SUPREME COURT OF INDIA

K. M. Shanmugam

Vs.

S. R. V. S. (P) Ltd.

C.A.No.697 of 1962

(S. J. Imam, K. Subba Rao, Raghubar Dayal and J. R. Mudholkar, JJ.)

06.02.1963

JUDGEMENT

SUBBA RAO, J.:

1. This appeal by special leave is directed against the judgment of a division Bench of the High Court of Judicature for Madras confirming that of a single Judge of that Court allowing the petition filed by the respondent under Art. 226 of the Constitution and quashing the order made by the State Transport Appellate Tribunal granting a stage carnage permit to the appellant for the route Tanjore-Mannargudi via Vaduvoor.

2. The facts relevant to the question raised may be briefly stated. The Regional Transport Authority, Tanjore, called for applications in respect of the issuing of a stage carriage permit for the route Tanjore-Mannargudi via Vaduvoor. 11 persons applied for the permit. The Regional Transport Authority, adopting the marking system prescribed in G. O. Ms. No. 1298 (Home) dated April 28, 1956, awarded marks to different applicants: the appellant got the highest number of marks, viz., 7, and the first respondent got only 44 marks, with the result the appellant was preferred to the respondent and a permit was issued to him. It is not necessary to notice the marks secured by the other applicants before the Regional Transport Authority, for they are not before us. Total of the said marks secured by each of the said two parties was arrived at by adding the marks given under the following heads:

Viable Unit	Workshop	Residence	Experience	Special circumstances	TOTAL
1	2	3	4	5	
K.M.S 4	1	1	1/2	1/1	1/1	7
S.R.V.S. -	1	1	1		1}	4}

It would be seen from the said table of marks that if the 4 marks secured by the appellant under the first column "Viable Unit" were excluded from his total, he would have got only a total of 3 marks under the remaining heads and the first respondent would have got a total of 44 marks under the said heads. Under the said G.O., as interpreted by this Court, the marks under the first column i.e., those given under the head "Viable Unit", would be counted only if other things were equal; that is to say, if the total number of marks obtained by the said two applicants under Cols. 2 to 5 were equal. It is, therefore, obvious that on the marks given the Regional Transport Authority went wrong in issuing a permit in favour of the appellant, as he should not have taken into consideration the 4 marks given under the 1st Column since the total marks secured by him under Cols. 2 to 5 were less than those secured by the first respondent. Aggrieved by the said order, the first respondent preferred an appeal to the State Transport Appellate Tribunal, hereinafter called the Appellate Tribunal. The said Appellate Tribunal recast the marks in respect of the said two parties in the following manner :

Viable Unit	Workshop	Residence	Experience	Special circumstances	TOTAL
1	2	3	4	5	
K.M.S 4	2	1	3/4	1/4	8
S.R.V.S. -	2	-	1	1	4

It would be seen from the marks given by the Appellate Tribunal that the total of the marks secured by the appellant under Cols. 2 to 5 is equal to that secured by the first respondent under the said columns, each of them securing 4 marks. It was contended before the Appellate Tribunal that the first respondent was entitled to some mark under the column "Residence or place of business" on the ground that it had the places of business at Tanjore and Mannargudi and that the Regional Transport Authority had given one mark to the first respondent under, the said column; but the Appellate Tribunal rejected that contention on the ground that the first respondent had a branch office at Kumbakonam and therefore, the office at Tanjore or Mannargudi could not be treated as a branch office. Aggrieved by that order, the first respondent filed a petition before the High Court under Art. 226 of the Constitution for setting aside that order. Ramachandra Iyer, J. who heard the said application allowed it. The main reason given by the learned Judge for allowing the petition was that the Appellate Tribunal omitted to give any mark in respect of residential qualification, which amounted to refusal to take into consideration the admitted fact, namely, the existence of a workshop at Mannargudi and, therefore, it amounted to a breach of S. 47 (1) (a) and (c) of the Motor Vehicles Act. The same idea was expressed by the learned Judge in a different way thus :

".....in regard to residential qualification, it (the Appellate Tribunal) declined to consider whether the office workshop at Mannargudi is sufficient to entitle the petitioner to any marks under head (sic) for the mere reason that it was a branch of a branch office."

