

MYSORE HIGH COURT

Meenakshi

Vs

Presiding Officer

Writ Petn. No. 38 of 1961

(A.R. Somnath Iyer and Mir Iqbal Husain, JJ.)

25.10.1962

JUDGMENT

A.R. Somnath Iyer, J.

1. On November 26, 1957, the Regional Transport Authority, South Kanara, invited applications under Section 57(2) of the Motor Vehicles Act, for the grant of a permit for the operation of a stage carriage, on the route between Karkal and Udyavar in the district of South Kanara. The last date within which those applications had to be presented was March 22, 1958. A certain Gopalasetty who was the husband of the petitioner before us, and, respondents 3 and 6 in this writ petition were some of the applicants who presented applications for the grant of a permit. By a resolution of April 25, 1958, the Regional Transport Authority decided to grant the permit to respondent 6. Against that decision of the Regional Transport Authority, four Appeals were preferred to the State Transport Authority which had then jurisdiction to hear those appeals. Gopalasetty the husband of the petitioner, was not, however, one of the persons who preferred an appeal to the State Transport Authority. During the pendency of that appeal, Gopalasetty died on December 30, 1956, and, by an order made on June 24, 1959, the State Transport Authority allowed the four appeals which had been preferred, and remanded the matter to the Regional Transport Authority for fresh disposal. On August 24, 1959, after the matter went back to the Regional Transport Authority, the Secretary of that Regional Transport Authority returned all the applications which had been presented by the various applications to them so that the applications may be re-presented after making certain rectifications therein. One of those persons to whom the Secretary sent back the applications in that way was the petitioner although that communication was sent, according to Mr. Rangaswamy the learned advocate for respondent 3 to a concern called the Manjunatha Motor Service which was the name and style under which Gopalasetty was operating his transport service. However that may be, on August 28, 1959, the petitioner re-presented the application presented by Gopalasetty along with another which she presented describing herself therein as "successor" of her husband. It appears that the other applicants to whom their applications had been similarly returned by the Secretary also re-presented their applications.

2. After these applications were received in that way by the Secretary, the Regional Transport

Authority published those applications once again under the provisions of Section 57 (3) of the Motor Vehicles Act for the reason that the publication which had been previously made was a defective publication. This publication was followed up by a resolution of the Regional Transport Authority on March 21, 1960, by which it decided to grant the permit to the petitioner. It is under this permit which was granted to her that the petitioner has been admittedly operating her stage carriage till now.

3. But, after the Regional Transport Authority resolved to grant the permit to the petitioner, six appeals were preferred to the State Transport Appellate Tribunal which had by then been invested with jurisdiction to hear appeals. One of them was an appeal preferred by respondent 3 in this writ petition. That appeal succeeded, the State Transport Appellate Tribunal having come to the conclusion that after the death of Gopalasetty, his application for the grant of a permit had abated, the petitioner not having the right to continue the proceedings relating to that application. The other ground on which the permit granted to the petitioner was set aside by the Tribunal was that the Regional Transport Authority had awarded more marks to the petitioner under column 10 of the broadsheet prescribed by the rules made by the State of Madras under Section 43 (1) (a) of the Motor Vehicles Act as in force in the South Kanara district than she deserved. The Tribunal next proceeded to grant the permit to respondent 3 who in its opinion should have been selected by the Regional Transport Authority as the permit holder.

4. In this writ petition, the challenge made is to the decision of the State Transport Appellate Tribunal by which it set aside the permit granted to the petitioner.

5. The two main questions which arise in this writ petition are whether the Tribunal was right in concluding that the application presented by Gopalasetty could not have been continued by his wife after he died, and whether the decision of the Tribunal setting aside the permit granted to the petitioner and selecting respondent 3 as the permit holder is liable to be set aside under Article 226 of the Constitution.

6. On behalf of the petitioner, reliance is placed on the principle incorporated in Section 306 of the Indian Succession Act in support of the argument that the application presented by Gopalasetty was what the petitioner had the right to prosecute even after her husband's death. It was argued before us that although Section 306 speaks of the survival of the right to prosecute a proceeding such as the one referred to in it, to an executor or administrator, the principle incorporated in that section is what is equally applicable to a case where that right is claimed by an heir of the deceased. The Motor Vehicles Act contains no provision in regard to the question whether an application for a permit presented by a person abates with his death. While Section 42 of the Act prohibits the use of a transport vehicle except in accordance with the conditions of a permit granted under the provisions of the Act, Section 46 provides for the presentation of an application for the grant of a permit. Sections 47 and 57 set out the procedure to be adopted by the Regional Transport Authority for the selection of the permit-holder when applications are made under Section 46. What should happen to an application presented by a person if before the Regional Transport Authority makes a final selection of the permit-holder under Section 57, he dies, is not a matter on which the Motor Vehicles Act contains any provisions. Mr. Rangaswamy appearing on behalf of respondent 3 has contended before us that in the absence of any specific provision in the Act, the only possible conclusion is that an application in that situation abates with the death of the person who presented it.

7. But, it seems to me that it would not be correct to think that an application presented under Section 46 of the Motor Vehicles Act for the grant of a stage carriage permit necessarily abates with the death of the applicants. It is not possible to say that an application for the grant of a permit is an application made for the acquisition of a right which is personal to the applicant which would disappear with his death. Section 42 of the Act makes it abundantly clear that a permit which may be granted under the provisions of the Act does not confer on the person to whom the permit is granted a right which is personal to him and that the right acquired by a person to whom a permit is granted is the right to use a transport vehicle in a public place in accordance with the conditions of the permit granted to him. The right created by the permit for the grant of which an application is made under Section 46 is therefore a right which has relation to the use of a transport vehicle and not a right which is wholly personal to the permit-holder. That that is the correct view to be taken of the right which a person claims under a permit is what is revealed at least by two sections of the Motor Vehicles Act which are Sections 59 and 61. The 59th Section, although it forbids the transfer of a permit by a permit-holder to another, clearly authorizes the transfer of such permit with the permission of the authority specified in that section. The provisions of this section thus indicate that although such transfer may be made only with the permission of the prescribed authority, the right is nevertheless transferable and therefore not personal in the sense that it is incapable of being transferred to another person. Section 61 is what contains provisions which afford more useful guidance to the question which really arises in this case. That section reads :

"61. Transfer of permit on death of holder - (1) Where the holder of a permit dies, the person succeeding to the possession of the vehicles covered by the permit may, for a period of three months, use the permit as if it had been granted to himself :
Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit;
(2) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit."

