Moti Lal And Ors. vs The Government Of The State Of Uttar ... on 11 May, 1950

Equivalent citations: AIR1951ALL257, AIR 1951 ALLAHABAD 257

JUDGMENT

Malik, C.J.

1. These applications have been filed on behalf of certain persons who own motor buses and carry passengers for hire on various routes in Uttar Pradesh. The applicants want appropriate relief under Article 226 of the Constitution. The applications can be grouped according to the routes over which the transport buses of the various bus-owners or transport companies were running.

2. Civil Misc. Cases Nos. 4 to 7, 71 to 98 and 133 to 140 of 1950 relate to the route Khurja-Bulandshahr-Delhi. The applicants in these cases are represented by Mr. Gopal Swarup Pathak. Civil Misc. Cases Nos. 8 to 70 of 1950 relate to Meerut-Delhi route and the applicants in these cases are also represented by Mr. Pathak.

3. Civil Misc. Cases Nos. 99, 100, 104 to 116 of 1950 relate to Garhmukteshwar-Hapur-Delhi route and the applicants in these cases are represented by Shri Alladi Krishnaswami and Mr. S.B. L. Gour.

4. Civil Misc. Cases Nos. 118, 119 and 120 of 1950 relate to buses running on the Mathura Naujhil, Mathura-Kosi, Mathura-Barsana and Mathura-Aligarh roads and the applicants in these cases are represented by Mr. Brij Lal Gupta. Civil Misc. Case No. 142 of 1950 relates to Meerut Division including Dehra Dun and Mussoorie and the applicant in this case is also represented by Mr. Brij Lal Gupta.

5. There are seven applications, Misc. Cases Nos. 170 to 176 of 1950, by bus-owners who had held permits for running buses inside the Jaunpur District. They are represented by Mr. S.N. Katju.

6. Civil Misc. Case No. 103 of 1950 relates to Agra-Shamsabad route, Civil Misc. Cases Nos. 117 and 123 to 129 of 1960 relate to Agra-Tantpur route, Civil Misc. Cases Nos. 121, 131 and 133 of 1950 relate to Moradabad-Sambhal route, Civil Misc. Case No. 122 of 1950 relates to Moradabad-Sambhal, Chandpur-Bijnor routes and Civil Misc Case No. 130 of 1950 relates to Moradabad-Sambhal and Moradabad-Chandausi routes and all these applicants are represented by Mr. P.C. Chaturvedi.

7. Civil Misc. Cases Nos. 145 and 148 of 1950 relate to Etawah-Mainpuri route, Civil Misc. Cases Nos. 147, 150, 153, 156, 157, 159, 161 and 162 of 1950 relate to various routes from Etawah, Civil Misc. Case No. 143 of 1950 relates to Kishni-Bawar route and Civil Misc. Cases Nos. 145, 151, 166

and 167 of 1950 relate to Etah-Farrukhabad routes, Civil Misc. Cases Nos. 144, 149, 152, 154, 158, 163, 164 and 165 of 1950 also relate to various routes from Etawah. All these applicants are represented by Mr. Gopi Nath Kunzru.

8. The main argument in the case has been advanced by Mr. Gopal Swarup Pathak who has covered a very wide field in his arguments. Other counsel have mainly adopted Mr. Pathak's arguments.

9. It may not be desirable at this stage to go into the details of each case as there are some differences in the facts, in the dates and in some other material particulars. The main arguments advanced by counsel on behalf of the applicants may be classified under the following heads: (1) That the applicants are bus-owners who run bus services and carry passengers for hire and they have an absolute right to carry passengers for hire on the high-way along the routes selected by them: (2) That though prior to the Constitution, the Regional Transport Authorities, appointed under the Motor Vehicles Act (IV [4] of 1939), could restrict the route or the number of buses, after 26-1-1950, the applicants have an absolute right to carry on their business and the Regional Transport Authorities have no right to place any restrictions or refuse to issue permits. It is urged that some of the provisions of the Motor Vehicles Act which restrict the rights of the applicants have now become invalid as being opposed to the provisions of the Constitution: (3) That the Regional Transport Authorities, in complete disregard of the provisions of the Motor Vehicles Act, have been refusing to issue permanent permits (permanent permit meaning a permit for not less than three years and not more than five years) and have in some cases been granting temporary permits, against the provisions of the Motor Vehicles Act, or have committed other irregularities and have not acted in accordance with the provisions of that Act. That this has been done to implement the policy of the State to run buses of their own on some of these routes; (4) That a temporary permit issued by the Regional Transport Authorities should be deemed to be a permanent permit by reason of the provisions of Section 58 of the Motor Vehicles Act; (5) That the Provincial and the Regional Transport Authorities are not properly constituted as some of the persons nominated by the State Government are officials of the Government who have financial interest in the Roadways; (6) That the State has ho right to carry on any business without legislative sanction and that there is no legislative sanction for running buses on hire. The whole activity is, therefore, illegal; and (7) That, in any case, the State cannot claim to have any better rights than the bus-owners themselves, and the provisions of the Motor Vehicles Act which discriminate between the State and private owners in respect of carrying on business of motor transport are void being contrary to the provisions of Article 14 of the Constitution.

10. Before I deal with the points mentioned above it may be useful to summarise the relevant provisions of the Motor Vehicles Act. The Motor Vehicles Act, IV [4] of 1939, was passed to consolidate and amend the law relating to motor vehicles in this country. We are mainly concerned with Chap. IV of this Act which deals with control of transport vehicles. Section 42 (1) makes it necessary for the owner of a transport vehicle to obtain a permit and provides that the owner of a transport vehicle shall use or permit the use of the vehicle in any public place only in accordance with the terms of the permit issued to him by the Provincial or the Regional Transport Authorities. Section 42 (3) exempts any transport vehicle owned by or on behalf of the Central Government or a Provincial Government, other than a vehicle used in connection with the business of an Indian State

Railway, from the necessity of obtaining a permit. Section 43 gives the Provincial Government (now Government of the State) the power to prohibit or restrict throughout the province or in any part thereof the conveying of long distance goods traffic generally, or of prescribed classes of goods, by private on public carriers, and also gives the power to fix maximum or minimum fares or freights for passenger or goods carriers. Section 44 gives the Government the power to constitute a Provincial-Transport Authority and Regional Transport Authorities. Under Section 45 an application for a permit has to be filed before the Regional Transport Authority. Section 46 gives the details what an application for a permit to carry passengers should contain. Sections 47 and 48 are important. Section 47 enumerates the matters which must be taken into account by Regional Transport Authorities in granting or refusing a permit. Section 48 empowers the Regional Transport Authorities to restrict the number of buses in a specified area or on a specified route and to impose conditions on permits. Section 58 provides that a permit other than a temporary permit shall be effective for a period of not less than three years and not more than five years. It also provides that a permit may be renewed on an application made and disposed of as if it were an application for a permit. This section has a proviso that applications for renewal of permits shall be given preference over applications for new permits. Section 62 provides for issue of temporary permits on grounds mentioned in it. Such a permit may have any condition attached to it that the Regional Transport Authorities consider fit and proper. Section 64 provides for appeals against the orders of Provincial and Regional Transport Authorities.

11. The Defence of India Act (XXXV [35] of 1939) by Section 6, Clause (6) had introduced certain important changes in the Motor Vehicles Act, 1939, giving the Transport Authorities greater power of issuing temporary permits and of suspending and cancelling permits, etc.

12. Clause (6) of Section 6 was amended by the Defence of India (Second Amendment) Ordinance, 1945 (XXXI [31] of 1945) which gave the Provincial Transport Authority or the Regional Transport Authority, in spite of the provisions of Section 58 and 62, Motor Vehicles Act, power to grant a permit or a temporary permit under chap, IV not exceeding five years in the case of a permanent permit and one year in the case of a temporary permit. It also gave it the power to reduce the period for which the permit was originally issued. It gave the Provincial Government power to exempt from all or any of the provisions of Chap, IV, Motor Vehicles Act vehicles declared to be needed for the defence of British India or the prosecution of the war, and certain other powers which it is not necessary to set out here.

13. It was after this amendment that notices were given to all the bus-owners informing them that all permanent permits, which had been issued to them, would be deemed to be valid only up to 30-4-1946, and thereafter they would be granted temporary permits.

14. The defence of India Act and the Rules made thereunder ceased to be operative after 30-9-1946, but even after the lapse of the Defence of India Act and the Rules thereunder, temporary permits were continued to be issued without any regard to the provisions of the Motor Vehicles Act.

15. The bus-owners, however, remained reconciled to their fate and up to March 1950, they continued to apply for renewals and temporary permits continued to be granted to them, except in a

few cases, which will be dealt with separately. This practice was adopted as in the beginning the U.P. Government had intended to form joint stock companies to run bus services, but this scheme not having materialized the Government started running buses of their own, and when they were in a position to put sufficient number of buses on a particular route the Regional Transport Officer gave notices to the bus-owners that the Roadways would commence operation with effect from a certain date and the passenger buses belonging to the applicants would cease to operate on the said route with effect from that date. In these notices it was mentioned that Rule 69 (c), U.P. Motor Vehicles Rules of 1940 the bus owners were not entitled to any notice, but the notice was given so that the period might be utilized to ask for an alternate route inside the region provided this happened to be the first displacement. The notice also gave the information that the owners of the passenger carriers had the option of getting their permits converted into permits for carriage of goods. Sometimes on the date mentioned it was not found possible for the State buses (which may conveniently be called hereafter the Roadways) to commence operation from the date mentioned in the notice and in such cases temporary permits were renewed and notices, similar to the notice mentioned above, were again issued informing the bus owners that they would not be allowed to ply their buses on the particular route mentioned by reason of the Roadways commencing operation on the route.

16. Rule 69 (a), U.P. Motor Vehicles Rules, 1940, gives the Regional Transport Authority power in its discretion, to vary the permit or any of the conditions thereof at any time upon application made in writing by the holder of the permit. Sub-rule (b), however, provides that after a permit has been issued the Regional Transport Authority cannot vary the permit or any condition thereof without giving notice, to persons affected thereby, a reasonable opportunity of making a representation. Sub-rule (c) of Rule 69 is as follows:

> "Notwithstanding the provisions in Sub-rule (b) a Regional Transport Authority may vary any stage carriage permit or any public carrier's permit without affording any parson an opportunity of making a representation it in the opinion of the Regional Transport Authority, the representation made by such person in respect of the issue or of the renewal of the permit was frivolous or vexatious or if the variation of the permit or any condition thereof is in accordance with any particular or general direction issued by the Provincial Transport Authority under Sub-section (4) of Section 44 of the Act or involves a question of principle which has already been decided by a ruling of the Regional Transport Authority or of the Provincial Transport Authority which has not been modified upon appeal."

17. Section 44 (4), Motor Vehicles Act provides that for the purpose of exercising and discharging the powers given to it under Sub-section (3) of Section 44, the Provincial Transport Authority may issue directions to a Regional Transport Authority and that Authority shall be guided by such directions. As no applications were made by the holders of the permits for the variation or amendment of the conditions, the Rule 69, clearly was not applicable.

18. The point raised by Shri Alladi Krishnaswami was that a temporary permit could only be issued on one of the grounds mentioned in Section 62, Motor Vehicles Act, the grounds being : (a) for the

conveyance of passengers on special occasions, such as, to and from fairs and religious gatherings : (b) for the purposes of a seasonal business ; or, (c) to meet a particular temporary need ; and as none of these grounds existed it must be held that it was not a temporary permit issued under Section 62, and the permit, even though the Regional Transport Authority might call it a temporary permit, must be deemed to be effective without renewal for a period of not less than three years and not more than five years under the provisions of Section 58 (1), Motor Vehicles Act.

19. Reliance was further placed on the fact that a fee of Rs. 5 was paid in each case which was the fee payable for a permanent permit, while in the case of a temporary permit payment had to be made per day for each day during which the permit was to remain effective.

20. Two cases, one of the Madras High Court and the other of the Calcutta High Court have been relied on. In the Madras case of Sri Ram Vilas service Ltd. v. Road Traffic Board, Madras, A.I. R. (35) 1948 Mad. 400, at p. 408: (1948-1 M.L. J. 85) the learned Chief Justice expressed himself as follows:

> "The sole authority for grant of such permits is Section 62 and only when a circumstance, therein specified, exists and for no longer than four months. No attempt was made to justify the grant by virtue of Clauses (a) and (b) of the section but it was argued that Clause (c) has application. That clause enables a temporary permit to be granted to meet a particular temporary need. It was suggested that the 'particular temporary need' was the non-availability of the Government buses at the date when the appellant's three years permits expired on 1-5-1947 and that need was met by granting a temporary permit for the appellant's buses to ply for hire during the period preceding the date when the Government hoped to obtain its vehicles and put them into use. .... There was not a particular temporary need within the meaning of the Act which empowered the grant of temporary permits."

20a. Having expressed himself as above, the learned Chief Justice did not hold that the temporary permit should be deemed to be a regular permit for three years but directed the Road Traffic Board to consider the application in accordance with law and in conformity with his judgment.

21. In the Calcutta case of United Motor Transport Co. Ltd. v. Sreelakshmi Motor Transport Co. Ltd., I.L. R. (1944) Cal. 631 : (A.I. R. (32) 1945 Cal. 260) Boxburgh J. held that a temporary permit being invalid, under Section 58 of the Motor Vehicles Act it must be held to be a permit for three years. Reliance was placed on the language of Section 58 (1) which is as follows:

> "A permit other than a temporary permit issued under Section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit."

22. To my mind Section 58 only prescribes the period for which a Regional Transport Authority can grant a permanent permit as against a temporary permit, which is only for a period of four months.

In granting a temporary permit the Regional Transport Authority need not follow the procedure laid down in Section 57 and need not consider some of the matters which it is directed to consider under Sections 47 and 48 when issuing a permanent permit. In these eases from the files placed before us, it was demonstrated that the Regional Transport Authority had acted in complete disregard of the provisions of the Motor Vehicles Act, and even after the Defence of India Act and the Rules made thereunder had come to an end they continued to exercise the powers given to them as a temporary war measure and issued temporary permits without any reference to the provisions of Section 62 or any other provision of the Motor Vehicles Act. Section 53 cannot be interpreted to mean that if a Regional Transport Authority has wrongly issued a temporary permit when it had no power to issue a temporary permit under Section 62, then such a permit must be deemed to be a permanent permit validly issued in accordance with the provisions of the Motor Vehicles Act, even though those provisions may have been completely disregarded. I prefer to follow the decision of the Madras High Court in Sri Rama Vilas Service Ltd. v. Road Traffic Board Madras, A.I. R. (35) 1948 Mad. 400: (1948-1 M.L. J. 85), cited above, where a temporary permit was not deemed to be a permanent permit and the application for a permanent permit was sent back for reconsideration on the ground that it bad not been disposed of according to law.

23-24. Prom what I have said above it would be clear that the Regional Transport Authority has failed to realize that it is a quasi-judicial body and although all its members may be nominated by the Government, it is expected to entertain and dispose of applications for permits in accordance with the provisions of the Motor Vehicles Act. Instead of considering the applications for permits on the merits, it informed the bus owners in advance that it would not issue any bat temporary permits and those permits also would be liable to cancellation whenever the State was in a position to place its own buses on the particular route. A. licensing authority, in which term the Regional Transport Authority issuing permits might be included, is, as I have already said, a quasi-judicial body and it must, in dealing with applications for permit, bring to bear an independent and an impartial mind of its own and act in accordance with the provisions of Sections 47 and 48 of the Motor Vehicles Act. Under Section 47 (1) (a) the Regional Transport Authority has to take into consideration 'the interest of the public generally'. As the Regional Transport Authority is mainly concerned with the interest of the travelling public, it must mean primarily the interest of the travelling public. The Regional Transport Authority has also to consider what are the other existing arrangements for the transport of passengers and how those services will be affected, the condition of the road, the amount of traffic on it, the operation by the applicant of other transport services, whether it is an application for a fresh permit or a renewal of an old permit, whether the applicant has been given any unremunerative route, and the benefit conferred by such service on the locality in question and such other matters.

25. The language of Section 47, Motor Vehicles Act, is mandatory and the Regional Transport Authority is bound to take into consideration the provisions of that section in deciding whether to grant or refuse a permit for a stage carriage. I may quote here a passage from the judgment of Cozens-Hardy, M.R. in Rex v. Metropolitan Police Commissioner, (1911) 2 K.B. 1131 at p. 1138 : (81 L.J. K.B. 205) which is as follows:

> "But then it has been said that the word used in the order is not 'shall' but 'may'. We have had our attention called, and not for the first time, to Julius v. Bishop of Oxford, (1880) 5 A.C. 214: (49 L.J. Q.B. 577) and it seems to me it is impossible to read this Act of Parliament, dealing with an existing well-known numerous class of traders in the city of London, and to say that this is not a case in which there is a duty imposed to grant the licence subject to the express conditions imposed by the Secretary of State in the mandate which has been conferred upon the Commissioner of Police."

26. In the Motor Vehicles Act the word is not 'may' but 'shall' and, therefore, there is greater reason to hold that a statutory duty has been imposed on the Regional Transport Authority to consider an application for the issue of a permit in accordance with the provisions of the Motor Vehicles Act and the Rules made thereunder.

