Before S. S. Sandhawalia and B. S. Yadav, J.

JAIDEV SINGH and another,—*Petitioners.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 5153 *of* 1981.

December 22, 1981.

Motor Vehicles Act (*IV of* 1939)—*Sections* 54, 55, 56 57, 60 *and* 63 (*II*)—*Order granting permits under the Act—Nature of—Whether quasi-judicial—National permits sanctioned after following the procedure prescribed by section* 57—*Granting authority—Whether could call upon the grantees to deposit their permits with a view to review the order on merits.*

Held, that proceedings before Tribunals issuing permits under the Motor Vehicles Act, 1939 are quasi-judicial in character. (Para 10).

Held, that there is no provision in the Act, which may vest the State Transport Commissioner or similar authority to review the quasi-judicial decisions sanctioning permits under the Act and nor is there any inherent power or jurisdiction in a judicial or a 'quasi-judicial Tribunal to reopen a decided cause and set matters right by altering the decision merely on discovering an error in it on the merits. The persons in whose favour permits are granted could not, therefore, be called upon to deposit them with a view to enable the sanctioning authority to review the order on merits. (Para 10).

Petition under Articles 226/227 *of the Constitution of India praying that a suitable writ, order or direction may be issued to the following effect :—*

(i) *The records of the case may be summoned;*

(ii) *the operation of the notices issued to the petitioners be stayed ;*

(iii) *That a writ of prohibition be issued to the respondents prohibiting them from implementing the order in respect of the deposit of the National permits with him on 16th November,* 1981.

(iv) *Ad interim order may be issued staying the operation of the impugned notices;*

(v) *Dispense with the issuance of notices of Motion and production of certified copies.*

H. L. Sibal, Senior Advocate with J. K. Sibal, *for the Petitioners.*

Harbhagwan Singh, Advocate-General, Haryana with G. L. Batra, Senior Deputy Advocate-General, *for the Respondent.*

JUDGMENT

B. S. Yadav, J.

(1) This judgment will dispose of C.W. Nos. 5153, 5152, 5300, 5214, 5275, 5304, 5219, 5154, 5311 and 5233 of 1981 as common question of law are involved in all these cases. Counsel for the parties are agreed that judgment in C.W. 5153 of 1981 will cover all these matters, as such I would give facts of that case only.

(2) The Government of India had allocated a certain number of national permits to the State of Haryana for being granted to the eligible persons. Out of that number the State of Haryana allocated some to the Ambala region and some to Hissar and Faridabad regions for being granted to such persons. In this case we are concerned with the Ambala region. The Regional Transport Authority, Ambala, issued notices inviting applications and those were published in local newspapers. Some applications were received. Substance of those applications was later on published in the newspapers and displayed in the office of the State Transport Commissioner, Haryana, for submission of representations against those applications. As no representation was received either in the office of the Secretary, Regional Transport Authority or the State Transport Commissioner within the stipulated period, the applicants were summoned on 23rd June, 1979 and 19th July, 1980

to ascertain their *bona fide* as public carrier operators and to scrutinize the relevant records. Their claims for the grant of national permits were assessed. After scrutiny of all the cases, national permits were granted on the basis of the assessment made by the State Tarnsport Commissioner to 12 persons (including present petitioners) mentioned in the order Annexure P. 1 passed by the said officer.

(3) On 2nd November, 1981 the State Transport Commissioner issued separate notices to the present writ petitioners and others directing them to deposit their permits with the Secretary, Regional Transport Auhority, Ambala, immediately, but not later than 16th November, 1981. It was further ordered that in case they had any objection to the deposit of the said permits, they could appear before him on 9th November, 1981. That order was passed for the following reasons:—

> "And whereas certain writ petitions were filed in respect of the grant of these permits and the orders passed by the State Transport Commissioner were challenged on the various grounds including that the petitioners have, as good, if not better a claim over those who have been granted/issued the permits.

