dieffrent set of cases and does not apply to an official deciding a matter which may affect his own department. No authority has been cited by the counsel in support of his contention. While considering the question of the grant of a permit or of its extension regard may legitimately be had to its effect on the existing services. It is both reasonable and lawful to do so ; the order is thus neither unconstitutional nor tained by illegal bias.

For the reasons given above, I would dismiss this writ petition, but in the circumstances of the case leave the parties to bear their own costs.

B.R.T.

CIVIL WRIT

Before I. D. Dua, J.

NATIONAL TRANSPORT ENGINEERING Co., (PRIVATE) LTD., PATIALA,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 233 of 1959.

1959

May, 26th

Motor Vehicles Act (IV of 1939)—Section 64—Right of appeal—Aggrieved party—Meaning of—Motor Vehicles Act as amended by the East Punjab Amendment Act (XXVIII of 1948)—Section 64(h)—Powers of the Government under—Extent of—Appellate Authority holding an appeal to be incompetent—Decision—Whether revisable by the Government—Constitution of India (1950)—Article 226—Writ of certiorari—Nature of—When can be issued—Facts disputed—High Court—Whether will inquire into in a writ petition.

Held, that Section 64 of the Motor Vehicles Act, 1939, deals with the right of appeal. Under clause (f) of this section an association providing transport facilities which

has opposed the grant of a permit is considered to be aggrieved by such grant or by any condition attached thereto and is, in the circumstances, entitled to appeal against the impugned order. The powers of the Government under Section 64(h) of the Motor Vehicles Act as amended by the East Punjab Act No. XXVIII of 1948 are very wide. The orders passed on any appeal decided by the Appellate Authority are subject to scrutiny by the Government and there is no qualification or restriction imposed on the power of the Government in altering, revising, cancelling or upholding the orders of such Appellate Authority. The decision holding an appeal not to be competent is covered by the expression "appeal decided by the Appellate Authority" and is thus within the ambit of Section 64(h). An appeal held to be incompetent does not, merely on that account, cease to be an appeal decided by the Appellate Authority.

Held, that a writ of *certiorari* is not a writ of course but it can be justified only in cases of excess of authority or flagrant and palpable violation of law which have in addition caused grave and manifest miscarriage of justice. Mere mistakes of fact, or even of law, within the power and competence of the administrative tribunals, even in the determination of rival claims, are by themselves not subject to scrutiny under Article 226 of the Constitution of India. The matter of grant of permits in the present case had been dealt with by the subordinate transport authorities in a manner which is far from commendable or even satisfactory. This has enabled the petitioner to raise some hyper-technical grounds in these proceedings questioning its consideration by the final revisional authority under the Motor Vehicles Act. Such bare technicalities do not merit any serious consideration by the High Court as they are designed and calculated to shut out determination by the highest departmental authority, of the propriety of the orders passed by the inferior tribunals. On the facts and circumstances of the instant case there does not appear to be any failure of justice and interference under Article 226 of the Constitution is not called for.

Held, that in proceedings under Article 226 of the Constitution it is not open to the High Court to hold an elaborate enquiry into disputed and complicated questions of fact, more so when the right in question is created by a statute and the mode of redress is also provided therein.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari *or any other appropriate writ, direction or order, be issued quashing the order of the respondent No. 1, dated the 5th March, 1959.*

BHAGAT SINGH, for Petitioner.

L. D. KAUSHAL, D. S. NEHRA, H. L. SIBAL AND JOGINDER SINGH WASU, for Respondents.

ORDER

Dua, J.