This section makes it clear that the right which a person has under a permit does not perish with his death and that the person succeeding to the possession of the vehicle covered by the permit, may, without any additional authority, use the permit as if it had been granted to him provided that he does not use it after a period of three months or for a period beyond the date on which the permit would have expired if the permit-holder had not died, and, also subject to the further condition that that person who had succeeded to the possession of the vehicle, sends intimation to the concerned transport authority of his intention to use the permit in that way. If as contended by Mr. Rangaswamy whatever rights which are conferred on a permit-holder by a permit disappear with the permit-holder's death and are not heritable, it is not easy to understand how and why the Motor Vehicles Act authorize the use of the permit by the person who succeeds to the possession of the vehicle even after the death of the permit-holder although on such user are placed the fetters imposed by Section 61. The second proviso to sub-section (1) of the section is even more revealing. Under that proviso although that proviso does not say so in so many words, the

permit-holder's heir has the clear right to apply for the renewal of the permit granted to the original permit-holder. Although an application made for the renewal of a permit has to be disposed of by the adoption of the procedure prescribed for the grant of a permit for the first time, it is clear that the right to obtain a renewal is what flows from the original permit and if, as contended by Mr. Rangaswamy, an original permit comes to an end and perishes with the death of the permit-holder, it would be difficult to understand how the heir of the original permit-holder can apply for the renewal of the permit after his death.

8. Although it may not be necessary for us to express any opinion in this case on the question whether a person who has made an application for a permit, can during the pendency of his application transfer the right to prosecute that application to another person, it is, I think, abundantly clear from the provisions of Sections 59 and 61 of the Act that a right to use a transport vehicle is not a right which is personal to the person to whom the permit was granted and that that right is what descends and devolves upon the heir of the permit-holder even after his death subject of course to the provisions of Section 6r. It is equally clear from Section 59 that that right is capable of being transferred to another, provided such transfer has the approval of the concerned transport authority.

9. The question is whether the right to prosecute an application for a permit is nevertheless a personal right which disappears with the death of the applicant. If we should come to the conclusion, as in my opinion we should, that a permit granted under the provisions of the Act authorizes the use of the transport vehicle not only by the person to whom the permit has been granted but also by those to whom the permit is transferred under Section 59 or by those who succeed to the possession of the vehicle under Section 61, and does not therefore create a right which is personal to the permit-holder, it would not be logical to think that a proceeding commenced for the purpose of obtaining a permit of that description is a proceeding which abates with the death of the person who commenced it. If a person makes an application for the grant of a permit and before that permit is granted to him he dies, I see no reason why we should take the view, unless the Motor Vehicles Act says so, or unless such is the necessary intendment of the Act, that that application presented under Section 46 for a permit abates with the death of the applicant and, far from there being anything on the basis of which we can say that it is possible to deduce that the necessary intendment of the Act is that such application should abate, there is something in Sections 59 and 61 to which we have already referred, which indicates that the legislative intent was not that a permit granted to an applicant clothes him with rights which are personal to him, and that being so, it would not be right to think that a proceeding commenced by a person for obtaining a permit which conferred rights which are not personal to the permit-holder must necessarily abate with his death.

10. It seems to me that the principle incorporated in Section 306 of the Indian Succession Act which provides for the survival of the right to prosecute a proceeding commenced during the lifetime of a person except those which are specifically mentioned in that section in favor of his executor or administrator, is equally applicable in appropriate cases to proceeding which is commenced by a person who dies before the proceeding comes to an end so as to entitle his legal representatives to continue that proceeding after his death.

11. There is not, in my opinion, any substance in the argument advanced that unless the Motor Vehicles Act itself provides for the continuation of an application presented by a person who dies before that application is disposed of, its continuation by his legal representative is not possible.

Under the scheme of the Act, it is clear that the purpose of the Act, is to enable a person to use his transport vehicle on the public roads after obtaining a permit. Section 46 of the Act makes provision for an application for a permit, and, Sections 47 and 57 of the Act prescribe the procedure for the disposal of that application. It is clear that one of the duties of the Regional Transport Authority when an application is presented under Section 46 is to dispose of that application by the adoption of the procedure prescribed by these two sections. If one of the persons who makes an application dies before his application is finally disposed of, and, if the Motor Vehicles Act does not state that the application abates with his death, it is clear that it is for the Regional Transport Authority to mould its own procedure for the purpose of the discharge of its duty imposed on it by Sections 47 and 57 of the Act. In my opinion, unless a law under which at proceeding is commenced and which enjoins the authority which has the power to dispose of that proceeding to take a decision in that proceeding contains express provision or provisions the necessary implication of which is that that proceeding abates with the death of the person who commenced it, it would be the duty of that authority to invent its own procedure for the purpose of dealing with a situation like that so that the legal representatives of the person who commenced that proceeding may continue the proceeding which was interrupted by the death of the person who commenced it.

12. In *Karigowda v. Regional Transport Authority, Hassan*¹, the principle which was enunciated in *Smith v. Williams, 1922-1 KB 158* was applied to a case where, under the provisions of Section 68-F (1) of the Motor Vehicles Act, the Mysore Government Road Transport Department had made applications for permits and that department ceased to exist when the Mysore State Road Transport Corporation was constituted under the provisions of the Mysore State Road Transport Corporation Act. This Court pointed out that after the Government Road Transport Department was abolished and that department could no longer prosecute the applications made for permits, the Corporation which had succeeded to the undertaking of the department could continue the proceedings commenced by the department for the grant of the permits to it. The following observations of Sankey, J., while referring to *Hemming v. Williams*², were what were considered to be in point :

"The Lord Chief Justice referred to the English cases, including (1871) 6 CP 480 and added that "this construction has since been uniformly adopted", the

¹ W. P. No. 1020 of 1961, D/-5-10-1961 (Mys)

²(1871) 6 CP 480

construction, namely, which allows the matter to proceed by adding the personal representative of the deceased person in order to give adequate effect to the intention of the Legislature. Later in his judgment he said : "A suit is not dead because it is abated". That is the view expressed in *Pemberaton on Revivor* p. 15. "It is suspended only, and is capable of being revived by procedure; and when jurisdiction exists in a case in which apt procedure is not provided by statute, the Judge must himself mould a convenient form of procedure, as did the English Common pleas in (1871) 6 CP 480". I am entitled to do what was done in (1871) 6 CP 480 and *Canning v. Farren*³, - namely, mould a convenient form of procedure to meet the case".

