RAJASTHAN HIGH COURT

Dholpur Co-Operative Transport and Multi Purpose Union Ltd.

Vs.

Appellate Authority Rajasthan

Misc. Writ Appln. No. 80 of 1953
(Wanchoo, C.J. and Ranawat, J)

28.08.1953

JUDGMENT

Wanchoo, C.J.

1. This is an application by Dholpur Co-operative Transport and Multi-purpose Union Ltd., under Art., 226, Constitution of India against the Appellate Authority, Rajasthan and Regional Transport Authority, Jaipur, and three others.

2. The application is verbose, ill-drafted, contains a lot of irrelevant matter, and is in every way what an application under Article 226, should not be. We would like to point out that an application under Article 226, should be concise and to the point, should clearly indicate the facts on which it is based and the grounds on which the relief is sought and the nature of the relief desired, with due realization of the position that this Court is not a court of revision or appeal under that article. We would like to sound a note of warning that such ill-drafted petitions containing so much irrelevant matter may in future be dismissed on that very ground. We find considerable difficulty in setting out the case for the applicant concisely on the basis of this application. However, the case of the applicants, as we have understood it to be, and as it was put in the arguments, appears to be that the applicant is a limited company desirous of running buses on the Dholpur-Agra route. A notification was issued by the Transport Commissioner, Jaipur, on 7-7-1951, inviting fresh applications for stage carriage permits on this route. There were 50 applicants for permits, and the names of these applicants were published as required by law, in the Rajasthan Gazette, dated 15-9-1951. The present applicant's name does not appear in this list. The applicant Company was apparently formed in October, 1951, and 12 persons, who were among the 50 applicants and who had formed this Company, applied to the Regional

Transport Authority, Jaipur that permits may be issued in the name of the applicant company instead of in their individual names. The matter came up for consideration before the Regional Transport Authority on 26-10-1951, and four permits were granted to the Dholpur Motor Transport Association, opposite party No.5, while two permits were granted in the applicant's name. No permits were granted to Sat Narain Singh, opposite party No.3, and Khazan Singh, opposite party No.4. Satnarain Singh is said to have applied for a permit, but Khazanstagh is said to have not applied at all. No representation is said to have been made to the Regional Transport Authority against any of the 50 applicants. There was then an appeal by Satnarainsingh to the Appellate Authority, and it was prayed that a permit should have been granted to him, and that no permit should have been granted to the present applicant. Khazansingh also filed an appeal. His case appears to have been that he was a partner in the Dholpur Motor Transport Association, and that Association had so manoeuvred matters that out of its five buses, the one, in which Khazansingh had a share, was not included in the four permits issued to it. These appeals were decided by the Appellate Authority on 30-7-1952. We are not concerned with the nature of that order for present purposes. Suffice it to say that the applicant as well as the Dholpur Motor Transport were dissatisfied with the order of the Appellate Authority, and made applications under Article 226 to this Court. After hearing parties, this Court quashed the order of the Appellate Authority, and the judgment is reported in - *'Dholpur Co-operative Transport and Multipurposes Union Ltd. v. Appellate Authority (Transport), Rajasthan',* [1] The main ground on which the applications were allowed was that the Appellate Authority was not properly constituted, and had therefore, no jurisdiction to hear the appeal. It was also directed that the appeal of Satnarain Singh and Khazansingh should be disposed of by a duly constituted Appellate Authority in accordance with the Motor Vehicles Act and the Rules there under.

3. It appears that thereafter R.76 of the Rules framed under the Motor Vehicles Act was amended so that the constitution of the Appellate Authority may be according to law and rules. Thereafter, the two appeals came up for decision by the reconstituted Appellate Authority, though the individuals composing the tribunal were still the same. The Appellate Authority allowed the two appeals on 28-1-1953 and granted one permit each to Satnarainsingh and Khasasingh, and cancelled the two permits granted by the Regional Transport Authority to the applicant. Thereafter, the present application was made by the applicant.

4. We shall now briefly indicate the grounds on which the order of the Appellate Authority is being challenged before us. These grounds are:

(1) that the rules framed under the Rajasthan Motor Vehicles Ordinance No.14 of 1950 on 30-3-1951, which are still in force with such amendments as might have been made later are all invalid as they were not placed before the Legislature as required by Section 133(3), Motor Vehicles Act, 1939, which came into force in Rajasthan on 1-4-1951 by the Part B States (Laws) Act (No.3) of 1951. In particular it is urged that the amendment of R. 76, which was made after the Legislature had come into existence in Rajasthan in March, 1952, was invalid, as it was not put before the Legislature as required by Section 133(3). It was, therefore, urged that the appellate authority, which decided the two appeals, was still not properly constituted, and had therefore no jurisdiction to hear the appeals in 1953;
(2) that the order of the Appellate Authority is mala fide;
(3) that there was no proper appeal, at any rate, of Khazansingh before the Appellate Authority, and it had no jurisdiction to grant any relief to him. This was because Khazansingh had not applied for permit and his appeal was, in any case, beyond limitation;
(4) that the Appellate Authority had no right to cancel the permits of the applicant when there was only an appeal under Section 64 (a), Motor Vehicles Act, 1939, before it, and no appeal under Section 64(f);
(5) that there was an error of law apparent on the face of the record, and, therefore, the order of the Appellate Authority should be quashed; and
(6) that the Appellate Authority, in so far as it based its decisions on grounds which were irrelevant and extraneous to the relevant provisions of the Motor Vehicles Act and the rules there under, exceeded its jurisdiction and its order is liable to be quashed.