27. In the King v. London County Council (1913) 1 K.B. 68 : (87 L.J. K.B. 303) Darling J. held--

> "It has been laid down that the body on whom is conferred the jurisdiction of granting such licences must hear each application on its merits and cannot come to a general resolution to refuse a licence to every body who does not conform to some particular requirement. It is not true to say that these parks are the property of the County Council in the sense that a man's house is his property. They are only the property of the Council for the public benefit and for purposes of control and management."

and Ivory J. observed:

> "I have come to the same conclusion, though somewhat reluctantly, because I doubt whether the rule will be of any effective service to the prosecutrix, inasmuch as, when the application for permission is considered, the Council will probably refuse to give it. We have to decide whether the prosecutrix has any legal right which is being withheld. I think she has a legal right to have her application considered. From the affidavit filed on behalf of the Council it appears that the application was refused in consequence and pursuance of the resolution of 30-5-1916, that no new permits were to be granted after September, 1916. . . . It is unlawful to sell intoxicating liquor without a justices' certificate and a licence; it is unlawful to sell any article in a park without the consent in writing of the Council. In exercising their functions justices cannot pass a general resolution to refuse certificates; that is not a judicial exercise of their discretion. Similarly in the present case there has not been a judicial exercise of the discretion which is vested in the County Council. The analogy seems to be complete. The bye-law ..... does not empower the Council to forbid the sale of articles altogether, but only a sale without the consent of the Council.
>
> I desire to add that I do not assent to the submission of the prosecutrix that the county Council must give their consent unless they determine that the pamphlet is an improper one to be sold in parks in connection with meetings of the National League

> of the Blind. No such duty is cast upon them by the bye-laws. They may refuse their consent although, as an article, no exception can be taken to the pamphlet which it is proposed to sell."

28. In the case of The King v. Board of Education, (1910) 2 K.B. 165 at p. 170 : (79 L.J. K.B. 595), Farwell, L.J. observed:

> "The point is of very great importance in these latter days, when so many Acts of Parliament refer questions of great public importance to some Government department. Such department when so entrusted becomes a tribunal charged with the performance of a public duty, and as such amenable to the jurisdiction of the High Court, within the limits now well established by law. If the tribunal hits exercised the discretion entrusted to it bona fide not influenced by extraneous or irrelevant considerations, and not arbitrarily or illegally, the Courts cannot interfere; they are not a Court of Appeal from the tribunal, but they have power to prevent the intentional usurpation or mistaken assumption of a jurisdiction beyond that given to the tribunal by law, and also the refusal of their true jurisdiction by the adoption of considerations in arriving at their conclusion or deciding a point other than that brought before them, in which cases the Courts have regarded them as declining jurisdiction."

293 Lord Esher, M.R. in The Queen v. Vestry of St. Pancras, (1830) 24 Q B.D. 371 at p. 375 : (59 L.J. Q, B. 244) observed :

> "I have no doubt that the vestry should take his application into their fair consideration, and do what they think, fair to the man under the circumstances, and if they do this, I have equally no doubt that the legislature has entrusted the sole discretion to them, and that no mandamus could go to them to alter their decision. But they must fairly consider the application and exercise their discretion on it fairly, and not take into account any reason for their decision which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of law they have not exercised their discretion."

30. There can be no doubt that the Provincial and the Regional Transport Authorities have to determine the question whether a permit should or should not be issued in accordance with the provisions of the Motor Vehicles Act and the Rules made thereunder. Any reason, which is not a valid reason under the provisions of the Motor Vehicles Act, cannot be taken by them into consideration. What matters they must consider before issuing, or refusing to issue, a permit are set out in the Motor Vehicles Act and the Rules made thereunder, and it is not necessary for me to attempt to reproduce them here.

31. The learned Advocate-General has admitted that the Provincial and the Regional Transport Authorities must act in accordance with the provisions of the Motor Vehicles Act; and he has further

conceded that if an application for a permanent permit was filed before the Transport Authorities, the Regional Transport Authorities must consider the same in accordance with the provisions of the Motor Vehicles Act. He has, however, urged that the applicants can ask for a writ of mandamus only if they can show that they had asked for the performance of the duty and the opposite parties had refused or failed to perform the same. He has urged that as none of the applicants had applied for a permanent permit it could not be held that the Transport Authorities had refused or had failed to do their duty. According to the learned Advocate-General, whatever might have been the reason, if the applicants continued to apply for renewal of their temporary permits and the Regional Transport Authorities continued to renew the same, the applicants cannot ask for a writ of mandamus on the ground that the Regional Transport Authorities when called upon to issue a permanent permit, in accordance with the provisions of Sections 47 and 48 of the Motor Vehicles Act, had failed or had refused to do so.

32. Mr. Pathak has urged in reply that no one should be asked to do something which was useless and the applicants having been informed in advance that no permanent permits would be issued to them and that even the temporary permits issued would be cancelled when the State was in a position to run its own buses, there was no point in their applying for issue of permanent permits. The question whether any application for a permanent permit was on was not made and, if so, the date when it was made or the order passed thereon might affect oar final order, but there can be no doubt that the Transport Authorities do need being reminded that they are bound by the provisions of the Motor Vehicles Act, unless we hold that any part of it is no longer valid, and that they are bound to act in accordance with the provisions of that Act.

33. The learned Advocate-General has raised another objection that as there was a right of appeal under Section 64 of the Motor Vehicles Act the applicants are not entitled to come to this Court under 226 of the Constitution. I do not consider that there is much force in this argument. Section 64 (a) provides for appeals by any person aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, and Sub-section (e) provides for an appeal by any person aggrieved by "the refusal of renewal of a permit." Reference was also made to Section 64A of the Motor Vehicles' (United Provinces Amendment) Act, 1948 (U.P. Act XI [11] of 1948), which provides for some sort of an appeal to the Provincial Government which may, on its own motion, or on the application of a person aggrieved by an order passed under Section 64, call for relevant papers and make such order as it thinks fit. For an appeal under Section 64 there must be an order of a Provincial or Regional Transport Authority passed under the Act. As I have already said, the Regional Transport Authority, or its Secretary, or the Regional Transport Officer, who seems to have been acting for the authority, do not appear to have passed any order under the Motor Vehicles Act and, therefore, no question of an appeal under Section 64 seems to arise.

34. In the Queen v. Thomas, (1892) 1 Q.B. 426 ; (61 L.J. M.C. 141), where the Justices had not given any grounds at the time of refusing the application and had passed the order 'Licence refused' to the objection that no application could be filed for a writ of mandamus as there was an adequate remedy by appeal. Wills J. pointed out that:

> "Where the applicant would have to appeal without knowing what were the grounds of the decision against her, and would not, therefore, be in the same position upon an appeal as she would have been if the grounds had been stated."

the appeal would not be as satisfactory and effectual as the remedy by mandamus. In the cases before us no reasons were given in any case, for the orders passed by the Transport Authorities and it could not be, therefore, said that an appeal was an adequate remedy.

35. Reliance has been placed by Mr. Pathak on the language of 226 of the Constitution which, it is pointed out, is in very wide terms and gives to this Court power to issue "directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorai, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose."

It is argued that the powers are very wide and the provisions can be applied not only for the protection of the fundamental rights but "for any other purpose". Article 226 was, however, not intended to give an alternative easy remedy to enable a person to move this Court instead of seeking his ordinary remedy under the law. To my mind, we must apply the same principle, which was applied in England, in dealing with the prerogative writs and lay down that the power under Article 226 would be sparingly used by this Court and only in those exceptional cases where there is no adequate remedy and an application under Article 226 is the only convenient, beneficial and effectual means of getting redress.

36. As regards the argument that the Provincial and the Regional Transport Authorities are not properly constituted as some of the officials nominated to this body are employees of the Government and must thus be deemed to have a financial interest in the Roadways, reliance is placed on the observations of the learned Chief Justice of the Madras High Court in the case of Sri Ram Vilas Service Ltd. v. The Road Traffic Board, Madras, (A.I. R. (35) 1948 Mad. 400: 1948-I, M.L. J. 85). The applicants ask for writs of mandamus directing the Regional Transport Authorities to act in accordance with the provisions of the Motor Vehicles Act, 1939, and have not asked for any relief on the ground that these bodies are not properly constituted. The question, therefore, does not, really arise for consideration. In Para. 31 of the affidavit in Misc case No. 4 of 1950--Moti Lal's case--and we have similar para. in other affidavits, all that is said is:

> "That while the U.P. Government professes to have acquired a financial interest in the Motor Transport, it has allowed its employees to servo as members of Transport Authorities contrary to the provisions of the Motor Vehicles Act."

37. No facts have been placed before us which would entitle us to hold that any of the persons who at present compose the various Transport Authorities under the U.P. Home Dept. Notifns. Nos. U.O. 181/VII and U.O. 181 (2)/VIII dated 2.3.1945, (published in the United Provinces Gazette, dated 10-3-1945, Part I, p. 68) has acquired a financial interest in the Roadways. So far as we have been able to find out the only officers of the Government who are members of the Provincial Transport Authority are the Provincial Transport Commissioner and the Superintending Engineer of the

Buildings and Roads Branch of the P.W. D. and of the Regional Transport Authority, the Commissioner of the Division, the Superintendent of Police the Executive Engineer or the Assistant Engineer of the P.W. D. and the Regional Transport Officer who is the Secretary. The argument is that as they are officials of the Government it must be said that they have a financial interest inasmuch as their continuation in the service depends upon the continuation of the Department. It is difficult to hold, without further facts, that a person who is in the permanent service of the State can be deemed to have acquired a financial, interest in an undertaking started by the Government by merely being put in charge of that Department. If the Government discontinues the Department, the permanent officials, who belong either to the police or to the Executive, will have to be provided for and will have a right either to revert to their Departments or be absorbed elsewhere.

38. The applicants have asked for three main reliefs; (a) for a writ of mandamus directing the opposite party to decide applications of the petitioners in accordance with the provisions of the Motor Vehicles Act, (b) to withdraw certain notice given by the Regional Transport Officers either on 1-7-1949, or on 22 11-1949, or on some other date; (the purport of these notices has been set out by me in an earlier part of this judgment) and (c) for an order directing the opposite party not to introduce Roadways buses for hire to carry passengers.

39. As regards relief (b) I have already said that the Regional Transport Authorities are bound by the provisions of the Motor Vehicles Act and they must act in accordance with the provisions of that Act. Learned Advocate General has admitted that, though the adequacy of existing road passenger transport service may be a ground for consideration in granting or refusing a permit, the fact that the Government intends in future to put some buses on the road is a wholly inadequate ground and is not a matter which the Regional Transport Authorities can take into consideration. The point was considered at some length by Gentle C.J. in Sri Ram Vilis Service Ltd. v. Road Traffic Board, Madras, A.I. R. (35) 1948 Mad. 400: (1948-1 M.L. J. 85), where the facts were very similar to the facts before us and it was held that the grant of temporary permits was misuse of the provisions of the Act. It is enough for us to hold that these notices are illegal and that the Regional Transport Authorities must act in accordance with the provisions of the Motor Vehicles Act.

40. As regards the last prayer relief (c) for an order directing the opposite parties not to introduce Roadways buses to carry passengers for hire, learned counsel for the applicants has strenuously urged that, unless that prayer is granted any relief given to the applicants would prove illusory as the Regional Transport Authorities are not likely to issue permits on a route where the Roadways buses are already plying in sufficient numbers.

41. Mr. Pathak's argument is that the executive power is limited to the execution of the laws made by the legislature tad the executive cannot engage in any activity for which there is no legislative sanction. The argument is based on the division of powers into legislative, judicial and executive powers, the definition of the executive powers suggested being the function of merely executing the laws.

42. The executive functions have not been defined in the Constitution. Article 53(1) of the Constitution provides that the executive power of the Union shall be vested in the President and

shall be exercised by him either directly or through officers subordinate to him, in accordance with the Constitution. Similarly, under Article 151(1) the executive power of the State is vested in the Governor and has to be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution. Articles 73 and 162 define the extent of the executive power of the Union and the State. It is on the basis of these Articles that Mr. Pathak has urged that the executive power means only the power to give effect to the laws made by the respective legislature.

43. It is difficult to define what is executive power. The easiest definition is to say that what is not legislative power or judicial power is executive power, though even this definition is imperfect as the executive can have even judicial and legislative powers. Where there is no written Constitution what is 'executive power' must always depend upon the form of the State and with the change in the form the concept of executive power must also change. In a written Constitution the executive power must be such power as is given to the Executive or is implied, ancillary or inherent. It must include all powers that may be needed to carry into effect the aims and objects of the Constitution. I do not find it necessary, however, in these cases, to attempt to catalogue the executive powers of the State but it must be more than merely executing the laws.

44. As regards the right of the Stats to carry on business or trade without legislative sanction it must be remembered that the State is entitled to hold property and 'business' can mean management of the property or putting it to such use as might yield an income. There is no reason why the State should not have the right to manage its own property and carry on such trade or business as a citizen has the right to carry on so long as such activity does not encroach upon the rights of others or is not contrary to law. If money is needed for such enterprise and the legislature provides funds for it by passing the Appropriation Act and the Finance Act, there is no reason why the State should not be allowed to buy buses and put them on public roads and ply them for hire. If in the interest of the general public and to provide them with transport amenities the Government decides to run transport buses, it would only be discharging one of its primary duties.

45. Great reliance was placed by Mr. Pathak on Article 266(3) that no moneys out of the Consolidated Fund of India or the Consolidated Fund of State shall be appropriated except in accordance with law and for the purposes and in the manner provided in the Constitution. It was argued that the Appropriation Act and the Finance Act cannot be said to give the power to appropriate the money to this particular head of expenditure, that is Roadways, unless there is a separate enactment authorizing the State to run buses for hire, and it is only in that cases that the appropriation would be deemed to be in accordance with law. To my mind, this is putting too narrow an interpretation on the provisions of Article 266(3). It is the appropriation which has to be in accordance with law and the words "in accordance with law," therefore, deal with the question of appropriation and with nothing more.

46. In support of the proposition that Legislative authority is needed before the State can run buses for hire Mr. Pathak has relied on the case of Blackpool Corporation v. Locker, (1948) 1 K.B. 349. The argument, in short, is that the citizen has a right to ask under what authority the State has acted and the State must then refer the citizen to the law. I do not think that, that case can be interpreted to lay down this general proposition stated in such wide terms. There a person, who was the owner of a

dwelling house, wanted to know under what authority he was asked to hand over the keys and the possession of the house to the Corporation. Dealing with the question that ignorance of the law is no excuse Scott Lord Justice said :

> "The vary justification for that basic maxim is that the whole of our law, written or unwritten, is accessible to the public in the sense, of course, that, at any rate its legal advisers have access to it, at any moment, as of right."

Discussing the matter further His Lordship quoted with approval the remarks of the Ministers' Powers Committee that:

> "In the absence of a common law or a statutory authority. 'A' cannot be deprived of rights by an executive act of a Minister; and if the Minister claims to have made a regulation entitling him to interfere with 'A' 's rights, the Court will interfere to stop the Minister unless he can show by what authority, statutory or otherwise, he has made the regulation in question."

There the Corporation wanted to take possession of the private property of a citizen. The Corporation could not obviously do that unless there was some statutory provision for it. The case, to my mind, has no bearing.

47. In this connection I may refer to the provisions of Article 289(2) of the Constitution which seems to recognize that the Union or a State can carry on trade or business and provides that the Parliament may by law impose taxation on any income accruing to the Government of a State in respect of a trade or business carried on by it and Article 289(3) seems to draw a distinction between a trade or business carried on as merely incidental to the ordinary functions of the Government and other trades or business carried on by it.

48. I have no doubt in my mind that it is not necessary to have a specific Act before a State Government can provide buses for transport of passengers for hire.

49. I want, however, to make it clear that nationalisation of any industry does not appear to me to be possible without legislation as nationalisation has in it two implications: (1) that the State will carry on the business and (2) that no one else will be allowed to carry it on. The second must be deemed to be an infringement on the rights of the citizen and, therefore, it must be by legislation and the legislation would probably have to be justified under the provisions of Article 19(6) of the Constitution.

50. Coming to the next question, whether the applicants have a right to use the highway to carry on transport business the argument is as follows. The applicants have been guaranteed the right under Article 19(1)(g) of the Constitution to carry on any business. They have, therefore, a right to carry on transport business. The transport business can be carried on only on a highway. The applicants have, therefore, an absolute right to ply buses for hire on highways and no limitation on their right is possible.

51. To my mind in view of the provisions of the Motor Vehicles Act the question of the nature of the right possessed by bus owners to ply buses on roadways for hire is now merely of academic interest. It is well known that the right of the public in a highway is merely to pass and repass. Such right can be restricted at the time of the dedication and whether the right is restricted or not is generally established by the nature of the user. The presumption generally is that the dedication is for the ordinary and reasonable user of the road as a highway. It is well settled that the question of the kind of traffic for which a highway is dedicated is a question of fact and it has to be answered having regard to the character of the way and the nature of the user. It is also settled that a right of passage once acquired will extend to "more modern forms of traffic reasonably similar to those for which the highway was originally dedicated, so long as they do not impose a substantially greater burden on the owner of the soil, nor substantially inconvenience persons exercising the right of passage in the manner originally contemplated."

