

Babu Ram Sharma vs State Of Uttar Pradesh And Ors. on 27 April, 1953

Equivalent citations: AIR1953ALL641, AIR 1953 ALLAHABAD 641

JUDGMENT

Mootham, J.

1. This is a petition under Article 226 of the Constitution in which the petitioner prays, first for the issue of a writ of certiorari to quash two orders of the Regional Transport Authority, Meerut, dated respectively the 21st July and the 3rd November, 1951, and an order of the State Transport Tribunal dated 6-8-1952, and secondly, for a writ of mandamus to issue to the State Transport Authority, Lucknow, to compel it to accept the replacement of one motor vehicle by another.

2. The petitioner is engaged in the business of plying stage carriages and he has been doing so since the year 1930. The facts upon which the petitioner relies are set out in the affidavit which accompanies his petition; and it is of importance to observe that no counter-affidavit has been filed. He states that in September, 1949, the Provincial Transport Authority was prepared to sanction the issue to him of a temporary permit, but as the petitioner had sold the vehicle which previously he had owned and was not possessed of sufficient money to purchase a new vehicle, he approached a financier named Chatter Sen for financial assistance. On the 23rd September Chatter Sen purchased a stage carriage for the sum of Rs. 16,500/- and on the 29th October -- learned counsel are agreed that the date (?) September" in paras. 9, 10 & 11 of the affidavit should be the 29th October -- he sold the vehicle to the petitioner, and as a form of security for the protection of Chatter Sen the petitioner executed on that date four documents, namely

(i) an agreement wherein, after reciting that he had resold the stage carriage to Chatter Sen for Rs. 19,000/-, the petitioner undertook to be responsible for such application and affidavit as may be required to complete the transfer, and Chatter Sen undertook to pay such taxes on the vehicle as might become due;

(ii) a letter addressed to the Regional Transport Officer, Meerut, stating that the stage carriage had been sold to Chatter Sen;

(iii) a power of attorney in favour of Hukum Chand, the son of Chatter Sen, authorising him to draw petrol for vehicle, to deposit the road taxes, renew the permit and to file applications and affidavits on behalf of the petitioner in connection with the vehicle; and

(iv) a form of declaration intended to "serve as evidence and be of use when needed" acknowledging that he had sold the vehicle and the permit therefor, to Chatter Sen for Rs. 19,000/- and had

received this amount.

3. The petitioner says that when he executed these documents on the 29th October, the documents were not dated and blanks were left to be filled in when the registration number of the vehicle and the number of the permit were known. No date has been inserted in letter to the Regional Transport Officer. The 9th November, 1949, was subsequently inserted as the date of execution of the agreement and the power of attorney and the receipt are now dated 29-11-1949. The petitioner says that these dates were inserted by Chatter Sen. The petitioner further states in para. 7 of his affidavit that similar documents had been executed by him at the request of Chatter Sen when he had acquired vehicles from the latter in 1943 and 1944 and that after he had paid the purchase price the documents were all returned to him.

4. On the 29th October -- the date upon which the petitioner says the abovementioned documents were executed -- a temporary permit No. 43M(T) was issued to him, and on the 10th November of that year the vehicle was registered in the petitioner's name and given the registration No. USL 3167.

5. In May 1950, this Court in the case of --'Moti Lal v. The State of Uttar Pradesh', AIR 1951 All 257 (FB) (A) commented adversely on the practice of the Transport Authorities in issuing only temporary permits, and as a consequence of the judgment in that case the Motor Vehicles Department invited the holders of temporary permits to apply for permanent permits. The petitioner did so, and on 30-9-1950, his application was published in the official gazette in accordance with the provisions of Section 57, Motor Vehicles Act. No objection to the application having been lodged, the petitioner was granted a permanent permit on 13-12-1950. The permit was numbered 133 and was declared to be valid up to 13-12-1953.

6. The petitioner says that Chatter Sen then started creating trouble and tried forcibly to stop the petitioner from running the stage carriage No. USL 3167, and that as a consequence of this the petitioner applied to the Transport Authorities on 15-1-1951, to be allowed to replace vehicle No. USL 3167 by another vehicle No. USL 3810. This application was allowed by the Regional Transport Officer subject to confirmation by the Regional Transport Authority.

