Y. Mahaboob Sheriff and Others

Vs

Mysore State Transport Authority and Others

Petitions Nos. 54, 75 and 76 of 1959

(B. P. Sinha, Syed Jafar Imam, K. N. Wanchoo K. C. Das Gupta, J. L Kapur JJ)

06.11.1959

JUDGEMENT

WANCHOO J. –

These are two connected petitions under Act. 32 of the Constitution and raise similar points and will be disposed of by this judgment.

The brief facts necessary for their disposal are these : The petitioners are transport operators in what is known as the Anekal pocket of the State of Mysore.

They held stage carriage permits for various routes, which were expiring on March 31, 1958. They therefore applied for the renewal of the permits on various dates in January 1958, as required under the law. Normally, their applications should have been disposed of before March 31, 1958. However, on February 1, the Mysore Government Road Transport Department (hereinafter called the Department) made applications under Chapter IV of the Motor Vehicles Act, No. IV of 1939, (hereinafter called the Act) for grant of permits on the same routes for which renewal applications were pending. The Department followed this up by a letter dated February 25, 1958, to the Regional Transport Authority, Bangalore, (hereinafter called the Authority). In this letter, the Authority was informed that the Department had already submitted applications for grant of permits for operation of transport vehicles in the Anekal pocket and it was proposed to take over these routes with effect from April 1, 1958. It was also pointed out that the Government of Mysore had been pursuing the policy of nationalisation of road transport services with a view to rationalise and co-ordinate the various forms of transport and that the Department was operating 1,200 vehicles on 700 routes. The letter went on to point out the advantages of granting permits to the Department resulting in rationalisation of the routes in the Anekal pocket in which at that time there were 20 routes and 58 operators. It was therefore requested that the permits of the petitioners should not be renewed and fresh permits granted to the Department.

The Authority met a number of times from March to July 1958 but passed no orders on the applications of the petitioners nor on those of the Department. Eventually, on August 11, 1958, the Authority dismissed the petitioners' applications for renewal as well as the Department's for grant of fresh permits. We must say that this appears to be a curious order, for the result of this order strictly would be that no stage carriages would be able to ply on these routes. However, both parties appealed on September 9, 1958, against the orders of August 11. In the meantime, a scheme under s. 68C of Chapter IV-A of the Act was published. This scheme was approved on October 24, 1958, while the appeals were pending. On October 30, the appeals of both parties were allowed and the matter was remanded to the Authority for fresh disposal. In the meantime, however, the petitioners

had applied to the High Court for quashing the scheme and it was quashed by the High Court on December 3, 1958. Thereafter the Authority met again and passed orders renewing the permits of the petitioners for a period of one year from April 1, 1958 to March 31, 1959. The petitioners went up in appeal against the orders granting them renewal only for one year on the ground that they were entitled to renewal for three years at least under s. 58 of the Act. Their appeals were dismissed as not maintainable. They also applied to the High Court of Mysore under Articles 226 and 227 of the Constitution but their petition was dismissed in limine and a certificate to enable them to appeal to this Court was refused on March 30, 1959. Thereafter the present petitions were filed in this Court. In the meantime, however, a fresh scheme was published on January 22, 1959, and after necessary formalities was approved on April 15, 1959, and finally published as an approved scheme on April 23, 1959. What happened thereafter is not really material for purposes of these petitions but we may as well mention it to complete the narrative. The Department applied for permits under s. 68F of the Act on April 24, 1959. On April 30, 1959, the petitioners challenged the new scheme before the High Court of Mysore by a writ petition. That petition was however dismissed on June 1, 1959. Thereafter they came to this Court for special leave and prayed for ex parte stay, which was refused. Notice was however issued on the stay application which was served in June 18, 1959. It may be mentioned here that in order to avoid inconvenience to the public temporary permits had been granted to the petitioners on the expiry of the renewal upto March 31, 1959, for a period of four months or upto the time the Department was granted permits under s. 68F, whichever was earlier. Consequently on June 23, 1959, the Authority met and granted permits to the Department under s. 68F and rejected the renewal applications of the petitioners which were said to have been filed under protest. On June 24, 1959, the transport services in pursuance of the scheme were inaugurated by the Chief Minister. On the same day the petitioners applied to the High Court by a writ petition challenging the order of June 23, 1959. On July 14, 1959, the High Court held that the grant of permits to the Department was invalid and the rejection of the renewal applications was incorrect. But it did not pass any order in favour of the petitioners on the ground that the relief granted would be short-lived and dismissed the writ petition. The petitioners then applied for a certificate to enable them to appeal to this Court and that application is still pending. Thereafter the Department applied for temporary permits which were granted on July 16, 1959. Another writ petition was filed on July 24, 1959, by the petitioners challenging the grant of temporary permits to the Department which is still pending. In the meantime, the petitioners filed two other writ petitions in this Court which were admitted and will be dealt with separately. Finally, the special leave petition against the judgment of the High Court dismissing the writ petition against the approved scheme was dismissed by this Court on September 7, 1959.