In view of the order passed by the High Court in the above cases, it has become imperative to consider the whole matter of grant of permits afresh."

(4) Objections were filed before the said Transport Commissioner,—*vide* **Annexure P. 3. After hearing the objections,—*vide*** order dated 13th November, 1981 said Transport Commissioner rejected them and ordered that in case the permits were not deposited by 16th November, 1981 in terms of the notices issued to the grants, the Regional Transport Authority Ambala, would take step to collect those permits and stop further operation against those permits till the whole matter was decided afresh. Exhibit R. 1 is the copy of that order.

(5) The present petition was filed after the notice Annexure P. 2 was issued. The petitioners are challenging the said notice and have *inter alia* pleaded that notice Annexure P. 2 amounts to review of the order passed earlier about grant of the permits after

ascertaining the *bona fides* of the various applicants and assessing their suitability and thus that order is of *quasi* judicial nature and, therefore, the State Transport Controller cannot review his own order.

(6) The State of Haryana (respondent No. 1) and State Transport Commissioner, Haryana, (respondent No. 3) have contested this petition and have filed a reply. It was pleaded by them that certain petitions were filled in respect of the grant of national permits and when those writ petitions came up for hearing before this Court the Government offered to examine the whole matter afresh so as to remove any bona fide doubts from the minds of those petitioners and other similarly situated persons and thereupon those writ petitions were dismissed. In view of those orders, it became imperative to consider the whole matter for the grant of permits afresh and therefore, the persons to whom permits had been granted, were issued notices to deposit them with the Secretary, Regional Transport Authority concerned in order to facilitate the matter regarding reconsideration of the whole case in compliance with assurance given in this Court. It has also been pleaded that the objections raised by the petitioners against the order about the deposit of permits were duly heard and thereafter order (copy of which is Exhibit R. 1) was passed.

(7) At the outset the learned Advocate General, Haryana, raised two preliminary objections. The first was that the petitioners in whose writs the Government had given the undertaking, ought to have been made parties to the present petition because their rights would be affected. The second was that the present petitioners ought to have filed appeal against the previous orders.

(8) To appreciate the above preliminary objections of the learned Advocate General, it is necessary to give some further facts. Some persons were not granted national permits in Faridabad region. They filed Civil Writ Petition No. 4133 of 1981 and other writ petitions in this Court alleging violation of Article 14 of the Constitution of India as also contravention of the provisions of the

Indian Motor Vehicles Act. After notice of motion to the Haryana State the following order was passed:

"The learned Advocate General, Haryana, states as follows:—

"To meet the objections, the Government has decided to reconsider afresh all the applications, including those who have been given the permits, filed within the prescribed time for the whole of the State, for the grant of these permits."

In view of this, the learned counsel for the petitioner does not press this petition. Dismissed."

The first preliminary objection of the learned Advocate General does not appear to have any force. Civil Writ No. 4133 of 1981 related to the non-grant of national permit in Faridabad region. This is an admitted fact between the parties that no applicant of Ambala or Hissar region had filed any writ in this Court about the non-grant of national permit to him. The present petitioners were not parties to that writ. We, therefore, fail to appreciate how the petitioners of C.W. 4133 of 1981 and other connected cases are necessary parties to the present writ. It would not be out of place to mention here that this objection has not been taken by the respondents in their reply.

(9) To elaborate his second preliminary objection learned Advocate General argued that the order in Civil Writ No. 4133 of 1981 was passed after judicial process had come in motion i.e. notice of motion had been issued to the State and, therefore, order passed in that writ could not be challenged in the present writ and it ought to have been challenged in appeal. This objection also does not appear to have any force. In writ No. 4133 of 1981, no order affecting the rights of the parties was passed by this Court. The then learned Advocate General made a statement and on the basis of that statement the writ petitioner withdrew that writ. It was a sort of compromise arrived at between the parties. If the parties had compromised outside the Court, even then similar would have been the situation. Moreover, in the present writ the petitioners are not challenging the validity or propriety of the order passed in that writ. Their only grievance is that the State Government or the State Transport Commissioner cannot require them to deposit the permits already granted to them and further that the order granting permits to them cannot be reviewed.