(See Halsbury's Laws of England, Hailsham Edn., Vol. 16, p. 185). It is also well settled that "the right of the public is a right to 'pass along' a highway for the purpose of legitimate travel not to be on it except so far as their presence is attributable to a reasonable and proper user of the high way as such. A person who is found using the highway for other purposes must be presumed to have gone there for such purposes and not with a legitimate object and as against the owner of the soil he is to be treated as a trespasser."

(See Halsbury's Laws of England, Hailsham Edn., Vol. 16, p. 238). The footnote would show that such oases as killing game on the highway, preventing the owner of the soil from killing game, watching trials of race horses, catching moths, allowing cattle to stray, or to stand on the highway to abuse or insult some one, is not a legitimate user of the highway, though taking a little rest on one side of the road while passing along or similar other use is not an unreasonable user.

52. In India we have highways or roads that are maintained by the State. There are roads which vest in Municipal Boards or District Boards, but it can be assumed that the law relating to highways is, more or less, the same as in England.

53. A great deal of argument has been advanced whether passing or repassing on a highway includes a right to use it for purpose of gain. It has been suggested by the learned Advocate-General that the use of a highway for purposes of gain is not a primary use, and he has relied on certain American decisions and has urged that the use of the highway for purposes of gain is "special and extraordinary" user and the State has the right to prohibit such user. It has been suggested in reply that the law in America might be different from the law in England and in India, and both in England and in India if a highway is dedicated for foot passengers, foot-passengers may alone have a right to pass and repass, if, however, it is dedicated for vehicular traffic, vehicular traffic can pass and repass and the owner of the soil cannot stop a bus passing and repassing merely because it is plying for hire, unless he can show that it is an unreasonable burden on the user of the highway.

54. The American eases relied on by the learned Advocate-General are:

(1) Packard v. Banton, 63 U.S.S.C.R. LAW Edn. 596, where the question was whether a particular Act unreasonably and arbitrarily discriminated against those engaged in operating motor vehicles for hire in favour of parsons operating such vehicles for their private ends and in favour of street motors and motor omnibuses. Sutherland J., delivering the opinion of the Court said :

"If the State determines that the use of streets for private purposes in the usual and ordinary manner shall be preferred over their use by common carriers for hire there is nothing in the 14th amendment to prevent. The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary, and generally, at least, may be prohibited or conditioned as the legislature deems proper." Again it was said :

"Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right, and one carried on by Government sufferance of permission. In the latter case the power to exclude altogether generally includes the lesser power to condition, and may justify a degree of regulation not admissible in the former."

(2) In Stephenson v. Binford, 77 Law Edn. 288, where the question was about the validity of a State statute prescribing condition for the use of the highways of the State by motor vehicle carriers, Sutherland J., delivering the judgment of the Court said :

"It is well established law that the highways of the State are public property; that their primary and preferred use is for private purposes; and that their use for purposes of gain is special and extraordinary, which, generally at least, the legislature may prohibit or condition as it sees fit."

(3) In Valentine v. Chrestensen, 86 Law, Edn. 1262, where the question of the validity of a municipal regulation prohibiting distribution of commercial handbills on a public road came up for consideration, Roberts J. delivering the judgment of the Court said : "The question is not whether the legislative body may interfere with the harmless pursuit of a lawful business but whether it must permit such pursuit by what it deems an undesirable invasion of or interference with, the full and free use of the highways by the people in fulfilment of the public use to which streets are dedicated."

and it was held that such a regulation was valid.

(4) In Buck v. S.V. Kuykendall, 69 Law, Edn., 623, one of the points argued by counsel was that the defendant had 'no right' to make the highways his place of business by using them as a common carrier for hire ; and (5) In Frost v. Railroad Commission, 70 Law, Edn., 1101 it was held that--. "the State has power to prohibit the use of public highways in proper cases though a private carrier cannot be converted into common carrier by mere legislative command."

55. It does not appear to me that the law in the United States as regards the right of the public to use a highway is materially different from the law in England which, I have already said, is the same as in India. The American Courts were called upon to decide the validity of certain statutes and to see whether these were reasonable restrictions and were, therefore, covered by the "police powers" or they were contrary to the provisions of Section 14 of the American Constitution. Such a question could never arise in England where the Parliament is supreme.

56. I may, however, point out that the right to use a highway is a right which a person possesses as a member of the public, along with other members of the public, and whatever personal rights he has of using it are merely as such a member. That being so the right has always been held to be exercisable subject to such reasonable restrictions or regulations, which, at times, might even amount to prohibition, as might be necessary to be imposed in public interest. From the earliest times the right has been subject to regulation. In the United States of America they had to invent the doctrine of police powers to effect such a regulation. In our country an attempt has been made to obviate the necessity of inventing the doctrine of police powers by defining the limitations in the various sub-clauses of Article 19. Article 19 purports to guarantee certain fundamental rights and the fundamental right with which we are concerned is the right to carry on any trade or business. Clause (6) of Article 19 provides that the existing or future law enacted in the interest of the general public and placing reasonable restrictions on the exercise of such right will be valid. It also gives the State the power to prescribe the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. The question, therefore, resolves itself into this, whether the Motor Vehicles Act is a reasonable restriction or regulation on the right to carry on transport business. There can be no doubt that the provisions of the Motor Vehicles Act and of the rules framed thereunder are, what may be called, "police regulations." I shall deal separately with the specific sections which have been attacked by Mr. Pathak on the ground that they are contrary to the provisions of the Constitution and are, therefore, bad. But before I come to them, there are two other small points that I may dispose of.

57. The first is the argument that 'reasonable restriction' cannot mean a total stoppage. I do not think this argument is sound. The words in Article 19 are not 'regulation' but are 'reasonable restriction' and I do not see why, if by reason of the nature of the trade carried on, which might be against public morality or if, for any other reason, it is deemed necessary in the general interest, to stop totally any trade or business, it cannot be included in the word 'restriction'. Dealing with the question whether a reasonable restriction may also include prohibition their Lordships of the Judicial Committee said in Australia v. Bank of New South Wales, (1949) 2 ALL. E.R. 735 at p. 772 as follows :

> " .. . . their Lordships do not intend to lay down that in no circumstances could the exclusion of competition so as to create a monopoly either in a State or Commonwealth agency, or in some other body, be justified. Every case must be judged on its own facts and in its own setting of time and circumstance, and it may be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation and that inter-State 'trade, commerce

> and intercourse' thus prohibited and thus monopolized remained absolutely free. Nor can one further aspect of prohibition be ignored. It was urged by the appellants that prohibitory measures must be permissible, for otherwise lunatics, infants and bankrupts could without restraint embark on inter-State trade and diseased cattle or noxious drugs could freely be taken across State frontiers. Their Lordships must, therefore, add what, but for this argument so strenuously urged, they would have thought it unnecessary to add, that regulation of trade may clearly take the form of denying certain activities to persons by age or circumstances unfit to perform them or excluding from passage across the frontier of a State creatures or things calculated to injure its citizens. Here, again a question of fact and degree is involved .. .."

58. The decision of the question, what is a reasonable restriction in public interest will have to depend upon the nature of the business, the place and time where it is intended to be carried on, its effect on others, the stage of social development and on many other factors which might change with the passing of time and with the development of society. The Judges on whom lies the duty of deciding this question will have to consider it divorced, as far as they can, from their own personal, political or economic views. The decision might also well differ not only with the type of legislation which comes under review but also with the nature of the activity that that legislation was intended to regulate or to stop, due regard being given to the view ex pressed by the citizens through their legislatures.

59. It might be useful to remember the remarks of Holmes J. in his dissenting judgment in Frost v. Railroad Commission, 70 Law. Edn., 1101, that : " the difficulties of keeping the streets reasonably clear for travel and for traffic are very great. If a State speaking through its legislature should think that, in order to make its highways most useful, the business traffic upon them must be controlled. I suppose that no one would doubt that it constitutionally could, as, I presume most states or cities do, exercise some such control. The only question is how far it can go. I see nothing to prevent its going to the point of requiring a licence and bringing the whole business under the control of railroad commission so far as to determine the number, character and conduct of transportation companies and so to prevent the streets from being made useless and dangerous by the number and lawlessness of those who seeks to use them."

60. In considering the question whether a particular legislation is or is not in contravention of Article 19(6), we may well be guided by the words of Holmes J. in Otis and Gassman v. Parkar 47 Law. Edn., 323 :

> "While the Courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based, upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view, as well as for possible peculiar conditions which this Court can know but imperfectly, if at all. Otherwise a constitution instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means

are held semper ubique-et-ab-omnibus :

> Even if the provision before us should seem to us not to have been justified by the circumstances locally existing in California at the time when it was passed, it is shown by its adoption to have expressed a deep-seated conviction on the pact of the people concerned as to what that policy required. Such a deep-seated conviction is entitled to great respect. If the State thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the Courts cannot interfere, unless, in looking at the substance of the matter, they can see that it is a clear, unmistakable infringement of rights secured by the fundamental law' ... No Court would declare a usury law unconstitutional, even if every member of it believed that Jeremy Bentham had said the last word on that subject, and had shown for all time that such laws did more harm than good." 61. The other argument was that every citizen had a right to carry on any trade or business under Article 19(1)(g) and anything which interferes with that right must be held to be contrary to the constitution and therefore bad. "Trade or business" has a well-defined meaning and is associated with some adventure which has the object of earning profit or gain. The Constitution does not give any list of such trades or businesses and no one can claim that he has an absolute right to carry on any trade or business that is now being carried on or that he may invent in future. The State must be deemed to have the right under Article 19(6) to regulate or prohibit such business in public interest. Cases of prohibition on the grounds of public morality etc. are quite common.
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> 62. The next Article relied upon, which, it is said, invalidates the provisions of the Motor Vehicles Act, is Article 301 of the Constitution, or as it has been called the "commerce clause." Article 301 is as follows :
>
> "Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free."

Counsel have cited by way of illustration Section 92 of the Australian Constitution, the first part of which is as follows :

> "On the imposition of uniform duties of customs, trade, commerce and intercourse among the State whether by means of internal carriage or ocean navigation shall be absolutely free."

A number of authorities have been cited on the interpretation of Section 92 and we are asked to adopt the view expressed in those cases with this modification that while Section 92 of the Australian Constitution, it is said, provides for the freedom of inter-State trade, Article 301 of the Constitution is said to provide for freedom of intra-State trade also. Article 301 no doubt provides for the freedom of both inter-State and intra-State trade, commerce and intercourse throughout the territory of India, but this freedom is subject to the rest of the provision of Part XIII. Article 302 gives the right to Parliament to impose restrictions required in the public interest. The word

"reasonable" has been omitted in this Article. Article 303(1) is to prevent any discrimination in favour of one State against another by Parliament or by the legislature of the State. Article 303(2) gives the power of discrimination to Parliament where it has declared that such discrimination is necessary due to scarcity of goods in any part of the territory. Article 304 lays down what restrictions can be imposed by the legislature or a State on free trade, commerce or intercourse. Article 305 saves the existing laws even if they are against the provisions of Articles 301 and 303. Article 306 saves certain old taxes and duties mentioned therein ; and Article 307 deals with delegation of powers. In view of the provisions of Article 305 it is not possible for learned counsel to urge that the Motor Vehicles Act has, in any way, been invalidated by the provisions of Article 301. It does not, therefore, appear to be necessary to discuss Article 301 any further nor does it appear to me to be necessary to discuss the cases cited on Section 92 of the Australian Constitution.

63. In the course of argument it was suggested that Article 19(1)(g) and Article 301 overlap. A distinction has to be drawn between interfering with trade, commerce and intercourse and interfering with the methods by which they are carried on. As was observed by Gavan Diffy, C.J. in the King v. Vizzard, 50 commonwealth L.R. 30:

> "No one would suggest that the State must furnish such roads or other conveniences as the inter-State traveller may desire, nor, I think, would any one suggest that the State must leave unaltered all conveniences for travelling which are already in existence." He pointed out the distinction between interfering with trade, commerce and intercourse and interfering with the methods by which they are carried on. It is true that Article 19(1)(g) deals with profession, trade or business while Article 301 deals with trade, commerce and intercourse. The correct interpretation seems to be that Article 19 lays down the nights of the citizen, while Article 301 deals with how the trade, commerce and intercourse is to be carried on between one place and another, whether the two places are situated in two States or are inside the same State.

64. Coming now to the sections of the Motor Vehicles Act which are said to be contrary to the provisions of Article 19(1)(g) and Article 301, the provisions attacked are Section 47 (1) (c), (d), (e) and (f); Section 48 (a), (b) and (d) and Section 58. Section 47 (1). (c) provides that the Regional Transport Authority will take into consideration the adequacy of existing road passenger transport services. This provision is said to be bad as it might enable the Regional Transport Authority to discriminate in favour of the Government. Reliance is placed on Yick Wo. v. Hopkins, 30 Law. Edn. 220 at p. 225, in which it was said that the discretion given was:

> "Not a discretion to be exercised upon a constitution and the circumstances of each case, but a naked and arbitrary power to give or withhold consent not only as to plane but as to persons.... The power given to them is not confined to the discretion in the legal sense of the term, but is granted to their mere will. It is purely arbitrary and acknowledges neither guidance nor restraint."

The facts of that case were entirely different and though the law on the face of it looked very innocent, it was held that it gave arbitrary powers so that those powers might be exercised to discriminate against Chinese laundry.

65-66. The power to consider the adequacy of existing road passenger transport services is a very reasonable power and I do not see how it can be said that Section 47 (1) (a) is bad. Clauses (d), (e) and (f) are clearly matters which must be considered by the Regional Transport Authority in issuing, or refusing to issue, a permit, and I cannot see how they can be said to be contrary to the provisions of Article 19 of the Constitution.

67. Section 48 (a) and (b) is attacked on the same ground on which Section 47 (1) (c) is attacked as giving a Regional Transport Authority an absolute right to limit the number, and the answer must be the same. Section 48 (d), specially (ii)-(a), is attacked on the ground that Article 19(1)(g) of the Constitution gives an absolute right to the applicants to carry on their business, and any restriction placed on it is an interference with the right to carry on that business and is bad. I have already said that Article 19(6) gives the right to impose reasonable restrictions in public interest and it cannot be urged that Clause (d) of Section 48 of the Motor Vehicles Act is not a reasonable restriction or that it is not in public interest. I do not think that any of these provisions can be attacked on the ground that they are contrary to the provisions of Article 19(1)-(g) of the Constitution.

68. The validity of Section 42 (3) (a) is attacked on the ground that it is contrary to the provisions of Article 14 of the Constitution. Article 14 is as follows:

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

The argument is that the applicants have a right to claim that they shall not be discriminated against and that they should have the right to carry on transport business on the same terms as all others. That is there can be no law interposing impediments to a pursuit by others in like circumstances or placing greater burdens upon one than are laid upon others in the same calling or condition: Francis Barbier v. Patrick Connoly, 113 U.S. 32. It is said that this principle is applicable and the State, when it carries on any trade or business, must be placed on the same footing as those others who carry on the same business. That is, the State should also be liable to apply for permits and get permits on the same conditions on which permits are granted to others carrying on transport business.

69. That a State may carry on a business as incidental to the ordinary functions of Government or merely as a trade or a business venture is clear from the provisions of Clauses (2) and (3) of Article 289. Section 42 (3) (a) of the Motor Vehicles Act seems also to draw this distinction by providing that while for a transport vehicle owned by or on behalf of the Central Government or a Provincial Government no permit is required, for a vehicle used in connection with the business of an Indian State Railway there is no such exemption. Again, Section 42 (3) (h) draws a distinction between transport vehicles used for Government purposes, unconnected with any commercial enterprise and those used for a commercial enterprise.

70. Where a business is carried on by the Government as incidental to its ordinary functions as such, there can be no doubt that Article 14 cannot be relied on in support of the argument that the State should be put on the same footing qua that business as any private citizen. It cannot be seriously urged that a citizen can claim that he must be given the same rights, as the State has to be given for carrying on its functions as such.

71. Where, however, a State carries on a commercial undertaking on a competitive basis and where such an undertaking is not incidental to its ordinary functions of Government, the question, whether the State can claim to be treated differently and whether the provisions of Section 42 (3) (a), Motor Vehicles Act (not requiring it to have a permit for its buses) are contrary to the provisions of Article 14, would depend upon the answer to the question whether the State can or cannot be separately classified. Though Article 14 provides for equality before the law and equal protection before the laws it must be remembered that laws cannot be the same for everybody and for every kind of business. The article does not prevent a State from recognising differences of capacity, physical or mental, or of "social functions" as provided for specifically in Section 40 (1) of the Irish Constitution. As has been said "the article does not require things which are different in fact or in law to be treated as though they were the same" (Tigner v. Texas, 310 U.S. 141). Differentiation on the basis of classifications or groupings on well recognised principles is always possible. Gerstenberg in his book on American Constitutional Law dealing with equal protection of the laws says :

> "Obviously all persons within the jurisdiction of a State cannot be treated alike in matters of legislation. For example, a book-bindery may not be objectionable in one locality, while a slaughter-house may be wholly so. A State may choose to regulate the evils of one type of business, while It permits the continuance in other kind of business of evils which are even more objectionable. Or a particular class of persons, such as farmers, may be given advantages of which others are deprived. Classification for purposes of legislation is not prohibited by the equal protection clause. Therefore, whenever reasonable economic, political or social reasons exist for doing so, the State may select certain subjects out of the community at large either for special regulation or for the enjoyment of special privileges.
>
> While there is no requirement that such classification be scientifically accurate, it must be based on something more than mere difference. Arbitrary selection can never be justified by calling it classification. A classification must not be arbitrary or capricious, but should rest upon some reasonable or prevalent economic or social conditions which can be used to rationalize the distinction thus made."

