Syed Yakoob

Vs

K. S. Radhakrishnan & Others

Civil Appeal No. 593 of 1963

(P. B. Gajendragadkar, K. N. Wanchoo, K. Subha Rao, J. C. Shah, Raghubar Dayal JJ)

09.10.1963

JUDGMENT

GAJENDRAGADKAR J. –

The short question which this appeal raises for our decision relates to the limits of the jurisdiction of the High Court is issuing a writ of certiorari while dealing with orders passed by the appropriate authorities granting or refusing to grant permits under the provisions of the Motor Vehicles Act, 1939 (hereinafter called 'the Act').

The State Transport Authority, Madras, (hereinafter referred to as Authority) issued a notification on the 4th July, 1956, under section 57(2) of the Act calling for applications for the grant of two stage carriage permits to run as an express service on the route Madras to Chidambaram 107 applications were received in response to the said notification; some of these were rejected as time-barred or otherwise defective, and the others which were in order were examined by the Authority.

On the 8th May, 1957, the Authority found that Provincial Transport (Private) Ltd., Madras, was the most suitable amongst the applicants and granted one permit to it. As regards the second permit, the Authority held that none of the other applicants was suitable, and so, it refused to grant the said permit to anyone of them; it decided to call for applications afresh under s. 57(2) of the Act.

Against this order, appeals were preferred by 18 claimants for permits before the State Transport Appellate Tribunal (hereinafter called "the Appellate Tribunal); amongst them was the appellant Syed Yakoob and respondent No. 1 K. S. Radhakrishnan. The Appellate Tribunal confirmed the grant of the first permit to the Provincial Transport (Pvt.) Ltd : and so far as the second permit was concerned, it allowed the appeal preferred by the appellant and directed that the said second permit should be issued to him; respondent No. 1's claim for the said permit was accordingly rejected. This order was passed on the 7th July, 1958.

The validity of this order was challenged by respondent No. 1 by his writ petition No. 44 of 1959 filed in the High Court of Madras. Srinivasan J., who heard the writ petition held that the Appellate Tribunal had overlooked material considerations in deciding the question of the grant of the second permit and allowed considerations not germane to the question to vitiate its order. That is why the rule issued on the writ petition filed by respondent No. 1 was made absolute.

This order was challenged by the appellant before a Division Bench of the said High Court by an

appeal preferred under Clause 15 of the Letters Patent. The Division Bench has held that the order passed by Srinivasan J. could be sustained on the ground that the Appellate Tribunal had overlooked material considerations in favour of respondent No. 1, and so, it has affirmed the decision of the learned single Judge on that ground alone. In regard to the finding of the learned single Judge that an irrelevant consideration had vitiated the finding of the Appellate Tribunal, the Division Bench held that the consideration in question was not irrelevant, and so, it different from the view taken by Srinivasan J. In the result, the appeal preferred by the appellant before the Division Bench was dismissed. It is against this order that the appellant has come to this Court by special leave and to his appeal he has impleaded respondent No. 1 and has added the Authority and the Appellate Tribunal as respondents 2 and 3. Mr. Setalvad for the appellant contends that in issuing a writ of certiorari in respect of the impugned order passed by the Appellate Tribunal, the High Court has clearly exceeded its jurisdiction under Art. 226 of the Constitution. In our opinion this contention is well-founded and must be accepted.

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque ([1955] 1 S.C.R. 1104.), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam ([1958] S.C.R. 1240.), and Kaushalya Devi v. Bachittar Singh (A.I.R. 1960 S.C. 1168.).

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-inter-pretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said

conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of a the legal provision which is alleged to have been misconstrued or contravened.