In 1922-1 KB 158 in which Sankey, J., made these observations the respondent appealed to the

General Commissioners against his assessment to income-tax, whereupon the appellant, the surveyor, expressed his dissatisfaction and, by notice in writing under Section 59, of the Taxes and Management Act, 1880, required the Commissioners to state and sign a case for the opinion of the High Court. Subsequently and before the case was signed and filed, the respondent died. A copy of the case when signed was served on the respondent's executor. On motion by the appellant that the proceedings in the appeal may be continued between him and the executor and that the latter be added as respondent, it was held that the proceedings did not abate that the Court was entitled, in the absence of apt procedure being provided by statute on the subject, to mould a convenient form of procedure so that the appeal could be heard, and that it would do this by ordering that the respondent's executor be added as a respondent.

13. In my opinion, if we should find as we should, that the intention of the legislature was that an application presented by a person for the grant of a permit should not abate with his death and that it may be continued by his legal representatives, and, if no apt procedure is prescribed by the Act for giving effect to that intention of the legislature, it would be the duty of the Regional Transport Authority to give adequate effect to the legislative intent by moulding a convenient form of procedure for the purpose of enabling the legal representatives to continue the proceeding in the place of the deceased applicant. What was done in (1871) 6 CP 480 and in (1907) 2 Ir R 486, is what a Regional Transport Authority could also do in a case of that description.

14. Mr. Rangaswamy's submission before us that Karigowda's Case, W. P. No. 1020 of 1961 D/d. 5-10-1961 (Mys) in which the principle in Smith's case, 1922-1 KB 158 was accepted is distinguishable from the case before us for the reason that as pointed out by this Court there was a compulsory duty imposed on the Regional Transport Authority by Section 68-F (1) of the Act to grant a permit to the Mysore Government Road Transport Department or the Mysore State Road Transport Corporation, as the case may be, is a submission which is based upon a distinction which makes no difference. The view of this Court in Karigowda's case, W. P. No. 1020 of 1961, D/d. 5-10-1961 (Mys) did not rest upon the fact that Section 68-F of the Act made it obligatory on the part of the Regional Transport Authority to make a grant of the permit to the Mysore State Road Transport Corporation but depended upon the

³(1907) 2 Ir R 486

principle which was enunciated in Smith's Case, 1922-1 KB 158, that if the intention of the legislature is clear and there is no apt procedure prescribed by the statute for giving effect to that intention, the authority functioning under the Act is under a duty to mould its own convenient form of procedure and thereby implement the legislative intent.

15. It would now be necessary to refer to two decisions on which Mr. Rangaswamy depended in support of the contrary view. The first of them is a decision of the High Court of Allahabad in *Ratan Lal Gupta v. State Transport Authority*⁴, That was a case in which during the pendency of an appeal one of the unsuccessful applicants for the grant of a permit died and his son claimed to be brought on record as his legal representatives on the ground that he had inherited the right to the grant of a permit. The contention urged on behalf of the opposite side that the son had no right to be brought on record succeeded on the ground that the right to obtain a permit was neither heritable nor transferable, and that the right to prosecute an appeal from the refusal of a permit was similarly neither heritable nor transferrable.

16. If I may say so with great respect, I do not find it possible to agree with this view. Randhir Singh, J., who took that view did not in his judgment indicate the reasons why he came to that conclusion. What was assumed, if I may say so, in that case was that a right to prosecute an appeal, such as the one which was pending before the appellate authority in that case, was not heritable or transferable. While I do not wish to say anything on the correctness of the view expressed in that case that that right was not transferable, I have no doubt in my mind that for the reasons which I have set out, particularly, by reason of what is clearly indicated by Sections 59 and 61 of the Motor Vehicles Act, it would not be right to think that that right is not heritable.

17. The other case on which Mr. Rangaswamy depended in an unreported decision of the High Court of Madras in *Ulganathan v. State Transport Appellate Tribunal*⁵, which does not appear to me to afford any assistance to Mr. Rangaswamy in support of his argument. That was a case in which one Elumalai applied for a permit to the concerned Regional Transport Authority and that permit was granted to him. On account of the non-production of the transport vehicle in respect of which the permit was decided to be granted to him, the actual issue of the permit to him was deferred, and, before the permit was so issued to Elumalai, he died. One of the sons of Elumalai asked for the delivery of the permit to him in pursuance of the application for such delivery which had already been presented by Elumalai before he died, and, the permit was delivered to him. But what is of importance is that that permit stood in the name of Elumalai who was dead before it was handed over to his son. The unsuccessful applicants who felt aggrieved by the grant of the permit to Elumalai appealed, and, during the pendency of the appeal, Elumalai's son who had taken delivery of the permit applied for permission to prosecute and defend the appeal as the legal representative of his father. The appellate authority upholding the contention of the appellants that the son could not be permitted to defend the appeal as the legal representative of the father, and, having also come to the conclusion that the delivery of the permit in the name of Elumalai to his son after his death was, in the

⁴ AIR 1957 All 471

⁵ W. P. No. 459 of 1957, D/d. 5-8-1957 (Mad)

circumstances, not within the competence of the Regional Transport Authority, allowed the appeal and set aside the permit granted to Elumalai. It is against this decision of the appellate authority that the writ petition was presented to the High Court of Madras by Elumalai's son. Although many contentions were urged before the High Court of Madras that which was really responsible for the view taken by Rajagopalan, J., was that the preparation of the permit in the name of Elumalai and its delivery to his son after his death, was without competence. The question whether Elumalai's son could prosecute an application for the grant of a permit if Elumalai had died before the permit had been granted to him or the question whether Elumalai's son could defend an appeal from the Regional Transport Authority's decision as the legal representative of Elumalai were all left open, Rajagopalan, J., having desisted from expressing any opinion on those questions. The other reason why Rajagopalan, J., dismissed the writ petition was the view that he took that since Elumalai was not the holder of a permit when he died, since none had been issued to him, the transfer of that permit to his son was impossible under Section 61 (2) of the Motor Vehicles Act. One of the requests made by Elumalai's son to the Regional Transport Authority for the transfer of the permit to his name and which also formed part of the subject-matter of the writ petition was also negatived for that reason.