The main contention of the petitioners in these cases is that they are entitled to carry on the business of transport of passengers as a fundamental right guaranteed to them under Art. 19(1) (g) of the Constitution, and that this right can only be restricted in the manner provided by the Act which is a regulatory measure dealing with motor vehicles. They contend that they were entitled under s. 58 of the Act to renewal of their permits for three years in case the Authority decided to renew them on the applications which they had made in January 1958 and in so far as the Authority gave them renewal only for one year it was acting in contravention of the Act and was thus committing a breach of their fundamental right. They therefore pray that this Court should come to their aid and protect their fundamental right to carry on the business of transport in accordance with the Act. The prayer which they actually made is somewhat inartistic but in effect they want that the authority be directed to renew their permits in accordance with the Act, which requires that the renewal must be for a period of not less than three years and not more than five years so far as stage carriage permits are concerned.

The respondents to these petitions are the Mysore State Transport Authority, the Regional Transport Authority and the General Manager, Mysore Government Road Transport Department. No appearance has been put in on behalf of the first two. The petitions are being opposed by the third respondent, namely, the Department; and the main contention on its behalf is that on a correct interpretation of s. 58 of the Act it is open to the Authority to renew a permit for any period it chooses to fix and therefore it was acting in accordance with the law when it fixed the period at one year. It is further contended that even if the Authority must fix a period of not less than three years and not more than five years, the only order that this Court should pass in these cases is to quash the order of the Authority dated December 15, 1958, and direct it to decide the renewal applications in accordance with the law to be laid down by this Court.

It will be clear from the above contentions of the parties that the first and foremost question in this case is the interpretation of s. 58 of the Act. That section appears in Chapter IV of the Act which deals with Control of Transport Vehicles in which term is included "a stage carriage" with which we are concerned here. It is necessary therefore to consider the scheme of Chapter IV in order to interpret s. 58 thereof. That Chapter begins with s. 42 which prohibits the owner of a transport vehicle from using it except in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority. Section 44 provides for the constitution of the State and Regional Transport Authorities. Then comes ss. 45 and 46, which provide for making of an application for permit and the contents of such an application. Section 47 sets out matters to which a Regional Transport Authority shall have regard in considering the application for a stage carriage permit. Section 48 gives power to the Regional Transport Authority to grant a stage carriage permit in accordance with the application or with such modifications as it deems fit. It also provides that every stage carriage permit shall be expressed to be valid for specified route or routes and sets out the conditions which may subject to any rules, be attached to a permit. We are not concerned in these cases with ss. 49 to 56, which deal with other kinds of transport vehicles. Section 57 provides the procedure in applying for and granting of permits. Then comes s. 58, which deals with duration and renewal of permits and is in these terms :

> "58(1)(a) - A stage carriage permit or a contract carriage permit other than a temporary permit issued under s. 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit.
>
> (b) - A private carrier's permit or a public carrier's permit other than a temporary permit issued under s. 62 shall be effective without renewal for a period of five years.

(2) - A permit may be renewed on an application made and disposed of as if it were an application for a permit :

Provided that the application for the renewal of a permit shall be made -

> (a) in the case of a stage carriage permit or public carrier's permit, not less than sixty days before the date of the expiry; and
>
> (b) in any other case, not less than thirty days before the date of its expiry :
>
> Providing further that, other conditions being equal, an application for renewal shall be given preference over new applications for permits.

(3) .....".