5. It was, therefore, prayed-

(1) that a writ of prohibition may be issued to the Regional Transport Authority not to cancel the permit of the applicant to buses;
(2) that a writ of prohibition may be issued to the Appellate Authority and the Regional Transport Authority ordering them not to prohibit the applicant from plying the two motor buses on the Dholpur-Agra route.

(3) that the Appellate Authority and the Regional Transport Authority may be prohibited from issuing any permits to Satnarainsingh and Khazansingh in pursuance of the order of the Appellate Authority, dated 28-1-1953, and if such permits lave already been issued to Satnarain Singh and Khazansingh, they may be prohibited from plying their buses on fee said route.

(4) that a writ of certiorari may be issued quashing the proceedings and the order passed by the Appellate Authority on 28-1-1953;

(5) that a writ of mandamus be issued to the Appellate Authority to decide the two appeals according to law and rules.

Finally it was prayed that any other writ, order or direction, which may be appropriate, may be granted.

6. The application was opposed by the Appellate Authority, as well as by the Regional Transport Authority, and also by Satnarain Singh and Khazansingh. Their reply to the various points raised by the applicant is this.

(1) The rules framed under the Motor Vehicles Act on 30-3-1951, were valid when they were framed, and it was not necessary to place them before the Legislature when it came into existence in March, 1952. As for the amendment of R. 76, it was laid on the table of the Legislature on 25-2-1953, in accordance with the provisions of Section 133(3), Motor Vehicles Act, 1939.

(2) The order of the Appellate Authority was not mala fide and was passed in due course.

(3) This question cannot be raised on an application under Article 226 as the Appellate Authority had full jurisdiction to decide whether Khazansingh was entitled to appeal to it and whether his appeal was within limitation.

(4) The Appellate Authority had full powers to pass such orders as seemed proper to it on an appeal under Section 64(a).

(5) There is no such error apparent on the record as would justify this Court in interfering by a writ of certiorari.

(6) In the first place, the Appellate Authority did not take into account any irrelevant or extraneous matter, and, in any case, even if some such matter has been considered, it does not vitiate the order of the Appellate Authority, and this Court should not interfere in its extraordinary jurisdiction, if, on the whole, the order appears to be based on considerations relevant to the law and rules.

7. We shall first consider whether the rules framed under the Motor Vehicles Ordinance No.14 of 1950, which came into force from 30-3-1951, were valid, even though. they were not placed before the Legislature when it met, for the first time, in March, 1952. The Rajasthan Motor Vehicles Ordinance did not contain any provision corresponding to Section 133(3), Motor Vehicles Act. The rules, therefore, which were framed on 30-3-1951, were not required to be placed before any Legislature. The contention of the applicant is that the Motor Vehicles Act, 1939 came into force from 1-4-1951, in Rajasthan, and Section 133(3) of that Act requires that all rules made under it by the Central Government or by any State Government shall be laid for not less than fourteen days before the Central or State Legislature, as the case may be, as soon as possible after they are made, and shall be subject to such modifications as Parliament or such Legislature may make during the session in which they are so laid. Therefore, the rules, which were made on 30-3-1951, should have been laid before the State Legislature, when it met, far the first time, in March, 1952. The reply to this contention is, in our opinion, ample. The Motor Vehicles Act, 1939, has been applied to Rajasthan by the Part B States (Laws) Act (No.3) of 1951. Section 6 of the Act provides for repeal of corresponding law in Part B States. Proviso second to Section 6 of that Act provides that anything done, or any action taken (including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation, form, bye-law or scheme framed, certificate obtained, patent, permit or licence granted or registration effected) under any such law shall be deemed to have been done or taken under the corresponding provision of the Act or Ordinance as now extended to that State, and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under the said Act or Ordinance.
Therefore, the Part B States (Laws) Act, 1951 continued in force the rules which had been made in Rajasthan on 30-3-1951, and these rules were to remain in force unless and until superseded by anything done or any action taken under the Motor Vehicles Act, 1939. It was, therefore, in our opinion, unnecessary to place these rules which had already been passed on 30-3-1951, and which were continued by the Part B States (Laws) Act at a time when there was no duly constituted Legislature in Rajasthan and legislative power vested in the Rajpramukh under Article 385 of the Constitution, before the Legislature which met, for the first time, in Rajasthan in March, 1952. It is true that the proviso says that the rules will be deemed to have been made under the corresponding provision of the Motor vehicles Act, those corresponding provisions being contained in Sections 21, 41, 68, 70, 91 and 111 of the Motor Vehicles Act. The proviso, in our opinion, did not require that the rules should be placed before the

Legislature in Rajasthan when it came into existence in March, 1952, for Section 133(3) was a new provision which became applicable to Rajasthan, for the first time, on 1-4-1951 and would apply to all rules framed after that date, and not to rules which were deemed to have been framed under the corresponding provisions of the Motor Vehicles Act of 1939, by virtue of the proviso to Section 6, Part B States (Laws) Act. Therefore, all those rules, which are in existence since 30-3-1951, and have not been amended after 1-4-1951, did not require to be placed before the legislature. We are, however, particularly concerned with R. 76, and that has certainly been amended after 1-4-1951. The amendment in R.76 certainly required to be placed before the Legislature under Section 133(3), and we find from the reply of the Appellate Authority that the amendment in question was placed before the Legislature on 25-2-1953. It is nowhere the applicant's case that the amendment of R.76 was not placed before the Legislature as soon as possible after it was made and for the requisite period of 14 days. Under these circumstances the amendment of R.76, by which the Appellate Authority was reconstituted, cannot be said to be invalid on this ground.