In the present case, the question raised by the appellant presents no difficulty whatever. The point which was raised before the High Court by respondent No. 1 lies within a very narrow compass; it is a very short and simple question of fact. It appears that in dealing with the rival claims of the appellant and respondent No. 1 for the second permit on the route in question, the Appellate Tribunal was ultimately influenced by the fact that the appellant had a workshop at Madras which is one terminus of the route in question, whereas respondent No. 1 had a workshop and a place of business only at Cuddalore which is an intermediate station on the route and did not posses a workshop at either of the terminii of the route; the other terminus being Chidambaram. In fact, that appears to be the effect of the finding made by the Authority also. Respondent No. 1 urged before the High Court that in coming to the conclusion that he had no workshop at Chidambaram, the Appellate Tribunal had failed to consider material evidence adduced by him. It is on this narrow ground that a writ has been issued in favour of respondent No. 1. Mr. Setalvad contends that the question as to whether respondent No. 1 had a workshop at Chidambaram is a pure question of fact and the High Court had no jurisdiction to interfere with the finding recorded by the Appellate Tribunal and seek to correct it by issuing a writ of certiorari. In this connection, he relies on the fact that both the Authority and the Appellate Tribunal have, in substance, found that respondent No. 1 had no workshop at either of the two terminii on the route and the fact that no reasons have been given in support of the said finding would not justify the interference of the High Court in its jurisdiction under Art. 226. It may be conceded that it would have been better if the Appellate Tribunal had indicated why it rejected the case of respondent No. 1 in regard to his alleged workshop at Chadambaram, but we do not think that the failure of the Appellate Tribunal to five a reason in that behalf, or to refer specifically to the evidence adduced by respondent No. 1, would, by itself, constitute such an error in its decision as to justify the issue of a writ of certiorari under Art. 226. In this connection, we ought to add that it has not been suggested by respondent No. 1 that in dealing with his claim for a permit, admissible evidence which he wanted to adduce had been excluded by the Tribunal from the record; the argument that some evidence was not duly considered by the Tribunal, would normally pertain to the realm of the appreciation of evidence and would, as such, be outside the purview of an enquiry in proceedings for a writ of certiorari under Art. 226.

It appears that when respondent No. 1 applied for the permit, he sent a letter dated 11th July, 1956, in which he had stated that he had a workshop at Chidambaram and that he was running it in order to maintain the service efficiently and without any breakdown whatsoever. The argument is that this

letter has not been challenged by any party to the proceedings and has been completely ignored by the Authority and the Appellate Tribunal when they reached the conclusion that respondent No. 1 did not possess a workshop at Chidambaram. As we have already pointed out, neither the Authority nor the Appellate Tribunal has given reasons in support of the findings of fact recorded by it; but the said fact alone does not, in our opinion, justify the conclusion of the High Court that the letter in question had not been considered by the said Authorities, and so, the High Court was not right in issuing a writ of certiorari on that basis alone.

But apart from this aspect of the matter, the record shows that the assertion of respondent No. 1 that he had a workshop at Chidambaram was contradicted by one of the claimants for a permit and is entirely inconsistent with the reports submitted to the Authority and the Appellate Tribunal by the department. D. Kanniah Pillai, one of the applicants for the permit, had specifically averred in his application that the other applicants amongst whom respondent No. 1 was included, were all for away from the Head-quarters having no workshop at Chidambaram. Thus, it would not be right to assume that the claim made by respondent No. 1 that he had a workshop at Chidambaram was not disputed by any other competitor. What is more significant, however, is the evidence supplied by the report made by the Regional Transport Officer, South Arcot. This report is made under different columns. Column 4 speaks about the possession of workshop or repair or maintenance facilities and its location. The report is made in respect of each one of the applicants. In regard to respondent No. 1 under column 4, the report shows that he was maintaining a workshop as per Government Order at Cuddalore, and column 5 speaks about the location of his residence or place of business as Cuddalore. A similar report has been submitted about the appellant and that shows that the appellant had workshop facilities at Madras and that he had a residence and place of business at the terminus.