It will be seen from this scheme of the Act that the duration of a permit is not one of the conditions attached to it but is specifically provided for in s. 58. Sub-s. (1)(a) thereof comes into play after the Authority has decided to grant a permit and lays down that a stage carriage permit or a contract carriage permit other than a temporary permit issued under s. 62 shall be effective without renewal for such period not less than three years and not more than five years as the Authority may specify in the permit. This sub-section therefore casts a duty on the Authority after it has decided to grant a stage carriage permit to specify therein the period for which it shall be valid and this period can in no case be less than three years and more than five years. This sub-section applies to grant of a permit. Then comes sub-s. (2), which lays down that a permit may be renewed on an application made and disposed of as if it were an application for a permit. The contention on behalf of the petitioners is that this provision means that an application for renewal shall in all respects be treated as an application for a permit and therefore the period provided under s. 58(1)(a) for a permit would also govern the period for which the renewal should be granted. On the other hand, it is contended for the Department that sub-s. (2) only refers to the procedure for granting permits and the duration provided for sub-s. (1)(a) being not a matter of procedure will not apply to a renewal. It is conceded that there is no other provision in the Act which lays down the period for which a renewal should be made. But it is urged that this means that it is open to the Authority to fix any reasonable period for renewal. Reliance in this connection was placed in particular on the words "without renewal" appearing in s. 58(1) and also on a decision of this Court in V. C. K. Bus Service Ltd. v. The Regional Transport Authority, Coimbatore ([1957] 1 S.C.R. 663). That case however did not deal with the question before us but with a different question altogether. The question there was whether a renewal amounted to a grant of a fresh permit or was merely a continuation of the original permit. This Court held that the renewal was a continuation of the original permit. It had no occasion then to deal with the question specifically before us, namely, whether a renewal should also be for the same period as provided in s. 58(1)(a).

Let us therefore turn to the contention based on the words "without renewal" appearing in s. 58(1)(a). It is urged that these words clearly indicate that s. 58(1)(a) applies only to the first grant of the permit and cannot in any circumstances apply to a renewal of the permit. As we have already said, s. 58(1) (a) specifically deals only with the grant of a permit and not with a renewal. The words "without renewal" appearing in that sub-section only signify that in counting the period of a permit renewals should be disregarded. It was necessary to put in these words to meet a possible contention arising out of the fact that a renewal only amounts to a continuation of the original permit. The effect of these words is that in considering the period of a permit the period of the renewal should not be added to the period of the permit, thus making the total period which may be more than five years invalid under s. 58(1)(a). For example, a permit may be granted for five years. It is then renewed for another five years. Now the permit is the same and the renewal is only endorsed upon it. If the words "without renewal" were not in the sub-section it might be contended that the permit being the same its period was ten years and therefore it contravened s. 58(1)(a). These words therefore were necessary to meet this contention and are no indication that the period mentioned in s. 58(1)(a) does not apply to renewals. We may in this connection refer to the language of s. 10 where also the same two words occur, i.e. :

> "A driving licence issued or renewed under this Act shall, subject to the provisions contained in this Act as to the cancellation of driving licences and disqualification of holders of driving licences for holding or obtaining driving licences, be effective without renewal for a period of three years only, from the date of the issue of the

licence or, as the case may be, from the date with effect from which the licence is renewed under s. 11."

Thus, though the earlier part of s. 10 specifically deals with issue and renewal of driving licences, the words "without renewal" are to be fond in the latter part and that clearly indicates that these words were necessary to be put in to meet the contention that the licence remaining the same even after renewal its period could not in any case exceed three years in all. It was however submitted that s. 10 specifically provides for renewals also for three years and that is not provided in s. 58(1)(a). That is undoubtedly so. But the reason why s. 58(1)(a) does not provide specifically for renewals is to be found in the fact that there is s. 58(2) specifically providing that an application for renewal shall be made and disposed of as if it were an application for a permit. Section 11 which deals with renewal of licences has no comparable words, for it merely says that any licensing authority may on application made to it, renew a licence issued under the provisions of this Act from the date of its expiry. Different language used in sub-s. (2) of s. 58 therefore must have a different effect and the contention on behalf of the petitioners is that s. 58(2) when it says that an application for renewal shall be made and disposed of as if it were an application for a permit must mean that all incidents which apply to a permit shall also apply to a renewal application. One of the incidents which applies to a permit is that the Authority is enjoined by sub-s. (1) (a) of s. 58 to indicate a period of not less than three years and not more than five years in the permit, so far as its duration is concerned. The same must apply to a renewal and the Authority must indicate when granting a renewal a period of not less than three years and not more than five years as the duration.

We are of opinion that the contention of the petitioners as to the effect of s. 58(2) is correct. There is no other provision in the Act which fixes the duration of a renewal. It could hardly be the intention of the legislature that the duration of the renewal should be left entirely to the discretion of the Regional Transport Authority, particularly when the legislature took care to fix the duration for the permit itself. It is urged that the legislature intended that the duration of the renewal should be left to the Authority which would prescribe a reasonable period, which may even be less than three years. If that was so, it would be equally open to the Authority to specify a period for more than five years which it may consider reasonable. We do not think that this was the intention of the legislature and the reason why no other provision was made for the duration of a renewal was that the legislature intended by these words in s. 58(2) that the renewal would be for such period as was prescribed in s. (1)(a) for a fresh permit. It is not disputed that the effect of s. 58(2) is that the considerations for renewal would be the same as for the grant of the permit and the procedure would also be the same. But it is said that the legislature did not intend to go further and prescribe the same duration for a renewal as for a permit. We are of opinion that there is no reason why we should stop short at s. 57 and should not take into account s. 58(1)(a) as applying to a renewal along with all other considerations that apply to the grant of a permit. S. 58(2) lays down that a renewal application shall be made and disposed of as if it were an application for a permit and we think that all that applies to the grant of a permit would also apply to the grant of a renewal. One of the provisions which apply to the grant of a permit is s. 58(1)(a) relating to the duration of a permit and that must in our opinion on the words of s. 58(2) apply to the duration of a renewal.

