the manner in which the levy is imposed, it is quite clear that it is a tax on gross income of the Transport Undertaking and is

therefore beyond the competence of the State legislature. He also contended that in any case MSRTC being entirely owned and controlled by the

State Government, the passenger tax receipts should form part and parcel of total earnings and the profits of the Undertaking. Such a burden

cannot be used to cripple down the viability of the Undertaking itself. He also contended that the representations made by respondent 3, MSRTC

or respondent Nos.6 and 7 Municipal Corporation of Greater Bombay or BEST Undertaking, that unless fares are increased, they would have

deficit budgets, are false representations, as they have underestimated the income and overestimated their expenditure. Additional depreciation

claimed over and above normal depreciation was wholly illegal, being contrary to the well established principles of accounting. At any rate, net

amount of additional depreciation cannot be permitted to be deducted from the profits of business. In support of this contention, he has placed

reliance upon the decision of the Supreme Court in Premier Automobiles Ltd. and Others Vs. Union of India (UOI), as well as the provisions of

the I-T Act. According to the learned Counsel by S. 23 of the Road Transport Corporations Act, a statutory obligation is cast upon the State or

Union Government to contribute towards working capital of the Undertaking. The Union Government and the State Government have failed to

carry out their statutory obligations and for their lapse on their part commuters cannot be penalised. MSRTC is under a statutory obligation to run

its undertaking on sound economic and business principles. Raising working capital by raising fares is not sound and economic business principle.

Further increase sanctioned is far in excess of the increase in the cost of fuel and other inputs. Respondent 3, MSRTC has consistently neglected to

take steps as suggested by the public undertaking committee in its successive reports for effecting economy and increasing efficiency. By effecting

economy and increasing efficiency MSRTC will be able to generate several crores of rupees. In this context, learned Counsel has placed reliance

upon the recommendations of the Paradasani Committee as well as Jain Committee. According to the petitioners in these reports specific measures

have been suggested to prevent pilferage etc. for effecting economy and improving efficiency. Instead of taking these steps MSRTC is taking

recourse to the fare hike which in substance amounts to putting premium on inefficiency, mismanagement and pilferage. So far as the BEST id

concerned, it is an Undertaking run by respondent 6. It is contended by Shri Kalsekar that it is quite clear from the records of previous nine years

that respondent No.6 Corporation was consistently misled by BEST administration by presenting deficit budgets and asking for fare hikes, when in

fact the Undertaking was making profits. The budget of BEST shows deficit since it is based on wrong method of calculation and due to inclusion

in its expenditure, the items like interest on internal funds, additional depreciation, excessive provision of contingency and payment to Bombay

Municipal Corporation under Ss. 460KK and 460LL of the Act. According to the learned counsel these provision viz. Ss. 460KK and 460LL are

ultra vires being violative of Art. 14 of the Constitution. According to the petitioners these provisions of the Act enable the BEST to create capital

by burdening passengers with periodical fare hikes, which is wholly unfair, unjust and arbitrary. It is also arbitrary since the B.M.C. only takes

profit without correspondingly contributing anything towards the losses. The petitioners also contended that under the Agreement with the World

Bank in May 1975 a loan of Rs. 22.5 crores was taken by the Municipal Corporation on that the provisions of Ss. 460 KK and 460LL will be

deleted. However the corporation has failed to carry out its obligation and therefore the World Bank has declined to give balance of Rs. 5 crores

towards the said loan. Though seven hundred buses were purchased from the World Bank loan, only 430buses are being used. The BEST

Administration is not disclosing its correct financial position to the Municipal Corporation, much less to the public at large. As per the correct

calculations, the BEST is running in profit. Further , if imposition of passenger tax is excluded from consideration, then fare hike is wholly

unnecessary.

5. It was also contended by the learned Counsel that every year several lakhs of rupees are paid to the Municipal Corporation and some amount

from profits is also set apart for welfare funds of Municipal Officers, servants and their families thus causing a severe drain on the BEST resources.

These are not permissible deductions from the gain of business under the Income Tax Act. According to him payment of interest on the amounts

advanced by the Municipal Corporation is an interest on internal funds and is therefore illegal and for this proposition he has placed reliance upon

the decision of the Supreme Court in The Workmen of William Jacks and Co. Ltd., Madras, Represented by the William Jacks and Company

Employees" Union Vs. Management of William Jacks and Co. Ltd., Madras, .

6. On the other hand it is contended by Shri Paranjape, learned Counsel appearing for the State Government, MSRTC. Honourable Minister as

well as Advocate General, that the provisions of S. 43 of the Act are legislative in nature and therefore the principles of natural justice have no

application to it. If the State Government chooses to issue such directions, then it is obliged to follow the procedure prescribed by the Act and

nothing more. Under S.43 ,the interest of the passenger has no place as he does nit belong to ""interest affected"" category of persons. Section 43 of

the Act cannot take in its import a body of passengers, whose interest is contingent. Further association of passengers is wholly out of picture,

when directions are issued under S.43. Assuming that the petitioners were entitled to be heard, still they were not entitled to ask for data and

material on which proposals or findings are based. Further, from the material placed on record, including the objections raised by the petitioner 2,

it is more than clear that he was in possession of relevant material and data. The annual accounts of MSRTC are presented to the Legislature and

the reports on its working are also published in newspapers. As regards municipal Undertakings the same are presented to respective municipal

bodies, and are also available to general public. It is also contended by Shri Paranjape that revision in fares was sought mainly on account of

enormous increase in prices of HSD Oil, lubricants, spare parts, hike in wages etc., which had a crippling effect on the operation of every transport

undertaking. These were matters of common knowledge. This is the reason why no specific demand was ever made by the petitioners for the

copies of the proposals or the data and therefore it cannot be said that hearing or opportunity given to the petitioners was not adequate or was

merely a farce.