72. Article 14 of the Constitution which provides for equality before the law and equal projection of the laws is not hedged in by any limitations. It is argued that the word 'person' in Article 14 is wide enough to include not only human beings and juristic persons, like companies or corporations, but also the State itself, specially, if the State carries on a commercial undertaking. It is urged that a State when carrying on a commercial undertaking must be deemed to be a person and Article 14 must, therefore, apply. The implications of this might be considerable and it might affect various laws and regulations or other provisions which tend to discriminate in public interest. For example,

Co-operative Societies are at present given special privileges. The public utility concerns are placed on a special footing. These are various trades and businesses about which there are special licensing rules.

73. Moreover, in interpreting Article 14 as including the State also, we shall have to see that there is no conflict between one part of the Constitution and any other part. In Part II of the Constitution the word 'person' has been used in contradistinction to a citizen, but both meaning human beings. In Article 14 the word used is 'person'. In Section 14 of the American Constitution the same word 'person' has been used and it has been interpreted to include not only human beings but also juristic persons like corporations. In Articles 15, 16 and 19 the word used is 'citizen'. In Article 18 the words 'person' and 'citizen' are both used, but both meaning a human being. In Article 20(3) the word person must refer to a human being though in Articles 20(1) and 20(2) it may include a corporation also. In Articles 21, 22, 25, 28 and 34 the word 'person' is used in the sense of a human being. Article 23 has the words 'human being'. In Article 27 the word 'person' seems to be used in its wider sense as including a corporation. In 226 the words used are 'person' and 'authority including .... government'. In Article 276(1) 'local authority' is given certain powers of taxation and Article 276(2) draws a distinction between a 'person' and 'authority'. Article 287 differentiates between a person and the Government or State. In Article 31 the word 'person' seems to have been used in its widest sense as including human beings, corporations and what has been called 'authority' or 'local authority'.

74. The word 'person' seems, therefore, to have been used in more than one sense in the Constitution. Article 289(1) provides that the property and income of a State shall be exempt from Union taxation and Article 289(2) makes it clear that the Parliament can impose a tax on a trade or business carried on by the Government of a State. That means that without express legislation in that behalf a trade or business carried on by the Government of a State will not be liable for a tax imposed on a person carrying on such business. A trade or business incidental to the functions of the Government is not taxable at all. The State has, therefore, not been put on the same footing in the matter of liability to taxation, as the ordinary citizen.

75. If the word 'person' in Article 14 is interpreted to include the State then the provisions of Article 14 would appear to be in conflict with the provisions of Article 289. Reading the Constitution as a whole I am inclined to the view that it was not intended that the Government of a State should be placed on the same footing as any person carrying on a business. I may point out that if Article 14 applies and the applicants can claim that they must be placed on the same footing as the Government, in that case the applicants might as well claim that Section 42 (1) Motor Vehicles Act, requiring them to take out permits and run buses in accordance with the conditions imposed on those permits, is void. Even in that case no question of issuing a mandamus under 226 can arise and the applicants can, if they so desire, ignore the provisions of the section and ply buses without licences. If they are prosecuted for contravention of the provisions of Section 42 (1) of the Motor Vehicles Act, they can then plead that the provisions have now become invalid by reason of the provisions of Article 14 of the Constitution. In the alternative, if the validity of Section 42 (1) is not affected and it is Section 42 (3) (a) that has become invalid, then in that case we cannot issue any order or direction under 226 of the Constitution directing the Government to apply for permits as

this question is not before us. It appears to me, therefore, that it is not necessary in these proceedings to decide whether the provisions of Section 42 (3) (a) of the Motor Vehicles Act have become void by reason of the provisions of Article 14 of the Constitution.

76. At the time when the Motor Vehicles Act was passed, an attempt was made to place the Government on the same footing as others where the Government was carrying on a commercial undertaking. The exemption in the Motor Vehicles Act from applying and obtaining permits might be due to the fact that at that time there was no intention on the part of the Government to carry on transport business. So long as the Government does not have legislation permitting nationalization, it appears to me that it is desirable that the Motor Vehicles Act should be amended and the Roadways should also be required to obtain permits so that the Provincial and the Regional Transport Authorities may have the same control over the Roadways as they have over private bus owners.

77. Coming now to the facts, I may mention that we had considerable difficulty in getting the correct facts. The applications were the first of their kind in this Court. They were filed in a hurry with the object of getting interim orders. The affidavits were not carefully drafted and did not contain full facts, probably because the applicants did not maintain proper files of the various applications made by them to the Transport Authorities or of the orders passed thereon. Oar difficulty was further enhanced by supplementary affidavits being filed during the course of the arguments and even after the arguments were concluded as counsel thought that they had discovered new facts. The affidavits accompanying the applications were, more or less, of a stereo-typed pattern and contained facts and arguments all mixed up together. On behalf of the Regional Transport Authorities only one affidavit was filed in reply and it did not deal with the facts of each case. The arguments were originally advanced on the assumption that on the expiry of the permanent permits applications were made in accordance with the provisions of the Motor Vehicles Act for the grant of permanent permits but instead of granting permanent permits the Regional Transport Authorities had granted temporary permits.

78. Mr. Pathak, when arguing the case, had given to us the facts of civil Misc. Case No. 4 of 1950 filed on behalf of Moti Lal who used to ply buses on the Khurja-Bulandshahr-Delhi route. Moti Lal had started motor transport business in 1941 and he was granted permanent permits up to 30-4-1946. After that he was given only temporary permits and it was said that on 1-7 1949, the Regional Transport Authority Agra, gave him notice to the effect that since the Roadways buses would commence operation on that route with effect from 1-8-1949, the passenger buses belonging to the applicant should cease to operate on the above-mentioned route with effect from the latter date. It was, however, not possible to run the Roadways' buses from 1-8-1949, and temporary permits were renewed up to 15-2-1950, and later upto 31-3-1950. It was said that the facts of the other cases were, more or less, similar but there were differences in the dates.

79. Learned Standing Counsel in his reply gave us a chart and claimed that none of the applicants had applied for a permanent permit till after the applications had been filed in the Court. After the applicants had been so advised by counsel several of them on various dates in March, 1950, applied for grant of permanent permits which applications, it was said, were still pending. After learned

Standing Counsel had concluded his arguments an attempt was made on behalf of the applicants to establish that in some cases at least applications for permanent permits had been filed and had not been disposed of and in some others permits had, as a matter of fact, been granted.

80. As the Transport Authorities had brought all their files we asked counsel whether they could give us any agreed statement as to the facts. Such agreed statements were filed only in five cases. Those cases are Nos. 75, 81, 118, 119 and 120 of 1950. These agreed statements, signed by counsel for the parties, have been kept on the record. I may mention that though in some of the rejoinder affidavits it was stated that applications had been made for permanent permits, but when those allegations were checked up from the files, in the possession of the Regional Transport Authorities, it was found that the applications were merely for the renewal of temporary permits.

81. In two of the cases writ petition No. 118 of 1950 (petitioner Niranjan Singh on the Mathura-Naujhil route) and writ petition No. 120 of 1950 (petitioner Jain Transport and General Trading Company, Mathura, sole proprietor Lakshmi Chand Jain on the Mathura-Kama Kosi route) in the agreed statements of facts it was mentioned that applications for renewal of permanent permits were made and those applications were still pending. In writ petition No. 120 of 1950 it was said that three applications were filed on 18-4-1949. They were first granted and the permits were renewed up to 30-4-1952, but this order was cancelled and the applications were still pending. In case No. 118 of 1950, an application for renewal was made on 30-4-1949, and the order granting renewal for three years was passed on 3-5-1949, but it was not signed and the application was still pending. In this latter case a fresh application was filed on 17-5-1949, for issue of a temporary permit and a temporary permit was issued for three months and they were renewed from time to time up to 15-4-1950.

82. On the admitted statements of facts in these two oases, it may be said that applications for issue of permanent permits were filed and the applications are still pending and have not been disposed of. In these two cases, to my mind, a writ in the nature of mandamus should issue to the Regional Transport Authority, Agra, directing it to hear and determine in accordance with law the applications dated 18-4-1949, and 30-4 1949, respectively. I would grant the applicants their costs.

83. In the following oases Nos. 4 to 100, 104 to 116 and 133 to 140, counsel were not able to satisfy us that any application was made to the Regional Transport Authorities, for issue of permanent permits, before this Court was moved under 226 of the Constitution. It is, however, stated, and the fact is not denied, that applications were made for issue of permanent permits on various dates in the month of March, 1950. An application under 226 for a writ in the nature of mandamus can be filed only if it is established that the opposite-parties had refused to do their duty when called upon to do so. If no application for a permanent permit was made to the Regional Transport Authorities, before this Court was moved under 226, it is difficult to hold that the case comes under 226. As regards these cases, the learned Advocate General has given an undertaking on behalf of the opposite parties that the applications would be considered and disposed of in accordance with the provisions of the Motor Vehicles Act. Mr. P.C. Chaturvedi has complained that though the Advocate-General has given this undertaking some of the applications were rejected either without giving any reason or on the ground that the Roadways' buses had started plying on those routes.

This statement was made by Mr. Chaturvedi after the arguments bad been concluded and while the cases were under judgment he filed certain affidavits in support of his statement. It is not suggested that it was after the undertaking given by the Advocate General that these orders were passed, we have no doubt that the opposite parties will now act in accordance with the undertaking, both in the spirit as well as in the letter and in case any application has been rejected in the meanwhile they would reconsider the same in accordance with the provisions of law.

84. The learned Advocate-General has further undertaken that even if some of the applicants have not filed applications so far, and they file applications in future the opposite parties will confer those applications and pass orders in accordance with the provisions of the Motor Vehicles Act. In case, therefore, any application has been rejected in spite of the undertaking a fresh application can be filed and considered by the Regional Transport Authorities. In view of the undertaking given by the learned Advocate. General, it is not now necessary to pass any orders under 226 of the Constitution. These applications, that is, Nos. 4 to 100, 104 to 116 and 133 to 140, must, therefore, fail, but I would make no order as to costs.

85. As regards applications Nos. 103, 117 to 119, 121 to 132, 144 to 154, 156, 168 and 170 to 176, no applications for issue of permanent permits have so far been made, but as I have already stated, the undertaking given by the Advocate General extends to these cases also, and I have no doubt that the Regional Transport Authorities will consider and dispose of the applications if and when they are filed in the light of the undertaking given by the Advocate-General. The applications made to this Court must, however, fail and must be dismissed, but without costs.

86. In Misc. Case No. 142 of 1950 permit was issued by the Regional Transport Authority for a period of three years and in the affidavit in support of the application the complaint is that at a particular barrier between Rajpur and Mussoorie the police constable on traffic duty stops the buses belonging to the applicants from going beyond that barrier. This, it is alleged, is done at the instance of the opposite parties that) is, (1) The State of Uttar Pradesh, (2) The Provincial Transport Authority, U.P. Lucknow, (3) The Regional Transport Officer, Meerut Region, Meerut, (4) The Regional Transport Authority, Meerut Region, Meerut and (5) The Secretary, Regional Transport Authority, Meerut Region, Meerut. Learned counsel for the applicants prayed for a writ of "prohibition". It was pointed out to him that a writ of prohibition does not lie against a body which is not exercising any judicial functions and which does not claim to be a Court or a judicial tribunal in any legal sense. Learned counsel, however, insisted that that was his appropriate remedy. The applicant does not set out in his affidavit the reasons why his buses were stopped from going beyond Rajpur Gate. Learned counsel has suggested that the traffic constable must have acted under somebody's order. He is not able to tell us who issued that order, nor the nature of the order or the approximate time-thereof. The applicants being in possession of a permanent permit from the Transport Authorities, if they ate unlawfully stopped by the police constable on traffic duty, we do not think they can claim a relief under 226 of the Constitution.

87. The application has no force and I would dismiss it but without costs.

88. In Misc. case No. 143 of 1950 filed by Lachhman Das the applicant has got a permanent permit issued under the provisions of the Motor Vehicles Act, but the route has now been curtailed and the complaint is that originally the applicant was entitled to ply his buses on the Kishni-Mainpuri route but now he can do so only from Mainpuri to Bewar, that is, a distance of fourteen miles. The applicant may have other remedies but he cannot ask for a relief under 226.

89. The application has no force and I would, therefore, dismiss it but I would make no order as to costs.

90. Mootham and Wanchoo JJ.-- These are 168 applications for writs under 226 of the Constitution of India. The applicants are owners of motor buses which plied on various routes in this State. The several applications give rise to common questions of law and have been heard together, although, the applications are, as between themselves, distinguished by certain differences of fact. It is convenient, as a starting point, to set out the circumstances in civil Misc. Case No. 4 of 1950 in some detail, the facts in that case being substantially the same as in a large number of the applications now before us.

91. The applicant in this case, Moti Lal, commenced plying a bus for the carriage of passengers on hire on the Khurja-Bulandshahr-Delhi route in 1941. Between Khurja and Bulandshahr the route is in this State; between Bulandshahr and Delhi it is partly in this State and partly in Delhi State. A permit authorising the use by Moti Lal of a stage carriage was first issued to him under the relevant provisions of the Motor Vehicles Act, 1939, by the Regional Transport Authority, Meerut, in 1941. This permit was twice renewed, the period of the last renewal expiring on 30-4-1946. Thereafter the Regional Transport Authority refused to renew the permit under Section 58 of the Act, but in lieu thereof issued what was described as a "temporary permit" valid for a period of three months. This temporary permit was periodically renewed up to 31-1-1949, but for the ensuing period ending on 30-4-1949 (that is, for the last quarter of the three-year period for which his original permit might have been expected to have been renewed) Moti Lal was given his original permit which now bore an endorsement renewing it for the period ending on 30-4-1949. For the first of these temporary permits Moti Lal paid a fee of Rs. 5 which, it may be noted, is the prescribed fee for the renewal of an ordinary permit and not that which is payable on the issue of a temporary permit under Section 62 of the Act--and he paid no fee for the periodic renewal of this permit. The procedure adopted by the Regional Transport Authority was described by counsel, with some justification, as the renewal of an ordinary permit by instalments. Thereafter Moti Lal was again issued with a temporary permit valid for three months on payment of a fee of Rs. 5, and this temporary permit was renewed, without fee, from time to time up to 31-3-1950.

92. On 1-7-1949, the Regional Transport Officer, Meerut, who appears to be an official of the Regional Transport Authority, Meerut, issued a notice to Moti Lal, and to other bus operators on the Delhi-Bulandshahr-Khurja route, informing them that a State-operated bus service, known as "Government Roadways", would commence to run on this route with effect from 1-8-1949, and that their buses must cease plying from that date on that section of the route which lay between Khurja and Bulandshahr. Moti Lal and the other bus owners were further informed that they could apply for a permit for an alternative route or for the conversion of their stage carriage permits into public

carrier permits. From 1-8-1949, Moti Lal and other bus owners on this route ceased plying between Khurja and Bulandshahr but they continued to ply between Bulandshahr and Delhi. On 22-11-1949 another notice was issued to these bus-owners by the Regional Transport Authority, Meerut informing them that as "Government Roadways" would commence to run from 15-2-1950, on the route between Bulandshahr and Delhi they must cease to operate between those places from that date. It is to be noted that although these bus owners had been directed not to run their buses between Bulandshahr and Delhi after 15-2-1950, they held so-called temporary permits to run their buses between these places which were expressed to be valid up to 31-3-1950. It is the contention of Moti Lal, and of other bus-owners whose vehicles plied on this route, (i) that the Regional Transport Authority had no power under the Motor Vehicles Act or other provision of law to issue the notices of the 1st July and 2nd November 1949, or to prohibit the owners of buses, who were in possession of permits from plying their buses for hire; (ii) that the Uttar Pradesh Government bad no lawful authority to establish and run a passenger bus service; (iii) that the Uttar Pradesh Government could not lawfully exclude the competition of privately owned buses and so establish a monopoly; and they prayed (a) for the issue of a writ of mandamus to the Regional Transport port Authorities concerned requiring them to "accept and to entertain, hear, determine and grant" applications for renewal of permits under the Motor Vehicles Act, (b) for the issue of a direction to the Government of the Uttar Pradesh and to the Regional Transport Authorities, to withdraw the aforesaid notices of the 1st July and 2nd November 1949, and (c) for the issue of a direction to the Uttar Pradesh Government ordering it not to introduce or ply on hire the "Government Roadways" bus service on the Delhi-Bulandshahr-Khurja route. Similar contentions were advanced by the other applicants. It is to be observed that in no case were any particulars given of the application or applications for renewal of permits which were to be the subject of the writs of mandamus and this lack of precision has been a considerable source of trouble in this case.