18. Mr. Rangaswamy, however, asked attention to the following observation of Rajagopalan, J., which according to Mr. Rangaswamy supported his submission that the petitioner in this case

could not have continued the application of her husband. That observation reads :

"The position was much the same as it would have been, had Elumalai died after making the application for a permit but before even the Regional Transport Authority considered the question of selection, except, of course, that in this case, on the strength of the order dated 24-12-1956, Elumalai purchased the bus MDS 2249, the rights of ownership in which of course, as constituting property devolved upon Elumalai's legal representatives." I am not prepared to think that this observation made by Rajagopalan, J., can be said to be any enunciation of the principle that a legal representative cannot prosecute an application for a permit made by the deceased applicant. On the contrary, the argument that was advanced before Rajagopalan, J., that Elumalai's son was entitled to be brought on record as the legal representative of Elumalai in the appeal was not decided but left open.

19. The acceptance of the argument of Mr. Rangaswamy might, in my opinion, lead to odd results. If a Regional Transport Authority calls for applications under Section 57 (2) of the Act and prescribes the date within which that application has to be presented and a person makes an application within that date and he has all the necessary paraphernalia and equipment to provide transport facilities to the members of the public, and if to his great misfortune death should overtake him before the application is disposed of, but, after the date prescribed by the Regional Transport Authority for the presentation of the application, the result of the acceptance of the submission that the application abated with the death of the applicant without the legal representatives of the applicant who are in as good a position as the applicant to provide transport facilities to the public would have lost once for all the opportunity to operate their stage carriage on the route which was advertised by the Regional Transport Authority and the right to be selected in a competition, notwithstanding the fact that the right to the possession of the vehicle had devolved upon those legal representatives. It is true that the legal representatives might make another application and that application has to be considered and disposed of by the Regional Transport Authority independently. But the right to compete with the other applicants and to establish their own superior qualifications and eligibility to be granted the permit is a right of which there would be a deprivation, and, why we should take a view which results in the deprivation of that right is what I do not find easy to understand, particularly, when the Act itself does not say that that right does not exist. It should be remembered that the right to operate a stage carriage on a public road which a citizen possesses as one of the component part of the right to carry on a trade or business, which is a fundamental right guaranteed by Article 19 (1) (g) of the Constitution, is a right which is exercisable and enforceable unless the appropriate legislature places reasonable restrictions on the exercise of that right, and, the provisions contained in the Motor Vehicles Act that a person who wishes to carry on such trade or business should obtain a permit to operate a stage carriage is one such reasonable restriction imposed by that Act. One can understand that a person does not therefore have the right to operate his stage carriage unless he obtains that permit. But if he makes an application for that permit and before he is able to obtain that permit he dies, notwithstanding the fact that the stage carriage which the applicant wanted to operate under the conditions of a permit which he wanted to obtain has become the property of his legal representatives, if those legal representatives should be told that the application for the permit which had been applied by their predecessor has abated and therefore the legal representatives cannot obtain that permit for which their predecessor had

applied, the denial of the right of the legal representatives to continue that proceeding would, in my opinion, amount to a most unreasonable restriction on the fundamental right possessed by the legal representatives to carry on a trade or business. To that view which may be taken, it would not be an answer to suggest that the legal representatives may make another application for the grant of a permit which may be considered and disposed of on its own merits. What should not be overlooked is that the right to operate the stage carriage in the manner in which the deceased person wanted to operate after obtaining a permit is one which by reason of the abatement of the application is what is once for all destroyed. We should not, in my opinion, accede to an argument which results in such consequences nor would it be right for us to place a construction which might render the provisions of the Motor Vehicles Act unconstitutional, transgressing as they would, if Mr. Rangaswamy's submission is accepted, the provisions of Article 19 (1) (g) of the Constitution.

20. Another curious consequence which would ensue if we should recognize the theory of abatement would be that if a person makes an application and before his application is disposed of he dies and his legal representative makes another application and before his application is disposed of he also dies and another legal representative makes another application and he dies before even his application is disposed of, the result will be that none of these legal representatives of the deceased legal representatives would ever be able to obtain a permit which their predecessor wanted, with the result that only those persons who had the good fortune of being still alive when the proceedings are completed would be the only persons who would be participating in the competition for the grant of a permit.

21. In any view of the matter, it seems to me that we should refuse to take the view that there is anything in the Motor Vehicles Act which either expressly or by necessary implication justifies the view that an application for a permit under Section 46 of the Motor Vehicles Act abates with the death of the applicant. Nor do I see any reason why we should not take the view that the Regional Transport Authority has the power to bring on record the legal representatives of the deceased applicant and permit them to continue the application presented by the deceased. The view to the contrary taken by the State Transport Appellate Tribunal in this case is therefore what cannot be sustained.