7. So far as the provisions of the Passenger Tax Act are concerned, it is contended by Shri Paranjape that under item 56 of List II of the 7th Sch.

the State Legislature is competent to enact such a legislation. Tax imposed is a tax on passenger and not on income of the operators. What is

provided in S. 3 of the Act is merely a method of calculation. The very wording of S. 3 makes it clear that it is a tax on passengers and has nothing

to do with the income of the operator. Operator only collects the tax and nothing more. Discrimination between the urban and rural areas is based

on intelligible differentia. In urban areas use of buses is repetitive. Urban commuters use buses at least twice a day, and expenditure incurred forms

substantial part of their monthly budgets. There is a difference in load of buses in rural and urban buses. Urban people have to pay additional taxes

to the Municipal Council such as wheel tax etc. Thus the classification made is wholly reasonable and cannot be termed as arbitrary. Dealing with

challenge to the provisions of Ss.460KK and 460LL of the Bombay Municipal Corporation Act, it is contended by Shri Paranjape that it is neither

alleged nor it is shown that the enactment is beyond the competence of the State Legislature. The said provisions are made in general interest of

Municipal Corporation. Further the rate of interest is controlled and is governed by the proviso to S. 115(1) of the Bombay Municipal Corporation

Act. The said section is not under challenge. Provisions of Ss. 460KK and 460LL are part and parcel of the scheme of revenue and expenditure

dealing with Bombay Electric Supply and Transport Fund. The said sections cannot be read in isolation and will have to be read with the whole

scheme. If so read, it cannot be said that the provisions are in any way arbitrary or illegal. So far as the argument relating to bias of the Honourable

Minister to hear the objection is concerned, it is contended by Shri Paranjape that under S. 43 of the Act, it is the State Government alone, which

can issue directions. MSRTC is an independent statutory corporation so also local authority undertakings. The Honourable Minister has no

personal interest in the matter. The Honourable Minister who heard the objection was in charge of the transport department as a whole and not of

MSRTC alone. Therefore, it cannot be said that he was in any way disqualified from hearing the objections. In support of this contention Shri

Paranjape has placed reliance upon the decision of the Supreme Court in Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road

Transport Corporation, and T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others,

8. Shri Singhvi, learned Counsel appearing for Respondents 6 and 7 adopted and supported the arguments advanced by Shri Paranjape.

According to him, the hearing contemplated by S. 43 cannot be equated with a long drawn process of trial before a Court of Law. Therefore, it is

not obligatory upon the authorities concerned to furnish the copies of the proposal or the data to the objector. Further by S. 460MM of the

Bombay Municipal Corporation Act, the General Manager is obliged to publish accounts in the official gazette every year. Such accounts are

placed before the BEST Committee as well as the Municipal Corporation also. Therefore, the petitioners very well knew that financial position of

BEST. The method of accounting followed by the BEST is perfectly legal and valid. The depreciation shown in the accounts and the proposal is

less than the depreciation permissible under the I-T Act. According to Shri Singhvi and Shri Paranjape, while exercising the writ jurisdiction, this

Court cannot sit in appeal over the decision of the State Government, nor can it act as super-auditor.

9. Section 43 of the Motor Vehicles Act, with which we are concerned in this writ petition reads as under:-

43.(1) A State Government having regard to -

(a) the advantages offered to the public, trade and industry by the development of motor transport, and

(b) the desirability of co-ordinating road and rail transport, and

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among motor vehicles,

may from time to time, by notification in the official gazette, issue directions to the State Transport Authority -

(i) regarding the fixing of fares and freights (including the maximum and minimum in respect thereof) for stage carries, contract carriages and public

carriers;

(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying or long-distance goods

traffic generally, or of specified classes of goods, by private or public carriers;

(iii) regarding the grant of permits for alternative routes or areas, to persons in whose cases the existing permits are not renewed in pursuance of

the provisions of sub-sec. (1D) of S. 68F, or are cancelled or the terms thereof are modified in exercise of the powers conferred by cl.(b) or cl.(c)

of sub-sec. (2) of S. 68F;

(iv) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into

with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport

generally, and in particular to its co-ordination with other means of transport and the conveying of long-distance goods traffic;

Provided that no such notification shall be issued unless a draft of the proposed directions is published in the official gazette specifying therein a

date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or

suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the

interest affected an opportunity of being hear.

(2) The State Government shall permit, at such intervals of time as it may fix, the interests affected by any notification issued under sub-sec. (1) to

make representations urging the cancellation or variation of the notification on the following grounds, namely:-

(a) that the railways are not giving reasonable facilities or are taking unfair advantage of the action of the State Government under this section ;or

(b) the conditions have changed since the publication of the notification; or

(c) that the special needs of a particular industry or locality required to be considered afresh.

(3)If the State Government after considering any representation made to it under sub-sec. (2) and having heard the representatives of the interests

affected and State Transport Authority satisfied that any notification issued under sub-sec. (1) ought to be cancelled; or varied, it may cancel the

notification or vary it is such manner as it thinks fit.