93. The argument has covered a wide field and has occupied the time of the Court for a number of days. We think that in these circumstances it is proper that we should state our views on the more important questions discussed, for even if it be the case that the applicants may not on technical grounds be found to be entitled to all the reliefs which they seek they would, on filing fresh applications, be entitled to reargue a case already fully argued.

94. The State Government and the several Regional Transport Authorities have made common cause; and they contended that not only had the former the legal right to create a State monopoly in bus passenger traffic on any particular route or routes and the latter the right to issue and extend temporary permits in the manner which we have described, but that the applicants have no general right to ply buses for hire on a public highway. It was also contended that the applicants had acquiesced in the conduct of the Transport Authorities.

95. The question which it is convenient to consider first is whether the applicants have a general right to ply buses for hire on the public highway. The argument of the opposite parties is that the right possessed by a member of the public in a highway is limited to passing and repassing thereon, and that no member of the public has a right to use a highway for purposes of gain. In support of this argument, the Advocate General relied on the case of Hickman v. Maisey, (1900) 1 Q.B. 752 : (69 L.J. Q.B. 511) and certain decisions of the United States Supreme Court. In Hickman's case,

(1900-1 Q.B. 752 : 69 L.J. Q.B. 511) the defendant walked to and fro on part of a highway which crossed the plaintiffs' land, for the purpose of watching and taking notes of trials of race horses held on that land. The soil of that portion of the highway was vested in the plaintiff, who brought an action and obtained judgment against the defendant for trespass, it being held that the latter had exceeded the ordinary and reasonable user of the highway to which a member of the public was entitled. The case, in our opinion, is authority only for the proposition that a member of the public is not entitled to use the highway for a purpose which was clearly not within that for which the highway was dedicated: it is not an authority for the proposition that a member of the public has no right to use a highway for the carriage of passengers on hire.

96. The two decisions of the United States Supreme Court upon which reliance was chiefly placed were Packard v. Banton, 68 U.S. S.C. R. Law Ed. 596 and Stephenson v. Bindford, 77 U.S. S.C. R. Law Ed. 288. In the first of these it was held that:

> "The streets belong to the public, and are primarily for the use of the public in the ordinary way. Their use for the purpose of gain is special and extraordinary, and generally, at least, may be prohibited or conditioned as the legislature deems proper."

and in the second that "It is well established law that the highways of the State are public property; that their primary and preferred use is for private purposes; and that their use for purposes of gain is special and extraordinary, which, generally at least, the legislature may prohibit or condition as it sees fit."

We do not, however, know the foundation for the rule laid down in these decisions that the use of a street or highway for purposes of game is exceptional, and therefore liable to be prohibited or regulated by law, and it may be that this doctrine of exceptional user was evolved by the Judges of the United States, in the same way as they evolved the doctrine of police power, to enable the legislature to regulate traffic on the streets. However that may be, we do not think that the American rule embodies the law on this matter as it is either in England or in India. In Halsbury's Laws of England (Hailsham Edn.) Vol. 16 at p. 238 it is said that "The right of the public is a right to 'pass along' a highway for the purpose of legitimate travel, not to 'be on' it, except so far as their presence is attributable to a reasonable and proper use of the highways as such."

97. The matter is further considered in Vol. 31 at p. 649 where the following passage occurs:

> "Apart from some statute or statutory regulation confining certain classes of traffic to certain parts of the highway, directing observance of the rule of the road, or otherwise restricting common law of rights, a person is entitled to use any highway which has been dedicated for such traffic as he desires to conduct on it, and use any part thereof although his failure to observe the rule of the road may be evidence of negligence on his part, should an accident occur."

We think that this is a correct statement of the law. It is common ground that the roads upon which the applicants' buses were running have been used by members of the public as public highways for

a very large number of years; and we are entitled to presume a dedication to the public of these roads by the owners of the land over which they passed. That presumption may be made, we think, whether the land belongs to private persons, a territorial ruler or the Crown: (see Turner v. Walsh, (1881) 6 A.C. 636 (50 L.J. P.C. 55)]. As to the extent of the dedication, it is again not in dispute that it was for the ordinary and reasonable user of the road as a highway. It is true that the primary purpose of the dedication was that of passage, but as was pointed out by Collins L. J., in Hickman v. Maisey. (1900) 1 Q.B. 752: (69 L.J. Q.B. 511):

> "The right of the public to pass and repass on a highway is subject to all those reasonable extensions which may from time to time be recognised as necessary to its exercise in accordance with the enlarged notions of people in a country becoming more populous and highly civilised but they must be such as are not inconsistent with the maintenance of the paramount idea that the right of the public is that of passage."

The learned Lord Justice referred to what Lord Esher M. R., had said in Harrison v. Duke of Rutland, (1893) 1 Q B. 142: (62 L.J. Q.B. 117):

> "Highways are no doubt dedicated prima facie for purposes of passage; but things ace done upon them by everybody which are recognised as being rightly done, and as constituting a reasonable and usual mode of using highways as such. If a person on a highway does not transgress such reasonable and usual mode of using it, I do not think that he will be a trespasser."

98. It appears to us that the question is whether the plying of buses for hire constitutes a reasonable user of the highway as a highway. There can, we think, be no doubt that from the time of the original dedication the highway was used not merely by individuals for passing from one place to another but also for the purpose of transporting persons from one town or village to another upon payment. The moans of transport have necessarily changed, but that is a consideration which is not necessarily material. The position appears to us to be again well summarised in Halsbury's Laws of England, where at p. 185 of Vol. 16 it is said:

> "Where a highway originates in an inferred dedication, it is a question of fact what kind of traffic it was so dedicated for, having regard to the character of the way and the nature of the user prior to the date at which they infer dedication; and a right of passage once acquired will extend to more modern forms of traffic reasonably similar to those for which the highway was originally dedicated, so long as they do not impose a substantially greater burden on the owner of the soil nor substantially inconvenience persons exercising the right of passage in the manner originally contemplated."

If the user is unreasonable the offender can (at least in England) be prosecuted for nuisance. A stage coach, for example, cannot wait an unreasonable time in the street for the purpose of picking up passengers; R. v. Cross, (1812) 3 Camp 224: (13 R.R. 794), or a motor bus company make excessive use of a highway for turning, standing or adjusting its buses: Robinson v. London General Omnibus

Co. Ltd., (1910) 26 I.L. R. 233: (74 J.P. 161). On general principles, therefore, we think the answer to the first question must be in the affirmative, and as far as India is concerned we think that the view which we have expressed is confirmed by the provisions of Article 19(1)(g) of the Constitution. That clause provides that "All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business". If plying of buses on hire is a trade or business--and there can be no doubt that it is--a citizen has now the right to carry on such trade or business subject to such reasonable restrictions in the public interest as may be imposed by law under Clause (6) of that Article. The business of plying buses for hire can be carried on only on the public highways; and we are of the opinion that the right to carry on a passenger transport business has implied in it the right to use the public highways for that purpose subject to such reasonable restrictions as the State may impose in the interests of the general public and so long as the highway continues to exist as such.

99. It becomes necessary now to consider the meaning and effect of Article 19(6). So far as is relevant that Article provides that:

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

Fundamental rights have been made justiciable under Articles 32 and 226 of the Constitution, and when occasion arises it will be the duty of the Courts to consider whether any existing law, or any law made in the future, with respect to the right declared under Article 19(1)(g) is in conflict with the provisions of Article 19(6). If the restrictions imposed by any such law do not come within the terms of Article 19(6) the law would to that extent be void in view of Article 13 of the Constitution. It has been urged on behalf of the applicants that Article 19(6) must be strictly construed, and that while it permits the enactment of a law imposing restrictions the law must stop short of prohibition We are not prepared to assent to the proposition that the expression "reasonable restrictions" can never in any circumstances exclude complete prohibition. In Commonwealth of Australia v. Bank of New South Wales, (1949) 2 ALL E.R. 755, their Lordships of the Privy Council had to interpret Section 92, Australian Constitution Act, which provides that inter-State trade, commerce and intercourse "shall be absolutely free". After pointing out that the regulation of trades commerce and intercourse is compatible with its absolute freedom their Lordships observed at p. 772:

> "Yet about this as about every other proposition in this field, a reservation must be made, for their Lordships do not intend to lay it down that in no circumstances could the exclusion of competition so as to create a monopoly either in a State or Commonwealth agency, or in some other body, be justified. Every case must be judged on its own facts, and in its own setting of time and circumstances, and it may be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to such monopoly was the only practical and reasonable manner of regulation and that interstate 'trade, commerce, and intercourse' thus prohibited and thus monopolised remain absolutely free. Nor can one further aspect of prohibition be ignored. It was urged by the appellant that

> prohibitory measures must be permissible, for otherwise . . . diseased cattle or noxious drugs could freely be taken across State frontiers. Their Lordships must therefore add that, but for this argument so strenuously urged, they would have thought it unnecessary to add, that regulation of trade may clearly take the form of ... excluding from passage across the frontier of a State creatures or things calculated to injure its citizens."

If we may respectfully say so, we agree with this observation. We may point out that in India certain public utility services are already the subject of State monopoly, for example railways, posts, telegraphs and telephones. It would, in our opinion, probably be going too far to say that in the circumstances of today Section 18 of the Indian Railways Act, Section 4 of the Indian Post Office Act and Section 4 of the Indian Telegraphs Act are invalid because they prohibit, or tend to prohibit, the carrying on of certain occupations, trades or businesses by citizens, We consider that reasonable restrictions in the interest of the general public may in certain circumstances, as pointed out by their Lordships of the Judicial Committee, mean complete prohibition ; and it will be for the Courts to judge whether in a particular case complete prohibition amounts to more than a reasonable restriction in the interest of the general public. That is a responsibility which, under the Constitution the Courts cannot escape. In exercising its power the Courts will, however, exercise the greatest care ; and we may, we think, usefully quote certain observations of Holmes J. in Stephen Olis v. E.A. Parker, 47 Law. Ed. 323 which we think express very felicitiously how Courts should act in such circumstances. That very learned Judge said :

> "While the Courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view, as well as for possible peculiar condition which this Court can know but imperfectly, if at all. Otherwise a Constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held semper-u-bique-et-ab-omnibus.
>
> Even if the provision before us should seem to us not to have been justified by the circumstances locally existing in California at the time when it was passed, it is shown by its adoption to have expressed a deep-seated conviction on the part of the people concerned as to what that policy required. Such a deep-seated conviction is entitled to great respect. If the State thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the Courts cannot interfere, unless, in looking at the substance of the matter, they can see that it 'is a clear, unmistakeable infringement of lights secured by the fundamental law'."

100. No law has been passed by the legislature of this State creating a State monopoly in the transport of passengers by bus on hire. It is, however, said that the provisions of the Motor Vehicles

Act can be--and indeed have been--used to secure that end. It will, therefore, be necessary to consider whether the provisions of that Act are in any way inconsistent with the provisions of Part III of the Constitution and Consequently void under Article 13. In dealing with this matter a number of ancillary questions which were discussed before us also require consideration.

101. The Motor Vehicles Act of 1939 was passed to consolidate and amend the law relating to motor vehicles in British India. It was an Act devised for the regulation and control of motor traffic, and made no provision for the creation of any monopoly in the transport of passengers of goods. Chapter 4 of the Act deals with the control or transport vehicles, a term which includes any motor vehicle used or adapted to be used for the carriage of passengers for hire. Section 42 (i) provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the terms of a permit issued by or under the authority of a Provincial or Regional Transport Authority. Section 42 (3) exempts any transport vehicle owned by or on behalf of the Central Government or a Provincial Government, other than a vehicle used in connection with the business of an Indian State Railway, from the necessity of obtaining a permit. Section 43 gives power to the Provincial Government to control road transport, and Section 44 authorises the Provincial Government to create Provincial and Regional Transport Authorities. Section 47 enumerates the matters which must be taken into account by a Regional Transport Authority in granting or refusing a permit. Section 48 empowers a Regional Transport Authority to restrict the number of buses in a specified area or on a specified route and to impose conditions on permits. Section 58 provides that a permit, other than a temporary permit, shall be effective without renewal for a period not less than three years and not more than five years; it also provides for the renewal of such permits. Section 62 provides for the issue of temporary permits, and Section 64 provides for appeals against the orders of Provincial and Regional Transport Authorities.

102. A comparison of Sections 58 and 69 of the Act shows that the permit ordinarily to be granted (to which it is convenient to refer as a "regular" permit) is a permit effective for not less than three or more than five years, while temporary permits were to be issued only for limited period not in any case exceeding four months for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or for the purposes of a seasonal business or to meet a particular temporary need. The position was altered by the Defence of India Act, 1939, Sub-section (6) of Section 6 of which (as amended by ordinance XXXI of 1945) provides that the Motor Vehicles Act shall have effect subject to certain provisions including, inter alia, the following :

> "(a) Notwithstanding anything to the contrary in Section 58 or Section 62 of the said Act, the Provincial Transport Authority or a Regional Transport Authority, acting in accordance with such directions as the Provincial Transport Authority may think fit to issue may grant a permit or a temporary permit under Chap. IV of the said Act to be effective for any specified period not exceeding five years in the case of a permit or one year in the case of a temporary permit.
>
> (b) Without prejudice to the provisions of Section 60 of the said Act, the Provincial Transport Authority may, it for reasons to be recorded in writing is of opinion that the public interest so requires, direct by order passed not later than the 28th day of

> February 1946, that any permit under Chap. IV of the said Act shall on a specified date not earlier than six months after the date of the passing of the order, cease to be effective without renewal."

In exercise of the power thus conferred on it the Transport Authority directed that the permits then held by the applicants should cease to be of effect after 30-4-1946. Thereafter the Regional Transport Authorities commenced the practice of issuing temporary permits to bus owners. That action may have been justified in 1946, but the Defence of India Act expired on 30-9-1946, and thereafter the Motor Vehicles Act had effect to the same extent as prior to the coming into operation of the Defence of India Act. From 1-10-1946, it was again the duty of the Regional Transport Authorities to issue permits in accordance with the provisions of the Motor Vehicles Act. But it seems that in all the cases now before us the Regional Transport Authorities continued the practice of issuing temporary permits for three months at a time and thereafter renewing them at the expiry of that period. This action was not justified under Section 62 of the Motor Vehicles Act for these temporary permits were not issued for any of the reasons specified in that section. The bus owners in this State were, however, without a remedy until the Constitution of India came into force, and they were obliged to submit to this illegal procedure or go oat of business. This consideration is in our view enough to dispose of the contention, only faintly urged, that the present applications are barred by the acquiescence of the applicants. In general the procedure adopted by the Regional Transport Authorities with regard to the issue of permits to the applicants since 1-10-1946, has been completely illegal.

103. It is convenient to refer at this stage to an argument advanced on behalf of the applicants that as the temporary permits issued to them bad not been granted under Section 62 of the Motor Vehicles Act, such permit must be deemed in law to be regular permits. This argument was based on the terms of Section 58 (1) of the Act which provides that:

> "A permit other than a temporary permit under Section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit." and reliance was placed on the decision to that effect in United Motor Transport Co. Ltd. v. Shreelakshmi Motor Transport Co. Ltd., I.L. R. (1944) 1 Cal. 631 : (A.I. R. (32) 1945 Cal. 260). Sub-section (1) of Section 58 deals, however, only with the duration of permits and cannot, we think, with all respect to the learned Judges who decided the Calcutta case, be as construed as to convert a permit issued without authority into a regular permit. The same point arose in a Madras case--Sri Rama Vilas Service Ltd. v. Road Traffic Board, Madras, A.I. R. (35) 1948 Mad. 400 : (1948-1 M.L.J. 85), where it was held that a Transport Authority which, on an application for a regular permit, issues a "temporary" permit otherwise than under Section 62, must be deemed not to have disposed of the application in accordance with law. With that view we respectfully agree.

104. In February 1948, the Motor Vehicles Act, in its application to this State, was amended by the Motor Vehicles (U.P. Amendment) Act, 1948 (U.P. Act No. XI [11] of 1948). Two amendments were

made by this Act. Power to revise an order made on appeal under Section 64 of the principal Act was conferred on the Provincial Government, and a new Section, Section 68A, made provision for "the better organisation of Motor Transport." This section enacted that the Provincial Government might, notwithstanding anything contained in the Act direct the appropriate Transport Authority in respect of any particular route or part of a route in the United Provinces (a) to grant permits to a joint stock company, (b) to cancel any permit or class of permits and (c) to refuse application for the issue of new permits or the renewal of existing permits. It further provided that no appeal by a person aggrieved by the cancellation of a permit should be entertained. The passing of this amending Act shows that, at that time, the Legislature had not the intention of creating a State monopoly. The scheme for which provision was made in Section 68A never, however, materialised and it appears that in lien thereof the State Government decided to create a State bus monopoly on certain routes. So much seems clear from the notices of July and November 1949, to which we have already referred and in which reference is specifically made to a "Nationalisation policy."