He held that the said refusal was an error apparent on the face of the record; and he act accordingly quashed the order and at the same time indicated that the result was that the State Transport Appellate Tribunal would have to dispose of the appeal afresh. The Letters Patent appeal filed by the appellant was heard by a Division Bench consisting of Anantanarayanan and Venkatadri, JJ. The learned Judges dismissed the appeal and the reason of their decision is found in the following

remarks:

"In essence, the Judgment really proceeds on the basis that with regard to the claim of the respondent to some valuation under Col. 3, arising from the existence of an alleged branch office at Mannargudi there has been no judicial disposal of the claim."

They also observed:

"The Tribunal is, of course, at liberty to adopt its own criteria for the valuation under Col. 2, provided they are consistently applied, and based upon some principle."

In dismissing the appeal the learned Judges concluded:

"....we desire to make it clear that we are not in any way fettering the discretion of the State Transport Appellate Tribunal to arrive at its own conclusion on the claims of the two parties irrespective of any observations that might have been incidentally made by this Court on those claims."

The appellant has preferred the present appeal by special leave against the said order.

3. It will be seen from the aforesaid narration of facts that the High Court issued the writ as it was satisfied that there was a clear error apparent on the face of the record, namely, that the Appellate Tribunal refused to take into consideration the existence of the branch office at Mannargudi for awarding marks under the head "residence" on the ground that there was another office of the first respondent at Kumbakonam. While it gave marks to the appellant for his residence, it refused to give marks to the first respondent for its office on the aforesaid ground.

4. Mr. Sen, learned counsel for the appellant, raised before us the following points. (1) The High Court has no jurisdiction to issue a writ of certiorari under Art. 226 of the Constitution to quash an order of a tribunal on the ground that there is an apparent error of fact on the face of the record, however gross it may be, and that, in the instant case, if there was an error, it was only one of fact; (2) this Court has held that directions given under S. 43 of the Motor Vehicles Act are only administrative in character and that an order made by a Tribunal in breach thereof does not confer a right on a party affected and, therefore, the Appellate Tribunal's order made in derogation of the said directions could not be a subject-matter of a writ.

5. The argument of Mr. Viswanatha Sastri, learned counsel for the first respondent, may be summarized thus :

The petitioner (appellant herein) has a fundamental right to carry on business in transport. The Motor Vehicles Act is a law imposing reasonable restrictions in public interest on such right. The Appellate Tribunal can decide, on the material placed before it. whether public interest would be better served if the permit was given to the appellant or the first respondent with the meaning of S. 47 of the said Act. The Government, in exercise of its powers under S. 43 of the said. Act, gave administrative directions embodying some principles for enabling the Tribunal to come to a conclusion on the said point. . The Tribunal had jurisdiction to decide the said question on the basis of the principles so laid down or dehors them. In either view, it only decides the said question. The first respondent raised before the Tribunal that public interest would be better served if a Permit was issued to it as it had a well equipped-branch office at Mannargudi. The said question was relevant in an inquiry under S. 47 of the said Act, whether the Tribunal followed the instructions given by the

Government or, ignored them. In coming to a conclusion on the said question, the Tribunal made a clear error of law inasmuch as it held that in the case of the first respondent, as it had a branch at Kumbakonam, its other branch at Mannargudi should be ignored. This, the learned counsel contends, is an error apparent on the face of the record. He further contends that the scope of an inquiry under Art. 226 is wide and that it enables the court to issue an appropriate direction even in a case of an error of fact apparent on the face of the record.

6. It is not necessary to express our opinion on the wider question in regard to the scope and amplitude of Art. 226 of the Constantion, namely, whether the Jurisdiction of the High Court under the said Article to quash the orders of Administrative tribunals is confined only to circumstances under which the High Court of England can issue a writ of certiorari or is much wider than the said power, for this appeal can satisfactorily and effectively be disposed of within the narrow limits of the ambit of the English Court's jurisdiction to issue a writ of certiorari as understood by this Court. If it was necessary to takkle the larger question, we would have referred the matter to a Bench of 5 Judges as it involved a substantial question of law as to the interpretation of the Constitution; and under Art. 145 thereof such a question can be heard only by a Bench of at least 5 Judges. In the circumstances a reference to the decisions of this Court cited at the Bar, which are alleged to have expressed conflicting views thereon, is not called for. We shall therefore, confine ourselves to the narrow question.

7. Adverting to the scope of a writ of certioraris in common law, this Court, in Hari Vishnu Kamath v. Syed Ahmed Ishaque, 1955-1 SCR 1104 at pp. 1121, 1123: (S) AIR 1955 SC 233 at pp. 243, 244) laid down the following propositions:

(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous.