When the present dispute went before the Appellate Tribunal, a fresh report appears to have been called for, and this report which has been made by the Secretary, State Transport Authority, also shows that respondent No. 1 had a workshop at Cuddalore on the route, whereas the appellant had a workshop at Madras. It would thus be clear that on the question as to whether respondent No. 1 had a workshop at Chidambaram, there was his own assertion stating that he had such a workshop and there were the two reports made by the Transport Officers which contradicted the said assertion; the said assertion was also challenged by one of the applicants. On this state of the record, it was, we think, not permissible to the High Court to consider these questions of fact and to hold that the finding recorded by the Appellate Tribunal was a finding without any evidence. To say that material considerations were ignored by the Appellate Tribunal in holding that respondent No. 1 did not own a workshop at Chidambaram would be plainly unreasonable when it is remembered that the evidence disclosed a sharp conflict between the versions of the parties, and the version of respondent No. 1 was inconsistent with the reports made by the Transport Officers which must have been treated as more reliable by the Appellate Tribunal. There can be little doubt that if respondent No. 1 had owned a workshop at Chidambaram, it would have been mentioned in col. 4, because the said column is obviously intended to indicate all places where the claimant owns a workshop and possesses repair facilities.

It appears that before Srinivasan J. the appellant's learned counsel conceded that the allegation made by respondent No. 1 that he owned a workshop at Chidambaram had not been challenged before the Transport Authorities, and naturally Srinivasan J. was considerably impressed by the said concession; but as the Division Bench which heard the Letters Patent Appeal has pointed out, the said concession was not correctly made; in fact, the record distinctly shows that the claim made by respondent No. 1 was challenged by one of the applicants for permit and was plainly inconsistent with the reports to which we have just referred. Therefore, the concession on which Srinivasan J.,

relied has been properly left out of account by the Division Bench in dealing with the appeal. The Division Bench thought that apart from the said concession, it did appear that the Appellate Tribunal had overlooked the claim made by respondent No. 1 in his letter of the 11th July, 1956. As we have already indicated, we find it difficult to sustain this finding. In our opinion, apart from the fact that the plea raised by respondent No. 1 could not be validly raised under Art. 226, even on the merits the said plea is not well-founded. The question on which respondent No. 1 sought for the intervention of the High Court under Art. 226 was a simple question of fact, and we are satisfied that on that question of fact, the Appellate Tribunal was justified in coming to the conclusion that the claim made by respondent No. 1 about the existence of a workshop at Chidambaram was not well-founded; but even if the said finding did not appear to the High Court to be satisfactory, that would be no reason for issuing a writ under Art. 226. There was evidence in support of the finding of the Appellate Tribunal and it is not a case where the finding is based on no evidence at all. We ought also to add that though the Division Bench was satisfied that the concession on which Srinivasan J., substantially acted had been wrongly made before him, its attention does not appear to have been drawn to the reports made by the Transport Officers to which we have just referred. We have no doubt that if the Division Bench had taken into account those reports, it would have hesitated to confirm the finding made by Srinivasan J.

It appears that Srinivasan J., was inclined to take the view that the decision of the Appellate Tribunal was vitiated by the fact that it took into account certain irrelevant considerations. The Division Bench has held that the said considerations cannot be said to be irrelevant. These considerations centre round the question as to whether preference should be given to an applicant for permit who has his headquarters at the terminus as against another who has only a branch office at the said terminus. The practice usually followed by the Tribunals under the Act appears to be to give one mark under col. 3 to the applicant who has his headquarters at the terminus and give only 1/2 mark to an applicant who has only a branch office at the terminus. Having held that the consideration on which marks are thus allotted cannot be said to be irrelevant, the Division Bench has indicated that the policy underlying the said practice may be open to doubt. In our opinion, it would have been better if the Division Bench had not expressed any opinion on this aspect of the matter, particularly when it came to the conclusion that the said matter was primarily for the decision of the Appellate Tribunal.