This court had an occasion to consider the scope and ambit of these provisions in Pandharinath Raghunath Chowdhari v. Maharashtra State

Transport Corporation and another in Special Civil Appln. Nos. 1904 with 1825 of 1972 decided on 1/4th Dec. 1972by the Division Bench of

this Court consisting of Tulzapurkar and Shah JJ. After making a detailed reference to the various provisions of Motor Vehicles Act and the

decision of the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, ,THE Division Bench held that the field

of S.43 is purely administrative and the functions that could be performed thereunder are purely of administrative character. While dealing with

somewhat similar question, the Division Bench observed :-

Chapter IV of the Act has the caption: "" Control of Transport Vehicles""; in other words, the entire Chapter deals with the matters pertaining to

control of transport vehicles a subject ordinarily falling within the administrative purview of the State Government. S.42 which is the first section in

that Chapter indicates one method by which the State Government can control the transport vehicles by providing for the necessity of permits

which must be held by operators of motor vehicles to enable them to ply the same for the purpose of carrying passengers or goods. Then comes

S.43 which is the material section with which we are concerned. It confers powers upon the State Government to control road transport by motor

vehicles and sub-sec. (1) of S.43 provides that the State Government after having regard to the factors and matters contained in cls.(a) to (d) there

of and after following the procedure prescribed in the proviso thereto, can from time to time, by notification in the Official Gazette, issue directions

to the S.T.A. regarding matters which are mentioned in cls. (i),(ii),(iii) and (iv). This is followed by Sec. 44 which confers power upon the State

Government to create certain authorities, such as S.T.A. and Regional Transport Authorities and under sub-sec (3) the S.T.A. is required to carry

out the directions issued to it by the State Government under S.43; further S.T.A. has been given power, in exercise and discharge of its junctious,

to issue directions to R.T.A. which R.T.A. are required to give effect to under sub- sec.(4) thereof. Sub-sec.(5) of S.44 also provides for further

delegation, in that it enables the State Transport Authority or any R.T.A., if authorised in that behalf by rules made under S.68 to delegate such of

the powers and functions to such authority or persons and subject to such restrictions, limitations and conditions are maybe prescribed by the said

rules. This group of Ss. 42,43,and 44 clearly indicates that the matters which are dealt with by these sections are matters which pertain to

administrative field. Reverting back to the provisions of S.43, as we have stated earlier, sub-sec. (1) thereof empowers the state Government, from

time to time, to issue directions to the S.T.A. in the first place, sub-sec. (1) speaks of directions being issued by the State Government, that too to

the S.T.A. and these directions could be issued from time to time as and when occasion arises or exigency demands. Besides, the topics covered

by cl.s (i),(ii),(iii) and (iv) regarding which directions could be given are topics of administrative character and that being on the directions which

could be issued in regard to such topics would normally be of administrative character. Sub-sec.(2) of S.43 provides for cancellation or variation

of the directions issued by such notification as a result of representations being entertained from interested or affected persons. This provision also

indicates that the directions which are contemplated under sub-sec.(1) regarding matters covered by cls. (i) to (iv) would be administrative

directions. In our view, therefore, apart from the observation of the Supreme Court to which we have already referred, on a consideration of the

scheme of the Act particularly the scheme of Chap. IV in which the relevant sections occur. It is also clear to us that the field covered by s.43 is an

administrative field and the directions that could be issued thereunder by the State Government to the S.T.A. would be directions of administrative

character. Therefore, it is not possible to accept Mr. Patil''s contention that the act of issuance of the impugned Notification under sub-sec.(i) of S.

43 containing directions as to the maximum rate of fares that could be charged by transport services for their stage carriages in the instant case,

partook the nature of any legislative function performed by the State Government but the said act in our view is clearly an administrative or

executive act on the part of the State Government.

In view of this binding pronouncement of the Division Bench, it is not possible for us to accept the contention of Shri Paranjape that the function

performed by the State Government under S.43 of the Act is legislative in nature. Even otherwise, in our view nothing turns on the question as to

whether the said function is administrative or legislative, so far as the controversy involved in this writ petition is concerned. Proviso to S.43(1)

clearly lays down that no such notification could be issued unless draft of the proposed directions is published in the official gazette specifying

therein date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objections or

suggestion which may be received has, in consultation with the S.T.A. been considered after giving representatives of the interests affected an

opportunity of being heard. It is implicit in these provisions that the representatives of the interests affected persons have a right to raise objections

or make suggestion and of being heard before any directions are issued to the State Transport Authority. We find it difficult to accept the

contention of Shri Paranjape that the expression ""representatives of the interests affected"" will not include in its import representatives of

passengers or commuters. In support of his contention Shri Paranjape has placed reliance upon the provisions of S. 47 wherein a specific

reference is made to the association representing persons interested in the provisions of road transport facility and recognised in this behalf by the

State Government. According to Shri Paranjape representatives of passengers come into the picture only after general directions are issued under

S. 43 and not till then. What is the scope and ambit of these various provisions also fell for consideration of the Supreme Court in Sree Gajanana

Motor Transport Co. Ltd. Vs. The State of Karnataka and Others, wherein it was held by the Supreme Court that it is the State Government

which had the data and the legal power under S. 43(1) of the Act to fix rates etc. After the notification under S 43 it becomes a condition which

has to be automatically attached to the permit and the R.T.A. has no option in the matter. In other words the R.T.A. has to act merely mechanically

after considering the matter on which it has to form an opinion and take decision quasi-judicially. Therefore, it is quite obvious that it is the

directions issued under S. 43 of the Act, which finally decides the matter one way or other. To accept the contention of Shri Paranjape that the

passengers have no place in the matter of fixing of fares of Stage carriages, contract carriages and public carriers will be the negation of the whole

scheme. It will mean that though while fixing fares, the State Government is bound to take into consideration advantages offered to the public, the

representatives of the public will have no right to be heard or to raise objections. This argument, to use the expression of Bhagwati, J. in National