8. We now come to the second contention, namely that the order of the Appellate Authority is mala fide, and as such is no order in law and must be set aside. In that connection, the applicant made certain allegations against the chairman of the Appellate Authority in paragraph 44 (4) of the petition. Those allegations have been traversed by two affidavits filed by Shri Kishorilal who was one of the members of the Appellate Authority which heard the two appeals on 28-1-1953. In view of those affidavits, we are not prepared to hold that the order in question was mala fide. In any case, the allegations are only against the Chairman of the Appellate Authority, and not against the other two members, and there is, therefore, no reason for holding that the order of the Appellate Authority was mala fide. We may add that we are not disposed to place any reliance even on the allegations made against the Chairman of the Appellate Authority.

9. The next point is whether there was a proper appeal by Khazansingh, and whether the appeal filed by him was barred by limitation. This raises the question of the extent of our jurisdiction to interfere with the order of a tribunal by a writ of certiorari. The scope of our authority in the matter of issuing writs of certiorari has now been settled by an authoritative decision of the Supreme Court in - *'Ebrahim Aboobakar v. Custodian General of Evacuee Property, New Delhi',* [2] In that case the jurisdiction of the Custodian General was challenged by a writ of certiorari, and it was contended

that no Court of limited jurisdiction could give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit of its jurisdiction depended, and that the questions involved in the appeal were collateral to the merits of the case. What are collateral matters and what are not was considered in - *Reg v. Income-tax Special Purposes Commrs.',* [3] by Lord Esher M.R., and the following observations are of great value:

> "When an inferior Court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decade whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction.

But there is another state of things which may exist. The Legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision for otherwise there will be none. In the second of the two cases, I have mentioned it is erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends and if they were given jurisdiction so to decide without any appeal being given, there is no appeal from such exercise of their jurisdiction."

10. In every case, therefore, it has to be seen whether the decision, which is challenged by a writ of certiorari, is on a point collateral to the merits of the case or a part of the very issue which a lower court has to enquire into. If it is the former, certiorari will lie; but if it is the latter, certiorari will not be granted (vide Halsbury's Laws of England, Second edition, volume, 9 paragraph 1485, p.881). The question whether the matter is collateral or part of the very issue in the case depends upon the

powers granted to the tribunal by the Legislature. If the powers granted are of the second kind mentioned in Lord Esher's observations, the tribunal will have the jurisdiction to decide the matter and it will not be collateral.

11. The Supreme Court considered the power granted to the Custodian General by Section 24, Evacuee Property Act, 1950, and after quoting the section observed as follows at pp.322-323:

> "Like all courts of appeal exercising general jurisdiction in civil cases, the respondent has been constituted an appellate court in words of the widest amplitude and the Legislature has not limited his jurisdiction by providing that such exercise will depend on the existence of any particular state of facts. Ordinarily, a court of appeal has not only jurisdiction to determine the soundness of the decision of the inferior court as a court of error, but by the very nature of things it has also jurisdiction to determine any points raised before it in the nature of preliminary issues by the parties.
> Such jurisdiction is inherent in its very constitution as a court of appeal. Whether an appeal is competent, whether a party has 'locus standi' to prefer it, whether the appeal in substance is from one or another order and whether it has been preferred in proper form and within the time prescribed, are all matters for the decision of the appellate court so constituted. Such a tribunal falls within class 2 of the classification of the Master of the Rolls." - '(Ebrahim Aboobakar's case)'.

It was held that the Custodian General was a tribunal which came in class 2 and his decision could not be challenged on the ground that a wrong finding was arrived at on a question of collateral fact, though, of course, if there was violation of the principles of natural justice, or an error of law apparent on the face of the record or a clear excess of jurisdiction certiorari may still issue.
Let us now look into the powers of the Appellate Authority as given by the legislature. These are contained in Section 64. That section merely prescribes that any person aggrieved by the order of the Regional Transport Authority may within the prescribed time and in the prescribed manner appeal to the prescribed authority who shall give such person and the Regional Authority an opportunity of being heard. These words, are in our opinion, of the same amplitude as the words of Section 24, Evacuee Property Act conferring powers of appeal on the custodian General. R.108 provides

for appeals against orders of the Regional Transport Authority, and prescribes the period within which the appeal has to be filed, and the manner in which it shall be filed. Reading Section 64 with R.108 the conclusion is obvious that the Appellate Authority has the widest power and comes within the second class of tribunals envisaged in the observations of Lord Esher, M.R., which we have already quoted. We are, therefore, of opinion that 'Ebrahim Aboobakar's case, applies with full force to the case before us so far as the powers of the Appellate Authority are concerned and the Appellate Authority had jurisdiction to determine questions of limitation, and locus standi, and we cannot interfere with their decision on a writ of certiorari. It is not the applicant's case that any principles of natural justice were violated by the Appellate Authority. We shall consider later whether there are errors of law apparent on the record to enable us to issue a writ of certiorari; but so far as the locus standi of Khazansingh and the question of limitation with reference to his appeal are concerned, these were within the powers of the Appellate Authority to decide, and we cannot question that decision, even though it may be wrong, by a writ of certiorari. In view of the decision in 'Ebrahim Aboobakar's case)' these cannot be called collateral matters on which the jurisdiction of the Appellate Authority depended. There is no force in this point either.