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law.

This view was followed in Nagendra Nath Bora v. The Commr Hills Division, 1958 SCR 1240 : (AIR 1958 SC 398), Satyanarayan v. Mallikarjun, AIR 1960 SC 137, Shri Ambica Mills Co. v. S. B. Bhutt, AIR 1961 SC 970 and Provincial Transport Services v. State Industrial Court, Nagpur, AIR 1963 SC 114. But the more difficult question is, what is the precise meaning of the expression 'manifest error apparent on the face of the proceedings'? Venkatarama Ayyar, J., attempted to define the said expression in Hari Vishnu Kamath's case (1955) 1 SCR 1104: (IS) AIR 1955 SC 233) thus:

"Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J., in Batuk K Vyas v. Surat Borough Municipality, AIR 1953 Bom 133 that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination

or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinion also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined Judicially on the facts of each case."

It would be seen from the said remarks that the learned judge could not lay down an objective test, for the concept necessarily involves a subjective element. Sinha, J., as he then was, speaking for the Court in Nagendra Nath Bora's case, 1958 SCR 1240: (AIR 1958 SC 398) attempted to elucidate the point further and proceeded to observe at pp. 1269-70 (of SCR): (at pp. 412-413 of AIR) thus:

"It is clear from an examination of the authorities of this Court as also of the courts in England, that one of the ground, on which the jurisdiction of the High Court on certiorari may be invoked, is an error of law apparent on the face of the record and every error either of law or fact, which can be corrected by a superior court, in exercise of its statutory powers as a court of appeal or revision."

This decision assumes that the score of a writ in the nature of certiorari or an order or direction to set aside the order of an inferior tribunal under Art. 226 of the Constitution is the same as that of a common law writ of certiorari in England: we do not express any opinion on this in this case. This decision practically accepts the opinion expressed by this Court in Hari Vishnu Kamath's case, (1955) 1 SCR 1104: (S) AIR 1955 SC 233). The only addition it introduces is the antithesis it made between "error of law and error of fact" and "error of law apparent on the face of the record". But the question still remains in each case whether an error is one of law or of fact and that falls to be decided on the facts of each case. Das Gupta, J., makes yet another attempt to define the expression when he says in Satyanarayan v. Mallikarjun, AIR 1960 SC 137 at p. 141 thus:

'An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments".

The learned Judge here lays down the complex nature of the arguments as a test of an apparent error of law. This test also may break, for what is complex to one judicial mind may be clear and obvious to another: it depends upon the equipment of a particular Judge. In the ultimate analysis the said concept is comprised of many imponderables: it is not capable of precise definition as no objective criterion can be laid down, the apparent nature of the error, to a large extent, being dependent upon the subjective element. So too, in some cases the boundary between error of law and error of fact is rather thin. A tribunal may hold that 500 multiplied by 10,000 is 5 lakhs (instead of 50 lakhs); another tribunal may hold that a particular claim is barred by limitation by calculating the Period of time from 1956 instead of 1961; and a third tribunal may make an obvious error deciding a mixed question of fact and law. The question whether the said errors are errors of law or fact cannot be posited on a priori reasoning, but falls to be decided in each case. We do not, therefore, propose to define with any precision the concept of "error of law apparent on the face of the record"; but it should be left, as it has always been done, to be decided in each case.

8. 'The only question, therefore, is whether the State Transport Appellate Tribunal committed an error of law apparent on the face of the record. A look at the provisions of S. 47 and S. 43 of the