22. In my opinion, out of the two applications presented by the petitioner on August 28, 1959, that presented by her as the legal representative of her husband was an application which the State Transport Appellate Tribunal could not have refused to consider as it did. What that Tribunal did was and that is how we should understand its order although the order is somewhat obscure in regard to what exactly the Tribunal intended to do, to consider the other application of the petitioner which she presented as the "successor" to her husband. On August 28, 1959, the petitioner produced two applications before the Secretary to the Regional Transport Authority. One of them was the application which had been presented by her husband and which had been returned to her for rectification. It is clear that when she presented this application, her intention was to continue that application and to prosecute it in her capacity as the legal representative of her husband. The other application which she presented was what was described by her as an application presented by her as a successor to her husband. It is clear that that application was what the petitioner regarded as an application which she could make in her own right as a fresh application in addition to the application which had been made by her husband on December 24, 1957. Although an objection was taken to the continuation of the husband's application by the

petitioner, the Regional Transport Authority did not consider that there was any substance in that objection. For the reasons already stated, that view taken by the Regional Transport Authority was the only possible view in this case. The Regional Transport Authority therefore considered the application made by the petitioner's husband on its own merits, and, after awarding marks under the various columns of the broad-sheet prescribed by the Government of Madras, came to the conclusion that the petitioner who had secured the highest number of marks was entitled to be granted the permit which was sought by her husband. Respondent 3 who had also secured an equal number of marks was considered by the Regional Transport Authority to be not entitled to be selected since the petitioner was not a fleet owner since she possessed only four stage carriages and was therefore in accordance with paragraph 1 of the Government Order of the State of Madras dated April 28, 1956, entitled to preference over respondent 3 who was the owner of as big a fleet of stage carriages as thirty. Although Mr. Rangaswamy has pointed out some observations in the order of the Regional Transport Authority which, according to him, lend support to the view that the Regional Transport Authority did not reach this decision on the application of the petitioner-husband but on her own application it is clear to my mind that what the Regional Transport Authority really did was to grant the permit to the petitioner as the legal representative of her deceased husband on the basis of the application presented by him. This conclusion in my opinion is irresistible by reason of the fact that the number of marks awarded by the Regional Transport Authority under column 10 of the broad-sheet for technical or transport experience were the marks awarded for the reason that the petitioner's husband was a person who, when he made his application had more than five years' experience in transport business. There are also other indications in the order of the Regional Transport Authority which make it clear that the Regional Transport Authority thought that since the petitioner was entitled to prosecute the application presented by her husband as his legal representative she was entitled to the permit which her husband would have secured if he had been alive.

23. If that was what the Regional Transport Authority did, in the four appeals presented by respondents, 3, 6 and two others, the State Transport Appellate Tribunal was definitely of the view that the right to prosecute the husband's application did not reside in the petitioner. Having reached that conclusion, it proceeded to consider the question whether the petitioner was otherwise entitled to a permit and it came to the conclusion that she was not. The only reason on the basis of which it reached that conclusion was that under column 10 the mark which could be awarded by the Regional Transport Authority for technical or transport business experience was not one as supposed by the Regional Transport Authority but could only be half. That view of the Tribunal made all the difference to the petitioner since respondent 3 became the person who secured the highest number of marks and the petitioner who had secured as many marks as he had secured before the Regional Transport Authority secured half a mark less than respondent 3 before the Tribunal. So it was that respondent 3 was selected as a permit-holder.

24. The reason why the Tribunal came to the conclusion that the petitioner was entitled only to half a mark for technical or transport business experience was that she did not have business experience of that description for a period of at least five years. The Tribunal has pointed out in the course of its order that the working rule which was adopted by the Regional Transport Authority in all such cases was to award one mark to persons who had business experience for a period of five years and to award only half a mark to those who did not have experience of that magnitude. The Tribunal proceeded to point out that the petitioner's own experience in the business of transport commenced only from the year 1959, and that, that being so, she was

entitled only to half a mark and not one. It was urged before us by Mr. Krishna Rao appearing on behalf of the petitioner that this view taken by the Tribunal suffers from the infirmity that the business experience which earns marks under column 10 is not the business experience of the particular person who happens to be before the Regional Transport Authority when it makes the selection or, for that matter, even of the applicant who presented it, but of the concern or undertaking whoever may be its owner, which has been providing transport facilities and which proposes to provide transport facilities under the permit sought. It was therefore contended that since the Manjunatha Motor Service which was the undertaking in this case and which was owned by the petitioner's husband when he died, undoubtedly possessed business experience in the matter of transport facilities for a period much longer than five years, whoever was the person who was carrying on that undertaking or conducting it at the time when marks had to be awarded, the experience to be taken into consideration for the purpose of column 10 was not the experience of any solitary individual or person but the experience of the business unit or the undertaking. The view pressed upon us therefore was that there was no point in the Tribunal thinking that the petitioner's experience of transport business was what had to form the criterion for the awarding of marks under column 10, and that the real and true criterion was the length of the period during which the undertaking had all along been providing transport facilities and which it proposes under the permit sought to provide even in the future, and the experience which it might claim to possess for that period.

25. It seems to me that the view taken by the Tribunal that the marks awardable to the petitioner should be commensurate with the length of her own business experience is open to many criticisms. Column 10 of the broad-sheet under which marks for business may be awarded reads :

"Technical or transport business experience. Max. I Mark."

This column is what is contained in a broadsheet prescribed by certain rules made by the Government of the State of Madras on April 28, 1956, which are embodied in a notification popularly known as Government Notification No. 1298. That notification by reason of Section 115 of the States Reorganization Act is still operating in those parts of the State of Madras which have now become part of the new State of Mysore. Paragraph 4 of that notification provides as follows :

"In order to ensure efficiency of service and equality of opportunity the following principles should be applied to the following applicants for permits. To secure precision and to enable quick consideration a system of marking according to the principles involved may be followed. In cases where this system works unfairly, the Regional Transport Authority may ignore the marks obtained for reasons to be stated.

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(4) Technical or business experience of transport of the applicant; This also secures the efficiency of the service. One mark may be assigned to this qualification.