12. The next point is whether the Appellate Authority, while allowing the appeals of Satnarinsmg and Khazansingh under Section 64(a) acted within their jurisdiction in cancelling the permits at the applicants or whether their order cancelling the permits of the Applicants was in excess of their jurisdiction. There are as many as seven clauses in Section 64 under which a right of appeal arises. Of these clauses (a) and (f) are relevant for our purposes, and may be put down here. Any person (a) aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or (f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit is aggrieved by the grant thereof or by any condition attached thereto, may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority.

13. The contention of the applicant is that there was no appeal before the Transport Authority under Clause (f), the two appeals being only under Clause (a), and therefore the Appellate Authority, while dealing with an appeal under Clause (a), could not cancel permits which had been granted by the Regional Transport Authority. It is not

seriously challenged that there was no appeal under Section 64(f) before the Appellate Authority and that the two appeals before it were only under Section 64(a). The question, that falls for determination, is whether, on an appeal under Section 64(a), the Appellate Authority has the power to cancel the permits granted by the Regional Transport Authority, and in their place substitute other permits granted to other persons by itself. The answer is a matter of some difficulty, particularly as in most cases the number of permits to be issued on a particular route is limited under Section 48(a). In the case before us, it has been agreed between the Dholpur and Agra authorities that six permits on the Dholpur-Agra route will be granted by the Dholpur authorities (which means the Regional Transport Authority, Jaipur) and six by the Agra Authorities. Another difficulty, which arises, is that the section does not lay down the nature of order which the Appellate Authority will pass in appeal. It may be argued, because the nature of the order in appeal is not prescribed, that the Appellate Authority may pass any order which it considers just and proper. At the same time, it cannot be overlooked that Section 64 has seven clauses dealing with specific grievances which give rise to appeal, and it should be clear that the order of the Appellate Authority must have reference to the grievance put before it. For example, Section 64(b) provides for appeal by a person aggrieved by the revocation or suspension of the permit granted to him. Now in such an appeal the Appellate Authority would have the power only to set aside the revocation or suspension, and it can hardly be contended that it would have, while setting aside the revocation or suspension, the power to revoke or cancel some other person's permit. Therefore, if the power of the Appellate Authority to give relief is circumscribed by the clause under which the appeal is filed, and this appears to us to be evident, the question arises whether, on an appeal under Clause (a), the permit of some other person can be cancelled. A person appealing under the first part of Clause (a) merely appeals against the refusal of a permit to him. He does not appeal against the grant of a permit to somebody else. The right to appeal against the grant of a permit to somebody else is contained in Clause (f) and is limited only to (i) a local authority, or (ii) Police authority or (iii) an association which, (iv) or a person providing transport facilities who, having opposed the grant of a permit is aggrieved by the grant thereof. Now supposing there was no opposition by any of these four to the grant of permits to the numerous applicants who always apply for such permits, and further suppose that one out of new applicants is granted a permit, while one of the persons, who was providing transport facilities, previously, does not get it, can this person, not having opposed the grant of a permit to the new applicant and thus not being entitled to appeal under

Clause (f), say that, because he has appealed under Clause (a) for refusal of a permit to him, the permit granted to the new entrant should fee cancelled in order to find a place for him in the list of permit holders, taking it for granted that the number of such permits is strictly limited? Put this way, the answer to our mind seems clear. If the person has no right of appeal under Section 64(f), it seems unfair that he should get by an appeal under Section 64(a) what he could not get because of the fact that he had no right of appeal under Section 64(f). It seems to us therefore, that by an appeal under Section 64(a), the Appellate Authority can only consider whether the refusal of the permit to the appellant was correct or not. If it comes to the conclusion that the refusal was correct it will dismiss the appeal. On the other hand, if it comes to the conclusion that the refusal was incorrect, it will allow the appeal and grant him a permit. But there can be no difficulty in holding that on an appeal under Clause (a) of Section 64, it has no further authority to cancel somebody else's permit, because the number of permits to be granted is strictly limited, and the Appellate Authority decides to set aside the order of the Regional Authority and grant a permit to the appellant. In such circumstances, the only course open to the Appellate Authority is to grant one more permit to the person appealing, if it thinks that the permit has been wrongly refused to the appellant.