105. Now it is conceded by the opposite parties that in deciding whether an application for a regular permit should be granted or not a Regional Transport Authority must have regard only to the matters to which reference is made in Sections 47 and 48 of the Motor Vehicles Act, and that the fact that the State Government was proposing to run its own buses on the roads or that it proposed to pursue a policy of State monopoly in respect of the carriage of persons for reward on certain routes were considerations which were entirely irrelevant. [See Sri Rama Vilas Service Ltd. v. Road Traffic Board, Madras, A.I.R. (35) 1948 Mad. 400 : (1948-1 M.L. J. 85).] If in any case the Regional Transport Authority allowed its decision to reject an application for a regular permit to be influenced by either of these wholly irrelevant considerations then -- and this also is conceded -- a writ in the nature of mandamus could properly issue to that authority. No such writ will, however, ordinarily be issued unless an application for a regular permit has been applied for and refused, explicitly or by implication. This is a matter about which we shall have something to say later. It is sufficient to say here that as Section 45, Specific Relief Act, was not in force in this State, the circumstances were such that the applicants had no practical alternative but to submit with as good grace as possible to the directions of the Regional Transport Authorities and to accept permits in such form as those authorities choose to give them if they were to carry on their business at all.

106. In the case of a large number of the petitions before us, applications for the issue of a regular permit were filed only after the petitions had been lodged. In respect of these applications an undertaking has been given by counsel on behalf of the Regional Transport Authorities that the latter will consider and dispose of those applications in accordance with the provisions of the Motor Vehicles Act. In a considerable number of these cases, however, State buses are now running over the routes in respect of which the applicants seek permits to run their own buses, and we have to consider a submission that constituted as they now are the Regional Transport Authorities may use the provisions of Sections 47(c) and 48 (a) of the Act to discriminate against them and in favour of the State.

107. A consideration of the provisions of the Motor Vehicles Act makes it sufficiently clear, we think, that the Provincial and Regional Transport Authorities are intended to be independent quasi judicial bodies. This was the conclusion reached in The Sri Rama Vilas Services case, (A.I. R. (35) 1948 Mad.

400: 1948-1 M.L. J. 85), (supra) with which we respectfully agree. But in fact the majority of the members of the Provincial Transport Authority as well as of the Regional Transport Authorities are Government servants, and the others are nominated by the Government. The manner in which the Regional Transport Authorities have already acted in ordering the applicants to cease running their buses on certain routes on the ground that the Government roadways service was about to operate thereon, and the manner in which the same Transport Authorities appear to have lent themselves to the implementation of the State Government's policy of "nationalisation" shows, we think, that these authorities have acted as though they considered themselves to be no more and no less than Departments of Government. When the Motor Vehicles Act was passed it does not appear to have been within the contemplation of the framers of the Act that the Government would enter the passenger transport business. At that time, therefore, there could be no valid objection to the Provincial and Regional Transport Authorities being composed of government servants and persons nominated by the Government, for they had to decide only the merits of conflicting claims between citizens and citizens. That may, however, cease to be so when the Government itself operates a transport undertaking.

108. We are not, however, now deciding whether any of the members of the several Regional Transport Authorities were disqualified under Section 44 (2) of the Act from membership of those bodies. Sufficient facts have not been placed before us to enable us to say whether any of the persons who at present compose the various Transport Authorities under United Provinces Home Dept. Notifns. Nos. U.O. 181/VIII and U.O. 181 (2)/VIII, dated 2-3-1945 (published in the United Provinces Gazette, dated 10-3-1945, Part I, p. 68) have a financial interest whether as proprietor or employee or otherwise in any transport undertaking within the meaning of Sub-section (a) of Section 44. That is a matter which may require consideration at a later date.

109. A further argument has, however, been put forward. It is a two-fold one : first, that the State Government has no power to place passenger buses on the streets at all; secondly, that if it has that power it cannot, by the indirect operation of the provisions of the Motor Vehicles Act, create a State monopoly in the carriage of passengers for regard on the roads.

110. No law has been enacted by the legislature of the State authorising the State Government to run passenger buses, and it is argued that in the absence of such legislation the action of the State Government in placing passenger buses on the roads is unlawful. For the State reliance is placed on Articles 154 and 162 of the Constitution. Under Article 154, the executive power of the State is vested in the Governor, and under Article 162 the executive power of the State extends to matters with respect to which the Legislature of the State has power to make laws. It was, therefore, urged that the State Government could, in the exercise of its executive power, put buses on the roads particularly when money had been provided for that purpose (as is the case) by the State Legislature in the budget of 1949 and the Appropriation Act, 1950. Reliance is also placed on Section 42 (3) of the Motor Vehicles Act, it being said that the very fact that transport vehicles belonging to Government were exempted from the necessity of obtaining permits shows that it was possible for the Government to run transport vehicles without specific legislative authority.

111. The expression "executive power" is not defined in the Constitution. Article 53 declares that the executive power of the Union is vested in the President, and Article 154 that the executive power of a State is vested in the Governor. Articles 73 and 162 defies the extent of the executive powers of the Union and a State respectively by delimiting the fields within which each may operate. It is argued that in the absence of a definition of "executive power" the executive, whether Union or State, is wholly without power to do any act unless that act is directly authorised by the appropriate Legislature or is clearly incidental to legislative authority already given. Its function is limited to the execution of the laws, and if it engages in any activity for which there is no legislative authority it is usurping the functions of the legislature.

Particular reliance was placed upon Clause (3) of Article 266 of the Constitution which provides that:

> "No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in the Constitution."

and it was strenuously argued that any expenditure of public moneys must be both "in the manner provided in the Constitution" and "in accordance with law." The former phrase-refers to the procedure by way of an Appropriation Act; and the latter--"in accordance with law"--it was urged, can have one meaning and one only, namely pursuant to an act of the legislature. The question is a difficult one, and the argument addressed to us is one of much force. We find ourselves, however, unable to accept it.

112. It is, of course, true that "executive power" is not defined in the Constitution; but it is not in dispute that the Constitution has been evolved not only from a consideration of the Constitutions of other countries, particularly the United States of America and the Commonwealth of Australia, but that its roots are also to be found in the successive Government of India Acts and a comparison of the relative provisions with regard to executive authority in the Constitution and in the Government of India Act, 1935, is, we think, instructive. Articles 53 and 73 of the Constitution--which concern the executive power of the Union--have their counterpart in Sections 7 and 8 of the Act; and Articles 154 and 164--dealing with the executive power of a State--bear a close similarity to the provisions of Sub-sections (1) and (2) of Section 49 of the Act. The expression "executive authority" which is used in the Government of India Act, 1935, is also not there defined, but there can, we think, be no doubt that by that expression was meant those powers which by Section 33 of the earlier Government of India Act of 1915 were conferred on the Governor General, namely "The superintendence, direction and control of the civil and military Government of India." The question is, as we have said, by no means free from difficulty, but upon the whole we think that we may reasonably infer that the words "executive power" in the Constitution have substantially the same meaning as 'executive authority" in the Act of 1935, and that it is the superintendence, direction and control of the civil Government of a State which is vested in the Governor of the State. It follows, therefore, we think, that although an executive act by a State Government may not be authorised by legislative enactment it will nevertheless be within the executive power of the State if--(i) it is not an act which has been assigned in the Constitution of India to other authorities or bodies such as the legislature, the judiciary or the

Public Service Commission ; (ii) it is not contrary to the provisions of any law; and (iii) it does not encroach upon or otherwise infringe the legal rights of any member of the public, We do not think this view is inconsistent with the provisions of Article 266(3) of the Constitution for we are unable to accede to the argument that the phrase "in accordance with law" necessarily means in pursuance of an .Act of the Legislature. That in our opinion, is to place too narrow an interpretation upon the words of this clause. Those words, in our judgment, in the context in which they are found, mean "lawfully" and if this be correct the argument founded on this clause loses its force.

113. It has not been shown to us that the act of the State in putting its own buses on the roads is contrary to any law, or that, taken by itself, that act infringes the legal rights of any member of the public, we see, therefore, nothing illegal per se in the State Government running a bus service on the public highways.

114. It is, however, contended that what the State has obtained for itself is a monopoly of the business of conveying passengers for reward on certain routes; and that it has been able to do this by the control which it exercises over the Regional Transport Authorities. A monopoly secured in this way unquestionably interferes with the right of others to carry on their trade or business. Where such a right is that of a citizen of India the monopoly is prima facie void under the Constitution, for such interference can only be justified if it constitutes a reasonable restriction, imposed by law in the interests of the general public, within the meaning of Article 19(6).

115. Section 42 (1), Motor Vehicles Act, provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority ; but Sub-section (3) (a) of this section exempts from the application of Sub-section (1) "any transport vehicle owned by or on behalf of the Central Government or a Provincial Government other than a vehicle used in connection with the business of an Indian State Railway."

This provision, in our opinion so far as it purports to exempt from the application of Sub-section (1) of that section transport vehicles owned by or on behalf of the State Government, is in conflict with Article 14 of the Constitution which declares that:

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

That Article bears a close resemblance to the concluding part of the first section of the Fourteenth Amendment to the Constitution of the United States of America, which declares that:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The meaning and effect of this provision for the equal protection of the laws was well stated by Field J. in the case of Barter v. Connolly, 103 U.S. 32 in which, speaking for the Court, he said :

> "The 14th Amendment in declaring that no State 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law' undoubtedly intended . .. that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances ; that no greater hardens should be laid upon one than are laid upon others in the same calling and condition.. ."

In P. & O. Steam Navigation Co. v. Secy of State, 5 Bom. H.C. R. App. 1, Peacock C.J. when dealing with the liability of Government for damages occasioned by the negligence of its servants observed as follows :

> "Now if the East India Company were allowed, for the purpose of Government to engage in undertakings such as the Bullock Train and the conveyance of goods and passengers for hire, it was only reasonable that they should do so subject to the same liabilities as individuals."

It appears to us that when the State engages in business or commerce such as is carried on by a private individual or corporation it must subject itself to the same obligations as are imposed on, and place itself in the same position as a private individual or corporation except in the matter of taxation. In our opinion the State cannot, when it engages in business or commerce deny equality before the law or the equal protection of the laws to other persons as against itself. Section 42 (3) (a), Motor Vehicles "Act, clearly places the State Government in a privileged position and to the extent that it does so it is in our opinion repugnant to Article 14 and therefore void under Article 13 of the Constitution. The State if it wants to put transport vehicles on the road, must first apply for and obtain permits for them under Sections 45 and 46, Motor Vehicles Act.

116. The applicants have prayed that the State Government be directed not to ply buses for hire on various routes in the State. We think it is open to us to issue a direction to this effect as it is not in dispute that Government roadways buses are in fact plying without obtaining the permits required under Section 42 (1) of the Act. Our power to issue such a direction is however, discretionary and we are bound to consider not only the claims of the applicants but the interest of the general public. As there are at present no private buses operating on the routes on which Government roadways services are running, a direction such as is asked for by the applicants would, we think, result in the general public being put to very great inconvenience. We do not, therefore, consider that the circumstances are such as to justify the issue now of a direction to the State Government to discontinue plying its buses until such time as the requisite permits are obtained. In coming to this conclusion we presume that immediate steps will be taken by the State to obtain such permits. If that presumption should prove to be unjustified occasion may arise for the issue of such a direction.

117. We think we should also sound a note of warning to the Regional Transport Authorities. Upon the evidence which has been adduced in the applications before us there can be no doubt that the

Regional Transport Authorities, constituted as they are at present, have shown themselves to be subservient to the wishes of the State Government and the ready instruments of the latter's policy. The story of the conduct of these authorities since October, 1946, in dealing with applications for stage carriage permits for buses on the routes referred to in the present applications shows, quite clearly we think, that they were actuated not by a desire to regulate passenger transport in the public interest but to keep the situation fluid.

118. The applicants have expressed a fear, which in the circumstances we cannot consider groundless, that these authorities will discriminate against the applicants and use Sections 47 (c) and 48 (a) of the Motor Vehicles Act in favour of the State Government. We do not presume that the Transport Authorities will act in this way, But if they do, and should they so operate these sections as to oust all privately owned buses from the roads and thus give to the State a monopoly of the passenger bus traffic thereon, then they will be doing something which in our opinion is inconsistent with the right given to every citizen under Article 19(1)(g) of the Constitution to carry on any occupation, trade or business unless authority for their action can be found in some law passed for the purpose and valid under Article 19(6). The creation of a monopoly is not something for which, in our opinion, justification can be found in the terms of the Motor Vehicles Act, an Act which, as we have pointed out, was not passed for the purpose of giving the State any form of monopoly. If the Act is so misused, a question may arise whether these provisions which are fair on the face of them are not repugnant to Article 14 as well as Article 19(1)(g) of the Constitution.

119. It is convenient now to summaries the facts in the individual cases which fall into five classes.

120-121. Class I -- (a) Applicant in Case No. 118 whose buses ply on the Mathura-Naujhil route, and (b) Applicant in case No. 120, whose bus plied on the Mathura-Kama Kosi and Mathura Iglas-Aligarh routes. In each of these cases counsel for the applicant and the Senior Standing Counsel, who appears with the Advocate. General for the opposite parties, have agreed that an application for renewal (which must in the circumstances be deemed to be an application for renewal of a regular permit) made to the Regional Transport Authority, Agra, in April, 1949, has not been dealt with and must be considered to be still pending. In lien of disposing of these applications in accordance with the provisions of the Motor Vehicles Act, the Regional Transport Authority has issued temporary permits which have been renewed from time to time. In these circumstances we are of opinion that a writ in the nature of mandamus should issue to the Regional Transport Authority, Agra, directing it to hear and determine these outstanding applications.

122-124. Class II -- (a) Applicants in Cases NOS. 4 to 7, 71 to 98 and 183 to 140, whose buses ply on the Delhi-Bulandshahr Khurja route. These applicants were stopped from plying on the part of this route between Bulandshahr and Khurja from 1-8-1949. They are however still plying between Bulandahahr and Delhi, and are in possession of temporary permits which have been renewed only up to 31-5-1950. Their services will, therefore, unless fresh permits are obtained, end on that data. In the case of Abdul Latif (Case No. 81) an endorsement was made by the Regional Transport Authority purporting to renew his regular permit up to 30-4-1962. This permit does not, however, appear to have been handed over to Abdul Latif who was in fact given temporary permits as in the case of the other applicants. (b) Applicants in oases NOS. 8 to 70, who are plying on the

Delhi-Meerut route. They were in possession of temporary permits which expired on 31-5-1950. (c) Applicants in Cases Nos. 99,100 and 104 to 116 whose buses were plying between Garhmukteshwar, Hapur and Delhi. They also held permits which expired on 81-3-1950. Although in some instances regular permits were on various dates between January and March, 1949, endorsed with a renewal up to 30-4-1949, no such permits were in fact issued to any of these applicants after 30-4-1946. From that date temporary permits only were issued, and from time to time renewed. All these applicants applied to the Regional Transport Authority in March, 1960, after the institution of proceedings in this Court, for the issue to them of regular permits.

125-126. Class III -- (a) Applicants in Cases Nos. 103, 117 and 121 to 132, whose buses are plying in the Agra, Etawah and Mainpuri districts. (b) Applicants in Cases Nos. 144 to 154 and 156 to 168, whose buses are plying in the districts of Etah, Etawah, Farrukhabad and Mainpuri, (c) Applicants in Cases Nos. 170 to 176, whose buses were plying in the district of Jaunpur upto 31-3-1950. (d) Applicant in case No. 119, whose buses ply in the district of Mathura. No regular permits were issued to any of these applicants since 1946, but they hold, or held, temporary permits which were renewed periodically. None of these applicants has applied since 1946 for the issue of a regular permit.

127. Class IV -- Applicant in Case No. 143. This applicant holds a regular permit which is valid up to 30-4-1952, for the route Kishni-Mainpuri, a distance of thirty-two miles. With effect from 10-12-1949, the applicant was permitted to ply his bus only between Mainpuri and Bewar, a distance of fourteen miles.

128. Class V -- Applicant in case No. 142, who holds a permit authorising him to ply certain taxicabs in the Meerut Division, including Dehra Dun and Mussoorie, which will expire in May 1951. The applicant's cabs have been stopped from proceeding to Mussoorie by the police constable who is posted at the road gate near Rajpur where the hill section of the Dehra Dun-Mussoorie road begins.

129. The applications for regular permits made by the applicants constituting class I have not been dealt with by the Regional Transport Authority concerned, and we are satisfied that the Authority has neglected and is neglecting to perform its statutory duty. In the case of these applicants, we are of the opinion that their applications should be allowed, with costs and that a writ in the nature of mandamus should issue to the Regional Transport Authority requiring it to consider the applications for renewal made by these applicants in accordance with law.

130. In the case of the applicants constituting Class III there is no application now pending for the issue of a regular permit, nor has any application for the grant of such a permit been made since 1946. Their application in this Court must, there fore, we consider, be dismissed, bat in the circumstances we would make no order as to costs.