DUA, J.— This writ petition has been filed on the following allegations. The petitioner-Company is carrying on the business of motor transport on certain routes in the Punjab, including Sunam-Budhlada route. On the last named route, the petitioner held three temporary permits which authorised the petitioner to ply their Stage Carriages via Jakhepal (a *kacha* route). In 1957, the Deputy Commissioner, Sangrur, recommended to the R.T.A., Patiala, that the said three permits should be varied so as to allow the petitioner-Company to run on the Sunam-Budhlada route via Bhiki instead of via Jakhepal. This recommendation, it is pleaded, was made on the persistent demands of the public of the *ilaqa* who represented that they were put to great inconvenience as the route via Jakhepal was only a fair weather route and in the rainy weather the operation of the services was suspended for months. This recommendation is said to have come up before the Regional Transport Authority and objections were invited from other transporters as well as the general public. Those objections were heard by the Regional Transport Authority on 17th of September, 1957, and it was decided that instead of varying the route for all the three permits only one permit should be so varied. On the basis of this decision a recommendation by the Regional Transport

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Authority was made to the State Transport Authority which after following the routine formalities and hearing objections accepted the recommendation of the Regional Transport Authority. In this manner, the petition proceeds, the route covered by one permit was varied. The order of the State Transport Authority is dated 10th of March, 1958. Against the decision of the Regional Transport Authority, dated 17th of September, 1957, recommending variation in the route of one of the permits, the Patiala Bus Service Limited, respondent No. 2 before me, preferred an appeal before the Provincial Transport Controller, the Appellate Authority constituted under the Motor Vehicles Act, 1939. This appeal came up for hearing before the Appellate Authority but was disallowed as incompetent after hearing the parties. Respondent No. 2 filed a revision before the Secretary, Transport Department, Chandigarh. It was, however, heard by the Hon'ble Minister for Revenue and Transport Department on 5th of March, 1959, and was allowed, with the result that the deviation in one of the permits allowed to the petitioner was revoked. Before the appeal came up for hearing before the Provincial Transport Controller, the Regional Transport Authority, Patiala, had, after following the procedure of section 57 of the Motor Vehicles Act, regularised all the petitioner's three permits on 16th of December, 1957. Against this regularisation, no appeal or revision was preferred by respondent No. 2, with the result that this regularisation became final and unassailable. Before the Hon'ble Minister the petitioner contended that the decision of the Provincial Transport Controller on the incompetency of the appeal was correct and was supported by a decision of the Madras High Court reported as *M. Kali Mudaliar* v. *A. Vedachala Mudaliar, etc.* (1), it was also contended that if the

(1) A.I.R. 1952 Mad. 545

Hon'ble Minister did not agree with the view of the Provincial Transport Controller on the question of the maintainability of the appeal, then the case might be sent back to the Appellate Authority to be heard on the merits ; it was further argued before the Hon'ble Minister that no appeal having been preferred by respondent No. 2 against the decision of the Regional Transport Authority, dated 16th of December, 1957, by which the permits in question had been regularised, the said respondent could not prosecute his revision and get the variation revoked. These contentions did not find favour with the Hon'ble Minister who allowing the revision, revoked the variation granted by the Regional Transport Authority on 17th of September, 1957. This order of the Hon'ble Minister, dated 5th of March, 1959, is being assailed in the present proceedings on the grounds—

(i) that the view of the Hon'ble Minister on the competency of the appeal is manifestly erroneous ;

(ii) that no appeal or revision having been taken against the regularisation of the permit, the said regularisation could not be assailed in a collateral revision petition filed with respect to temporary permits. Reliance in this connection is placed on an unreported decision of a learned Single Judge of this Court in Civil Writ No. 20 of 1958 ;

(iii) that the variation having been allowed at the time when the permit was of a temporary nature, the case is not covered by section 57 of the Motor Vehicles Act which is inapplicable to temporary permits; and

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(iv) that section 57 of the Motor Vehicles Act could not be pressed into service as a deviation of a route cannot be equated with a new route.