It may also be mentioned that there were amendments of s. 58 by various State legislatures by which the duration of a permit could be fixed at less than three years. When, however, the Central legislature made amendments in the Act by the Amending Act No. 109 of 1956, the amendments made by the State legislatures earlier fell through and the Central legislature did not think it fit to give power to the State legislatures to reduce the period below three years in the case of a permit. If it were intended that a permit may be granted for less than three years and a renewal may be made

also for less than three years, we would have expected some provision to that effect in the Amending Act of 1956, for the Central legislature could not be unware of the amendments made by the various State legislatures. In the circumstances we are of opinion that the duration of a permit under s. 58(1)(a) being not less than three years and more than five years, the same applies to a renewal. We, therefore, hold that reading ss. 58(1)(a) and 58(2) together, a renewal must also be governed by the same provision which governs the duration of a permit.

This brings us to the question of relief to be granted to the petitioners. It is contended on behalf of the Department that all that this Court can do is to quash the order of December 15, 1958, and send the case back to the Authority for consideration of the question of renewal afresh. On the other hand, the petitioners contend that this Court should quash the illegal condition limiting the duration of the renewal to one year and direct the Authority to specify a period of not less than three years and not more than five years in conformity with s. 58(1)(a) in the order of renewal. This raises the question of severability of a part of the order passed by the Authority. The principles on which any unconstitutional provision can be severed and struck down leaving other parts of a statute untouched were laid down by this Court in R. M. D. Chamarbaugwalla v. The Union of India ([1957] S.C.R. 930), and the first principle is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. This principle relating to statutes was extended by this Court to orders in Shewpujanrai Indrasanrai Ltd. v. The Collector of Customs and Others ([1959] S.C.R. 821), where a part of the order of the Collector of Customs was quashed. The question therefore resolves into this : Would the Authority have ordered renewal if it knew that it could not reduce the period of a permit to below three years ? Looking at the facts of these cases which we have set out earlier, it is to our mind obvious that the Authority would have granted renewal in the circumstances of these cases when it did so in December 1958. The previous permits in these cases had expired on March 31, 1958, and the petitioners had been plying their stage carriages right up to the time when the order was passed on December 15, 1958; they could not do so without a permit in view of s. 42 of the Act. Therefore, renewal in these cases was certain when the order was passed on December 15, 1958. In the circumstances it is open to us to sever the illegal part of the order from the part which is legal, namely, the grant of the renewal.

The next question is what order should be passed in the circumstances. This depends on the exigencies of each case, for this Court is not confined by the technical rules relating to issue of writs by the English Courts. In T. C. Basappa v. T. Nagappa and Another ([1955] 1 S.C.R. 230), this Court observed as follows at 256 :

> "The language used in articles 32 and 226 of our Constitution is very wide and the powers of the supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law."

It is therefore upon to us to issue a direction in the nature of mandamus requiring the authority to

follow the law as laid down by this Court in respect to the order of renewal granted by it in accordance with s. 58(1)(a). It is true that where it is a case of discretion of an authority, this Court will only quash the order and ask the authority to reconsider the matter if the discretion has not been properly exercised. But in this case, the discretion is not absolute; it is circumscribed by the provision of s. 58(1)(a), which lays down a duty on the Authority which grants a renewal to specify a period which is not less than three years and not more than five years. The duty being laid on the Authority which has in this case decided to grant a renewal to specify a period not less than three and not more than five years as the duration of the renewal, it is in our opinion open to this Court to direct the Authority to carry out the duty laid on it by s. 58(1)(a) read with s. 58(2), when it has granted the renewal.

We therefore allow the petitions and quash that part of the order complained against which specified the renewal of the permits upto March 31, 1959, and direct the Regional Transport Authority, Bangalore, to comply with the requirements of the law as laid down in s. 58(1)(a) read with s. 58(2) in the order of renewal made by it in favour of the petitioners on December 15, 1958. The petitioners will get one set of costs from the Mysore Government Road Transport Department which alone has contested these petitions.