7. On 23-1-1951, Chatter Sen filed a suit against the petitioner in the Court of the Civil Judge, Meerut, for a declaration that he was the owner of permit No. 133 and he applied for an interim injunction to restrain the petitioner from plying vehicle No. USL 3167. The Court refused to grant an interim injunction and its decision was upheld by this Court on appeal. On the 31st January Chatter Sen also addressed a letter to the Regional Transport Authority objecting to the petitioner's application for the replacement of one vehicle by another on the ground that he was the sole owner both of vehicle No. USL 3167 and of permit No. 133.

8. On 21-7-1951, the petitioner's permit No. 133 was suspended by the Regional Transport Authority and notice was issued to him to show cause why it should not be cancelled. At the same time the Regional Transport Authority refused to allow the petitioner's application for replacement.

9. On 3-11-1951, the Regional Transport Authority, Meerut, made the following order:

"The original permit was Mt. No. 43 covering vehicle No. 3167. It is established by deed dated 9-11-49 that Babu Ram sold the vehicle and the permit in favour of L. Chattersen. Chatter Sen has all along been in possession of that vehicle and has been running it. Babu Ram could not sell the vehicle and the permit without obtaining the permission of the R. T. A. Blanks to fill in number, etc., were only left in the deed dated 9-11-49. Babu Ram later wrote out an application addressed to the R. T. O. that he has sold the vehicle and permit to Chatter Sen. Babu Ram is not, therefore, entitled to retain the permit. The permit No. 133 is a successor of permit No. Mt 43. Permit No. 133 is cancelled. The question of transfer of permit does not arise as no permission for transfer was taken."

Against that order the petitioner appealed to the State Transport Authority which heard the appeal on 6-8-1952. The State Transport Authority had properly cancelled the permit No. 133 under Section 60 (d), Motor Vehicles Act, on the ground that the permit was obtained by misrepresentation. It also held that at the time when the petitioner asked for the replacement he was not in possession of vehicle No. USL 3167, and that, therefore, the permit was liable to cancellation under Section 60(c) of that Act. It accordingly dismissed the appeal.

10. The petitioner contends that at all material times he was in possession of the vehicle and he denies that he obtained the permit, No. 133 by any fraud or misrepresentation. He says that there is no evidence to support any finding to the contrary and that this Court can and should give him the relief which he seeks on the ground that the order is vitiated by an error apparent on the face of the record and that it amounts to a violation of the principles of natural justice.

11. It is common ground that on the 29th October the motor vehicle USL 3167 was sold by Chatter Sen to the petitioner and that the latter was given possession of it. The petitioner swears, that on that date he signed the several documents to which I have referred although the documents were not then dated and blanks were left for the insertion of certain particulars. He also swears that these documents were executed solely for the purpose of affording Chatter Sen security for the payment by the petitioner of the purchase price of the vehicle. There is, as I have said no counter affidavit, the only evidence to which the opposite parties can refer in order to disprove the statements made by the petitioner being the documents themselves. But the documents are, in my view, clearly consistent with the petitioner's, version of what occurred, and I find it hard to appreciate for what purpose the vehicle was admittedly sold to the petitioner if on the same day he resells it to his vendor for the same price. Be that as it may, the question which is of importance is not the legal title to the vehicle but who was in possession of it, for the right to obtain a permit depends on possession and not ownership: -- 'Verappa Pillaj v. Raman and Raman Ltd.', AIR 1952 SC 192 (B).

Now it is clear that the petitioner was in possession of the vehicle on the 29th October; according to his affidavit (para. 17) he was in possession in January 1951, and that that was as appears clearly to be established by the fact that it was in that month that Chatter Sen tried unsuccessfully to obtain from the civil Court an injunction to prevent him from using the vehicle. I can find no evidence

whatever to show that the petitioner was not in fact in possession of the vehicle at all material times. Any finding, therefore, that the Regional Transport Authority was entitled to cancel the permit under Section 60 (c) is, in my opinion, unsupported by any evidence. Nor can I find any evidence to show that the applicant obtained the permit No. 133 fraudulently or by misrepresenting: that he was in possession of stage carriage' USL 3167 when that was not the case.