131. The applicant who constitutes class IV is in possession of a permit authorising him to ply three buses between Kishni and Mainpuri and that permit is valid up to 30-4-1952. The applicant may enforce his rights under that permit by the ordinary process of law, and we are of opinion, therefore, that no case has been made out for the exercise by this Court of its powers under 226. We would accordingly dismiss the application in case No. 143, but without costs.

132. So also in the case of the applicant who constitutes Class V. He also holds a permit which is valid up to May, 1951. There is no evidence that the police constable who, it is said, prevents his cabs plying between Dehra Dun and Mussoorie is acting on instructions from the Regional Transport Authority. It is open to this applicant also to enforce his rights by the ordinary process of law, and we are accordingly of opinion that the application in Case No. 142 should be dismissed, but we would make no order as to costs.

133. There remain the applicants who constitute Class II. It is conceded that there are no circumstances which would justify the grant in these cases of writs in the nature of mandamus, but the Court is asked to exercise its power under 226 and to issue appropriate directions or orders to the Regional Transport Authorities with regard to the applications for permits made to them in March, 1950.

134. 226 of the Constitution provides that :

> "(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories direction a, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purposes."

The language used in this Article shows clearly that the power thereunder vested in a High Court is not confined to the issue of certain specified writs. The powers given to a High Court under this Article are very wide, for they include not only the issue of writs in the nature of habeas corpus mandamus, prohibition, quo warranto and certiorari, but such other writs, and such directions and orders as the Court shall deem necessary for the enforcement of any of the fundamental rights, and for any other purpose. The scope of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari is well known and the circumstances in which they will be granted are well settled. The further power given to the Court is clearly intended, we think, to enable the Court to secure inter alia the enforcement of any of the rights conferred by Part III in those cases in which the circumstances do not justify the grant of one or more of the five "named writs or where such remedy would not be appropriate. The Court's power in such cases to issue directions or orders or writs should, we think, be exercised with caution and circumspection, and ordinarily only in those cases where grave injustice may otherwise ensue and no other remedy equally convenient, beneficial and effectual is available.

135. Now the applications for a permit in respect of which we are asked to issue directions or orders to the Regional Transport Authorities were all made after the proceedings in this Court were instituted. They have not as yet been considered by the several Regional Transport Authorities to whom they were submitted, still less have they been rejected. In respect of all of them the Advocate-General has given an undertaking to the Court that these applications will be heard and determined by the Transport Authorities concerned in accordance with law and with due regard to the observations made by this Court.

136. It has been strongly urged by counsel for the applicants that it has been established only too clearly in the course of these proceedings that the Regional Transport Authorities have allowed themselves to become the instruments of the policy of the State Government. We are constrained to agree : but we think we should not be justified in assuming that now the error of their ways has been pointed out they will not henceforth, to the best of their ability perform their statutory duties in a fair and impartial manner strictly in accordance with the law. Until the contrary is shown we shall at least presume that they will do so. Upon the whole, we are not satisfied that the circumstances are such as would justify this Court in issuing a direction or order as these applicants now seek. Their applications must, therefore, be dismissed, but without costs.

137. Sapru J. -- I have had the benefit of reading the judgment of the Hon'ble the Chief Justice. He has fully dealt with the facts and his doing so has lightened my task. I shall, there fore, very briefly state some of the facts which have given rise to these applications.

138. The applicants are bus owners and carry on the business of transport by hire by means of state carriages on various high-ways. The routes on which the applicants in this case are plying buses are Khurja, Bulandshahr, Meerut and Delhi, (1) Meerut Delhi route, represented by Mr. Pathak, (2) Garhmukteshwar-Hapur-Delhi route, represented by Sir Alladi Krishna Swami and Mr. S. B. L. Gaur, (3) Mathura-Naughat, Mathura-Kosi, Dahra Dun-Meerut, represented by Brij Lal Gupta, (4) Agra-Shamshabad route, Moradabad-Sambhal, Agra-Tantpur, represented by P. C. Chaturvedi, (5) Etawah-Farrukhabad, Etawah-Shikohabad, Etawah-Auraiya, Etah Farrukhbad, Kishni-Mainpuri represented by Shri Gopinath Kurzru, (6) Jaunpur-Singrama route, represented by Mr. M. L. Chaturvedi, (7) Agra-Kanpur route, represented by S. N. Katju.

139. In order to avoid confusion, I propose to consider the points which these applications raise by confining my attention in this judgment mainly to the case of Motilal which was argued for the applicant by Mr. Pathak. Motilal carries on the business of transport on hire by means of state carriages with a capacity for taking six passengers on the Khurja-Bulandehahr-Delhi Roads and the Meerut-Delhi route. It will be noticed that parts of these routes are situate in Uttar Pradesh and part in Delhi Province. For the purposes of taking passengers on hire, permits are issued by the Regional Transport Authority constituted Under Section 4, Motor Vehicles Act, 1939 -- vide Section 42 of the Act. It is common ground between the parties that the appropriate Transport authority was pleased to grant a permit for the aforesaid purpose to the petitioner in 1941. This permit was renewed for a period of three years and continued to be in force until 30-4-1946. Thereafter, on an application for renewal being made to the Regional Transport Authority by Motilal no regular permit was granted. He was, however, given a Temporary permit which had to be renewed after every three mouths The last permit expired on 81-3-1950. In 1949 the Regional Transport Authority informed the petitioner as also the other applicants with whose cases I shall deal separately only to the extent of indicating orders to be passed on them in the light of my observations in this case that Government was contemplating nationalisation of the transport business and no further applications for renewal would be considered by the Transport Authority. Previous to 1949, the intention of the Uttar Pradesh Government or the United Provinces Government as it then was to have joint stock companies formed for running bus services. Actually an Act was passed for this purpose but, for some reason or other, no effect was given to this scheme. A further fact which may be mentioned is

that in 1947 it was decided by Government to introduce its own buses on this route and the complaint of Motilal as also that of other bus owners is that Government officials had not been discharging their duties under Motor Vehicles Act properly. Prom such facts as I have been able to gather it would appear that a notice was given by the Regional Transport Officer, Agra, on 1-7-1949, to Motilal the purport of which was that as the roadways would begin to operate on the Delhi Bulandshahr route with effect from 1-8-1949, the applicant shall not be permitted to ran his buses on the abovementioned route from that date. In the notice mentioned above reference was made to the fact that under Rule 69 (c) of the Motor Vehicles Rules of 1940 it was not obligatory on the authority to give any notice to the bus owners but that nevertheless the authority was giving a notice so that he might, if be so chose, make an application for an alternate route within the transport region. Another option point ed out to him was to have his permits for carrying passengers converted into permits for the carriage of goods. My interpretation of the intention of the Regional Transport Authority is that the notice was intended to convey to Motilal that his temporary permit would cease to operate from 1-8-1949. Nothing in particular appears to have happened until 22-11-1949. It was on that date that the Regional Transport Officer sent another notice to Motilal relating to the Delhi Bulandshahr Khurja Road intimating that it bad been decided that such carriages whether belonging to the applicant or to the other operators would not be allowed to be run on the above-mentioned route from 15-2-1950, which was the date fixed for the expiry of the notice. In point of fact, this notice was in terms similar to the one which had been sent to him in August 1949.

140. From what I can find out from such facts as have been mentioned in the affidavit it appears that the temporary permit held by Motilal was extended up to 31-3-1950. The application which has been presented by him under Article 236 of the Constitution was thus presented to this Court during the time the temporary permit was in operation.

141. I may mention that in some of the cases before us an application for permit was made on 15-3-1960. In some applications orders for renewal of temporary permits were issued. In some of the applications no formal order appears to have been passed.

142. On these facts which have been more fully set out by the learned Chief Justice, the points that arise for determination and on which I shall state my views are:

> (1) Have the applicants a right to carry on the business ot plying buses on hire on the highways in question?
>
> (2) Is the action of the Regional Transport Authority In refusing to give regular permits on grounds extraneous to Section 47 of the Motor Vehicles Act of 1939 valid?
>
> (3) Is the Motor Vehicles Act or any part of it Invalid for the reason that it conflicts with Article 19(g) ot the Constitution? In particular are Sections 42 (3), 47 (c) and 48 (a) invalid for the reason that they offend Article 19(g) ot the Constitution?

(4) What is the nature of the right conferred by Article 19(g) and to what extent, if any, can it be regulated, curtailed, restricted or prohibited by the Legislature?

(5) Who la to decide whether it is in the public interest that it should be regulated, curtailed, restricted or prohibited?

(6) Can reasonable restrictions amount to prohibition?

(7) Is the State a person, and are any of the clauses of the Motor Vehicles Act, and if so, which, void for the reason that they offend Article 14 of the Constitution?

(8) Was it open to U. P. Government to start buses and enter into motor business, without legislative sanction?

(9) Can the State start buses and create a state monopoly, without legislative sanction? (10) Was it open to the State by misusing the Motor Vehicles Act, and refusing permits to private bus owners, to create a virtual monopoly?

(11) Are the restrictions on motor vehicle traffic such as are to be found in the Motor Vehicles Act, consistent with Article 301 of the Constitution? Does Article 301 correspond with Section 92 of the Commonwealth of Australia Act? Has a State monopoly or nationalization been ruled out by that article?

(12) What is the relief to which the applicants are entitled? Have they made out a case for the writ of mandamus or any other writ or directions by this Court to the Regional Transport Authority? If so, what should be the directions?

143. The arguments in this case have covered a very wide ground. In the very learned argument which was addressed to us by Mr. Pathak who appeared for the appellants it was argued that not only was he entitled to relief because the Motor Transport Authority had refused to issue a permanent permit on grounds which were extraneous to those which he could take into consideration under the Motor Vehicles Act but that the refusal to grant a regular permit amounted to an interference with the free carrying on of his business guaranteed to him as a fundamental right under Article 19(g) of the Con-titution. It was further urged by Mr. Pathak that it was not open to Government or to the Legislature, having regard to the nature of the Constitution, to carry on any business or trade or to nationalise or socialise or to create a State monopoly of any business. Properly speaking, some of the question raised by him do not, in my opinion, arise in the case at this stage. But on reflection I consider it desirable, particularly in view of the fact that the arguments have traversed in this case a wide ground, to indicate my view on all the issues and points raised by Mr. Pathak.

144. The Motor Vehicles Act of 1939 was designed to replace the Act, on the subject, of 1916. It is a consolidating and amending statute and of the two consolidation would appear to be the more important. It is divided into ten chapters and attached to them are seven schedules. A glance at the

Act shows that it deals with : Licensing of drivers of motor vehicles ;

Registration of motor vehicles; Control of transport vehicles; Construction, equipment and maintenance of motor vehicles; Control of traffic; Insurance of motor vehicles against third party risks and in Chap. IX there are provisions creating offences for the breach of rules and the laws framed. Chapter II, for example, deals with the question of licensing of drivers. It seeks to provide a common system for the classification of vehicles and a uniform form for their licensing. It enumerates the conditions on which it can be secured and provides that, if obtained, it shall be valid throughout the territory known formerly as British India and, by reciprocal arrangement, even beyond. Chapter III concerns itself with the registration of vehicles. What is attempted by the sections embodied in this chapter is to secure a uniform and more permanent system of registration. Chapter IV is an important chapter. It deals with the control of transport vehicles, and I shall consider some of its provisions in detail later. Chapter V provides for rule-making powers. Chapters VII concerns itself with motor vehicles coming from or going abroad. Chapter VII relates to third party insurance and we have little concern with it in this case.

145. It strikes me that the Act is designed to secure the safety of the public. A reading of it discloses that it was intended to secure that drivers shall possess a reasonable degree of competence and that the manner in which goods or passengers are loaded shall be free from danger. It seeks to protect the roads and ensures that the traffic on them shall be subject to adequate directions and control.

146. Chapter X is of a miscellaneous nature.

147. Having given a survey of the Act, I propose to consider Chapter IV a little more closely inasmuch as argument has centered round it. It deals with what might be called "the Regulation of the Commercial use of Motor Vehicles." Section 42 (1) makes it obligatory on the owner of a transport vehicle not to use or permit the use of his vehicle in any public place without possessing a permit granted or countersigned in the manner laid down by the permit.

148. Section 43 (3) (1) exempts from the requirement of possessing a permit any transport vehicle owned by or on behalf of the Central Government or a Provincial Government other than a vehicle used in connection with the business of an Indian State Railway, to possess a permit. This sub-section is important and it is contended that it is inconsistent with the Constitution. I shall deal with this point, at a later place, in my judgment.

149. Section 43 authorises the Provincial Government, after taking into account all the considerations in that section to prohibit or restrict long distance, goods traffic by public or private carrier and to fix where necessary maximum and minimum fares and freights. There is a provision in the section permitting, at such intervals of time as it may deem fit, the interest affected by any notification issued under Sub-section (1) of the section to make representations in regard to matters specified in (a) to (c) of Section 43 (2).

150. Section 44 authorises the Provincial Government for the discharge of the function stated above to set up Provincial and Regional Transport Authorities--the former having control over the latter in

certain cases and acting, speaking generally, as co-ordinating and regulating agencies. Sub-section (2) of Section 44 is of an important nature as it throws light upon the nature of the authority contemplated by the Act.

151. Section 45 makes a general provision as regards applications for permits.

152. Section 46 lays down the details which must find a place in an application for permission to carry passengers.

153. I now come to two vital sections which are Sections 47 and 48. I quote them below :

> "47. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely:
>
> (a) the interest of the public generally ;
>
> (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from jour eys not being broken ;
>
> (c) the adequacy of existing road passenger transport services between the places to be served, the fares charged by those services and the effect upon those services of the service proposed ;
>
> (d) the benefit to any particular locality or localities likely to be afforded by the service ;
>
> (e) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services ; and
>
> (f) the condition of the roads included in the pro posed route or routes :
>
> and shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lies or by any association interested in the provision of road transport facilities.
>
> (2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened :
>
> Provided that before such refusal an opportunity shall be given to the applicant to amend the time-table so as to conform to the said provisions.

48. A Regional Transport Authority may, after consideration of the matters set forth in Sub-section (1) of Section 47:

(a) Limit the number of stage carriages or stage carriages of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region;

(b) Issue a stage carriage permit in respect of a particular stage carriage or a particular service of stage carriages.

(c) Regulate timings or arrival or departure of stage carriages whether they belong to a single or more owners ; or

(d) Attach to a stage carriage permit any prescribed condition or any one or more of the following conditions, namely :

(i) that the service specified in the permit shall be commenced not later than a specified date and be continued for a specified period ;

(ii) that the service may be varied only in accordance with specified conditions ;

(ii) (a) that the stage carriage or stage carriages shall be used only on specified routes or in a specified area;

(iii) that copies of the fare table and time-table shall be exhibited on the stage carriage and that the fare table and time table so exhibited shall be observed;

(iv) that not more than a specified number of passengers and not more than a specified amount ot luggage shall be carried on any specified vehicle at any one time ;

(v) that within municipal limits and in such other areas and places as may be prescribed passengers shall not be taken up or set down at or except at specified points ; or

(vi) that tickets shall be issued to passengers for the fares paid."

154. I also consider it convenient to quote at this place Sections 58 and 62 of the Act.

"58. (1) A permit other than a temporary permit issued under Section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit:

Provided that in the case of a permit issued or renewed within two years of the commencement of this Act, the permit shall be effective without renewal for such period of less than three years as the Provincial Government may prescribe.

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit :

Provided that other conditions being equal, an application for renewal shall be given preference over new applications for permits.

62. (1) A Regional Transport Authority may at its discretion, and without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily :

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings ; or

(b) for the purposes of a seasonal business ; or

(c) to meet a particular temporary need and may attach to any such permit any condition it thinks fit.

(2) A Regional Transport Authority may delegate all or any of its powers under this section to any one of its members.

155. From these two sections, it will be clear that the Act makes a distinction between what may be called a "regular permit" and a "temporary permit". From Section 62 it is quite evident that it is open to the Regional Transport Authority to grant a temporary permit only for one of the reasons enumerated in Section 62. With the change in the position of the law in regard to the temporary permits by the Ordinance no. xXXI [31] of 1946 under the Defence of India Act, 1989, we are not concerned as temporary permits issued during the War period for reasons other than specified in Section 62 expired with the termination of the War on 31-4-1946. Temporary permits could after that date be issued only for one of the four purposes mentioned in Section 62 (1) (a) to (c), mentioned above.