(10) Now, we come to the merits of the case. Sections 47 to 59-A of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') deal with procedure to be adopted by Regional Transport Authority in considering application for the grant of stage carriage permits or contract carriage permits or private carrier permits, and about the duration and renewal of those permits and the conditions which could be attached to the permits. Section 60 deals with the cancellation and suspension of permits. Admittedly in the present case action is not being taken under Section 60 of the Act. Learned counsel for the petitioners has drawn our attention to the provision of Section 63 of the Act. Sub-section 11 of that section reads as follows:—

> "63(11). Notwithstanding anything contained in sub-section (1), but subject to the rules that may be made by the Central Government under sub-section(15), the appropriate authority may, for the purpose of encouraging long distance inter-state road transport, grant, in a State, national permits to the owners of motor vehicles who uses, or intended to use, such vehicles for the carriage of goods, for hire or reward, in respect of such number of motor vehicles as the Central Government may specify in this behalf in relation to that State and the provisions of Sec. 54, 55, 56, 57, 58, 59, 50-A, 60, 61 and 64 shall, as far as may be, apply to or in relation to the grant of national permits;
>
> Provided that number of national permits specified for a State shall not be varied or modified except after consultation with the concerned State Government."

Sub-sections 12 and 13 of Section 63 of the Act lay down whom national permits are to be issued and up to what number. Sub-Section 15 gives the Central Government power to make rules with regard to sub-section 11. It is not in dispute in the present case that the national permits were granted to the present petitioners after following the procedure laid down under the Act. Learned counsel for the petitioners has argued that the Regional Transport Commissioner while granting the national permits to the petitioners exercise *quasi* judicial functions and, therefore, he has no right to ask the petitioners to deposit the permits for the purpose of

reviewing them. To support his argument that the Authority granting permits acts in a quasi judicial manner he has cited *M/s Raman and Raman Ltd.* v. *The State of Madras and others,* (1) wherein there Lordships in para 5 have remarked.

> "Proceedings before tribunals issuing permits are quasi judicial in character."

He has also cited *Sri Ram Vilas Service (P) Ltd.* v. *C. Chandrasekaran and others,* (2) where their Lordships remarked.

> "In entertaining writ petitions, the High Court must not lose sight of the fact that decisions of questions of fact under the Motor Vehicles Act have been left to the appropriate authorities which have been constituted into quasi-judicial Tribunals in that behalf, and so, decisions rendered by them on all questions of fact should not be interfered with under the special jurisdiction conferred on the High Courts under Art. 226, unless the well recognized tests in that behalf are satisfied."

To show that order of *quasi* judicial nature cannot be reviewed unless such a power is given under the Act concerned, he has cited *Deep Chand and another* v. *Additional Director, Consolidation of Holdings,* (3). where it was remarked by a Full Bench of this Court.

> "It is, in my opinion, profitable here to refer to a recent decision of the Supreme Court in *Mrs. V. G. Peterson* v. *O. V. Forbes etc.* and reproduce the following instructive observations:—
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> "When, however, we find that the Court acted without jurisdiction in attaching the property and in any, case, in ordering such property to be handed over to Government we have to remember the other great principle which was stated many years ago in these words by *Cairns, L.C. in Rodger* v. *Comptoir D. Escomple de Paris, at p.* 475.

(1) AIR 1959 S.C. 694.
(2) AIR 1965 S.C. 107.
(3) 1964 P.L.R. 318.