Respondent No. 2 has filed a reply contesting the petition on a number of grounds. By way of preliminary objections it has been contended that the Hon'ble Minister was fully competent and had complete jurisdiction to pass the impugned order, which was done after giving full opportunity to both the parties to state their case. Even if the decision be erroneous on facts or in law, it cannot be successfully assailed in these proceedings. It is also contended that there is no manifest injustice caused to the petitioner who originally held three permits on *kacha* route and by the impugned order the Hon'ble Minister has only set aside the deviation illegally allowed in respect of one of the said three permits ; the petitioner is fully authorised to operate on the original route on all the three permits. On the merits, this respondent has expressed ignorance about the recommendation said to have been made by the Deputy Commissioner, Sangrur. It is, however, alleged that the Deputy Commissioner had no right to make any such recommendation to the Regional Transport Authority which is a *quasi*-judicial body. It is also asserted that the entire route from Sunam to Budhlada via Bhiki, except for a small area of 9 miles from Sunam to Chima, fell outside the jurisdiction of Sangrur District, with the result that any recommendation alleged to have been made by the Deputy Commissioner, Sangrur, would be invalid, It is expressly denied that any objections were invited by the Regional Transport Authority as alleged in the petition. The application of the Company for the deviation was not even published as required by the Motor Vehicles Act and the rules.

it was only included in the agenda of its meeting and was affixed on the notice board outside its office at Patiala. Respondent No.2, however, on coming to know of the meeting, appeared of its own, and raised objections stressing on the Regional Transport Authority to follow the mandatory procedure provided by section 57 and to deal with the matter after duly publishing it and inviting objections. The Regional Transport Authority rushed through the matter and without complying with the provisions of law, on 17th of September, 1957, recommended to the State Transport Authority for the deviation of one out of the three permits. The State Transport Authority also, without notifying the application and without inviting objections from the public or the operators concerned, took up the matter in the meeting on 10th of March, 1958, under the chairmanship of the Provincial Transport Controller. The respondent on coming to know of this meeting also appeared and objected to the deviation claimed by the petitioner ; the State Transport Authority, however, arbitrarily approved the recommendation of the Regional Transport Authority, Patiala, and thereby overlapped 18 miles of the respondent-Company's route. The procedure adopted both by the Regional Transport Authority and the State Transport Authority is alleged to be illegal and not warranted by any provision of law ; it is also emphasised that in the orders neither the Regional nor the State Transport Authority has specified any particular permit in respect of which the deviation is allowed. Replying to the allegation regarding the competency of the appeal, the respondent has placed reliance on a Full Bench decision of the Rajasthan High Court reported as *Jairamdas* v. *Regional Transport, etc.* (1), and has sought to distinguish the judgment of the

(1) A.I.R. 1957 Raj. 312 (F.B.)

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Madras High Court in *M. Kali Mudaliar's case* (1), the correctness of the Madras decision has also been questioned. This respondent has also objected that the petitioner having not stated facts correctly in his petition is not entitled to relief under Article 226. It has been stated that the petitioner Company held three temporary permits Nos. 165, 167 and 168, on Sunam-Budhala via Jakhepal *kacha* route. By its application, dated 21st of August, 1957, the petitioner applied to the Regional Transport Authority, Patiala, for the grant of regular permits for three years as provided by sections 57 and 58 on this route. This application was notified in the daily 'Ranjit', dated 11th of September, 1957, and objections were invited from the public. The matter was taken up in the meeting of the Regional Transport Authority on 16th of December, 1957. The respondent-Company not being affected by the grant of regular permits to the petitioner on the *kacha* route did not raise any objection. These three permits were thus regularised by the Regional Transport Authority, Patiala. It is contended that the respondent is only prejudiced by the deviation of the route illegally made in violation of the provisions of sections 47 and 57 of the Motor Vehicles Act which has resulted in overlapping the metalled route via Bhiki which is operated by the respondent-Company. In this connection it is emphasised that the deviation really amounts to the grant of a new permit in view of section 57(8) of the Motor Vehicles Act which the Regional Transport Authority was not competent to grant, in view of the directions given by the State Government, and also without complying with the mandatory provisions of section 57 of the Act and the rules framed thereunder. It has also been pleaded that the actual entry regarding deviation was made on permit No. 167, a

(1) A.I.R. 1952 Mad, 545

long time, after the acceptance of the recommendation by the State Transport Authority, on 10th of March, 1958, and in this connection it is further averred that till such time as the deviation was permitted by the Regional Transport Authority in pursuance of the letter received from the State Transport Authority, the operation of the petitioner was on the *kacha* route. Along with the reply, respondent No. 2 has also attached a plan (R. 1) showing that the variation in Sunam-Budhlada route via Bhiki substantially and in all essential particulars amounts in fact to a new route because the only common factors are virtually the starting point and the terminus.