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What was assumed by the Tribunal was that the technical or business experience of transport referred to in this paragraph and in column 10 is the experience of the particular person who is

appearing before it as the applicant and not of the undertaking or concern of which he is the proprietor or the owner. This view, in my opinion, ignores and overlooks the fact that the primary object of awarding marks for business experience is the ensurement of efficiency of service as paragraph 4 itself expressly states. It is obvious that it was considered by the Government of the State of Madras that experience in technical matters relating to a transport service and in the business of providing transport facilities is what conduces to the efficiency of the service. If a business organization by whomsoever it is owned has, by reason of its standing and by reason of the great efficiency and ability of the members of its staff built up a reputation for technical skill and business experience, I fail to understand why that reputation for business experience and technical skill which it has acquired should be ignored by the transport authority before whom an application is made for a permit and why it should bestow its thought only to the limited and solitary question whether the particular person who is an applicant before it has any technical skill or business experience. If what has to be considered by the transport authority is whether technical skill or business experience is found in that measure which contributes to the efficiency of the service, what it has to consider is whether the business undertaking or the organization has the requisite skill or business experience and what would be its measure. If the approach made by the Tribunal in this case is what is the contrary approach, it is clear that one of the vital factors which was directed by the Government of Madras to be taken into consideration was disregarded and the approach made for the assessment of the business experience or technical skill became unrealistic and artificial. There may be many cases in which a person who owns a transport undertaking knows nothing of either the technical aspect of the transport business or the commercial aspect of his business. It is common knowledge that some such undertakings are owned by persons who take little or no interest in the complicated machinery of that undertaking or the various aspects of the business whether technical or otherwise. Such undertakings are mostly managed by persons such as managers who possess all the requisite skill and experience, and, the business experience or technical skill which is what really counts is not the experience of the dummy proprietor but the totality of the experience of all the persons who are in charge of the various component parts of the undertaking and which really is what produces the reputation for technical skill or business experience.

26. Any other view would lead to queer situations such as these : If a person who is not a major is the owner of a business undertaking and he is still a child and therefore could have no experience or technical skill and his transport undertaking is managed by his guardian, it would be extremely unreasonable for anyone to suggest that marks should be awarded under column 10 when an application is presented on behalf of the minor only for his experience of which he has none or for his technical skill which he could not be expected to possess. Likewise, if a trustee is managing an understanding on behalf of a beneficiary, and he makes an application for the grant of a permit, to say that the experience which has to be taken into consideration for the purpose of awarding marks under column 10 is the experience of the beneficiary would lead to results as unreasonable and odd as those to which a similar view in the case of a minor would lead. That will also be the position where an undertaking is owned by a lunatic and his estate is managed by a guardian appointed by a Court. To say that the business experience and technical skill which should form the basis of the determination of the marks is the business experience and technical skill of the lunatic would be an equally unreasonable view. Again, if a person has been granted a permit and the permit is about to expire and before an application is made for its renewal he dies and his legal representative makes an application for its renewal as he undoubtedly can as indicated by the second proviso appearing under Section 61 (1) of the Motor Vehicles Act, that

application, it is clear, has to be considered as if it were an application made for the first time, for the grant of a permit as provided by Section 58 (2) of the Act. If a person who had obtained the permit previously was still alive, the business experience and technical skill for which he would have been awarded marks would have been his own business experience and technical skill. But if the view which was pressed on us by Mr. Rangaswamy is accepted that basis would disappear with the death of the original permit holder, notwithstanding the fact that the undertaking which was providing transport facilities and which was owned by the deceased person continues to be the same undertaking with the same business experience and technical skill. To say that the Regional Transport Authority should award marks not for the business experience and technical skill of the undertaking but for the business experience and technical skill of the legal representative would amount to saying that the Regional Transport Authority should in conceivable cases award marks for the business experience and technical skill of either a minor or a beneficiary or a lunatic.

27. In my opinion, the Tribunal was not right in this case in thinking that notwithstanding the fact that the Manjunatha Motor Service which was the undertaking in this case and which was owned by the petitioner's husband had experience in regard to transport facilities for a period longer than five years and therefore one full mark would have been earned by the petitioner's husband if he had been alive and since that one mark would have been awarded not because of the petitioner's husband's personal experience of transport facilities or technical skill but because of the experience which his undertaking possessed in these matters, there should be a reduction of the marks awardable under column 10 by reason of the accident of the death of the petitioner's husband and by reason of the fact that his wife who during his life time would not have bothered to interest herself in any of the business activities of the undertaking is prosecuting the application as his legal representative. It is thus clear that this is not a case in which the Tribunal could have disposed of the application presented by the petitioner's husband which his wife had a right to continue and did continue by resorting to the approach which it made in regard to the number of marks which were awardable under column 10.

28. But Mr. Rangaswamy appearing on behalf of the third respondent who was the successful applicant before the Tribunal has contended that even if we could come to that conclusion, this is not a case in which we could disturb the selection of respondent 3 as the permit-holder by the Tribunal. He has told us that the pronouncement of their Lordships of the Supreme Court in *Abdulla Rowther v. State Transport Appellate Tribunal*⁶, which followed its own previous decision in *Raman and Raman Ltd. v. State of Madras*⁷, precludes us from exercising our jurisdiction under Article 226 of the Constitution in this case merely on the ground that the Tribunal either ignored the directions of the Government of Madras in its Notification No. 1298 or misapplied it or misconstrued it or infringed it.

29. Mr. Rangaswamy is quite right in asking us to take the view that in a case in which a transport authority has ignored the instructions issued by the Government of Madras in its notification No. 1298 or has misapplied those instructions, or has misinterpreted or infringed them, our exercise of certiorari jurisdiction would be impossible for the obvious reason that, as their Lordships of the Supreme Court have pointed out, those instructions issued under notification No. 1298 have no higher status than mere administrative or executive instructions, having no force of law,