Textile Workers" Union and Others Vs. P.R. Ramakrishnan and Others, sounds like a relic of a bye-gone age. If ultimately the advantages offered

to the public are relevant for deciding the maximum and minimum fares of Stage carriages, then the representatives of public must have a say

because they know best what is in public interest. They must have an opportunity of placing before the State Government the relevant material

having bearing upon fixing of fares. Such matters cannot be fairly decided by keeping the representatives of commuters or passengers out of

picture. As a matter of fact it is the tragedy of our democratic, welfare State that whenever any discussion about the interest of general public or

common man takes place, he is normally conspicuously absent or is kept out. He is only an onlooker or a sleeping partner and not a participant

though a silent sufferer. If in the matter of fare hike, passengers representatives have no right to raise objections or of being heard, then obviously

fares will be fixed only on the basis of material placed by one side. It will be a one way traffic. The expression ""representatives of the interests

affected"" as used in S. 43 does not mean the representatives of the vested interests who are co-conspirators. Such pressure groups have spun their

own impenetrable web of vested interests and are interested in fare hike only. It is true that in a welfare State the Government elected by the

people is expected to act as a watchman or a watch-dog so as t protect the common man from exploitation by the vested interests. However, it is

not enough to appoint a watchman. Ultimately who will ''watch the watchman'' is the vexed question. This function of keeping watch on the

watchman is carried out by vigilant non-political, non-profit voluntary organisations. Such organisations consists of public spirited citizens who have

taken up the cause of ventilating legitimate public problems. Such organisations represent the common man who on his own is unable to raise

objections or participate in such matters. Petitioner 1 before us is a society registered under the Societies Registration Act. It is non-political

voluntary organisation. Its members consist of public spirited citizens who are well versed in the subject. Therefore we have no hesitation in coming

to the conclusion that under the proviso to S. 43(1) of the Act representatives of general public, like the petitioner 1, are entitled to raise

objections, make suggestion and also place before the State Government the data and material which is relevant for deciding the question of fixing

fares. They are also entitled to be heard before any such directions are issued. What should be the nature of this hearing must obviously depend

upon the facts and circumstances of each case. Once it is held that the function or power exercised by the State Government under S. 43(1) is

administrative in nature, then it cannot be said that hearing contemplated should involve a long drawn process of judicial trial, nor the order passed

by the Honourable Minister overruling or accepting suggestions could be equated with the judgement of the Court. The principles of natural justice

cannot be imprisoned in a strait-jacket formula. As to what principles of natural justice will apply in a particular case must obviously depend upon

the facts and circumstances of each case and no general rule can be laid down in that behalf. However, it can safely be said that the opportunity of

being heard as contemplated by S. 43 of the Act must be a reasonable and effective and not a mere formality. Before fixing fares the State

Government is obliged to take into consideration the objections and suggestions which may be received. It is not that each any every individual is

given an opportunity of being heard. The opportunity is restricted to the representatives of interests affected. The fares are to be fixed in

consultation with the S.T.A. and it is obvious that such consultations must be real, effective and not illusory. In the present case it is apparent that

the S.T.A. was consulted. The representative of the petitioner association was also given a personal hearing by the Honourable Minister. The

Honourable Minister has also passed a reasoned order. However it was contended by Shri Kalsekar that this hearing was merely a farce since the

relevant material and data on the basis of which the Honourable Minister ultimately fixed fares was never disclosed to the petitioner at any stage. It

was also contended by the learned Counsel that such a material should be disclosed in the draft notification itself. We find it difficult to accept this

contention. The draft notification is not a complete Code in itself. In the very nature of things it cannot contain all the data or material. It is also not

possible to lay down as a general rule that the copies of the proposals or data should be supplied to everybody. However, in our opinion so as to

give a reasonable opportunity to raise reasoned objections or make useful suggestions, copies of such proposals, or basic material should be made

available for inspection, when asked for and copies should be supplied to representatives of interest affected when demanded. This is necessary to

give a reasonable opportunity of hearing to the representatives of interests affected. This is also necessary to make the hearing effective and

meaningful. However, in the present case, but for making a general statement it is nowhere stated in the petition or anywhere else that a specific

demand in that behalf was ever made. Further from the objections raised by petitioner 2 Shri V.S.Bapat, it is quite clear that he had in his

possession copies of balance-sheet and other relevant material. Annual accounts of MSRTC are presented to the legislature and we are informed

that the reports of its working are also published in newspapers. As regards the municipal undertaking the same are presented to respective

municipal bodies and are also available to the general public. Further as is clear from the affidavit filed by the Joint Secretary to the Government,

the revision in fares was sought mainly on account of enormous increase in prices of H.S.D. oil, lubricant, spare parts, hike in wages etc. These

were the matters of public knowledge, details of which were already known to the petitioners. From the bare reading of the objections raised for

and on behalf of the petitioners it is quite clear that they were in possession of necessary material. This being the position, it cannot be said that the

petitioners were not given a reasonable opportunity of raising objections or making suggestions or of being heard in the matter. Therefore, it is not

possible for us to accept this contention of Shri Kalsekar. From the order passed by the Honourable Minister, it is quite clear that all the objections

or suggestions received were duly considered. It is also clear from the said order that S.T.A. was already consulted and it had also expressed

opinion that there is full justification for allowing an increase in the existing fare structure. It had suggested the area of increase and had also drawn

the attention of the Government towards the report of the Jain Committee. Section 43(1) proviso casts an obligation upon the state Government to

act in consultation with the S.T.A. according to Shri Kalsekar the expression used is "" in consultation"" with S.T.A. According to the learned