The reply filed on behalf of the State of Punjab through the Secretary, Regional Transport Authority, also expressly asserts that the subject regarding the deviation of the permits from Sunam-Budhlada via Jakhepal route to the route via Bhiki was discussed in the meeting of the Regional Transport Authority on 17th of September, 1957, without inviting objections from the transporters or the general public. This subject-matter, according to this reply, was published in the newspapers and put on the notice board of the office as one of the items of the agenda to be discussed in the meeting. The objections, however, were heard by the Regional Transport Authority and it was resolved that one of the permits of the petitioner be deviated. This resolution is, also, expressly asserted to be, subject to the approval of the State Transport Authority which was given on 10th of March, 1958. Before giving its approval, the State Transport Authority considered the recommendation of the Regional Transport Authority and the objections raised by the Patiala Bus Service and Pepsu Road Transport Corporation, Patiala, represented by the Deputy Transport

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Controller. It is admitted that the three permits Nos. 165, 167 and 168 held by the petitioner at Sunam-Budhlada via Jakhepal route became regular in the meeting of the Regional Transport Authority held on 16th of December, 1957, and against this regularisation of three permits via Jakhepal route no appeal was filed by respondent No. 2. Permits on the prescribed forms are admitted to have been issued on 14th of March, 1958, and the deviation via Bhiki was given on regular permit No. 167 on 25th of March, 1958, after the decision of the State Transport Authority, dated 10th of March, 1958. The view of the Transport Minister, that the appeal was competent, has been pleaded to be correct.

Mr. Bhagat Singh Chawla has contended that advertisement was actually published in the 'Ranjit', Patiala, dated 30th of August, 1957, with respect to the proposed variation and objections were actually heard on 17th of September, 1957, and he admits that the recommendation was actually accepted on 10th of March, 1958, and the deviation was in fact incorporated in permit No. 167 on 25th of March, 1958. The counsel has contended that respondent No. 2 was not an aggrieved party with respect to the grant of a permanent permit nor with respect to a variation of conditions in the permit in which the deviation had been incorporated. When confronted with the provisions of section 57(8) of the Motor Vehicles Act that inclusion of a new route or routes or a new area is to be treated to be the grant of a new permit, the learned counsel dropped his point No. IV mentioned above and modified his contention by submitting that on that basis respondent No. 2 should have preferred an appeal either against the order of 16th of December, 1957, when all the three permits were regularised or against the order

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of 25th of March, 1958, when the deviation was actually entered in permit No. 167. With respect to the contention that the provisions of sections 47 and 57 of the Motor Vehicles Act were not complied with the counsel submits that there was a substantial compliance with these provisions and some technical or unimportant omissions are immaterial. In this connection he has laid stress on the fact that objections are admitted to have been heard by the Regional Transport Authority on 17th of September, 1957. The counsel for the respondents has contended that unless the State Transport Authority finally decided the matter there could not be any regularisation of a permit which could operate on the new varied route via Bhiki, with the result that on 16th of December, 1957, no question of regularisation of permit No. 167 operating on the new route via Bhiki could possibly arise. It is not disputed that the respondents could not and did not, have any grievance against the regularization of the three permits operating on the *kacha* route via Jakhepal. Some confusion has been created, in this case, by the manner in which the two applications of the petitioner, dated 9th of August and 21st of August, 1957, have been dealt with by the departmental authorities. The two advertisements published in the 'Ranjit' on the 30th of August, 1957, and 11th of September, 1957, are far from clear and they have merely added to the confusion. In the interests of justice, it is desirable that the Transport authorities take a little greater care when dealing with the rights of the claimants for permits. Had the orders of the departmental authorities and the advertisements published with respect to the application of the petitioner, been more clear and explicit, this case would have taken much lesser time before me than it has actually done. The petitioner's application, dated 9th of August, 1957, seeks the diversion of