Mr. Pathak for respondent No. 1 has relied on a recent decision of this Court in K. M. Shanmugam v. The S.R.V.S. (P) Ltd. ([1964] 1 S.C.R. 809.) in support of his contention that the error committed by the Appellate Tribunal really amounted to a contravention of s. 47 of the Act. He argues that the Appellate Tribunal was under an obligation, in considering the question about the grant of a permit, to take into account the interests of public generally under s. 47(a) and inasmuch as the Appellate Tribunal has ignored the fact that respondent No. 1 owns a workshop at Chidambaram and thereby has refused his application for a permit, the interests of the public generally have been sacrificed. This argument prima facie appears to be far-fetched and fanciful; but Mr. Pathak urges that the observations made by this Court in the case of K. M. Shanmugam are in his favour. In our opinion, the said decision does not lend any assistance to Mr. Pathak's contention. In that case, this Court was satisfied that "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 Manmargudi should be ignored." The judgment shows that this Court took the view that it was obviously an untenable proposition to hold that even if a company has a 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, and it was observed that that was precisely what the Appellate Tribunal had held and that, according to the Court, clearly was an error apparent on the face of the record. It is in that

connection that this Court referred to the mandatory provisions of s. 47. We do not think that this decision can be legitimately pressed into service by Mr. Pathak in the present case. It is only after it is proved that respondent No. 1 had a workshop at Chidambaram that any subsequent question about the interests of the public generally can possibly arise. If, as in the present case, the Appellate Tribunal has held that respondent No. 1 did not own a workshop at Chidambaram, no consideration of public interests can arise at all, and it is with this question that the present writ proceedings are concerned. We ought to add that the decision in the case of K. M. Shanmugam cannot justify a party whose application for permit has been rejected by the authorities under the Act, to move the High Court under Art. 226 and invite it to consider all questions of fact on the plea that the decision on the said questions of fact may assist him to invoke the provisions of s. 47. That clearly is not the effect of the said decision.

Mr. Pathak has also urged that even if we come to the conclusion that the High Court was not competent to issue a writ in the present proceedings, having regard to the nature of the questions raised before it by respondent No. 1, we should not reverse the decision of the High Court under Art. 136 of the Constitution. The jurisdiction of this Court under Art. 136, though very wide, is exercised by the Court in its discretion, says Mr. Pathak, and he contends that where the order under appeal furthers the ends of justice, we should not reverse the said order on technical grounds. We are not impressed by this plea. It may be conceded that in a proper case this Court may refuse to exercise its jurisdiction under Art. 136 where the interests of justice patently indicate the desirability of adopting such a course; but we do not see how a plea of such a kind can be entertained where it is clearly shown that the impugned orders passed by the High Court are without jurisdiction. If Mr. Pathak's argument were to be accepted, in a majority of cases if the High Court interfered with questions of fact in issuing writs of certiorari against the decisions of special Tribunals, it may always be urged that what the High Courts have done is in the interests of justice and this Court should not interfere with the decisions of the High Courts. In the circumstances of the present case, we do not see how considerations of justice can really arise. The Tribunals of fact have found that respondent No. 1 does not own a workshop at Chidambaram and having regard to the other relevant circumstances which the Tribunals have considered, the fact that he does not own a workshop at Chidambaram has ultimately proved decisive against respondent No. 1 and in favour of the appellant. If that be so, a decision based on facts found by the Tribunal cannot be reopened on the plausible plea that a further enquiry should be made because that would be just. If findings of fact were allowed to be disturbed by High Courts in such writ proceedings, that may lead to an interminable search for correct findings and would virtually convert the High Courts into Appellate Courts competent to deal with questions of fact. That is why we think, in entertaining petitions for writs of certiorari, it is necessary to remember that findings of fact recorded by special Tribunals which have be clothed with jurisdiction to deal with them, should be treated as final between the parties, unless, of course, it is shown that the impugned finding is based on no evidence. Therefore, we do not think the plea made by Mr. Pathak that in the interests of justice we should refrain from setting aside the order under appeal, can be upheld.

There is one more point to which reference must be made. It appears that in the writ petition filed by respondent No. 1 he claimed that the orders passed by the Authority and the Appellate Tribunal should be set aside, and a rule was issued in terms of the prayer made in the said petition. Ultimately, the said rule has been made absolute. It is obvious that in the writ petition, respondent No. 1 did not challenge the grant of the permit to the Provincial Transport (Pvt.) Ltd., but unfortunately, having regard to the prayer made by respondent No. 1 in his writ petition, the orders ultimately passed in the said proceedings may, if technically construed, mean that the orders of the Authority as well as the Appellate Tribunal have been set aside and that clearly was not and could

not have been the intention of the High Court in issuing the writ. It would, we think, be better if in issuing a writ on a writ petition and in making it absolute in case the writ petition succeeds, care is taken to draw the order more accurately.