Petition No. 76 of 1959.

WANCHOO J. –

This is a petition under Art. 32 of the Constitution by certain transport operators in the State of Mysore and raises a question as to the interpretation of s. 58(2) of the Motor Vehicles Act, No. IV of 1939 (hereinafter called the Act). The brief facts which are necessary for our purpose are these : The petitioners were operating on the basis of stage carriage permits on certain routes which are under the control of the Regional Transport Authorities, Bangalore and Kolar (hereinafter called the Authorities). The routes being inter-district routes, the permits are issued by the Regional Transport Authority, Bangalore, and are countersigned by the Regional Transport Authority, Kolar. That is why both have been made parties to the petition. The permits of the petitioners were expiring on December 31, 1957, and were renewed upto March 31, 1958. Applications for renewal were invited thereafter for three years from April 1, 1958. Consequently the petitioner made applications for renewal of their permits. It appears that the Mysore Government Road Transport Department (hereinafter called the Department) also applied for permits for the same routes. The Department also wrote a letter each to the two Authorities in which it pointed out that the Government of Mysore was pursuing a policy of nationalisation of road transport services in the State and that it would be in a better position to run the services on these routes and would be able to rationalise and co-ordinate the various forms of transport and offer better service to the public. It therefore requested that the permits of the petitioners should not be renewed and that the Department was prepared to take over the services from April 1, 1958. Though meetings were held from May to December 1958, the Authorities did not pass any orders on the applications for renewal. It appears, however, that the applications of the Department for grant of permits were dismissed in September 1958. The Department went up in appeal against this order which was allowed in March 1959 and the Authorities were directed to reconsider the applications. In the meantime the Regional Transport Authority, Bangalore, ordered in January 1959 that the applications for renewal should be renotified and this was done. Upon this, the Department wrote again to the Bangalore Authority on February 20, 1959, not to renew the permits of the petitioners. Eventually, the Regional Transport Authority, Bangalore, met on March 29, 1959, and renewed permits relating to certain other routes for three years while the applications of the present petitioners were postponed. There was another meeting

on April 30, 1959, when the permits of the petitioners were renewed till September 30, 1959. It is this order which is being challenged by the present petition. The petitioners case is that they are entitled to carry on the business of transport of passengers as a fundamental right guaranteed to them under Art. 19(1)(g) of the Constitution, and that this right can only be restricted in the manner provided by the Act which is a regulatory measure dealing with motor vehicles. They contend that they were entitled under s. 58 of the Act to renewal of their permits for at least three years in case the Authorities decided to grant renewal on the applications which they had made in January 1958 and in so far as the Authorities gave them renewal only upto September 30, 1958, they were acting in contravention of the Act and were thus committing a breach of their fundamental right. They therefore pray that this Court should come to their aid and protect their fundamental right to carry on the business of transport in accordance with the Act. The prayer which they actually made is somewhat inartistic but in effect they want that the Authorities be directed to renew their permits in accordance with the Act, which requires that the renewal must be for a period of not less than three years and not more than five years so far as stage carriage permits are concerned.

The petition has been opposed by the Department and the main contention on its behalf is that on a correct interpretation of s. 58 of the Act it is open to a Regional Transport Authority to renew a permit for any period it chooses to fix and therefore the Authorities in this case were acting in accordance with the law when they renewed the permits of the petitioners upto September 30, 1959. It is further contended that even if the Regional Transport Authority must fix a period of not less than three years and not more than five years, the only order that this Court should pass is to quash the order dated April 30, 1959, renewing the permits upto September 30, 1959, and direct the Authorities to decide the renewal applications in accordance with the law to be laid down by this Court.

This case is similar to Writ Petitions Nos. 54 and 75 of 1959, in which judgment has been just delivered today and raises the same two questions which have been raised there. The only difference is that there is no scheme prepared under Chapter IV-A in connection with the routes with which we are concerned here. We have considered the interpretation of s. 58(2) read with s. 58(1)(a) in Writ Petitions Nos. 75 and 54 of 1959 and the form of the order to be passed. For reasons given in those petitions, we are of opinion that this petition should be allowed.

We therefore allow the petition and quash that part of the order complained against which specified the renewal of the permits upto September 30, 1959, and direct the Authorities to comply with the requirements of the law as laid down is s. 58(1)(a) read with s. 58(2) in the order of renewal made by them in favour of the petitioners on April 30, 1959.

The petitioners will get their costs, except hearing costs as the hearing was common with Petition No. 75 of 1959, from the Mysore Government Road Transport Department which alone has opposed the petition.