Our attention has been drawn to the application form P.St.S.A. which is the form of application for a permit applicable in the present case under Rule 50(a)(ii), U. P. Motor Vehicles Rules, 1940. It is pointed out to us, and I think correctly, that fraud or misrepresentation could arise only in respect of the particulars to be entered in either Clause (10) or Clause (14) of this application. Clause (10) requires the applicant to give particulars of any stage or contract carriage permit valid in the State which is held by him. On the date on which the application for a permanent permit was made the petitioner held a temporary permit, No. 43 M. (T). In Clause (14) of the application the applicant is required to state whether he was then in possession of the vehicle in respect of which the permanent permit was applied for. The evidence in my view is all one way and shows that the petitioner was in possession of the vehicle USL 3167.

12. The Regional Transport Authority and the State Transport Tribunal are administrative bodies exercising quasi-judicial functions as regards the issue and cancellation of permits. I am fully conscious of the fact that this Court is not in the exercise of its powers under Article 226 of the Constitution entitled to usurp the jurisdiction vested in those bodies or to constitute itself a Court of appeal from their decisions. This Court would have no power, in my view, save possibly in very exceptional circumstances, to interfere with the decision of the State Transport Tribunal on a question of fact in any case in which there is conflict of evidence. But that, in my judgment, is not the case here, for as I have said I have been unable to find any evidence that the petitioner was not in possession of vehicle USL 3167 at material times or that he obtained permit No. 133 by fraud or misrepresentation. The result is, therefore, that the Regional Transport Authority and the State Transport Tribunal have arrived at a finding of fact which is not only unsupported by any evidence but is contrary to such evidence as there is; and to come to a finding of fact in the absence of any evidence amounts, in my view, to an error of law if not to a violation of the principles of natural justice. An error of law apparent on the face of the proceedings is recognised in England as good ground for the issue of an order of certiorari; -- 'R v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw', (1952) 1 All E R 122 (C), and although our attention had not been drawn to any case in India in which the same view has expressly been taken it would appear to be in accordance with the pronouncement of the Supreme Court in -- 'AIR 1952 SC 192 at p. 195 (B)' where Chandrasekhara Aiyar, J. delivering the judgment of the Court, said:

"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record.."

13. For the reason I have stated I am of opinion that the petitioner is in this case entitled to relief, and I would direct the issue of a writ of certiorari quashing the orders of the Regional Transport Authority dated the 21st July and the 3rd November, 1951, and the order of the State Transport Tribunal dated 6-8-1952.

14. As regards the second of the petitioner's prayers, I do not think it would be proper for this Court to direct the State Transport Tribunal to accept the replacement of vehicle USL 3157 by vehicle USL 3810, but I think that this Court can properly direct that that authority should now proceed to consider the petitioner's application for replacement on its merits. The petitioner is entitled to his costs.

Gurtu, J.

15. This is an application under Article 226 of the Constitution of India. The applicant prays that a writ of 'certiorari' or such other writ, order or direction, as the Court may deem fit, be issued whereby the orders of the Regional Transport Authority dated 21-7-1951 and 3-11-1951 as also the order of the State Transport Tribunal dated 6-8-1952 be cancelled. The applicant also prays that a writ of mandamus be issued to the opposite party No. 3 commanding him to accept the replacement of vehicle No. USL 3157 by USL 3810 and to allow the applicant to run the same and to return the permit.

16. The applicant is an operator who has been plying motor stage-carriages on permits since the year 1930. In September 1949, the Provincial Transport Authority decided to issue temporary permits which the applicant desired to apply for. The applicant was not then possessed of enough money to purchase a stage-carriage to enable him to apply and he approached one Lala Chatter Sen for financial assistance. On 23-9-1949 Lala Chatter Sen purchased a stage-carriage bearing temporary Registration No. 476 T from India Automobiles, Delhi, for a sum of Rs. 16,500/-. The aforesaid vehicle was on 29-10-1949 transferred to the applicant, the fact of sale being endorsed on the present receipt issued by the Indian Automobiles to Lala Chatter Sen.