The result is, the appeal is allowed, the order passed by the High Court is set aside and the writ petition filed by respondent No. 1 is dismissed; Respondent 1 to pay the cost of the appellant in this Court.

Mr. Ranganathan Chetty who appears for respondents 2 and 3 has asked for his costs. We do not think this request can be accepted. It may be that in such proceedings, the Authority and the Appellate Tribunal are proper and necessary parties, but unless allegations are made against them which need a reply from them, it is not usual for the authorities to be represented by lawyers in Court. In ordinary cases, their position is like that of courts of other Tribunals against whose decisions writ proceedings are filed; they are not interested in the merits of the dispute in any sense, and so, their representation by lawyers in such proceedings is wholly unnecessary and even inappropriate. That is why we direct that respondents 2 and 3 should bear their own costs.

SUBBA RAO J. - I have had the advantage of perusing the judgment of my learned brother, Gajendragadkar J. I cannot agree. The facts lie in a small compass and they are as follows : The State Transport Authority, Madras, called for applications for the grant of two stage carriage permits on the route Madras to Chidambaram. 107 applications were received by the said Authority. The appellant and the first respondent are two of the said applicants. The State Transport Authority gave one of the permits to the Provincial Transport (Private) Limited, Madras : we are not concerned with this permit. As regards the second permit, the said Authority found none of the applicants suitable and, therefore, refused to grant the same to any one of them and directed fresh applications to be called for. Against the said order, the appellant, first respondent and others preferred appeals to the State Transport Appellate Tribunal. The appellant herein was respondent 16 and respondent 1 herein was appellant 7 before the said Appellate Tribunal. The first respondent secured the highest total marks, viz., 7 1/2, under columns 1 to 5 under the scheme of marking sanctioned by the State Government. The appellant got only 4 1/2 marks. Ignoring the highest total of marks secured by the first respondent, the Appellate Tribunal rejected his claim on the ground that he had his workshop and place of business en route at Cuddalore and not at either of the termini of the route. Excluding the first respondent, the Appellate Tribunal, for the reasons mentioned in the order, preferred the appellant in a competition between him and appellant 14 before the Tribunal. The main ground of preference was that the appellant had got his workshop in the headquarters at Madras. In the result, the Appellate Tribunal rejected the application of the first respondent and gave the permit to the appellant. The first respondent filed a writ petition under Art. 226 of the Constitution in the High Court of Judicature at Madras for the issue of a writ of certiorari for quashing the order of the said Tribunal. The said petition was heard by Srinivasan J., and he quashed the order of the Appellate Tribunal mainly on the ground that the Tribunal did not take into consideration a material and relevant circumstance to the enquiry before it, namely, that the petitioner had the necessary repair and maintenance facilities at Chidambaram, one of the terminii of the route in question. In that view the learned Judge quashed the order of the Appellate Tribunal. On Letters Patent Appeal, a Division Bench of the High Court, consisting of Ramachandra Iyer C.J., and Venkataraman J., held that the learned Judge should not have given a finding on the question whether the first respondent had the above said facilities at Chidambaram, but agreed with him that the Appellate Tribunal had overlooked the claim made by the first respondent to the effect that he had such facilities at Chidambaram. Hence the appeal.

Mr. Setalvad, learned counsel appearing for the appellant, contended that the Appellate Tribunal had held on the material placed before it that the first respondent had no such facilities at the terminal and that, therefore, the High Court had no jurisdiction to interfere with the finding of fact arrived at by the Appellate Tribunal.