Petitions Nos. 54, 75 and 76 of 1959.

KAPUR J. –

In the circumstances of this case I do not propose to give any opinion on the question whether in renewing a permit the Regional Transport Authority had to do so for a period of not less than three and not more than five years. Assuming that it should have been so, what is the form of order that this Court could and should make in a case like the present. The petitioners' prayer was as follows :-

> "Wherefore your petitioners most humbly pray that the order of the 2nd respondent dated 15th December, 1958, and be quashed as illegal, arbitrary, unreasonable, unconstitutional and void and the 2nd respondent be directed to grant renewal of your petitioners' permit strictly according to law as has been done in the case of all other operators in that region, upto 31st March, 1961."

If the Impugned order is without jurisdiction then it is liable to be quashed. If it is such that no reasonable body could have given it then it must be deemed to be in excess of jurisdiction and in that case also it is liable to be quashed. The power of a superior court in such cases is not that of an Appellate Authority overriding the decision of the Administrative Tribunal - in this case the Regional Transport Authority : Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation ((1948) 1 K.B. 223).

The Petitioners submitted that the Regional Transport Authority be directed to grant renewal of the permits for a period of three years; in other words what the petitioners want is not only that the order of the Regional Transport Authority be quashed but it should be substituted by the order directing the Authority to act in a particular manner, that is, to renew the permits for a period on not less than three and not more than five years. By doing this this Court will be directing an order in substitution of the order passed and not merely quashing the order made by the Regional Transport Authority but also amending it. In England the power of certiorari did not extend to ordering an amendment of an order : The King v. Willesden Justices, Ex parte Utley ((1948) 1 K.B. 397). In that case a person was properly convicted for an offence by the Justices but was erroneously fined in a sum in excess of the statutory maximum and it was held that the conviction was bad on the face of it and the order must be quashed because unlike the Appeal Court a court acting in its extraordinary prerogative jurisdiction had no power to amend the order and all that could be decided in a case of that kind was whether the conviction was good in law. In a number of other cases a similar view was taken by the English Courts.

Even where the matter is one which falls under the power of issuing a mandamus the order can only command the Tribunals to hear and decide the particular matter and no writ will be issued dictating to them in what manner they are to decide. This rule holds good even though the decision is erroneous not only as to facts but also in point of law and although the particular circumstances of the case are such that there is only one way of performing the duty in question. Halsbury's Laws of England, 3rd Edition, Vol. 11, page 101, paragraph 187. This principle was accepted in Veerappa Pillai v. Raman & Raman Ltd. ([1952] S.C.R. 584) Chandrasekhara Iyer, J., while delivering the judgment of this Court said at page 596 :

> "Further, it will be noticed that the High Court here did not content itself with merely quashing the proceedings, it went further and directed the Regional Transport Authority, Tanjore, "to grant to the petitioner permit in respect of the five buses in respect of which a joint application was made originally by the petitioner and Balasubramania Pillai and that in case the above buses have been condemned, the petitioner shall be at liberty to provide substitutes within such time as may be prescribed by the authorities". Such a direction was clearly in excess of its powers and jurisdiction".

In Basappa v. Nagappa ([1955] 1 S.C.R. 250) this case referred to with approval.

The petitioners relying upon two judgments of this Court submitted that the impugned order was

severable and it should be severed and the portion which is not in accordance with law should be excised and a direction given that the tribunal should specify a period of not less than three years and not exceeding five years. In my opinion this is nothing more than substituting an order in place of the order passed by the Regional Transport Authority itself. It must be recognised that under Art. 32 this Court has the power to enforce fundamental rights and a right under Art. 32 itself is a fundamental right but when this Court exercises the power of judicial review in the matter of enforcement of fundamental rights which are alleged to be infringed because of some order passed by an administrative Tribunal in the exercise of its jurisdiction this Court has to proceed on certain principles and one of the recognised principles is that :

> "..... "in the whole of administrative law the functions that can be performed by judicial review are fairly limited". The role of the courts in this field "is to serve as a check on the administrative branch of government - a check against excess of power and abusive exercise of power in derogation of private right". The judicial function is thus one of control : we may expect "judicial review to check - not to supplant - administrative action." (Bernard Schwartz on American Administrative Law, page 113).

The question is whether the powers given under Art. 32 are such that this Court can direct the exercise of direction by the administrative tribunal in the manner that this Court would have exercised it. It is said that the tribunal would have ordered the renewal of the permits irrespective of whether they were going to be for a period of not less than three and not more than five years. There is slender basis for this assumption and the fact that there was nationalisation in the offing do not give it much support. In giving such a direction, as is proposed, this Court will be substituting itself in place of the Regional Transport Authority and acting as if it was the Authority itself which is beyond the scope of judicial review.