14. It may be urged that this view unduly limits the powers of the Appellate Authority under Section 64(a) and makes it impossible for it to grant relief in a case in which a relief should be granted, particularly if it is also of the view that the number of permits should not be increased. This difficulty is no doubt there. It seems to us however that if those applying for permits went to lay a foundation for the Appellate Authority to interfere by cancellation of permits which might be granted by the Regional Transport Authority, it is their duty, if they are entitled to object under Clause (f) to do so, and thus create a right of appeal under Cl(f). If such right of appeal has been created by an objection being taken by any person, there will be material before the Appellate Authority to decide whether a particular permit granted to a particular man should be cancelled. But if no such foundation has been laid, there will generally be speaking no ground before the Appellate Authority to decide whose permit to cancel in order to give relief to an appellant under Section 64(a). It may be accepted that when there is an appeal before the Appellate Authority under Section 64(a), the whole matter may be open for its consideration, provided a foundation has been laid by an objection of the nature specified in Clause (f) before the Regional Authority. If such foundation has been laid, the mere fact that an appeal has been made under Section 64(a) will not

preclude the Appellate Authority from going into the entire matter. But if no such foundation has been laid, and no one has objected to the grant of a permit to any of the applicants then it seems to us that the Appellate Authority in an appeal under Section 64(a) can only consider the question of grant of a permit to the appellant before it and cannot cancel toe permit granted to some other person.

15. The conclusion, therefore, to which we arrive at, is that where an appeal has been made under Clause (a) against the refusal of a permit, the Appellate Authority will generally have the right to give relief to the appellant by grant of a permit, but will not have any jurisdiction to cancel the permit granted to another person, unless a foundation has been laid before the Regional Transport Authority for an appeal provided by Clause (f) by an objection by somebody entitled to appeal under that clause. If such objection has been made then it does not matter whether that particular person appeals or not. In such a case, on an appeal under Section 64(a), the Appellate Authority may consider the objection of the nature specified in Clause (f) before the Regional Transport Authority and give its own decision in the matter. The same applies to the other clauses of Section 64. We are supported in this view to a certain extent by a decision of the Madras High Court in *'Nadar Transports Tiruchirapalli v. State of Madras',* [4] We feel that we cannot go further than what has been decided in that case as to the limits of the powers of the Appellate Authority on an appeal under Section 64(a). in the case before us it is not in dispute that no one made any objection to the grant of a permit to any body before the Regional Transport Authority. Under these circumstances, no foundation was laid for an appeal of the nature specified in Clause (f). The Appellate Authority, therefore, could grant relief to the appellants before it by giving them permits, but could not cancel permits granted to others, and in so far as it did so, it clearly exceeded its jurisdiction.

It may be said that in this case, by an interstate agreement, the Dholpur authorities can only grant six permits. That only means that the Dholpur authorities can grant six permits for buses plying from Dholpur right up to Agra; but they can certainly grant permits from Dholpur upto the border of the State of Rajasthan and leave it to Satnarain Singh and Khazansingh to get their permits countersigned under Section 63, Motor Vehicles Act by the Agra Authorities. Relief could therefore, be granted by the Regional Transport Authority to Satnarainsingh and Khazansingh to this extent only in the circumstances of this case, and the Appellate Authority could not cancel the permits of the applicants.

16. The next point that is urged is that there is an error of law apparent on the face of the record, and therefore the order of the Appellate Authority should be quashed. Before we consider whether there is an error of law apparent on the record in this case, it is well to define the scope of this expression. The meaning of this expression is well settled, and the error of law envisaged should be so patent that a bare perusal of the judgment and the record on which it is based would show that there was error. Where two views, are, however, possible, or where the decision as to whether there is error of law can only be arrived at after long arguments such error cannot the called error of law apparent on the record.

Only those errors of law, which are patent on the face of the record, can form the basis of interference in certiorari. This has been made clear in two cases of this court namely - *'Nanagram v. Ghinsilal,* [5] and - *'Shriniwas v. Collector, Sawai Jaipur* [6] The view taken in this court is supported by the decisions of the Bombay High Court in - *'K.P. Mushran v. B.C. Patil',* [7] and - *'Butuk K. Vyas v. Surat Borough Municipality',* [8] In 'K.P. Mushran's case, the following observations appear at p.241: "The error of law which can be considered to be apparent on the face of the record is not an error which can be pointed out to the superior Court after a long and elaborate argument. It has been often said that a Court of jurisdiction may decide wrongly in law and yet the superior Court will not interfere with its decision. But the error of law contemplated is an error so patent, so manifest, that the superior Court will not permit the subordinate Court to come to a decision in the face of a clear ignorance or disregard of a provision of law. If a section of a statute is clearly misconstrued, or if a provision of the law is overlooked or not applied, and that appears from the judgment of the lower Court itself, then the superior Court may interfere by a writ of certiorari."

17. In 'Batuk K. Vyas's case,' it was urged that there was an error of law apparent on the face of the record inasmuch as Rule 17(4) which was framed under Section 58, Municipal Boroughs Act was ultra vires of the Municipality. The following observations at page 137 show clearly the extent and scope of words 'error apparent on the face of the record'

> "It is difficult to understand how this is an error of law apparent on the face of the record. Even assuming that there is force in the argument advanced by Mr. Phadke, the mere fact that two views are possible on a question of law does not make the decision of a Tribunal has jurisdiction bad on the ground that it has erred in law and the error is apparent en the face of the record. We have had

occasion several times to point out that only that error will be corrected by this Court which is clearly apparent on the face of the record and which does not become apparent only by a process of examination or arguments".