Counsel in the present case order is not passed in consultation with S.T.A. and therefore it illegal. He has also paced reliance upon the decision of

Supreme Court in Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, and has contended that this consultation means full and

effective consultation and not formal or unproductive consultations. However, it cannot be forgotten that expression used is ""in consultation with

and not ""with concurrence of"". Consultation with S.T.A. is made obligatory, since it consists of a chairman who has had judicial experience and

such other officials and non-officials, not being less than two. By their experience in the field they are in best position to consider the situation fairly,

competently and objectively. Therefore it follows that whole consulting the S.T.A., the State Government must male relevant data and material

available to it, on the basis of which S.T.A. can offer its reasoned opinion. The section has imposed a corresponding duty on S.T.A. to express its

opinion after considering all the data material placed before it. State Transport Authority is not only at liberty but is obliged to call for the relevant

data and materials, which are necessary to arrive at the proper conclusion. In Chandramouleshwar Prasad Vs. The Patna High Court and Others,

the Supreme Court had an occasion to consider the scope of Art. 233(1) of the Constitution wherein also expression "in consultation with" is used.

While interpreting these words, Supreme Court observed (at p.375) :-

Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or

others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who had a counter proposal in his

mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more cannot be said to have

been issued after consultation.

These observations aptly apply to the present enactment also. The very object of consultation is to obtain the view of the person or body to be

consulted in order to arrive at some conclusion in respect of the matter on which the advice is sought. No doubt the best way to consult would be

to discuss the entire matter at a conference table so that there may be a full and fair exchange of views, but that is neither possible nor feasible in

many cases. In our view the requirement as to consultation would be duly fulfilled if the S.T.A. is supplied with all the materials and available on the

basis of which conclusion has to be reached and its opinion is sought on the points in issue after indicating how the State Government views the

matter. In the present case it is neither alleged nor shown that such a procedure was not followed. Therefore, it cannot be said, there was no real

or effective consultation with S.T.A.

10-11. It is not also possible for us to accept the contention of Shri Kalsekar that Honourable Minister was disqualified to hear and decide the

matter, on the ground of bias. MSRTC, though an agency of State, is an independent statutory corporation. BEST or other transport undertakings

are owned by the local authorities. The Minister is not interested in any of these Undertakings personally, nor he had any personal interest in them.

The statute in terms enjoins a duty upon the State Government to issue necessary direction. Under the business rules, the Minister of the concerned

Department is obliged to hear and decide the matter on behalf of the State Government. In Dosa Satyanarayanamurty etc. Vs. The Andhra

Pradesh State Road Transport Corporation, the Supreme Court pointed out the distinction between the official bias of an authority, which is

inherent in a statutory duty imposed on it and personal bias of the said authority in favour or against one of the parties. The Supreme Court further

pointed our that though under the provisions of the Act, the State Government has some control, it cannot be said either legally or factually that the

said Corporation is a department of a State Government. This being the legal position, there is no substance in this contention also.

12. So far as the challenge raised by the petitioner qua the provisions of Passenger Tax Act is concerned, we find no substance in the said

challenge also. Under Entry 56 of List II of Seventh Sch. the State Legislature is competent to frame an enactment of this nature. Nature and

quality tax would not depend on what measure is adopted for fixing the amount payable. The fact that tax is to be measured in proportion to the

fare and freight realised does not alter the nature of the tax nor it will affect its intrinsic character. Tax is levied on the passenger and not on the

income of the operator. The Supreme Court had an occasion to consider a somewhat similar challenge in A.S. Karthikeyan and Others Vs. State

of Kerala and Another, . In that case the provisions of Kerala Motor Vehicles (Tax on Passengers and Goods Amendment) Act were challenged.

In that case the Supreme Court had also made a reference to its earlier decisions reported in Sainik Motors, Jodhpur and Others Vs. The State of

Rajasthan, ; Rai Ramkrishna and Others Vs. The State of Bihar, and B. Srikantiah and Others Vs. The Regional Transport Authority, Anantapur

and Others, . However, it was contended by Shri Kalsekar that there is a world of difference between the provisions of Rajasthan and Kerala

Acts and the Bombay Motor Vehicles Act. We find no substance in this contention also. In substance the provisions are identical. From the bare

reading of the provisions of the Act. It is quite clear that it is a tax on passengers and not on income of the operators. Tax levied has nothing to do

with the income of the operator. Operator is only obliged to collect it. What is provided by S. 3 is the method of calculation and nothing more. It

also provides for an outer limit. The distinction made between the rates in urban and rural areas is also based on reasonable classification. It is

based on intelligible differentia, which had a rational nexus to toe object sought to be achieved by the statute. As observed by the Honourable

Minister in his order, this tax has been levied in order to mobilise resources for the developmental activities of the State. The nature of this tax is

also explained by the Supreme Court in the latest decision reported in B.A. Jayaram and Others Vs. Union of India (UOI) and Others, . In urban

areas use of buses is repetitive which is not the case in rural areas. There is a difference in load of buses and further in urban areas citizens are

obliged to pay some more taxes in the form of wheel tax etc. therefore it cannot be said that rates fixed are not based on any reasonable

classification or are arbitrary. As observed by the Supreme Court on A.S. Karthikeyan"s case, while fixing the fares under S. 43 of the M.V. Act,

the Government can take into account the tax imposed on passengers and such fares could be fixed either exclusive or inclusive of such tax.