Reliance was placed by the petitioners on Shewpujanrai Indrasanrai Ltd. v. The Collector of Customs ([1959] S.C.R. 821). In that case the Collector of Customs purporting to act under section 167(8) of the Sea Customs Act ordered (1) confiscation of the smuggled gold (2) in lieu thereof an option to pay fine of Rs. 10 lakhs and (3) in addition to pay proper customs duty and other charges leviable thereupon and (4) imposed a condition that the release of gold will be subject to the production of a permit from the Reserve Bank of India within a period specified in the order. It was conceded that the Collector had no power to impose the last two conditions and it was contended that the order being a composite and integrated whole, part of it was within jurisdiction of the Collector and part of it without and the superior court must quash the whole order as being in excess of jurisdiction. Relying upon the judgment of this court in R. M. D. Chamarbaugwalla v. Union of India ([1957] S.C.R. 930) this Court was of the opinion that there was no difficulty in enforcing the order even after excising the two illegal conditions. S. K. Das, J., in delivering the judgment of the Court said :-

> "There is no legal difficulty in enforcing the rest of the impugned order after separating the invalid conditions therefrom;.. For these reasons we agree with the Division Bench of the High Court that the invalid conditions imposed by the Collector in this case are severable from the rest of the impugned order."

But these observations have to be read in the context of the facts and the decision of the case The King v. Willesden Justices, Ex parte Utley ((1948) 1 K.B. 397) was cited but was not applied because of the observations of this Court in T. C. Basappa v. T. Nagappa & Anr. ([1959] S.C.R.

279) to which I shall refer presently. The main ground on which the order of severability was passed was that the appellant in that case had not merely asked for a writ of certiorari but also for a writ of mandamus and prohibition and that the prayers were neither unnecessary nor mere surplusages and they were appropriate for the purpose of getting rid of conditions imposed by the Collector for the release of gold. It was held in that case that if a decision of an inferior court or tribunal was partly within and partly without its jurisdiction, prohibition will lie against what is in excess of jurisdiction and reference was made to Halsbury's Laws of England, 3rd Edition, Vol. 11, page 116, paragraph 216 and also to Shree Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar & Ors. ([1959] S.C.R. 279) where the principle of severability was applied. In Shewpujanrai's case ([1959] S.C.R. 821) two passages from Basappa v. Nagappa ([1955] 1 S.C.R. 250) at page 257 were quoted with approval. After a review of these various authorities S. K. Das, J., said at page 844 :-

> "Therefore, we do not see any insuperable difficulty in the present case in prohibiting respondents 1 to 3 from enforcing the two invalid conditions which the Collector of customs had imposed for release of the gold on payment of the fine in lieu of confiscation, and the time limit of four months fixed by the Collector must accordingly run from the date of this order."

It will be seen therefore that in Shewpujanrai's case ([1959] S.C.R. 821) although this Court was of the opinion that the powers of the Court are wider than those of the Courts in England yet in the exercise of those powers of issuing writs the broad and fundamental principles that regulate the exercise of jurisdiction granting such writs in English law will be observed. The case is no authority for saying nor did it lay down that in the matter of judicial review this Court will proceed on different principles than the Courts in England. The main decision in the case proceeded on the ground that a writ of prohibition was prayed for, in granting which it was open to the Court to issue a writ quashing that portion which was in excess of jurisdiction. Besides, in that case, by severing the illegal conditions which had been imposed the order of the Collector still remained one enforceable and not a truncated order which would be incomplete by the excision of those two conditions. Can it be said in the instant case that the impugned order can remain one whole integrated and intelligible order by taking away the condition in regard to the period and could it fall within the rules laid down in Chamarbaughwalla's case ([1957] S.C.R. 930). The 6th condition there laid down at page 951 was that if after the invalid portion was expunged what remained could not be enforced without making alterations and modifications therein then the whole must be struck down. Can it be said as it could be said in Shewpujanrai's case ([1959] S.C.R. 821) that the order is enforceable without the period and without making a substituted order in place of the order made by the Regional Transport Authority. In my opinion it cannot be.