Mr. Pathak, learned counsel for the first respondent, argued that though the first respondent clearly stated in his letter dated July 11, 1956, to the Transport Authority that he had such facilities, the State Transport Authority as well as the State Transport Appellate Tribunal had ignored that material circumstance which was germane to the question of public interest under s. 47 of the Motor Vehicles Act, 1939, and, therefore, the High Court had rightly quashed that order under Art. 226 of the Constitution and directed the Tribunal to dispose of the appeal on merits. Alternatively he contended that though there might be some material for the Appellate Tribunal to come to the conclusion that the first respondent had no such facilities, three learned Judges of the High Court, on the admissions made and the material placed before them, have held that the Tribunal did not decide that question and that they only gave a further opportunity to the Appellate Tribunal to decide the appeal on merits and that in the circumstances it is not a fit case for this Court to interfere under Art. 136 of the Constitution.

The first respondent has a fundamental right to carry on business in transport. The Motor Vehicles Act is a law imposing reasonable restrictions in public interests on such right. Under s. 47 of the said Act the Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard, inter alia, to the interests of the public generally. The fact that the first respondent has a separate workshop or at any rate has the necessary repair and maintenance facilities at one of the terminii of the route, viz., at Chidambaram, is certainly a consideration germane to the question of public interest. Indeed, the scheme or marking system, suggested by the Government also recognizes the importance of such facilities at either of the terminii of the route. If the first respondent had placed before the authorities concerned the said circumstance in support of his claim for a permit and if that was ignored or not investigated into by the said authorities, the High Court would certainly have jurisdiction under Art. 226 of the Constitution to quash the order of the authorities and direct them to ascertain whether the claim of the first respondent was true, and if it was true, to take that into consideration before issuing the permit to one or other of the claimants before them. In such an event the High Court would not be interfering with the finding of fact arrived at by the Appellate Tribunal based on the material placed before it, but would only be quashing the order on the ground that an important and material circumstance was ignored or not investigated into by the Tribunal. If a Tribunal ignores or fails to investigate a material circumstance put forward by a claimant and gives a finding against him, the said finding can certainly be said to be vitiated by an error of law apparent on the face of the record.

In the present case, the State Transport Authority was considering the competing claims of 107 persons for two permits. The said Authority gave its decision on May 8, 1957. The first respondent filed his application for a permit on July 11, 1956. On the same day he addressed a letter to the said Authority to the following effect :

> "Chidambaram is one of the terminii of this proposed route. A separate office and workshop are located at Chidambaram in order to maintain the service efficiently and without any breakdown or whatsoever."

None of the innumerable applicants in his application denied specifically the claim of the first respondent that he had a separate office and workshop at Chidambaram. This fact was conceded

before Srinivasan J., though the learned Judge put the concession somewhat higher than was actually made. Nor did the learned counsel for the appellant go back on the limited concession before the Division Bench. But one Kanniah Pillai, who was applicant No. 43-D, stated in his application thus :

> "The applicant Nos. 43, 57, 69, 78 and 81 are residents of Chidambaram but No. 57 is a fleet owner. Nos. 69 and 78 have no workshop. No. 81 is a new entrant. The rest all are far away from the headquarters having no workshop at Chidambaram."

Except this vague and implied denial by Kanniah Pillai, there is nothing on the record to suggest that any other applicant denied the claim of the first respondent. The fact remains that the appellant did not at any stage of the proceedings refute the claim of the first respondent.

With this background let me first look at the order of the State Transport Authority. The said Authority has ignored the said letter of the first respondent claiming to have a workshop at Chidambaram, but it stated in an omnibus clause that the first respondent and some of the other applicants were residents either in the middle or off the route and they were not so well situated as an applicant who had facilities at one end of the route with all the necessary facilities. It may be stated that this is an implied finding against the first respondent, but the complaint of the first respondent is that it is made in Utter disregard of his claim. So too, the Appellate Tribunal observed in its order disposing of the 18 appeals before it that the first respondent, who had secured the highest number of marks, including those in column 1 of the mark list, had his workshop and place of business en route at Cuddalore and not at either of the terminii of the route. This observation was also made in utter disregard of the claim made by the first respondent that he had a workshop at Chidambaram, one of the terminii of the route, and though the other applicants, except one, had not denied the said fact. The High Court, therefore, found on the material placed before it that the said Authority as well as the Tribunal had failed to consider the specific claim made by the first respondent in regard to his workshop at Chidambaram and, therefore, rightly set aside the order of the Appellate Tribunal so that the Appellate Tribunal might consider the claim made by the first respondent. I do not see any flaw in the reasoning of the High Court. Nor can I say that it has exceeded its jurisdiction under Art. 226 of the Constitution.