17. At the same time, the applicant, as first party, and Lala Chatter Sen, as second party, executed an agreement wherein the applicant stated that for a consideration of Rs. 19,000/-, the applicant had re-sold the said stage-carriage under a receipt to Lala Chatter Sen. It was stated in that agreement that the parties would be bound by the terms of the agreement which, 'inter alia' were that the applicant would have no concern with the permit of the stage-carriage or the stage-carriage itself and that when an application for transfer was made, the applicant would make the necessary affidavit. It was also agreed that Lala Chatter Sen would, in every way, be the owner of the stage-carriage and that the applicant would have no objection thereto and further that Lala Chatter Sen would have the right to sell the said stage-carriage.

18. This agreement was executed, according to the applicant, on 29-10-1949, the space for filling in the permit number later when assigned and the Registration number also when assigned being left blank. These numbers, according to the applicant when subsequently assigned were filled into the agreement. At the same time, according to the applicant, an application addressed to the Regional

Transport Officer. Meerut, was also signed by him wherein it was stated that the stage-carriage had been sold and that the name of Lala Chatter Sen should be substituted on the permit and the Registration.

19. A power of attorney was also executed by the applicant in favour of Shri Hukum Chand Jain, son of Lala Chatter Sen, authorising Hukum Chand Jain to draw petrol ration of the stage carriage, deposit the road taxes, renew the permit and fitness of the vehicle and further authorising him to file applications and affidavits on behalf of the applicant in connection with the stage-carriage.

20. On the same day, the applicant gave a receipt for the purchase-money received in respect of the sale of this stage-carriage, including the permit and all rights, to Lala Chatter Sen.

21. According to the applicant, all these documents were executed on 29-10-1949, although the receipt and the agreement bear the date 9-11-1949; the explanation being that the dates in the latter documents were filled in later after the Registration and permit numbers had been obtained.

22. The applicant alleges that all these documents were agreed to be returned when the money due in respect of the stage-carriage, which Lala Chatter Sen had purchased and had transferred to him, was paid to Lala Chatter Sen and that the documents were merely taken by Lala Chatter Sen as security and to safeguard his position.

23. The applicant further alleges that consequent to a judgment of this Court, which questioned the legality of the grant of temporary permits for stage-carriages which were regularly operating, applications for the issue of permanent permits were called and the applicant applied for the issue of a permanent permit in place of his temporary permit. The application of the applicant for a permanent permit was published in the U. P. Gazette, dated 30-9-1950 for any objections under Section 57, Motor Vehicles Act. No objections were, however, filed and, therefore, on 13-12-1950 a permanent permit no. 133 was granted to the applicant which was to be valid upto 13-12-1953. The applicant alleges that thereafter Lala Chatter Sen, the financier, started creating trouble and tried to forcibly stop the running of the stage-carriage which he had sold to the applicant under a receipt on 29-10-1949 and so the applicant applied on 15-1-1951 that there was a dispute about this stage-carriage no. USL 3167 and that he should be allowed to replace it by another stage carriage USL 3810. The Regional Transport Officer allowed the replacement subject to confirmation by the Regional Transport Authority.

23a. On 30-1-1951, Lala Chatter Sen objected to the replacement by an application made to the Regional Transport Authority alleging that he was the full owner of stage-carriage USL 3167 and of permit no. 133 and that he had filed a civil suit and had applied for an injunction and that, therefore, further action in replacing the vehicle be stayed pending the orders of the civil Court. Lala Chatter Sen had filed the suit on 23-1-1951, for a declaration that he was the owner of permit no. 133 present, and old 43MT, sanctioned with stage-carriage no. USL 3167, with all rights to ply. Lala Chatter Sen applied later for an 'ad-interim' injunction on which notice was issued. This 'ad-interim' injunction was, however, not granted and the High Court upheld the order of the trial Court.