18. It is in this light that we have to examine the contention of the applicant that there is an error of law apparent on the face of the record. All that has been urged on behalf of the applicant in this connection is that if the judgment of the tribunal is read, certain inconsistencies between one part or another would be found. It is nowhere suggested that the law is enshrined in a particular section or rule, and the Appellate Authority, in any part of its judgment, has clearly misunderstood the obvious import of the law or rule. Even taking it for granted that there is some inconsistency in the argument of the Appellate Authority with respect to various points which it decided, that, in our opinion, cannot be called an error of law a on the face of the record. We. therefore, see no reason to interfere with the order of the Appellate Authority on this ground.

19. We now come to the next point, namely that the Appellate Authority has based its decision on grounds which are irrelevant and. extraneous to the relevant provisions of the Motor Vehicles Act and the rules there under and in so doing exceeded its jurisdiction, and its order is liable to be quashed. It has been urged that all relevant grounds are specified in Section 47. But the Appellate Authority has taken into account other factors, namely whether a certain applicant was an old operator or whether his father was an old operator at one time.

20. Section 47 lays down the general conditions regard will be paid to which in granting or refusing a stage carriage permit. These conditions are not necessarily exhaustive in details and in deciding between one applicant and another, the Regional Transport Authority or the Appellate Authority may well consider other allied matters. For example if there are two applicants and only one permit is to be granted, and one of the applicants was an old operator while the other applicant is a new operator, the Transport Authority may well take into account the fact that one of the applicants is an old experienced operator and as such better entitled to the permit. Or, there are two persons applying for a permit, and one of them has better buses than the other, the Transport Authority may well take that into consideration also in granting the permit. Similar other matters can also be considered by the Transport Authority for preferring one applicant to another provided these are all in the interest of the public and it cannot, in our opinion, be said that in so doing the Transport Authority is taking into

account matters so extraneous to Section 47 that its decision must be held to be guided by considerations other than those provided by law and the rules. In this connection we may refer to - *'Shah Transport Co., Chhindwara v. State of Madhya Pradesh',* [10] in which it was held that the classification of motor operators as new and dislodged operators from the date from which the policy of nationalization of bus service came into force, and the policy of making provisions for dislodged operators on the routes held by new operators does not contravene Article 14.

21. We are, therefore, of opinion that no such extraneous matter has been taken into account in this case as to call for interference by us by a writ of mandamus to the effect that the Appellate Authority should decide the appeals again after confining themselves to matters relevant under the Motor Vehicles Act.
Lastly, learned counsel for the applicant contended that the relevant provisions of the Motor Vehicles Act are unconstitutional inasmuch as they infringe the fundamental right of the applicant under Article 19(1)(g) to carry on any occupation, trade or business, and the restrictions imposed were not saved by clause (6). It is also urged that the Motor Vehicles Act infringed Article 14 of the Constitution, and is therefore, bit by Article 13(1), and is void to the extent of the inconsistency.

22. It may be pointed out that this contention was not raised in the application. It seems to have been put forward mainly on the basis of a recent decision of the Madras High Court in - *'C.S.S. Motor Service, Tenkasi v. State of Madras',* [11] It may be accepted that the applicant has the fundamental right to carry on the business of a bus operator under Article 19(1)(g) of the Constitution subject to such reasonable restrictions as may be placed on that right under Article 19(6), vide - *'Moti Lal v. Govt. of the State of Uttar Pradesh',*

23. The validity of the various sections of the Motor Vehicles Act was considered at length in the light of Article 19(1)(g) and 19(6) by the Madras High Court in the case cited above, and it was held that Section 42 and Section 43A were valid. Further Section 47(1) Clauses (a), (b), (d) and (f) were held valid, but Section 47(1)(e) was held invalid, and Section 47(1)(c) was held to be partially valid. Sections 48(a) and (b) were also held to be valid. Learned counsel for the applicant has not urged that the decision of the Madras High Court in so far as it has held certain sections of the law to be valid is incorrect. It is, therefore, unnecessary for us to go into this question, and we will assume for purposes of this case that those sections, which have been held

valid by the Madras High Court, are actually so. It is also unnecessary for our purposes to decide whether the view of the Madras High Court about Section 47(1)(e) and part of Section 47(1)(c) is correct or not, because those provisions do not arise for consideration before us in this case. What the applicant particularly relies on are certain observations in the Madras case as to the application of Article 14 of the Constitution. The argument in the Madras High Court was that as there was no criteria laid down in the Act for making a selection among the applicants, there was scope for arbitrary exercise of powers, and that the Act was, therefore, repugnant to the provisions of Article 14 at the Constitution. The view taken in that ease is:

> "It is for the State to decide on questions of policy as to which among the several competing principles would serve best the interests of the public and when once a decision has been taken by the Government it is not the province of the Court to go into the question of the comparative soundness of one point of view rather than the other.....But whatever principles be adopted as criteria for making the selection among the applicants it is necessary that they should be applied uniformly and without differentiation as if they had been enacted as part of the statute.

This does not, however, prevent the State from altering its rules from time to time when as a result of experience it discovers that they require to be altered in the interests of the public.....There should not be two different and opposing principles both in operation at the same time, one being applied to one applicant and the other to the other. This would be clearly illegal and opposed to Article 14." (p.292).