One of the first and highest duties of all courts is to take care that the Act of the Court does no injury to any of the suitors. To say that, we are aware, is not to say that whenever a Court after wrongly deciding a case between two parties discovers that the decision was wrong it has the inherent jurisdiction to re-open the matter and to set matters right by altering the decision. In many cases when the Court had made a mistake the party who has suffered for that mistake is without any remedy except what he can get in accordance with the provisions of appeal, revision or review As the Courts are careful to point out again and again, Courts of Law have the jurisdiction to decide wrongly as well as rightly and the mere fact that the decision is wrong does not give a party a remedy." These observations, in my opinion, clearly negative any inherent power of jurisdiction in a judicial, and if I may say so with respect also in quasi-judicial tribunal, to re-open a decided cause and set matters right by altering the decision merely on discovering an error in it on the merits.

To concede such a wide power of review would, in my opinion, introduce into judicial and quasi-judicial decisions, disconcerting element of permanent uncertainty and unpredictability tending to give an impression of quasi judicial lawlessness, which a cannot persuade myself to uphold. If Courts do not possess such a wide and sweeping power it is difficult to accede such a wide power in statutory judicial or quasi-judicial tribunals."

In *Harbhajan Singh* v. *Karam Singh and others*, (4) their Lordships were dealing with East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. In that case the question for determination was whether the Director of Consolidation of Holdings had power to review his previous order. Their Lordships remarked:—

> "There is no provision in the Act granting express power of review to the State Government with regard to an order made under S. 42 of the Act XXX. It follows, therefore,

(4) AIR 1966 S.C. 641.

that the order of the Director dated 29th August, 1948 is ultra vires and without jurisdiction and the High Court was right in quashing that order by the grant of a writ under Art. 226 of the Constitution." It is not disputed in the present case that there is no provision in the Act which may vest the State Transport Commissioner or similar Authority to review the quasi-judicial decisions.

(11) The learned Advocate General has cited *Shib Prasad Mondal v. The State of West Bengal and others* (5), wherein it was remarked.

> "In my opinion it is unnecessary to draw a close parallel with judicial proceedings. The R.T.A. carries out duties which are administrative but in certain aspects of a quasi-judicial nature. I do not see why, when it finds that an order has been made inadvertantly overlooking that the law had meanwhile been changed, that order cannot be rectified. All that the R.T.A. purported to do was to rectify a gross mistake which appeared on the face of the proceedings. It is not to be considered with the same strictness and formality as a review in a purely judicial proceeding. I should think that for an administrative body sometimes carrying out quasi-judicial functions, there is an implied power to rectify such mistakes. I, therefore do not find that the order dated 10th April, 1958 is defective."

It is not the case of the learned Advocate General that in the present case the State Transport Commissioner committed any mistake while granting the permits to the present petitioner. If a permit has been granted and the State Transport Commissioner wants to cancel or suspend it then he has to follow the procedure laid down under section 60 of the Act.

(12) The learned Advocate General has argued that the State Transport Commissioner has not cancelled the permits granted to the petitioners and has only recalled the previous order to the extent that they have been asked to deposit the permits for re-consideration. We are also of the opinion that the State Transport Commissioner

(5) AIR 1959 Calcutta 543.

cannot recall the previous order. In this respect, reference may be made to *Deep Chand and another* v. *Additional Director, Consolidation of Holdings* (Supra) where it was remarked,

> "The Contention that power to recall an erroneous order is distinct and different from power of review and is, therefore, inherent in every quasi-judicial tribunal, is supported neither by status nor by any recognized principle or precedent, and indeed the difference appears to be too tenuous to form the basis of a sound argument. In the absence of statute, persuasive principle or binding authority, I am as at present advised, unable to persuade myself to sustain the bald contention, for, in my view, power to recall an order like the one before us is only another name for the power to review it, and therefore, cannot be claimed as a separate and distinct jurisdiction as suggested."

Hence, the State Government or the State Transport Commissioner has no authority even to recall the previous order.

(13) In view of the above discussion, we allow the present petition and quash the orders Annexures P. 2 and R. I. No order as to costs.