⁶ AIR 1959 SC 896

thereby making the disobedience of those instructions disobedience of executive instructions and not an error of law. In Abdulla Rowther's case, AIR 1959 SC 896 the Supreme Court made it clear that instructions issued by the Government of Madras were mere executive or administrative instructions not having the force of law and that their disobedience or disregard or misconstructions or transgression amounting as they do to non-adherence to executive instructions do not make the errors committed in that way by a transport authority errors of law. Mr. Rangaswamy has asked us to take the view that since even if the Tribunal has committed a mistake in awarding marks under column 10 for business experience or technical skill, that mistake amounting to no more than disobedience to or misinterpretation of the administrative instructions given by the Government of Madras, is not an error of law so as to attract our jurisdiction under Article 226. If we had found it possible to think that what the Tribunal did in this case when it selected respondent 3, was merely to ignore the instructions of the Government of Madras or to misinterpret or even to transgress it, Mr. Rangaswamy would have been on exceedingly firm ground in his submission that we should not disturb the selection made by the Tribunal. But it seems to me that it is not possible to think that what the Tribunal in this case did was merely either to disregard or to disobey or violate or misinterpret the provisions of the Madras Government's notification. It is true that in one sense the approach made by the Tribunal was to misunderstand the provisions of paragraph (4) of the Madras Government's notification and column 10 of the broadsheet and to think that the technical or transport business experience referred to in those two parts of the notification is the experience of the particular person before the Tribunal and not of his undertaking which is providing transport facilities. If, therefore, the case before us was one in which a smaller number of marks had been awarded to the petitioner by reason of that misapprehension in the mind of the Tribunal, than she would have been entitled to if there had been no such misapprehension, Mr. Rangaswamy would have been right in asking us to say that there is nothing which we could do in this matter. But, it appears to me that what the Tribunal has done is something more than a mere disobedience to the notification or its misinterpretation. What the Tribunal first did was to disregard the submission made on behalf of the petitioner that she was entitled to prosecute her husband's application, having reached the conclusion that that application perished with the husband's death. Then, what it proceeded to consider was whether the petitioner was entitled to the grant of a permit on her own application which she presented for the first time on August 28, 1959. Although Mr. Rangaswamy has asked us to take the view that even the application made by the petitioner in her own right independently of her husband's application was considered by the Tribunal to be not maintainable, the view which I find the Tribunal to have taken in more than one part of its order, in which it pointed out that the only applications which the Regional Transport Authority could consider after the remand of the matter to it were the applications originally presented was that the petitioner's application was not one of them and was also made very late beyond the date which was prescribed by the Regional Transport Authority under Section 57 (2). It is, however, clear that when the Tribunal thought that under column 10 only half a mark had to be awarded to the petitioner, it was thinking of the marks to be awarded in respect of the petitioner's own application. In paragraph 13, after discussing column 10 and the number of marks to be awarded under that column, this is what the Tribunal observed in paragraph 13 of its order :

"For this limited purpose the real applicant is not Gopala Shetty but his wife the respondent who, as his successor, rightly or wrongly purported to pursue the application.

Hence, it is quite clear that the Regional Transport Authority should have assigned only half mark under column No. 10 to the respondent instead of one full mark, as her experience was limited to only less than two years. It is also reasonable to hold that efficiency of service referred to in clause (4) of Part-A of the Madras Government Order can be secured by the transport business experience of the person who seeks the grant of a permit and not of the original deceased applicant whose experience will not be available to the service after his death".

Although Mr. Rangaswamy attempted to persuade us to think that in this part of the order of the Tribunal, the Tribunal was discussing the number of marks to be awarded under column 10 in respect of the application of Gopalasetty who is the petitioner's husband and not in respect of the petitioner's own independent application as his successor, it is obvious that this endeavour cannot meet with success. The Tribunal, it is clear, in the entire discussion which it made of column 10 was thinking only in terms of the application of the petitioner and not of her husband which she sought to prosecute in the main. It is thus clear that the Tribunal never addressed itself to the question as to what should be the marks to be awarded under column 10 in respect of the application of Gopalasetty the husband of the petitioner, which, according to the view which we should, in my opinion, take the petitioner had the right to prosecute as his legal representative. If the petitioner had the right to prosecute that application in that way, she was entitled according to the Regional Transport Authority to claim one full mark under column 10. The Tribunal did not address itself to that question and it is clear that even if it had addressed itself to that question, it is impossible for any one to dispute that she would have been entitled to claim one full mark under column 10, since even according to the formula adopted by the Regional Transport Authority and which was considered to be correct by the Tribunal, Gopalasetty the petitioner's husband who had more than five years' experience in technical and transport business experience was clearly entitled to one full mark. The real reason therefore why the petitioner failed before the Tribunal was that out of the two applications presented by her to the Regional Transport Authority, one of them was altogether ignored by the Tribunal which it did not consider on the mistaken supposition that that application abated with the death of the petitioner's husband. What it really considered was the other application, namely, the one presented by the petitioner in her own right and that application, according to the Tribunal, had to fail for three reasons : the first of them was that it was not entertainable by the Regional Transport Authority under the order of remand made by the State Transport Authority; the second was that it was made beyond the period of time prescribed under Section 57 (2) of the Motor Vehicles Act; and the third was that under column 10, the number of marks awardable to the petitioner did not exceed half. The basis of the decision of the Tribunal is therefore the attention which it bestowed upon one of the two applications presented by the petitioner on August 28, 1959, and the reason why the petitioner failed to get a permit under the application presented by her husband was that that application could not according to the Tribunal, be prosecuted by her after her husband's death. It is clear that we cannot disturb that part of the order made by the Tribunal by which it rejected the second application presented by the petitioner on August 28, 1959, in her own right, since one of the reasons why that application failed before the Tribunal was that a smaller number of marks was secured by the petitioner by reason of what may at best be a misinterpretation of paragraph (4) of the Madras Government notification and column 10 of the broad-sheet prescribed by it. But to say that is not the something as saying that the petitioner must fail in this writ petition, because, the view taken by the Tribunal that the petitioner could not prosecute her husband's application

is, it is obvious, a clear mistake apparent on the face of the record, and attributable to an error of law. The argument that the Madras Government notification issued instructions of an administrative and executive character, the disobedience of which would not amount to an error of law, would not be available, although useful in regard to the petitioner's own independent application, to the third respondent in defense of that part of the order of the Tribunal by which it thought that the petitioner could not prosecute her husband's application.

30. In that view of the matter, the decision of the Supreme Court in Abdul Rowther's case, AIR 1959 SC 896 and Raman and Raman's case, AIR 1959 SC 694 by which we are clearly bound is not what can afford any assistance to the argument advanced on behalf of respondent 3 in so far as the challenge made in this writ petition is against the refusal of the permit to the petitioner on the basis of her husband's application. This is a case in which we must think that the husband's application was entirely ignored by the Tribunal by reason of the erroneous view of the law which it took on the question whether the petitioner could prosecute her husband's application after his death. That being so, that error of law committed by it is what justifies the exercise of our jurisdiction under Article 226 of the Constitution.