Then I come to the consideration in T. C. Basappa v. T. Nagappa ([1955] 1 S.C.R. 250). That was a case which arose in appeal against the decision of the Mysore High Court given under Art. 226 in regard to an election matter where the Election Tribunal had found certain issues in favour of the petitioner and had declared the election to be void and the respondent filed an application under Art. 226 for a writ or direction in the nature of certiorari which was allowed. The question raised in this Court was that the Tribunal whose order had been quashed had neither acted without jurisdiction nor was there any error apparent on the face of the record and the two questions which arose for decision were (1) what was the extent of the power of the High Court in exercise of its powers under Art. 226 to grant a writ of certiorari to quash the adjudication of an Election Tribunal and (2) whether such grounds did exist. After reference to the principles on which superior courts in England act in issuing writs of certiorari and how the power had developed, Mukherjee, J. (as he then was) observed that under the Constitution of India new and wide power had been conferred on

the High Courts of issuing directions, orders or writs primarily for the enforcement of fundamental rights and also included the power of issuing such directions for any other purpose. At p. 256 the learned Judge said :-

> "In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law." (Italics are mine).

It will thus be seen that in that case this court did not hold that the principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law were not to be kept in view. As a matter of fact the learned Judge then gave quotations from various English decisions e.g. Rex v. Electricity Commissioners ((1924) 1 K.B. 171 at p. 205); King v. Nat Bell Liquors Limited ((1922) 2 A.C. 128 at p. 156). At page 258 a passage from the judgment of Morris, L. J., in Rex v. Northumberland Compensation Appellate Tribunal ((1952) 1 K.B. 338 at p. 357) was quoted with approval and then a passage from the judgment of Chandrasekhara Iyer, J., in Veerappa Pillai v. Raman & Raman Ltd. ([1952] S.C.R. 584) at p. 594

> "However extensive the jurisdiction may be it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made"

was quoted. After referring to these various passages Mukherjea, J. (as he then was) said :-

> "These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of certiorari under article 226 of the Constitution."

It cannot therefore be said that in Basappa's case ([1955] S.C.R.250) this Court said or intended to say that a superior court acts in a manner different from that in which the courts acted in England. All it intended to say was that in that case on the facts and circumstances found by the High court a writ of certiorari was rightly issued. This Court did not say that in issuing a writ of certiorari a superior court could substitute orders or direct what the order should be. In other words judicial review extends to a check on administrative tribunals and not to supplant administrative action. In my opinion the power of this Court only extends to quashing and not to substituting an order in place of what an administrative tribunal has done or to direct what it should do. Reference was made by the learned Solicitor General to Kochunni v. State of Madras (A.I.R. (1959) S.C. 725) in which certain observations were made as to the power of this Court to frame its writs or orders to suit the exigencies of the case. That was not a case of judicial review of administrative action but of the exercise of the powers under Art. 32 in a case where the validity of an Act eo instanti abridging the petitioner's rights under Art. 19(1)(f) was in dispute. The decision, the observations and the rule laid down must be read in the context and in the circumstances of that case. United Motors Transport Co. v. Sree Lakshmi Motors Transport Co. Ltd. (A.I.R. (1945) Cal. 260), also was not a case of judicial review but an appeal from a decree and does not affect the question now before us.

The petitioners applied to the High Court under Arts. 226 & 227 of the Constitution against the order made by the Regional Transport Authority but that was dismissed and a certificate for appeal was also refused by the High Court. As to what is the legal effect of the order of the High court which has become final by its not being appealed against, I do not propose to discuss in this case as we have not had the advantage of its being debated at the Bar.

In my opinion no order commanding the Regional Transport Authority as to what order it should pass and what period should be substituted in place of the order passed by the Regional Transport Authority can be made by this Court and all that this Court can do is to quash the order and leave it to the regional Transport Authority to reconsider the matter and exercise its discretion keeping in view the law as laid down by this Court. As the petitioners' success would be partial, I leave the parties to bear their own costs in this Court.

ORDERS OF COURT.

In Petitions Nos. 54 and 75 of 1959.

In accordance with the opinion of the majority, we allow the petitions and quash that part of the order complained against which specified the renewal of the permits upto March 31, 1959, and direct the Regional Transport Authority, Bangalore, to comply with the requirements of the law as laid down in s. 58(1) (a) read with s. 58(2) in the order of renewal made by it in favour of the petitioners on December 15, 1958. The petitioners will get one set of costs from the Mysore Government Road Transport Department which alone has contested these petitions.

In Petition No. 76 of 1959.

In accordance with the opinion of the majority, we allow the petition and quash that part of the order complained against which specified the renewal of the permits upto September 30, 1959, and direct the Authorities to comply with the requirements of the law as laid down in s. 58(1)(a) read with s. 58(2) in the order of renewal made by them in favour of the petitioners on April 30, 1959.

The petitioners will get their costs, except hearing costs as the hearing was common with Petition No. 75 of 1959, from the Mysore Government Road Transport Department which alone has opposed the petition.

</html