Motor Vehicles Act, 1939, as amended by the Madras Legislature, will facilitate the appreciation of the problem. Under S. 47, a Regional Transport Authority in considering an application for a stage carriage permit is enjoined to have regard, inter alia, to the interests of the public generally. Section 43-A, introduced by the Madras Legislature by the Motor Vehicles (Madras Amendment) Act, 1948, says that the State Government may issue such orders and directions of a general character as it may consider necessary in respect of any matter relevant to road transport to the State Transport Authority or to a Regional Transport Authority and such Transport Authority shall give effect to all such orders and directions. It has been held by this Court in M/s. Raman and Raman Ltd. v. the State of Madras, 1959 Supp (2) SCR 227: (AIR 1959 SC 694) that S. 43A conferred a power on the State Government to issue administrative directions, and that any direction issued thereunder was not a law regulating rights of parties. It was also pointed out that the order made and the directions issued under S. 43A of the Act cannot obviously add to, or subtract from, the consideration prescribed under S. 47 thereof on the basis of which the tribunal is empowered to issue or refuse to issue a permit, as the case may be. It is, therefore, clear that any direction given under S. 43-A for the purpose of considering conflicting claims for a permit by applicants can only be to enable the Regional Transport Authority to discharge its duties under S. 47 of the Act more satisfactorily, efficiently and impartially. To put it differently, the directions so given cannot enlarge or restrict the jurisdiction of the said tribunal or authority but only afford a reasonable guide for exercising the said jurisdiction. Concretely stated, an applicant in advancing his claim for a permit may place before the Authority an important circumstance in his favour, namely, that he has a branch office on the route in respect whereof he seeks for a permit. He may contend that he has an office on the route, and that the interests of the public will be better served, as the necessary amenities or help to meet any eventuality in the course of a trip will be within his easy reach. The Government also under S. 43-A may issue instructions to the Regional Transport Authority that the existence of an office of a particular applicant on the route would be in the interests of the public and, therefore, the said applicant should be given a Referential treatment if other things are equal. The issue of such-an instruction only emphasizes a relevant fact which an authority has to take into consideration even if such an instruction was not given. But if the Authority under a manifest error of law ignores the said relevant consideration, it not only disobeys the administrative directions given by the Government, but also transgresses the provisions of S. 47 of the Act. The disobedience of the instructions which are administrative in nature may not afford a cause of action to an aggrieved party, but the transgression of the statutory law certainly does. What is the position in the present case?

9. The Government issued G.O. No. 1298 (Home), dated April 28, 1956 introducing a rnarking system for assessing the meets of applicants for stage Carriage permits. Column 3 reads thus:

"Location of residence or place of business of the applicant on the route or at the terminal: This qualification not only is in favour of local enterprise but also secures that the owner will pay prompt and frequent attention to the service entrusted to him. One mark may be assigned to this qualification."

Under this instruction the location of the residence or the place of business is considered to be in the interest of the public, for whose benefit the service is entrusted to a permit-holder. The first respondent contended before the Regional Transport Authority that he had branch offices at Tanjore and Mannargudi and therefore that fact should be taken into consideration and a mark should be given to him thereunder. The Regional Transport Authority gave one mark to the appellant and also one mark to the first respondent under that column. But the Appellate Tribunal refused to give any mark under that column to the first respondent for the following reasons:

"On behalf of the other appellants and the Respondent it is contended that appellant No. 1 (1st respondent before the Supreme Court) is a Private Ltd. Company having its registered office at Madras, that their office at Kumbakonam is only a branch office, that the offices if any at Tanjore or at Mannargudi cannot be treated as branch offices, and that, as such they are not entitled to any mark in column 3 of the mark list. This contention is a valid one."

In regard to the Tanjore office the said Appellate Tribunal has given an additional reason by holding on the facts that it was not an office at all. We can, therefore, ignore the Tanjore office for the purpose of this appeal. So far as the Mannargudi office is concerned, the decision of the Appellate Tribunal was based upon an obvious error. It took the view that if a company had a branch office at one particular place, it could not have in law any other branch office though it had one in fact. Whatever conflict there may be, on which we don't express any opinion, in a tax law or the company law, in the context of the marking system and the evaluation of an amenity in the interest of the public, it is obviously an untenable proposition to hold that even if a company has well equipped office on a route in respect of which a permit is applied for, it shall be ignored if the company has some other branch somewhere unconnected with that route. That was what the Appellate Tribunal held and in our view it is an error apparent on the face of the record. On that erroneous view, the Appellate Tribunal did not decide the relevant question raised, namely, whether the respondent has any such office at Mannargudi. Both Ramachandra Iyer, J. at the first instance, and Anantanarayanan and Venkatadri, JJ., in appeal, rightly pointed out this error. As this is an error apparent on the face of the record, they quashed the order of the Appellate Tribunal and left the question open for decision by it. In our view, the conclusion arrived at by the High Court is correct.

10. It remains only to notice the decisions on which strong reliance is placed by learned counsel for the appellant in support of his contention.