31. It would be necessary to refer briefly to some of the other arguments which were addressed on behalf of respondent 3. One of these submissions made was that in some other cases, the petitioner was awarded only a quarter mark by the same Regional Transport Authority which awarded her one mark in this case, and that therefore, we should take the view that the Regional Transport Authority did something surprising when it awarded one full mark in this case. But the answer to this submission is that the number of marks to be awarded under column 10 of the broad-sheet would in each case depend upon its own facts and circumstances and the fact that in one case a particular person was awarded a smaller number of marks by a Regional Transport Authority would be no ground for thinking that by some kind of estoppel it is estopped from awarding a larger number of marks in some other proceeding. It was next said that under the order of remand made by the State Transport Authority on June 24, 1959, the only applications which could be considered by the Regional Transport Authority were those which had been presented by the four persons who were the appellants before the State Transport Authority. This argument which was advanced before the Tribunal was repelled and, in my opinion, rightly. The State Transport authority did not direct the Regional Transport Authority to consider only those four applications but set aside the resolution of the Regional Transport Authority in its entirety which means that every part of that resolution stood vacated, including those by which the applications of everyone other than respondent 6 had been rejected. In that situation, it became the plain duty of the Regional Transport Authority to consider every one of the applications which had been presented to it making the contention urged before us in this case that that consideration by the Regional Transport Authority should have been confined only to the applications of the four appellants before the State Transport Authority impossible.

32. Having regard to the fact that the writ petition succeeds in this way, it is not necessary to consider the other question whether a transgression of paragraph (4) of the Madras Notification relating to column 10 of the broad-sheet becomes an error of law by reason of such transgression amounting also to the transgression of the provisions of Section 47 (1) (a) of the Motor Vehicles Act which enjoins a Regional Transport Authority in considering the application for a stage carriage permit to have regard among other matters to those relating to the interests of the public generally. It is not necessary for us, in my opinion, to consider the question whether technical and

business experience being one of those factors which promote the interests of the public generally, the awarding of a smaller number of marks for such technical or business experience would amount to a disobedience to the provisions of Section 47 (1) (a) of the Motor Vehicles Act and therefore to an error of law.

33. What remains to be considered is the form of the order which we should make in this case. It is undisputed that the Tribunal would have awarded one full mark under column 10 to the petitioner in respect of the application of her husband which she was prosecuting had not the Tribunal come to the erroneous conclusion that she had no right to prosecute it. That being so in so far as the request for a permit was based on the husband's application, the number of marks secured before the Regional Transport Authority by respondent 3 and the petitioner who secured the highest number of marks was five each. It was by the application of the principle incorporated in paragraph (1) of the Madras Government's notification that, in that situation, the Regional Transport Authority selected the petitioner by reason of the fact that she was not yet a fleet owner and therefore should be given the opportunity to become one. It is undisputed that respondent 3 is the owner of a large fleet of stage carriages numbering thirty. It was not disputed before the Tribunal that the number of marks awardable to Gopalasetty the petitioner's husband if he had still been alive was one under column 10. The Tribunal did not take a different view, and it is clear from its discussion that if Gopala Setty had been still alive he would have been able to claim one mark under that column. The Tribunal did not state that if the petitioner had the right to prosecute the application after his death, the number of marks awardable under column 10 in respect of her husband's application would be less than one. The limited question to which it addressed itself was whether if the "real applicant as it said was the petitioner as it thought and not her husband, who really was the applicant and whose legal representative was the petitioner in which capacity she was prosecuting her husband's application, the marks awardable under column 10 was only half and not one. That being so, it is obvious that if the Tribunal had not refused to investigate into the claim made by the petitioner on the basis of her husband's application as his legal representative, the other things would have been equal as between the petitioner on the one hand and respondent 3 on the other, thereby attracting paragraph (1) of the Madras Government Notification. The reason why we should in my opinion think so is that it is not disputed that the technical and business experience of the Manjunatha Motor Service which was the undertaking providing transport facilities when the petitioner's husband applied for a permit was also the undertaking which became the property of the petitioner after her husband died. That the technical and business experience of that undertaking had diminished or that its efficiency had deteriorated after the death of the petitioner's husband was not the contention urged either before the Regional Transport Authority or before the Tribunal. Far from there being any diminution in the technical and business experience of the undertaking, that undertaking having continued to provide transport facilities even after the petitioner's husband had made his application, its experience in that sphere was of a longer duration than at the stage when the petitioner's husband had made his application. It was thus impossible for the Tribunal when considering the application of the petitioner's husband which the petitioner was continuing, to award less than one mark under column 10 of the broad-sheet. The Tribunal, it is clear, in that situation would have selected the petitioner as the permit-holder. This is, therefore, a case in which it is not necessary for us to send back the matter to the State Transport Appellate Tribunal for a fresh consideration of the application made by the petitioner's husband, the right to prosecute which was claimed by the petitioner but negated by the Tribunal.

34. The order that we should, in my opinion, therefore make in this case would be to quash the order made by the State Transport Appellate Tribunal, and we order accordingly, the result of which would be that the selection of the petitioner to be the permit-holder by the Regional Transport Authority stands restored.

35. I should not be understood to have expressed the view that in all cases in which a legal representative of a deceased applicant prosecutes the application for the grant of a permit, the authority having the power to grant the permit has no option but to award to the legal representative under the relevant columns of the broad-sheet, the same number of marks which the deceased applicant would have earned had he been alive. The question whether a legal representative should be awarded marks equal to those which the deceased applicant would have earned should in each case depend upon its own facts and circumstances, although it is clear from the discussion already made that either for technical or business experience or in respect of similar matters, if the undertaking of the deceased applicant providing transport facilities is the very undertaking owned by the legal representative through which he proposes to provide transport facilities, the marks awardable under column 10 should be commensurate with the experience of that undertaking and not with the personal experience of the legal representative.

36. In the circumstances, each party will bear its own costs.

Mir Iqbal Husain, J.

37. I agree.

Petition allowed.