24. It is then alleged that the applicant filed a reply to the application of Lala Chatter Sen on 18-5-1951 and be asked that as a civil suit has been filed, the decision of the matter by the Regional Transport Authority should remain stayed so that there might not be investigations by two Tribunals at the same time. On 21-7-1951 the Regional Transport Authority, nonetheless, passed the following order:

"Replacement of the vehicle given by Secretary R. T. A. in favour of Babu Ram is not confirmed. There is 'prima facie' evidence to show that Babu Ram sold the vehicle and the permit in favour of Chatter Sen, which he had no right to do without the sanction of the R. T. A. The vehicle and permit are suspended. Issue notice under Section 60 to Babu Ram to show cause why the permit be not cancelled. Transfer application is postponed."

On 3-11-1951, the Regional Transport Authority again considered the matter and passed the following order:

"The original permit was MT No. 43 covering vehicle no. 3167. It is established by deed dated 9-11-49 that Babu Ram sold the vehicle and permit in favour of L. Chatter Sen. Chatter Sen has all along been in possession of that vehicle and has been running it. Babu Ram could not sell the vehicle and the permit without obtaining the permission of the R. T. A. Blanks to fill in number etc. were only left in the deed dated 9-11-49. Babu Ram later wrote out an application addressed to R. T. O. that he has sold the vehicle and permit to Chatter Sen. Babu Ram is not, therefore, entitled to retain the permit. The permit no. 133 is the successor of permit no. MT43. Permit no. 133 is cancelled. The question of transfer of permit does not arise as no permission for transfer was taken."

25. From this order, an appeal was preferred to the State Transport Tribunal which by its order dated 6-8-1952 held that there was no ground to interfere with the decision of the Regional Transport Authority.

26. In this last-mentioned order the state Transport Tribunal appeared to consider that the Regional Transport Authority had cancelled the permit no. 133 under Section 60 (d), Motor Vehicles Act, on the ground that the permanent permit was obtained by misrepresentation as the temporary permit had been sold when the permanent permit was applied for. The Tribunal also observed that when the applicant had asked for replacement he was not in possession of the stage-carriage No. 3167 and that the Regional Transport Authority was entitled to cancel the permit also under Section 60 (c) of the said Act.

27. The order does not appear to determine whether the applicant was in possession of the stages-carriage when he applied for the permanent permit.

28. Learned counsel for the applicant contends that the permit could not be cancelled either under Sub-clause (c) or (d) of Section 60.

29. So far as Section 60, Sub-clause (c) is concerned, the submission of learned counsel for the applicant is that the applicant, at no time, ceased to possess the stage-carriage no. 3167 covered by the permit. He urges that the state Transport Authority, in its order dated 6-8-1952, has not stated the ground on which it came to the conclusion that the applicant was not in possession of the stage-carriage no. USL 3167, when he applied for replacement. Attention is drawn by learned counsel to para. 17 of his present affidavit which runs as follows:

"That subsequently L. Chatter Sen, financier, created trouble and tried to forcibly stop the running of the stage-carriage No. USL 3167, so the deponent applied on 15-1-1951 that as there was a dispute about carriage no. USL 3167, he be allowed to replace the vehicle by vehicle No. USL 8810 and the Regional Transport Officer was pleased to allow the replacement subject to confirmation by Regional Transport Authority."

30. Learned counsel for the applicant urges that this para, has not been controverted by any affidavit filed on behalf of the opposite parties and so it must be taken that possession of the stage-carriage no. USL 3167 was still with him on the date of replacement. He also urges that as Sub-section (c) of Section 60, Motor Vehicles Act, refers to the permit-holder ceasing to possess the vehicle during the currency of the permit, the documents which had passed between him and Chatter Sen all being prior to the grant of the permanent permit these could not establish that the stage-carriage no. USL 3167 had ceased to be in his possession after the permanent permit had come into force, but if at all these documents might be used for establishing that he was not in possession of the stage-coach when he applied for the permanent permit.