13. For similar reasons the challenge to the provisions of Ss. 460KK and 460LL of Bombay Municipal Corporation Act must fail. The

competence of the State legislature to enact the said provisions is not challenged. Once it is held that the State Legislature had power to legislate on

the subject, then the legislative wisdom is not open to challenge. These provisions are challenged by the petitioners on the ground that they are

perverse and deny the citizen the protection of equal laws and, therefore, are contrary to Art. 14 of the Constitution. According to the petitioners

said provisions do not permit any surplus to be retained by BEST and the same is required to be transferred to Bombay Municipal Corporation

which in turn lends some money to BEST on interest. This method of charging interest on internal funds is illegal, and is also not in tune with sound

business principle. In support of this contentions, the petitioners have placed reliance upon the decision of the Supreme Court in The Workmen of

William Jacks and Co. Ltd., Madras, Represented by the William Jacks and Company Employees" Union Vs. Management of William Jacks and

Co. Ltd., Madras, However, it cannot be forgotten that in the said case the Supreme Court was not concerned with the statutory provision which

specifically provides for the transfer of surplus balance to Municipal funds. Section 115 of the Bombay Municipal Corporation Act lays down that

in the case of an emergent necessity for funds and upon a representation by BEST Corporation may with the previous sanction of the State

Government, which may be given subject to such terms and conditions as to repayment and other matters as the Government thinks fit, authorise

the Commissioner to pay from Municipal fund into BEST fund such sums as may be specified, as temporary advance for meeting such

emergencies. The provisions of Ss. 460KK and 460LL cannot be read in isolation since they form part and parcel of the whole scheme, that is

Chapter XVI-A dealing with the Bombay Electric Supply and Transport Undertaking. If these provisions are read with other provisions of the Act,

harmoniously, it cannot be said that they are in any way arbitrary. Since the BEST is acting in accordance with the statutory provisions, it cannot be

held that in paying interest to Bombay Municipal Corporation, on the funds advanced, by Corporation, it is acting illegally or against the sound

business principle.

14. So far as the merits of the controversy are concerned, it is contended by the petitioners that while deciding the question of fare hike, 1980

should have been considered as a base year because till then, the MSRTC or BEST were not running in losses and the fare hike already granted in

the year 1975 was excessive. It was also contended that the method of accounting following by these Undertakings was wholly unscientific and

unbusinesslike and the additional depreciation claimed over and above normal depreciation was wholly illegal. According to the petitioners at any

rate, the amount of additional depreciation cannot be permitted to be deducted from the profits of the business. The petitioners have also made a

grievance that MSRTC consistently, neglected to take steps as suggested by the Public Undertaking Committee in its successive reports for

effecting the economy and increasing efficiency. This in substance amounts to disregarding its statutory obligation and therefore the burden of

inefficiency cannot be shifted on the passengers. By effecting economy and increasing efficiency MSRTC will be able to generate more than Rs.25

crores. Improving efficiency will mean saving of Rs.36 to 37 crores. The Petitioners have also contended that if the working of MSRTC is

compared with Gujarat State Road Transport Corporation, then it is quite clear that the working of MSRTC is not only unsatisfactory, but it is

being run as if it is an independent kingdom, meant for the benefit of the Members of Board and its employees unconcerned with public interest.

The petitioners have also drawn out attention towards the report of Public Undertaking Committee, wherein it was suggested that there is lot of

scope of reducing fuel consumption. There is lack of control in Central Stores which has resulted in increased expenditure on spare and other store

material. Material purchased is also of doubtful quality. In spite of recommendations of Public Undertaking Committee, experts on transport

management or automobile engineering etc, are not yet included on the Board of MSRTC and the office bearership of the Board is made a prized

post for conferring political favours. There is ample scope for economising on the expenditure made on these members by cutting their existing

fringe benefits. No norms for recruitment of employees, opening of new depots, starting of new routes etc. have been laid down which results in

inefficiency leading to uneconomic operation. The suggestions made by the Public Undertaking Committee qua town and city buses are also not

followed. According to the petitioners if recommendations of Paradasani Committee and Jain Committee are properly implemented. MSRTC can

be run on economic lines and in that case no fare hike was necessary. So far as the BEST is concerned, it is contended by the petitioners that the

proposals made by the Committee in August 1979 were not approved by the BEST Committee as well as the Standing Committee. The Chairman

of the Standing Committee had deprecated attempts on the part of the BEST Administration to present deficit budgets and ask for fare hike.

According to the petitioners for the last 9 years the Municipal Corporation was being misled by the BEST Administration by presenting deficit

budgets, when in fact there were surpluses for three years. The BEST Administration has always shown its estimated income to be much less than

the actual whereas the estimated expenditure is highly inflated. In spite of the objection by the Municipal Chief Auditors a provision is being made

every year for additional depreciation fund over and above the normal depreciation. Depreciation is also provided on new chassis long before they

are brought in use. Thus, in substance it is contended by the petitioners that by manipulating accounts MSRTC and BEST are showing losses and

deficits and are claiming fare hikes.