Reliance is also placed on certain observations at p.294 which are as follows:

> "With particular references to the provisions of the Motor Vehicles Act, the right of a citizen to ply buses may be abridged or taken away in two ways: by limiting the number of vehicles which can be put on the route under Section 48(a) and by excluding the applicants in making the selection under Section 48(b). It was argued for the petitioners that even the decision of the Regional Transport Authority fixing the number of vehicles under Section 48(a) was liable to be reviewed by the Courts. This must be conceded that every step in restriction of a fundamental right must be a matter for judicial review, though actually it is difficult to see how the Court is in a better position than the

> transport authority in coming to a correct decision on the question.....
> The more important aspect of this restriction consists in the power of selection resulting in the exclusion of non-successful applicants. As to this, as already observed, it is the duty of the Provincial Government to frame rules for selection solely in the interests of the public and the limits within which Courts might interfere with such rules have been discussed; and the authorities are under a duty to apply such rules fairly and impartially; and their orders are liable to be reviewed by Courts and set aside if they are unreasonable or arbitrary.....The decisions of the transport authorities granting or refusing to grant permits are liable to be reviewed by the Courts and set aside if they are unreasonable, arbitrary or discriminatory".

The learned Judges also distinguished - *'Veerappa Pillai v. Raman and Raman Ltd.',* [13] on the ground that the rights of the petitioners in that case were under the Motor Vehicles Act prior to the Constitution, and no arguments were addressed on the basis of the Constitution.

24. With all respect to the learned Judges of the Madras High Court, it seems to us that it is going too far to say that the decisions of the Transport authorities granting or refusing to grant permits are liable to be reviewed by the Courts and set aside if they are unreasonable, arbitrary or discriminatory. It is clear that so far as the Motor Vehicles Act is concerned, it does not give any authority to the Courts to interfere with the orders of the Transport Authorities as observed by the Supreme Court 'In Veerappa Pillai's case'. The Motor Vehicles Act is a complete Code in itself containing a complete and precise scheme for regulating the issues of permits and providing a regular hierarchy of administrative bodies to deal with the regulation of transport by means of motor vehicles. It is, in these circumstances, difficult to see how the High Court can interfere with the decision of the Transport Authorities granting or refusing to grant permits in every case on the ground that it is unreasonable, arbitrary or discriminatory. We take it that the learned Judges used these three words on the basis of Article 19(6) and Article 14 of the Constitution. Article 19(6) provides as follows:

> "Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevent the State from making any law imposing, in the interests of the general public, reasonable, restrictions on the exercise of the right conferred by the said sub-clause ....."

Article 14 provides that:

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

It is to our mind obvious that the test prescribed in Article 19(6) has to be applied to the law, and it has to be seen whether the law imposes reasonable restrictions on the exercise of the fundamental right. Once it is clear that the law is reasonable, we find it difficult to hold that every order passed by any authority constituted under the law has again to undergo the test of reasonableness, and if it fails to pass that test, it is liable to be set aside as an unreasonable restriction on the fundamental right contained in Article 19(1)(g).

When therefore it is said that the decisions of the transport authorities granting or refusing to grant permits are liable to be reviewed by the courts and set aside if they are unreasonable and arbitrary, the obvious intention is to use Article 19(6) for testing every order under any law, even- though the law itself might have passed the test of reasonableness. We do not think that Article 19(6) was meant to be applied in this way. In this connection reference may be made to the observations of Meredith, C.J., in *Brajnandan Sliarma v. State of Bihar* [14]

> "In my opinion, we are alone concerned with the validity of the restrictive provisions contained in the Act. We are in no way concerned with the merits of the particular order and cannot enter into them. The wording of the Act does not entitle the Courts to consider the order on its merits; nor do the provisions of Article 19(5). The wording of Article 19(5) makes it quite clear that the words "reasonable restrictions" refer to the law itself, and not to orders passed under the law. The clause speaks of any existing law in so far as it imposes reasonable restrictions and the making of a law imposing reasonable restrictions. If the law is valid, there appears to be nothing anywhere in the Constitution, or in the particular Act itself, enabling the Courts to consider the merits of the order."

What is said above about Article 19(5) applies with equal force to Article 19(6). We are, therefore, of opinion that the validity of every order passed; for example under the Motor Vehicles Act by a Transport authority cannot be questioned on the ground of arbitrariness or unreasonableness by the use of Article 19(6), and it cannot be said that

the order is invalid because it contravenes Article 19(6).

25. Turning now to Article 14 we find that it provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It is not suggested that the Motor Vehicles Act or any part of it, so far as it goes, is discriminatory in its effect. What is urged, however, is that the provisions of Section 47(1), for example, are not so detailed as to exclude all possibility of arbitrary or discriminatory selection for purposes of granting permits. We have already pointed out in an earlier part of this judgment that the principles laid down in Section 47 are of a general nature and are not exhaustive in details and it is open to the Transport Authority to consider acceptance or rejection of particular applicants on further principles which must all be shown to be in the interest of the public. It may perhaps be advantageous, as pointed out by the learned Judges of the Madras High Court, that these further principles may also be prescribed by the State Government in the rules.
But even the absence of such further principles from the rules will not, in our opinion, entitle the court to scrutinize every single order passed by a Transport Authority, and see whether it denies to any person equality before the law or the equal protection of the laws. Article 13(1) and 13(2) make it clear that any law, which was in existence on the date of the Constitution or which may be passed after the Constitution comes into force, contravening the provisions of Article 14 would be invalid Here again, we feel that Article 14 cannot be applied to test the correctness of orders passed under laws which are themselves valid. The principle, in our opinion, is the same as in the case of Article 19(6).