31. Learned counsel then points out that no objection whatsoever was taken, when his application for the grant of a permanent permit was published in the Gazette, by Lala Chatter Sen, within the specified period, and urges that this established that the grant of a permanent permit could not have been opposed on the ground that the applicant was not possessed of the stage-carriage no. USL 3167 on the date of his application or was not the owner of the temporary permit to ply it. Learned counsel urges that there was no evidence before the Regional Transport Authority apart from the documents to show that Chatter Sen had all along been in possession of the stage-carriage and had been running it since 9-11-1949. He points out that the documents being merely by way of collateral security and not being intended to be acted upon could not, in law, transfer the permit or the stage-carriage back to Chatter Sen, nor did they show that Chatter Sen took possession of the said stage-carriage on or after 29-10-1949, the alleged date of re-transfer.

32. Learned counsel urges that there is no evidence to show that the applicant had obtained the permit fraudulently or by misrepresenting that he was possessed of stage-carriage USL 3167. He has invited the Court's attention to the application form p. St. s. A. which is to be made under Rule 50 (a) (ii), U. P. Motor Vehicles Rules, 1940, and submits that fraud or misrepresentation could only arise in respect of the particulars to be entered either in Clause 10 or 14 of the application form. So far as Clause 10 is concerned, it requires particulars of any stage-carriage permit valid in the province held by the applicant on the date of application. It is urged that in view of Section 59, Sub-clause (1), Motor Vehicles Act, 1939, even if it be taken that the applicant had in fact transferred

the temporary permit to Lala Chatter Sen on 29-9-1949, in law that transfer was inoperative and, therefore, there could be no fraud or misrepresentation in the applicant stating that he held a temporary permit valid in the province on the date of his application.

33. It is urged that under Clause 14 of the said application form, the applicant was only required to state whether he was then in possession of a vehicle available for use under the permit applied for. Learned counsel states that it has not been shown that on that day he was not in possession of the stage carriage no. USL 3167 and that he could not have used the same under the permit applied for. Learned counsel urges that the fact that Lala Chatter Sen did not intimate under Section 31 that the ownership of the stage-carriage no. USL 3167 had been transferred to him by the applicant on 29-10-1949 clearly shows that there was neither transfer of ownership nor of possession under the documents, and he points out that there was no evidence before the transport authorities of the handing back of possession of the stage-carriage under the said documents by the applicant to Lala Chatter Sen.

34. The submission of learned counsel thus is that in cancelling the permit, the authorities concerned have exceeded or acted illegally in exercising the jurisdiction vested in them under Section 60, Sub-clauses (c) and (d), Motor Vehicles Act.

35. Learned counsel for the State argues that the Regional Transport Authority, in its order dated 3-11-1951, has stated that it was established by the deed, dated 9-11-1949 that Chatter Sen and not the applicant had all along been in possession of the stage carriage no. USL 3167 and had been running it and that, therefore, it cannot be said that that Authority had acted beyond its jurisdiction in cancelling the permit on the ground of misrepresentation. He urges that it is not open to this Court to examine the correctness of the finding that Chatter Sen had all along been in possession of the stage-carriage no. USL 3167 and had been running it and urges that it could not be said that there had been an excessive exercise of jurisdiction under Section 60, Motor Vehicles Act.

36. Attention has been drawn by the learned counsel for the State to the case of -- 'AIR 1952 SC 192' (B). In that case, it was laid down that the grant of a permit is entirely within the discretion of the Transport authorities and naturally depends on several circumstances which have to be taken into account. It was held in that case that the Motor Vehicles Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation and that no one is entitled to a permit as of right even if he satisfies all the prescribed conditions, that there is a complete and precise scheme for regulating the issue of permits providing what matters are to be taken into consideration as relevant and prescribing appeals and revisions from subordinate bodies to higher authorities and that 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. It was further held that such Writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it or in violation of the principles Of natural justice, or refuse to exercise a jurisdiction vested in them, 'or there is an error apparent on the 'face of the record', and such act, omission, error, or excess has resulted in manifest injustice. It was held that, however extensive the jurisdiction may be, it seems that it is not so wide or large as to enable the High Court to convert

itself into a Court of appeal and examine the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made.

37. In the end, the Supreme Court was of the view that that was not a fit case for interference with the discretion that was exercised by the Transport Authorities paying regard to all the facts and the surrounding circumstances.