15. On the other hand it is contended by the respondents, including the State Government, that fare hike was claimed as a result of rise in the

prices of petroleum products and other material. As a result of further rise in the prices of petroleum products BEST would be required to spend

additional expenditure of Rs.250 lacs and MSRTC will be required to spend Rs.900 lacs in the accounting year 1981-82 itself. In the affidavit filed

on behalf of MSRTC it is contended that after the fare hike, there has been additional increase in price of diesel and other petroleum products from

13th January 1981 and 12th July 1981 involving an additional burden of Rs.16 crores per annum. Further due to settlement between the

employees and the management the Corporation has to provide another sum of Rs.17 crores per annum which was not in contemplation at the

time of fare hike. Additional burden of Rs.3 crores is there because of rise in prices of tyres and allied material after the present notification. Thus,

out of the additional revenue of Rs.48.52 crores, resulting from the fare hike, a sum of Rs.36 crores is wiped out on account of increase in prices

of diesel oil, tyres and allied material and settlement with the employees. Thus, even the present fare is not enough to cover the loss estimated. To

the similar effect is the affidavit filed by the BEST. So far as the provision regarding the additional depreciation is concerned, it is contended on

behalf of MSRTC that the formula adopted for calculating depreciation in the accounts of 3 rd respondent, is the original cost of vehicle multiplied

by the kilometres done during the year divided by the prescribed life of the vehicle. Additional depreciation is provided by taking actual cost of

new vehicles purchased during the year and deducting therefrom the amount of the original costs of vehicles which are fully depreciated and which

are replaced by new purchases during that year. Depreciation according to this method was less than even the depreciation allowed by the income

tax authorities. As a matter of fact the income tax rules entitle the 3rd respondent to substantial higher amount of depreciation than the one charged.

According to respondent 3, method of charging additional depreciation has not in any manner altered the position for hike in fares. The said

depreciation is also in conformity with the rules and regulations framed for the said purpose by the Government. So far as the BEST is concerned,

it is contended by respondents 6 and 7 that the Undertaking charged depreciation on its assets in two parts viz. on the original cost of asset and

other supplementary depreciation. It is an established practice of accountancy that depreciation is to be provided for replacement of the assets

which are being used. Principal assets of the BEST are its fleet of buses. If the depreciation is calculated on the original cost, it will be hopelessly

inadequate to serve the purpose of replacement of assets and this is why the Undertaking has for the past several years been providing for

supplementary depreciation. Even by adopting this practice, the total provision is largely short of replacing shortage. The BEST has also denied

that it has been deliberately presenting deficit budgets as alleged by the petitioners. For showing that the method of accounting followed by them is

in tune with the well established practice, the respondents have also placed reliance upon the book of Spicer and Peglar Book-keeping and

Accounts. They have also contended that because of increased price of petrol and other lubricants the present fare hike was a must. The

Respondents have totally denied several allegations made by the Petitioners. Thus the averments made in the petition, which are denied by the

respondents involve disputed questions of fact, which cannot be gone into in writ jurisdiction of this Court. It is well settled that while exercising

writ jurisdiction under Arts. 226 and 227 of the Constitution this Court cannot act as a Court of appeal, nor can it assume a role of super-auditor.

It is well known that cost structure of any mode of transport is made of three components: (a) operator''s cost; (b) user''s cost, and (c) social cost.

The social cost which is incurred in terms of noise, accidents, environmental pollution etc. lacks conceptual clarity and is generally difficult to

quantify. Therefore, it is normally excluded from consideration. We are also informed that conversion of financial cost into economic cost broadly

follows the guidelines laid down by Planning Commission. According to the petitioners these guidelines are also not followed in the present case.

However, as already observed power exercised by the State Government under S.43 of the Act is administrative in nature. Therefore, scrutiny by

this Court in its writ jurisdiction will be limited to testing as to whether the administrative action of the State Government has been fair and free from

the taint of unreasonableness or arbitrariness and whether the State Government has substantially complied with the norms of procedure prescribed

by the Act. It is contended by the petitioners that the State Government has acted arbitrarily while granting the fare hike. However it is apparent

from the order passed by the Honourable Minister that the fare hike was permitted as the cost of operation of service had increased tremendously

as a result of hike in prices of diesel, lubricant, spare parts, tyres etc. and in the staff cost. The Minister also took into account the fact that another

price hike in diesel prices was round-the-corner. In these circumstances, it cannot be said that the directions issued by the State Government were

in any way arbitrary. As to whether fare hike to the extent directed or permitted was necessary or not is a mute question which cannot be decided

in writ jurisdiction of this Court. It is not for the High Court to constitute itself into an appellate Court over the decision of State Government and to

resolve the dispute of this kind which is qualitatively different from ordinary civil disputes.

16. In the absence of relevant material or data it is also not possible to say that MSRTC is trying to raise working capital by taking recourse to fare

hike. By amending Ss.23 and 26 of the Road Transport Corporations Act, the Corporation is now authorised to augment its resources to enable it

to undertake developmental schemes etc. As already observed the present hike was sought due to rise in prices of diesel, lubricant, spare parts,

tyres etc. Thus the fare hike was asked because of increase in operator''s cost, and not for raising working capital as alleged.

17. However, we find much substance in the contention raised by the petitioners that the reports of the Public Undertaking Committees or

recommendations of Pardasani Committee or Jain Committee were not given proper considerations for reorganising the working of MSRTC.