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the route for all the three permits from Sunam-Budhlada via Jakhepal to Sunam-Budhlada via Bhiki, the actual words stated being "diversion is required by Bhiki instead of Chima". In the application, dated 21st of August, 1957, the petitioner claimed ragularization of a large number of permits including the three in question, on Sunam-Budhlada route, for a period of three years. It is important to note that, in this application, as against the permits Nos. 165, 167 and 168 Sunam-Budhlada route, it was not mentioned that these may be regularized for the deviated route. The petitioner thus cannot be deemed, as is contended by the counsel, to have claimed regularization of any permit on the deviated route, nor could the prospective objectors be considered to have notice of such claim. It may, in this connection, be kept in mind that no stage carriage permit can under the law be granted in respect of any route or area not specified in the application and every such permit has to be expressed to be valid only for a specified route or routes or for a specified area (see section 48 of the Motor Vehicles Act). On these facts, therefore, it is not possible for me to hold that the ragularization of the three permits, in any way, resulted in a regular permit for three years being granted to the petitioner on the deviated Sunam-Budhlada route via Bhiki. This regularization of the three permits would, therefore, by no means, provide grievance to respondent No. 2 so as to enjoin upon them or even to enable them to file an appeal, and which, if not filed, would in any way prejudice them in their grievance against the deviation with respect to the one permit allowed by the State Transport Authority. The observation of the Hon'ble Minister in this connection does not seem to be quite correct. The contention of Mr. Chawla on this basis is thus repelled.

With respect to the competency of the appeal against the order, dated 17th of September, 1957, before the Provincial Transport Controller, in my view, the order of the Appellate Authority, dated 21st of June, 1958, is not correct and is obviously based on a misunderstanding of the law on the subject. Section 57(8), which has a bearing on this question, is in the following terms:—

> "57(8). An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of services above the specified maximum, or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit :
>
> * * * * *".

It is true that this section does not apply to a temporary permit but what the petitioner himself claims is that his regularized permit contains a deviation from the old route and is to operate on a new route or in a new area and if this be so, then obviously what is intended to be achieved by the impugned order is a deviation, not in a temporary permit, but in a regular permit. And this is exactly the position taken by the petitioner now, but it may be argued that if the petitioner is found to have only claimed the regularization of the permit on the original route, then his claim for deviation before the Regional Transport Authority should also be considered to have been of the temporary permit. This, however, is not what the petitioner argues or claims. A temporary permit

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is effective for a limited period, which can, in no case, exceed four months,—*vide* section 62, Motor Vehicles Act. The petitioner is merely trying to take advantage of the confusion created by the manner in which his applications have been dealt with by the departmental authorities. Now section 64 of the Act deals with the right of appeal; clauses (b) and (f) are the relevant clauses which are claimed by the respondents to confer the right of appeal. Clause (b) permits any person aggrieved by the revocation or suspension of the permit or by variation of the conditions thereof to appeal to the prescribed authority. If variation of the conditions of a permit results in the petitioner operating on the route on which respondent No. 2 is operating, then it is urged that respondent No. 2 can legitimately feel aggrieved by such variation. It may, however, be contended that the words "the permit" in this clause are suggestive of the permit-holder himself alone being given the right of appeal and not every other person feeling aggrieved by such variation of the conditions. It is admitted that there is conflict of authority on this point: (See *M. Kali Mudaliar's case* (1) and *Jairamdas's case* (2). But the more liberal construction placed by the Rajasthan High Court in the above case having been followed by the Hon'ble Minister in the instant case, it is contended, and in my view with some justification, that this Court should be reluctant to interfere under Article 226 of the Constitution. More so when this construction only gives a right of appeal to an obviously aggrieved party; to interfere in such a case may amount to setting aside an order which has promoted the cause of justice. However, at least under clause (f) of section 64 an association providing transport facilities which has opposed the grant of a permit

(1) A.I.R. 1952 Mad. 545
(2) A.I.R. 1957 Raj. 312 (F.B.)