38. In -- 'Ebrahim Aboobakar v. Custodian General of Evacuee Property, New Delhi', A. I. R. 1952 S C 319 (D), cited by the State Counsel, it was pointed out that:

"A writ of 'certiorari' cannot be granted to quash the decision of an inferior Court within its jurisdiction on the ground that the decision is wrong. It must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Once it is held that the Court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly."

39. On the other hand, learned counsel for the applicant has referred to the case in -- '(1952) 1 All E R 122' (C) Singleton L. J. therein observed:

"Error on the face of the proceedings has always been recognised as one of the grounds for the issue of an order of 'certiorari'. I can find no authority for saying that in this respect there is any distinction to be drawn between proceedings of a criminal nature and civil proceedings."

His Lordship further observed as under :

"The decision of the tribunal was a 'speaking order' in the sense in which that term has been used. The Court is entitled to examine it, and if there be error on the face of it, to quash it

--not to substitute another order in its place, but to remove that order out of the way, as one which should not be used to the detriment of any of the subjects of His Majesty."

Again Singleton L. J. observed:

"After all, it is the junction of the Courts to determine questions of law. Tribunals are sometimes given an unduly difficult task. There must be a feeling of dissatisfaction if it is recognised that a decision of a tribunal is wrong in law and yet there is no power to correct it--in other words if there is no right to obtain the opinion of the Court. I am satisfied that the course I have suggested would result in a saving of time, and of expense, and would be for the public good."

40. Denning L. J. observed:

"We have here a simple case of error of law by a tribunal, an error which they frankly acknowledge. It is an error which deprives the applicant of the compensation to which he is by law entitled. So long as the erroneous decision stands, the compensating authority dare not pay him the money to which he is entitled lest the auditor should surcharge them. It would be quite intolerable if in such a case there were no means of correcting the error. The authorities to which I have referred amply show that the King's Bench can correct it by certiorari.. I am clearly of opinion that an error admitted openly in the face of the Court can be corrected by 'certiorari' as well as an error that appears on the face of the record."

Morris L. J. has observed:

"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision or irregularity, or absence of, or excess of, jurisdiction where shown,"

Morris L. J. further observed:

"It was further said that, though these grounds were formerly wide enough to include cases where decisions were, on the face of them bad in law, there has in recent years been a contraction, with the result that 'certiorari' no longer lies for such reason. It is said that this basis for the exercise of the controlling power has fallen into abeyance. I can find no justification for this contention."

41. It was suggested that the decision in the case of -- 'AIR 1952 SC 192' (B), could not be said to be in accord with the view expressed in -- '(1952) 1 All ER 122 (C)' and ruled out the correction of legal errors apparent on the face of the record.

42. It is not evident that this judgment of the Supreme Court has the effect of laying down that even where there is an error apparent on the face of the record, which goes to the root of jurisdiction, such an error may not be corrected. In this connection, it is necessary to quote the following passage from the judgment of their Lordships of the Supreme Court:

"It is unnecessary for the disposal of this appeal to consider and decide on the exact scope and extent of the jurisdiction of the High Court under Article 226. Whether the writs it can issue must be analogous to the writs of 'habeas corpus, mandamus, prohibition, quo warranto and certiorari' specified therein and the power is subject to all the limitations, or restrictions imposed on the exercise of this jurisdiction, or where the High Court is at liberty to issue any suitable directions or orders or writs untrammelled by any conditions, whenever the interests of justice so require, is large

and somewhat difficult problem which does not arise for solution now."

43. If the guiding principles in regard to the exercise of jurisdiction under Article 226 may be taken from the reported English cases, there seems no reason why the latest accepted position in England should not be considered as applicable in India also and there is nothing in the Supreme Court judgment referred to above which suggests that an error on the face of the record, going to the root of jurisdiction may not be corrected. Moreover, the language of Article 226 has to be kept in view.

44. Considering the growth of Departmental tribunals in this country, it seems, unless there is anything clearly to the contrary in the Constitution itself or in any case of the Supreme Court, that the writ jurisdiction may, in a fit case, be used for the purpose of not only keeping inferior tribunals within their jurisdiction but seeing that they observe the law.