But, Mr. Setalvad contended that there was material before the Tribunal and that the Tribunal gave its finding on the basis of that material. He relied upon an extract from the report of the Regional Transport Authority, South Arcot, dated January 31, 1957. That was a report sent by the said Authority to the State Transport Authority. Against the name of the first respondent in column 4 under the heading "possession of workshop or repair or maintenance facilities and its location" it is stated, "maintaining a workshop at per G.O. at Cuddalore". Again in the report sent by the State Transport Authority to the State Transport Appellate Tribunal, against the name of the first respondent in column 8 under the heading "Place of residence or prinicipal place of business and the nearest distance" the entry is "Cuddalore - on the route". This information given by the Transport Authority is presumably gathered from the earlier report of the Regional Transport Authority. Reliance is placed upon a letter dated January 10, 1957, written by the first respondent to the Secretary, State Transport Authority, in support of the contention that even the first respondent, though on July 11, 1956, he claimed to have had a workshop at Chidambaram, did not mention it therein. But a perusal of that letter shows that he did mention that he had the sector and terminal qualifications. Basing the argument on the said documents, it was contended that there was material on which the Appellate Tribunal could have come to the finding which it did, viz., that the first respondent had no workshop at either of the terminii of the route. Firstly, these documents were not

expressly relied upon by the Tribunal for holding that the first respondent had no workshop at Chidambaram. Secondly, these documents were not relied upon by the appellant either before Srinivasan J., or before the Division Bench to the effect that the Appellate Tribunal gave a finding on the basis of the said material. Thirdly, one of the said documents, viz., the letter of the first respondent, does not support the contention. The other two reports did not say that the first respondent had no workshop at Chidambaram. The officers who made the report did not make any enquiry as regards the fact whether the first respondent had a workshop at Chidambaram on the basis of the claim made by him. There is, therefore, absolutely no evidence to controvert the first respondent's claim and that is the reason why the appellant did not place the said documents before the High Court in support of his contention that there was material before the State Transport Authority and the State Transport Appellate Tribunal for holding that the first respondent had no workshop at Chidambaram. A perusal of the two orders shows that presumably in view of the innumerable applications, the specific claim of the first respondent was completely missed by the Transport Authority and the Appellate Tribunal. This is, therefore, a clear case of a finding made by the Tribunal without any evidence to support it and by ignoring a specific claim made before it. I am, therefore, of opinion that the High Court rightly set aside the order of the Appellate Tribunal.

The next question is whether this is a fit case for interference under Art. 136 of the Constitution in exercise of this Court's extraordinary jurisdiction thereunder. Srinivasan J., and, on appeal, the Division Bench on the basis of the material placed and the concession made before them, came to the conclusion that the Appellate Tribunal had ignored the specific claim set up by the first respondent. The first respondent had secured the highest number of marks. His claim, if substantiated, would certainly tilt the balance in his favour. The material placed before us was not relied upon by the appellant before the High Court. The High Court gave a further opportunity to the Appellate Tribunal to consider the claim of the first respondent. Though the High Court quashed the order of the Tribunal, the observation in the judgment clearly shows that the Tribunal could reconsider the matter. Indeed, learned counsel for the first respondent conceded that fact. The appellant would have every opportunity to establish that the first respondent has no workshop at Chidambaram. Instead of following the straight course, he is trying to shut out further enquiry to arrive at the truth. In the circumstances I am of the view that this is not a case which calls for the exercise of this Court's extraordinary jurisdiction to set aside the order of the High Court.

In the result, the appeal fails and is dismissed with costs of the first respondent.

ORDER BY COURT

In accordance with the opinion of the majority the appeal is allowed and the Writ Petition filed by Respondent No. 1 is dismissed. Respondent No. 1 to pay the costs of the appellant in this Court. Respondents 2 and 3 to bear their own costs.

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