is clearly considered to be aggrieved by such grant or by any condition attached thereto and is, in the circumstances, entitled to appeal against the impugned order; the Appellate Authority appears to have failed to consider the applicability of this clause and has thus deprived an aggrieved party of a right of appeal. But the question may also be considered from another point of view. I am at this stage concerned with the order of the Hon'ble Minister on revision. The powers of the Government under section 64(h) of the Motor Vehicles Act as amended by the East Punjab Act No. XXVIII of 1948 are very wide. It lays down that "Government may ask the Appellate Authority prescribed under the Rules framed under this section to forward for its consideration any of the appeals decided by the Appellate Authority and may alter, revise, cancel or uphold any such orders". In this context the orders passed on any appeal decided by the Appellate Authority are subject to scrutiny by the Government and there is no qualification or restriction imposed on the power of the Government in altering, revising, cancelling or upholdinig the orders of such Appellate Authority. The decision holding an appeal not to be competent is also, in my view, covered by the expression "appeal decided by the Appellate Authority" and is thus within the ambit of section 64(h). An appeal held to be incompetent does not, merely on that account, cease to be an appeal decided by the Appellate Authority. Sinha, J., in *The New Prakash Transport Co. Ltd* v. *The New Suwarna Transport Co.. Ltd.* (1), approvingly quoted the following observations from *Veerappa Pillai* v. *Raman and Raman Ltd.* (2) :—

> "Thus we have before us a complete and precise scheme for regulating the issue

(1) A.I.R. 1957 S.C. 232
(2) A.I.R. 1952 S.C.R. 583

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of permits, providing what matters are to be taken into consideration as relevant, and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedies for the redress of grievances or the correction of errors are found in the statute itself and it is to these remedies that resort must generally be had."

The power of revision conferred on the Government by section 64(h) is no less comprehensive than the power conferred by section 64-A inserted in the Motor Vehicles Act by the Amending Act No. 100 of 1956 which was considered by the Supreme Court in *Raman and Raman Ltd.* v. *State of Madras and another* (1), where it was observed:—

"Before S. 64-A was inserted into the Act by an Act of the legislature of the State of Madras, it might have been possible to contend that the order of a Regional Transport Authority which had not been appealed against and the order of the appropriate authority under S. 64. where an appeal had been made, were incapable of interference by the State Government for lack of statutory authority. By enacting S. 64-A, the legislature clearly intended that that should not be so and that the State Government should have the powers to intervene, if it was satisfied that the order in question was either illegal, irregular or improper. In clothing the State Government with such power the legislature clearly intended the State Government to decide the issue as to whether any order

(1) A.I.R. 1956 S.C. 463

in question was illegal, irregular or improper. It would not be open to a Court exercising the power of *certiorari* to intervene merely because it might be of the opinion that the view taken by the State Government was erroneous."

The section, that I am dealing with in the present case, as stated above, gives a far greater latitude to the Government than was given by the section construed by the Supreme Court. It is, therefore, not competent to the petitioner in the present case to successfully assail the merits of the order of the Hon'ble Minister in writ proceeding. In this connection, as observed by a Division Bench of this Court in *Arjan Singh* v. *The Custodian-General of Evacuee Property, New Delhi, and others* (1), although this Court has power to compel a judicial or a *quasi*-judicial tribunal to perform a function imposed upon it by law, it has no power to correct the decision of a tribunal which is erroneous in point of law or to control the discretion and judgment of such tribunal acting within the scope of its judicial or *quasi*-judicial power.

The unreported decision in Civil Writ No. 20 of 1958, is hardly of any avail. As stated above, the regularization of the three permits cannot on the present record be construed to be tantamount to granting regular permit on the deviated route. The deviation was allowed in pursuance of the order of the Regional Transport Authority as approved by the State Transport Authority of which the Provincial Transport Controller was the Chairman. This order of the Regional Transport Authority, as affirmed by the Appellate Authority has been cancelled and set aside by the Hon'ble