45. In the light of these remarks, the contentions of learned counsel may now be examined.

46. To take up Section 60, Sub-section (c), Motor Vehicles Act, in the first instance, the language of this sub-section clearly indicates that the possession must cease in respect of the vehicle covered by the permit. In other words, it means that possession must have ceased within the duration of the permit.

47. The case before the Regional Transport Authority seems to have been that there was no possession at all even at the date of the making of the application for a permanent permit for the applicant's possession had come to an end on or about 29-10-1949 when the documents passed. It was not the case that the applicant's possession ceased during the currency of the licence, nor is there any evidence to suggest that the applicant was dispossessed just prior to his applying for replacement. It would appear, therefore, that Section 60, Sub-section (c) would not apply at all.

48. So far as Section 60, Sub-clause (d) is concerned, in law, there could be no fraud or misrepresentation in stating, that the applicant held a temporary permit valid in the province, under Clause 10 of the application form, since despite the documents passing, in law there could not have been a valid transfer of permit because of the prohibition under Section 59, Sub-clause (1), Motor Vehicles Act, even assuming that the documents were intended to be acted upon.

49. So far as possession of the stage-carriage USL 3167 on the date of the application for a permanent permit is concerned, the finding of the Regional Transport Authority that there was no possession at all on the date of application appears to have been arrived at on the basis of the documents executed by the applicant. It is not stated that there was any oral evidence of actual handing over of possession to and of subsequent, possession by Chatter Sen. The inference that Chatter Sen had all along been in possession appears to have been drawn from the document purporting to transfer the stage-carriage. The power or attorney which recites that the ownership is with the applicant is difficult to reconcile with the document of transfer to Chatter Sen. Under the circumstances, no inference from the documents regarding possession could be drawn one way or the other. No oral evidence is indicated in the order from which it could be found that the power of attorney had been acted upon. The recitals, by themselves, in the power of attorney do not indicate

the actual handing over of possession. The contents of the application made by Chatter Sen on 30-1-1951 to the Regional Transport Authority clearly indicate that Chatter Sen did not have possession of the stage-carriage when he made that application. The nature of this application does not appear to have been Kept in view by the Regional Transport Authority in arriving at its decision.

50. Under the circumstances, it would appear that there is an error on the face of the record caused by a non-reading and misreading of the relevant material and a failure to draw correct legal inferences from the facts which were before the Regional Transport Authority. The State Transport Tribunal appears to accept the reasoning and conclusion of the Regional Transport Authority on the question of possession.

51. Under the circumstances, it cannot be said that it has been established that on the date, when the application for a permanent permit was made, the possession of the stage-carriage had re-passed from the applicant to Chatter Sen or his son. It has been laid down in -- 'AIR 1952 SC 192' (B) that the question which has to be considered in a case like this is not whether legal title to the stage-carriage has passed, but who is in possession of it and that the right to obtain a permit depends upon the possession and not ownership.

52. For the reasons stated above, it would appear that the petitioner is, in this case, entitled to relief and that a writ in the nature of 'certiorari' should issue quashing the orders of the Regional Transport Authority, dated the 21st July and the 3rd November, 1951 and the order of the State Transport Tribunal, dated 6th of August, 1952.

53. So far as the second of the petitioner's prayers is concerned, it would appear that the correct order to pass is to direct the State Transport Tribunal to consider the petitioner's application for the replacement of stage-carriage USL 3167 by stage-carriage USL 3810, on the merits,

54. In my view, this writ application should succeed in the manner indicated above and costs should be awarded to the petitioner and I order accordingly.

BY THE COURT

55. A writ of certiorari will issue to quash the orders of the Regional Transport Authority dated the 21st July and the 3rd November, 1951, and the order of the State Transport Tribunal dated the 6th August, 1952.

56. The State Transport Tribunal will proceed to consider the petitioner's application for replacement at vehicle USL 3167 by vehicle USL 3810 on Its merits. The petitioner is entitled to his costs which we fix at Rs. 200/-.