26. We are not unmindful of the fact that in some cases it has been held that though the law may not be discriminatory on the face of it, it may be so applied as to deny the equal protection of the law, and in such a case the law will be invalid. The law being thus held invalid, the orders passed under the law would naturally be invalid. It seems to us, therefore, that Article 19(6) or Article 14 can only be employed 'to declare individual orders invalid, if, in the first instance the law itself, under which the orders are passed, is declared invalid under these articles. In the well known case of - *'Yick Wo v. Peter Hopkins',* [15] it was held that:

> "Though a law be fair on its face and impartial in appearance, yet, if it is administered by public authority with an evil eye and an unequal hand, so as

practically to make illegal discriminations between persons in similar circumstances, material to their rights the denial of equal justice is still within the prohibition of the Constitution." The distinction between law itself and orders passed under the law, (which means its administration,) if we may say so with respect, was well brought out in - *'Dhanraj Mills Ltd. v. B.K. Kocher',*[16] In that case it was held

"If a Jaw is so passed as to make discrimination or deny its application equally to all subjects, such a law can be challenged under Article 226 as offending against Article 14. A clear distinction must be borne in mind between the law and the administration of the law. If the law itself permits discrimination, even though the law may appear to be fair and undiscriminatory, the court may interfere. One may even have a case where in exercising the discretion vested in officers under the Statute the State may, as a policy of administration, require its officers to exercise the discretion unfairly and unequally. Even in such a case the Court may interfere and say that although administrative orders are being challenged, the administrative orders suggest behind them a policy of the State, of discrimination. But when a subject comes to the Court and challenges a specific act of an individual officer as being in contravention of Article 14, the Officer in acting contrary to Article 14 is really acting contrary to the law and not in conformity with or in consonance with the law.

When the law invests an officer with a discretion, the law assumes that the officer will exercise the discretion *bona fide* and not dishonestly, arbitrarily or capriciously, and if he exercises the discretion dishonestly, arbitrarily or capriciously, he is really going contrary to the law. In such a case, the subject comes to court not for protection under Article 14 but for protection against the dishonest, arbitrary or capricious act of the officer. The Court is not powerless to give the subject protection against a dishonest officer, but that protection cannot be sought under Article 14 or under Article 226."

The extent of the application of Article 14 was summed up by Mukherjea, J., in the - *'State of West Bengal v. Anwar Ali Sarkar',* [18] and the following observations appear on p.92:

"The position, therefore, is that when the statute is not itself discriminatory and the charge of violation of equal protection is only against the official, who is

> entrusted with the duty of carrying it into operation, the equal protection clause could be availed of in such cases; but the officer would have a good defense if he could prove bona fides. But when the statute itself makes a discrimination without any proper or reasonable basis, the statute would be invalid for being in conflict with the equal protection clause and the question as to how it is actually worked out may not necessarily be a material fact for consideration."

These observations show that Article 14 cannot be availed of for individual orders unless there is proof of mala fides. We have already held that there is no question of mala fides in this case, and therefore the order of the Appellate Authority, in our opinion, cannot be challenged on the ground that it offends against Article 14 and is discriminatory. It would be a different matter if the Motor Vehicles Act could be challenged under Article 14 as ultra vires; but that has not been the argument of learned counsel for the applicant, and the Madras case, on which he relies, has also held most of the provisions of the Motor Vehicles Act as valid. We are not here concerned with the few which have been held by the Madras High Court to be invalid.

27. We, therefore, hold that Article 19(6) or Article 14 cannot be availed of in this case by the applicant to impugn the order in dispute.

28. In view of what we have said about the limits of the power of the Appellate Authority in granting relief under Section 64(a), Motor Vehicles Act, we order the issue of a writ of certiorari quashing that part of the order of the Appellate Authority which cancels the permits granted to the applicant as it is in clear excess of their jurisdiction. The rest of the order granting permits to Satnarainsingh and Khazansingh will stand. We have pointed out already how matters can be arranged in view of the agreement between the Dholpur and Agra authorities. Considering all the circumstances of the case, we think that parties should bear their own costs of this application and order accordingly.

Order accordingly.

Cases Referred.

1. AIR 1953 Raj 193
2. AIR 1952 SC 319

3. (1888) 21 QBD 313
4. AIR 1953 Mad 1
5. AIR 1952 Raj 107
6. 1952 RLW 117
7. AIR 1952 Bom 235
8. AIR 1953 Bom 133
9. AIR 1953 Bom 133
10. AIR 1952 Nag 353
11. AIR 1953 Mad 279
12. AIR 1951 All 257 (FB)
13. AIR 1952 SC 192
14. AIR 1950 Pat 322 (FB) at p.324
15. (1886) 118 US 356
16. AIR 1951 Bom 132
17. AIR 1951 Bom 132
18. AIR 1952 SC 75