These reports are not mere paper tigers. In his usual fairness, Shri Paranjape, learned Counsel appearing for the respondents, conceded that

everything is not well in the kingdom of MSRTC and there is much scope for improvement. The same is true about BEST Undertaking also. The

accounts of MSRTC are placed before the Legislature and in the case of BEST before Sub-committee and Municipal Corporation. These are not

mere empty formalities. The representatives of people, who in theory can be trusted to see that the interests of general public are protected are

expected to scrutinize these accounts and proposals. The State Government which is also the custodian of public interest is also expected to study

these reports, so as to find out as to whether price hike is really necessary or it will amount to a premium on inefficiency or mismanagement. These

Public Undertakings as well as the concerned authorities are also obliged to see that maximum will not become minimum and common men will not

become guinea-pig. If this is so then the general public will be within its right to expect that before making any proposal for fare hike hereafter, the

respondents will take into consideration the recommendations made by various committees. This is the least a common man can expect from the

public Undertakings which are run for his benefit. However, having regard to the material placed before us and the scope of our jurisdiction under

Arts. 226 and 227 of the Constitution it is not possible for us to come to the conclusion that the final notification issued by the State Government

are arbitrary or are wholly unwarranted. It was also conceded by Shri Kalsekar that an additional burden is cast upon the exchequer of these

public Undertakings because of rise in prices of petroleum products and spare parts etc., though according to him by curtailing wasteful

expenditure the respondents undertakings could have met this price rise and enhancement in fares to this extent was not necessary. Thus, it appears

that on this question also, two opinions are reasonably possible. Therefore, if the view taken by the respondents Undertaking or the State

Government is reasonably possible view of the matter, then also this is not a fit case for interference in the extraordinary jurisdiction of this Court

under Arts. 226 and 227 of the Constitution.

18. When the judgment was ready for delivery, Shri Kalsekar, learned Counsel for the petitioners produced before us a copy of the judgment of

Gujarat High Court in Spl. Civil Appln. No.1373 of 1979, Consumers Education & Research Centre, Ahmedabad v. State of Gujarat decided on

28-10-1983 and contended that for the reasons given therein, this writ petition should also be allowed. In substance, it is contended by Shri

Kalsekar that since the petitioners were not supplied with the copies of the representations submitted by the MSRTC, BEST and others for

revision of fares, the notifications issued are vitiated, being in contravention of the principles of natural justice. On the other hand it is contended by

Shri Singhvi and Shri Paranjape, learned Counsel for the respondents that having held that the nature of the function under sub-sec. (1) of S. 43 is

legislative, it is an error on the part of Gujarat High Court to come to the conclusion that proviso to sub-sec.(1) of S.. 43 requires compliance with

the principles of natural justice. In support of this contention, they have placed strong reliance upon the decision of the Supreme Court in Tulsipur

Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, and AIR 1981 1127 (SC) . It was also contended by the respondents that the

relevant material was in possession of the petitioners and the petitioners never made any demand in that behalf and in fact no prejudice was caused

to them on that ground. Further, Petitioner 1, who claims to be representative of interest affected persons had never lodged any objection to the

draft notification. The objections were lodged by Shri V.S.Bapat and others in their individual capacity and no demand for any material was made

by any of the petitioners before the actual date of hearing. In our view, the judgment of the Gujarat High Court is wholly distinguishable on facts. In

the case before the Gujarat High Court, initially the State Government had issued a notification u/s 43(1) of the Act. The Petitioners, the

Consumers Education & Research Centre had filed objections to the said notification and their representative had also attended the hearing held by

the State Government. For the reasons, which are not clear the State Government did not pursue the matter and withdrew their draft notification.

Thereafter the notification under S. 43(2) of the Motor Vehicles Act was issued. This draft notification was issued on the basis of the

representations made by the State Transport Corporation. Some correspondence had taken place between the Petitioners and the State

Government as well as the Corporation for furnishing the petitioners with the copies of the statements submitted by the Corporation for variation of

fares. Correspondence had also taken place between the State Government and the Corporation for appointing a rating committee to consider

whether the fares should be revised. The State Government had informed the centre that it had accepted in principle the establishment of rating

committee in respect of future proposals for fare hike. It also appears that the Government had expressed its inability to agree to the proposal of

Corporation incorporated in draft notification and had advised the Corporation to reconsider the matter in the context of the objections and

suggestions received and then approach Government with revised proposal. The Corporation had annexed to representation a note placed before

Corporation where three alternative fare structures were suggested. Admittedly the copies of these proposals were not supplied to the petitioners

in spite of specific demand and the Court also came to the conclusion that petitioners had no knowledge even of the substance of the proposal. In

these peculiar circumstances Gujarat High Court came to the conclusion that in the case before it there was denial of principles of natural justice

and fair play and the petitioners were denied an opportunity of effective hearing. Thus the finding in that behalf is based on the basis of facts and

circumstances brought on record and no general rule was laid down. In the case before us, the petitioners were in possession of all the material on

which proposals or representations were based. They have in fact dealt with the said proposals in their written submissions. The objections raised

are reproduced and dealt with in the speaking order passed by the Honourable Minister. Petitioners had never demanded the copies of these

proposals or representations. In these circumstances it cannot be said that there was any denial of principles of natural justice or fair play or they

had no opportunity of effective hearing or that any prejudice was caused to the petitioners. It is also not possible for us to accept such a challenge

in the present writ petition for one more reason. The Pune Municipal Transport Undertaking and Kolhapur and Solapur Municipal Undertakings

are not joined as parties to the petition. It is quite clear from the material placed on record that the proposals for fare hike were received by the

Government from them also. In this view of the matter, it will have to be held that the decision of the Gujarat High Court is not of any assistance in

deciding the controversy raised in this petition.

19. In the result, therefore, the petition fails. Hence the rule is discharged.

However, in the circumstances of the case, there will be no order as to costs.

Leave to appeal to Supreme Court orally prayed for. Leave refused.

20. Petition dismissed.