(1) A.I.R. 1957 Punj. 206

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Minister. The deviation thus cannot, on the facts of the present record, have any independent existence, and its origin is traceable to the orders of the Regional Transport Authority alone. In my opinion, therefore, it (the deviated permit) must be held to be subject to the implied condition that if the order of the Regional Transport Authority as approved by the State Transport Authority is set aside by higher authorities, then the deviation in question must also automatically fall with it. In view of the above discussion it is not possible for me to sustain the petitioner's contention that the deviation should be deemed to have been allowed to him on the basis of an application for a new permit which should be deemed to have been dealt with and disposed of in accordance with the provisions of section 57 of the Motor Vehicles Act. Not only is this case not contained in the present writ petition but it is also difficult to find support for this contention from the record. This position is hotly controverted by both the respondents including the Secretary, Regional Transport Authority, and it is well established that in proceedings under Article 226 of the Constitution it is not open to this Court to hold an elaborate enquiry into disputed and complicated questions of fact, more so when the right in question is created by a statute and the mode of redress is also provided therein. It is undoubtedly true that public benefit is one of the most important factors to be considered in granting permits under the Motor Vehicles Act. The Deputy Commissioner with whom the recommendation originated in the instant case was, however, not the officer having jurisdiction over a major part of the area for which he had made the recommendation ; his opinion, therefore, can hardly carry much weight in so far as the benefit of the public of the area to be covered by the deviated route is concerned. In

this view of the matter, the order of recommendation of the Deputy Commissioner loses much of its importance, at least it does not make the Minister's order vulnerable in the present proceedings. It is, however, contended by Mr. Chawla that the original route via Jhakepal was only a fair weather route and traffic on it remains suspended for months during the rainy season. This assertion is being controverted by the respondents at the Bar who allege that it is only during a short period that traffic on this route is obstructed. I, however, find that the relevant assertion in this connection made in para 2 of the petition has not been expressly controverted in the written statement. But whatever be the true position, this is a factor which was for the departmental hierarchy of authorities to take into account while considering the question of deviation.

As noticed above, the Minister has merely adopted the view approved in *Jairamdas's case* (1), which, in my opinion, he was fully competent to do. Even if the view of law as adumbrated in the Rajasthan case be considered to be incorrect, it does not, in my opinion, call for interference by this Court in writ proceedings. A writ of *certiorari* as is well settled is not a writ of course but it can be justified only in cases of excess of authority or flagrant and palpable violation of law which have in addition caused grave and manifest miscarriage of justice. Mere mistakes of fact, or even of law, within the power and competence of the administrative tribunals, even in the determination of rival claims, are by themselves not subject to scrutiny under Article 226 of the Constitution (see *Raman and Raman Ltd.* (2), *and D. N. Banerji* v. *P. R. Mukherjee and others* (3). The matter of grant of permits in the present case had been dealt with

(1) A.I.R. 1957 Raj. 312
(2) A.I.R. 1956 S.C. 463
(3) A.I.R. 1953 S.C. 58

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by the subordinate transport authorities in a manner which is far from commendable or even satisfactory. This has enabled the petitioner to raise some hyper-technical grounds in these proceedings questioning its consideration by the final revisional authority under the Motor Vehicles Act. Such bare technicalities do not, in my view, merit any serious consideration by this Court as they are designed and calculated to shut out determination by the highest departmental authority, of the proprietory of the orders passed by the inferior tribunals. On the facts and circumstances of the instant case there does not appear to be any failure of justice and interference under Article 226 of the Constitution is, in my opinion, not called for.

For the reasons given above, this writ petition fails and is hereby dismissed with costs.

B.R.T.

INCOME-TAX REFERENCE.

Before A. N. Bhandari, C. J., and Bishan Narain, J.

BHAGWANT SINGH,—*Petitioner.*

versus

COMMISSIONER OF INCOME-TAX,—*Respondent.*

Income-tax Reference Case No. 9 of 1956.

1959

May, 28th

Income-tax Act (XI of 1922)—Karta of a joint Hindu family investing funds of the family in a firm to become partner therein—Salary drawn as such partner—Whether his personal income or the income of joint Hindu family—Partnership—Nature and ingredients of—Partners—Position of, vis-a-vis each other—Indian Partnership Act (IX