11. In 1959 Supp (2) SCR 227: (AIR 1959 SC 694) the relevant facts were: the appellant and the 4th respondent therein, along with others were applicants for a stage carriage permit. The Regional Transport Authority granted the permit to the appellant on the basis of instructions issued by the State Government under S. 43A of the Motor Vehicles Act; on appeal, the Central Road Traffic Board set aside that order on the footing of fresh instructions issued by the Government; and a Division Bench of the Madras High Court dismissed the writ petition filed by the appellant. It was, inter alia, contended before this Court that the instructions given under S. 43A being law regulating rights of parties, the appellate authority could not ignore that law and set aside the order of the Regional Transport Authority on the basis of subsequent instructions. The contention was rejected on the ground that instructions under S. 43A were not law, but were only administrative directions and that the fact that the appellate tribunal ignored them would not affect its jurisdiction if it had come to a decision having regard to the considerations laid down in S. 47 of the Act. The question before the tribunal was whether a small unit or a large one would be viable or would be in the interest of public. There was scope for taking different views on the question, and the appellate tribunal, contrary to the earlier directions, came to the conclusion that smaller units would be more in the interest of the public than larger ones. This judgment, therefore, is an authority only for the position that a tribunal in issuing or refusing to issue a permit to an applicant would be acting within its jurisdiction notwithstanding the fact that it ignored the administrative directions given by the Government under S. 43A of the Act, provided it had come to a decision on the relevant considerations laid down in S. 47 of the Act.

12. In Abdulla Rowther v. The State Transport Appellate Tribunal, Madras, AIR 1959 SC 896 the Regional Transport Authority issued a permit each to the appellant therein and to one Gopalan Nair.

on appeal, the Appellate Tribunal set aside that order and gave the permits to respondents 3 and 4. Both the Regional Transport Authority and the Appellate Tribunal considered the applications on the basis of G. O. No. 1298 issued by the Government of Madras on April 28, l956. The Regional transport Authority gave 4 marks each to the appellant and Gopalan Nair under Col. 1, which dealt with the building strength to viable units, and refused to give any marks to respondents 3 and 4 under the said column on the around that they were fleet owners with the result that the appellant and Gopalan Nair secured more marks than respondents 3 and 4 and were, therefore, given the permits. But the Appellate Tribunal held that the appellant and Gopalan Nair were not entitled to claim the benefit of the marks under Col. 1, as they had secured less marks than respondents 3 and 4 under Cols. 3 to 5, for they held, on a fair construction of the said G.O., that it was only when the marks obtained by applicants under Cols. 2 to 5 were equal, recourse could be had to Col. 1. on that basis, the Appellate Tribunal quashed the order of the Regional Transport Authority and gave the permits to respondents 3 and 4. The appellant challenged the said order by an application under Art. 226 of the Constitution for a writ of certiorari in the High Court of Madras. Rajagopalan, J., dismissed the application on two grounds, namely. (1) that the construction of the G.O. was not shown to be wrong, and (2) that even if the G.O. was misconstrued, it would not justify the issue of a writ of certiorari, as the said G.O. embodied only administrative directions. The Letters Patent Appeal filed against the said order was dismissed. The appeal filed to this Court was also dismissed. This Court followed the decision in 1959 Supp (2) SCR 227: (AIR 1959 SC 694) and held that the instructions given under S. 43-A of the Motor Vehicles Act were only administrative directions and that, therefore, even if the rule as to the assignment of marks was infringed, it was not an error of law at all. This decision only follows the earlier decision and lays down that instructions given under S. 43A of the Motor Vehicles Act are only administrative directions and that a wrong construction of the said instructions would not enable the party affected to apply for a writ of certiorari. The instructions laid down a method of evaluation of the respective claims vis-a-vis the considerations laid down in S. 47 of the Act. The Regional transport Authority and the Appellate Tribunal have borne in mind the said considerations in deciding upon the rival claims, though they may have wrongly interpreted one of the instructions. It may be pointed out that in that case the interpretation out upon the instructions was a correct one, though this Court proceeded on the assumption also that they might have been wrongly interpreted. But the decision cannot obviously be an authority for the position that on a wrong interpretation of the administrative directions or dehors the said directions, a tribunal can ignore the relevant considerations laid down in S. 47 of the Act or on the basis of an error of law apparent on the record wrongly refuse to decide on any of such considerations.

13. To the same effect is the decision of this Court in Ayyaswami Gounder v. M/s. Soudambigai Motor Service, Civil Appeal No. 198 of 1962, D/- 17-9-1962 (SC). There, the Regional Transport Authority followed the marking system as laid down by the Government of Madras and gave to the appellant (therein) 5 marks and to the respondent 6 marks. Though the respondent got 6 marks, he was not given the permits as in the view of the said Authority he was guilty of misconduct. As between the other applicants, the appellant having secured the highest number of marks, he was given a permit. But on appeal the Appellate Tribunal re-allotted the marks and under the re-allotment the appellant got the highest number of marks; and because of that fact and also for the reason that he was a small operator of two buses, who should be given an opportunity to build up a viable unit as quickly as possible, he was given the permit by the appellate Tribunal upholding the order of the Regional Transport Authority. One of the questions raised there was whether the appellant was entitled to marks under Col. 2 for repair and maintenance facilities at Dharapuram the Appellate Tribunal found that he had such facilities. The appellant filed a writ in the High Court and

the learned single Judge thought that some mistakes had been committed by the Appellate Tribunal in the allotment of marks and that it acted in contravention of the directions given by the Government under the said G.O., but dismissed the petition on the ground that, as the said instructions are only executive directions, their contravention did not confer any right on the parties before the tribunal on Letters Patent Appeal a Division Bench of that Court set aside that order on the ground that the Appellate Tribunal had taken into consideration the following two irrelevant considerations: (i) the appellant's claim should suffer because of the punishment for his past misconduct, and (ii) the third respondent being a small operator, he would be entitled to better consideration than the appellant who was a monopolist. On appeal, this court followed the decision in 1959 Supp (2) SCR 227: (AIR 1959 SC 694) and AIR 1959 SC 896 and held that under the said G. O. the Government issued only administrative directions and that the failure of the Transport authorities to follow them would not entitle the respondents to a writ. As regards the two reasons given by the High Court, this Court came to the conclusion that they were not irrelevant consideration, but were considerations germane in the matter of issue of permits.

In the result this Court allowed the appeal. This decision accepts two propositions, namely, (1) misconstruction or even disregard of the instructions, given by the Government does not confer a right upon an aggrieved party to file a writ, the said instructions are only administrative directions, and (2) the decision implies that if the Tribunal decides on irrelevant considerations, the Court can issue a writ. But in that case it came to the conclusion that no such irrelevant considerations weighed with the Tribunal.

14. The last of the cases relied upon is that in Sankara Ayyer v. Narayanswami Naidu, Civil Appeal No. 213 of 1960 D/- 10-10-1960 (SC). There too, the Regional Transport Authority and the State Transport Appellate Tribunal considered the applications for the grant of a permit for a new route on the basis of the administrative directions given by the State Government. The Regional Transport Authority gave the appellant 3 marks on the basis that he was a small operator but the Appellate Tribunal came to the conclusion that he was not entitled to any marks as a small operator. A single Judge of the High Court set aside the order of the Appellate Tribunal on the ground that it misconstrued the directions contained in the Government Order relating to small operators. But a division Bench of that Court in Letters Patent appeal held, relying upon the earlier decision of this Court, that the said directions were only administrative in nature and that they did not confer any legal rights and in that view allowed the appeal. This Court again following the earlier decisions dismissed the appeal holding that by construing the administrative directions the Tribunal did not take irrelevant considerations in the matter of issue of permits. It is always a controversial question whether the issue of a permit to a small operator or to a big operator would be in the interest of the public and a Tribunal is certainly entitled to take either view.

15. It will be seen from the aforesaid decisions that this Court only laid down that the instructions given under S. 43A of the Motor Vehicles Act were only administrative directions and that the infringement of those instructions by the Tribunal did not confer any right on a party to apply to a High Court for a writ under Art. 226 of the Constitution. In all those cases the Tribunal either ignored the instructions or misconstrued them, but nonetheless decided the question of issue of permits on considerations relevant under S. 47 of the Act. They are not authorities on the question whether a writ of certioraris would lie where a Tribunal had on an obviously wrong view of law refused to decide or wrongly decided on a consideration relevant under S. 47 of the Act, whether or not it was covered by the instructions given under S. 43A. For if on the basis of such an error of law, it refuses to decide a relevant question, the fact that the Government also issued instructions to the Tribunal to apply some objective standards in deciding such a question does not make the said

question any the less a relevant consideration under S. 47 of the Act.

16. That is the position in the present case. As we have already indicated on the basis of an error manifest on the record, namely, that a company cannot have a branch office on the "out in question, if it has another branch elsewhere, it refused to take into consideration a relevant fact namely, whether the respondent has an office on the said route. The High Court, therefore, was right in quashing the order of the Appellate Tribunal and giving an opportunity to the Tribunal to decide that question on merits.

17. In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.