156. It may be mentioned that any conditions could be attached to such permits as the Transport Authorities thought fit. The practice of granting temporary permits for reasons other than those specified in Section 62 was, in my opinion, clearly irregular. From the affidavits as drawn up details are not ascertainable as regards the various dates on which the applicant applied under Section 45 for permits. It would appear that even though the bus owners were being issued only temporary permits, the actual fee charged for each of them was not that prescribed for a temporary permit, but the fee for renewals, namely, Rs. 5 per bus. The fee for a temporary permit was, according to the Act, to be calculated on a daily basis. From this circumstance coupled with the undoubted fact that in the

notice issued to the bus owners intimating that no regular permits would be issued as Government had decided to nationalise transport and introduce roadways on the highways, the inference that we are asked to draw is that the applications sent to the Regional Transport Authorities by bus owners were for regular and not temporary permits and that the word "temporary permit" was being pat in by them as being businessmen, they felt that, in all the circumstances which existed, there was no alternative for them, but to accept the decision of the Regional Transport Authorities and make the best use of the opportunity which temporary permits gave them, It would appear that no formal orders were passed on their applications for regular permits, the policy being to give them temporary permits. It was after this Court had been given the power to issue directions, etc., in the nature of writs that it occurred to them that they had a remedy which should enable them to have their position clarified and their applications decided by the Regional Transport Authority on merits. I regret that the applications and the affidavits have been drawn up in these cases in a hurry and they do not give all the particulars that should find a place in them. I am satisfied, however, from the affidavits and the notice of Government that the operative and indeed the sole reason for refusing regular permits and giving temporary permits was the nationalisation policy of the Government and the introduction of roadways. Clearly those were matters which the Regional Transport Authority was not entitled to take into consideration in deciding whether permits should or should not be granted. The only matters which it could take into account were the matters specified in Section 47 (1) (a) to (f) of the Motor Vehicles Act (already quoted above). The section had left no discretion to the Regional Transport Authority to take into account any other matter save that after he had taken the matters referred to in Section 47 (1) (a) to (c), into consideration, he could also take matters enumerated in Section 48 of the Act into account. As Section 48 has been set out above I need not quote it here. I am clear in my view that it was not open to the Regional Transport Authority to allow itself to be influenced by any such extraneous consideration as the nationalisation policy of the Government or the introduction of the roadways. Both the Provincial Transport Authority and the Regional Transport Authority are creations of an Act of the Legislature. They are statutory bodies and a cursory glance at Section 42 and Section 44 (2) will disclose that they were also to have a non-official element, though they were subjected to the control of Government in certain matters. The extent of the control that was to be provided over them was laid down in Section 64. Under Sections 67 and 68 power had been given to the Provincial Government to make rules to regulate stage carriages and contract carriages. Under Section 67 of the Motor Vehicles Act the Provincial Government had been given certain powers which included under Clause 2 (a) of Section 68, the power of appointment, and the terms of appointment of, and the conduct of business by Regional and Provincial Transport Authorities the reports to be furnished by them and (b) the conduct and hearing of appeals that may be preferred under that chapter.

157. I cannot look upon this Regional Transport Authority as a Government functionary whose only business was to carry out the orders of Government. Clearly, in my opinion, the Regional Transport Authority failed in its duty to consider the applications on merits in the light of the requirements of the law and to that extent its action was illegal. On this part of the case, I may say that I am in agreement with the view taken by Gentle, C. J., in the case of Sri Rama Vilas Service Ltd v. Road Traffic Board, Madras, A. I.R. (35) 1948 Mad. 400: 1948-1 M. L. J. 85. This was also a case in which certain lorry owners had sought a relief under Section 45 of the Specific Relief Act as the Regional Transport Authority had, as in this case, refused permits on the ground that Government was

nationalising road transport and introducing its own roadways. In dealing with the above state of affairs Gentle, C. J., observed that:

> "The whole circumstances connected with the disposal of the appellant's application were completely wrongful and illegal and reflect a withholding, and a denial, of right and justice. The Board did not follow the procedure laid down in Section 57 (3), it did not pay regard and give consideration to the matters set out in Section 47 (1) both those provisions being mandatory and no enquiry was held as prescribed in Section 57 (5) which is essential when any representation Is made against the grant of an application for permits. All those provisions in the Act were ignored. The Board failed in every respect to carry out its statutory duties and obligations, to observe the relevant and mandatory provisions of the Act, to deal with the appellant's application as required by law and to realise its obligations as a statutory body. The dismissal of the application was occasioned solely by a meek and supine submission to the orders of the Government contained in G. O. No. 3898. There was no consideration or disposal of the appellant's application, as the Act required, and the actual position is that it has never been heard and determined."

With respect, I would say that I agree with Gentle, C. J., that it was a dereliction of duty which had been imposed by the statute on the part of the Regional Transport Authority not to take into consideration matters which he was under a statutory obligation to take note of and allow itself to be guided by those matters which were quite irrelevant for the purpose of disposing of the applications. The duty cast on the Regional Transport Authority was of a mandatory nature as the word 'shall' in Section 47(1) clearly has a compulsory force and leaves no residuary powers in it. It is quite clear that the reasons for not giving a licence is quite extraneous to the Motor Vehicles Act. The law, as I understand it, is that if people who are under a statutory duty to exercise a public duty, by exercising their discretion, take into account matters which are extraneous, then in the eye of law they have not exercised their discretion. They must fairly exercise their discretion and not take into account any reason which is not a legal reason. It is incumbent on a statutory body to act in a bona fide manner, consistently with the duty cast on it by the statute and not act arbitrarily or highhandedly. Where the language of the Statute shows that a power has been conferred and has been coupled with a duty to do something, then, there may be something in the nature of the. thing empowered to be done, which may make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. The duty cast on the Regional Trans port Authority was of a mandatory nature as the word 'shall' in Section 47 has a compulsory force and leaves no residuary powers in it (vide Julius v. Bishop of Oxford, (1880) 5 A. C. 214. (49 L. J. Q. B. 577); Alcock Ashdown & Go. v. Chief Revenue Authority, Bombay, 50 I.A. 227: (A.I.R. (10) 1923 P. C. 138); See Rustom J, Irani v. H. Kennedy, 26 Bom. 396 : (4 Bom. L. R. 1) when the Commissioner of Police was ordered to grant to the petitioner a license for an eating house Reg. v. Allpp Pasco, 5 Moore P. C. 296; Gell v. Taja Noora, 27 Bom 307: (5 Bom. L. R. 133). Queen v. Cotham, (1898) 1 Q. B. 802: (67 L.J.Q.B. 632); R v. Vestry of St. Paneras, (1890) 24 Q.B.D; 371 at 375 : (59 L. J Q. B. 244); Board of Education, v. Rice, 1911 A. C. 179 : (83 L. J. K. B. 796). Also see Halsbury, Vol. 9, (Hailsham Edn. p. 760, para. 1204). See also Ratanshaw v. G. William, I. L. R. (1942) Bom. 259: (A.I.R. (29) 1943 Bom. 1).

158. This part of the case presents, therefore, no difficulty so far as I am concerned. I shall indicate in the concluding portion of my judgment what the nature of the relief given by us to the various applicants should be.

159. I now come to the point which was raised by Sir Alladi Krishnaswami Ayyer that in those cases where a temporary permit has been granted to the applicant, a temporary permit should operate as a permanent permit. It is obvious that in the language of Gentle, C. J., there was no particular temporary need within the meaning of the Act which empowered the grant of temporary permits It is further clear that temporary permits were resorted to in order to carry out directions of the Government and to ensure that there was no criticism and objection by the travelling public. The relief granted in the Madras case was not that the permit should be looked upon as a regular permit for a period of three years. The Madras Court considered it sufficient to direct the Road Traffic Board to consider the applications before it in accordance with law. The view taken by the Calcutta High Court in the case of United Motor Transport Ltd. v. Lakshmi Motor Transport Co. Ltd., I. L. R. (1944) Cal. 631 : (A.. I. R. (32) 1945 Cal. 260), is that regard being bad to Section 58 (1) the temporary permit issued will ensure as a regular permit for three years. Now (new?) temporary permits can be issued under Section 62 (1) (a) for purposes specified in that section only. The reasons actuating the issue of temporary permits in the cases before us were not those specified in Section 62. A misuse of that section was made by the Regional Transport Authority to cover up its irregularity. The Regional Transport Authority had clearly no authority to issue temporary permits in order to get over the difficulty which the Government notification had created for it. I cannot see how these temporary permits can be looked upon as regular permits There has, in my opinion, been no proper disposal of the application of the applicant for regular permits. That being so, the actual direction that we can issue to the Regional Transport Authority is that he should consider the applications on their proper merits.

160. I may also here dispose of an argument which was advanced by the learned Advocate-General that the applications are premature in the sense that the applicants have not exhausted all the avenues of redress that were open to them under the Motor Vehicles Act. Any person aggrieved by the refusal of the Provincial or the Regional Transport Authority for the renewal of a permit has a right of appeal to the prescribes authority under Section 64 of the Motor Vehicles Act. The prescribed authority in this case is the Provincial Government. The difficulty, as far as I can see with this part of the case, is that as no regular orders were passed by the Regional Transport Authority, it was impossible for the applicants to go in appeal to the prescribed authority In any case, it was under the instructions of the prescribed authority that the Regional Transport Authority acted in the manner it actually did act.

161. I am not, therefore, disposed to attach, in the very special and peculiar circumstances of this case, any importance to the fact that the applicants did not exhaust the remedy of going to the prescribed authority in appeal before coming to this Court under 226 of the Constitution. [See on this point, B. v. Cotham, (1899), 1 Q. B 802 : (67 L. J. Q. B. 632).]

162. I shall now indicate my views on certain points which were urged in connection with the constitution of the Provincial Transport Authority. The argument of Mr. Pathak was that the

Provincial and the Regional Transport Authorities were not properly constituted as the Regional Transport Commissioner as also the Provincial Regional Commissioner and certain officers were employees of Government which was running buses of its own and had, therefore, a financial interest in the business. In order to appreciate the argument it is necessary to invite attention to Section 44 (2) of the. Act which lays down that :

> "A Provincial Transport Authority or a Regional Trans port Authority shall consist of each number of officials and non-officials as the Provincial Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or other wise in any transport undertaking shall be appointed as or continue as a member of a Provincial or Regional: Transport Authority and, if any person being a member of any such authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing give notice in writing to the Provincial Government of the acquisition of such interest and shall vacate office."

The object of this section was to ensure that the persons appointed shall be persons possessed of: an independent mind not tied to the vested? interests of transport business. It strikes me that the scheme rates out the appointment of officials serving either, permanently or temporarily, on a loan basis, in the Transport Department. The difficulty so far as this part of the case is concerned is with the facts, on the assumption, however that the Regional Transport Officer gets his salary from the budget of the Trans port Department I would hold that he is disqualified from acting on the Board. The same would apply to the Provincial Transport Commissioner so far as the Provincial Regional Authority is concerned. Possibly the Superintending Engineer of Public Works and Transport who is also a member, gets his salary from the Transport Department. But as there is no proper material before me on this point, I refrain from passing any order and merely draw the attention of Government so that if there is any irregularity it may be put right. The other officials, as far as I have been able to gather, do not get any gratuity or bonus or share in the profits of the concerns run by Government. They are permanent officials who cannot be described as men having a financial interest in any transport undertaking. No doubt the word "otherwise" is a wide one but I think it would be stretching the language too far to hold that a permanent official who does not occupy the position of a transport official appointed to the Board is covered by the disqualification laid down for membership in Section 44 (2) of the Act. I, therefore, see no force in this objection.

163. Before I go on to discuss the other points in the case, I shall first deal with the argument that the applicants have no rights to ply on hire buses on the highways in question. The learned Advocate-General denies that they have any such right. A public right of highway can originate under the English law, either with the concurrence of the owner of the soil and acceptance by user of the land by the public or by some statute. As I understand it, there has first of ail to be an animus dedicandi, that is to say, an intention to dedicate, though this dedication heed not be in writing, it being a matter on which the Court forms its own opinion on the evidence before it. Formal adoption by person or authority is not necessary; proof of intention is enough. It is further essential to prove that the way has been thrown open to the public. (Halsbury's Laws of England, Volume 16, pp. 181, 184, 185; and Pratt and Mackenzie's Law of Highways, Ed. pp. 17 to 19).

164. The learned Advocate-General's contention is that whatever be the law in England, the position in India is that the highways are owned by the State and that that being so, it is for the State to determine whether, and if so, for what purposes and to what extent, it shall allow them to be used. No authority has been pointed out to us for the proposition that the State has an absolute right in these highways such as the owner of a "fee simple" possesses in his property. I shall proceed to consider the extent to which this argument is valid. In an early case of this Court, on a dispute arising between a co-sharer in which there was some land which was being used as a highway, the defence taken by the Municipal Board was that the proprietary right of the plaintiff and his co-sharer had not been extinguished because by Section 38 of the Municipalities Act of 1879 the road had been vested in and had indeed become a property of the Municipality; consequently the Municipality was not competent to make a grant of the land to the defendant. In delivering the judgment of the Court, Old field, J. observed that it was not the intention of Section 38 of the Municipalities Act to deprive persons any private right of property they might have in the land used as a highway, nor had in fact that section conferred any such right on the Municipality.

165. With reference to the argument that in as much as the District Boards Act as also the Municipalities Act vests a street in a Municipality or, as we are now told, the Provincial Government, the State or the Municipal Council concerned became the owner of the land, the position is that the authorities cited before us in regard to the state of law on this matter in this country do not support the contention of the learned Advocate-General. In the case reported in Gunendra Mohan Ghosh v. Corporation of Calcutta 44 Cal. 689 : (A. I. R. (4) 1947 Cal. 95) viz., it was laid down that the effect of the statutory vesting of a street is not to transfer to the Municipality the ownership in the soil or right over which the street exists; the street qua street vests in the Municipality, that is to say, so much of the air space above and so much of the soil below the surface as is reasonably necessary for the Municipality adequately to manage the street as a street. Mukherji & Cuming, JJ, observed in that case that the decision was in conformity with the law as settled in England and D. S. They further observed that it could not be presumed that the intention of the legislature was to confiscate private property and vest in a public corporation without compensation being granted to the proprietor. See also : Sunderam Ayyar v. Municipal Council of Madura 25 Mad. 635 : (12 M. L. J. 37), Tunbrid Wells Corporation v. Baird, (1896) A. C. 434 : (65 L. J. Q. B. 451). Municipal Council, Sydney v. Young, (1898) A. C. 457 : (67 L. J. P. C. 40). Finchley Electric Light Co. v. Finchley Urban Council, (1903) 1 Ch. 437 : (72 L. J. Ch. 297). Foley's Charity Trustees v. Dudley Corporation, (1910) 1 K. B. 317 : (79 L. J. K. B. 410). Westminster Corporation v. London and N. W. Ry. Co. (1905) A. C. 426 : (74 L. J. Ch. 629). Lodge Holes Colliery Co. v. Wediesburg Corporation, (1908) A. C. 323: (77 L. J. K. B 847). Battenea Vestry v. County of London, (1899) 1 Ch. 474, referred to in Gunendra Mohan v. Corporation of Calcutta, 44 Cal. 689 : (A. I. R. (4) 1917 Cal. 95). A more reasonable way, on the other hand, of looking at the matter, in their opinion, was that the right of the owner had been abridged only to the extent necessary for the discharge of the duties which had been cast on the Corporation for the benefit of the public (vide also Tunbridge Corporation v. Board, (1896) A. C. 434 : (65 L. J. q. b. 451) and Municipal Council of Sydney v. Young, (1898) A. C. 457 : (67 D. J. P. C. 40), Sundaram Ayyar v. Municipal Council of Madura 25 Mad. 635 : (12 M. L. J. 87), Finchley Electric Light Co v. Fiuchley Urban Councid, (1903) 1 Ch. 437 : (72 It. J. Ch. 297).

166. In the case of Amba Prasad v. Jugal Kishore, 1936 A. L. J. 433 : (A. I. R. (23) 1936 ALL. 112), the view was expressed by a Single Judge of this Court that the soil of the road no doubt vests in the District Board, but that the public had an untrammelled right to pass and repass the road In this case what the District Board had done was to grant to the plaintiff a monopoly or exclusive eight to run lorries on certain roads to Saharanpur. The plea taken by the plaintiff, observed the learned single Judge of this Court, was that the plaintiff was a trespasser and was, therefore, not entitled to sue. It was held that the argument that a motor driver had no right to use the road for the purpose of making profit by plying cars or lorries on hire was not correct. In exercising that right the lorry owner was exercising no greater right than that of the untrammelled right of passing and repassing over the highway. No authorities for these propositions were given.

167. In another case, viz. Man Singh v. Arjun Lal, A. I. R. (24) 1937 P. C. 299: (I. l. r. (1937) ALL. 901) the view taken was that the effect of the use of the word 'vest' in the U. P. Municipalities Act is not that the local authorities do absolutely become the owners of the street; they become only owners of so much of the air above and the soil below as is necessary to the ordinary use of the street as a street and of no more.

168. In regard to the origin of the right of way and of similar rights the observations of a Fall Bench of the Bombay High Court in the case of Baslingappa v. Dharmappa Basappa, 34 Bom, 571: (7 I. C. 663 F. B.) may be quoted :

> "It may be useful to premise that by the Common Law of England there are three distinct classes of way and other similar rights. First there are private rights in the strict sense of the term vested in particular individuals or the owners of particular tenements and such rights commonly have their origin in grant of prescription. Secondly, there ate rights belonging to certain classes of persona, certain portions of the public, such as the free men of a city, the tenants of a manor or inhabitants of a parish or a village Such rights have commonly their origin in custom. Thirdly there are public rights in the full sense of the term which exist for the benefit of all the King's subjects; and the fourth of this is ordinarily dedication. It is unnecessary to enquire whether the mode of acquiring each of these classes of rights is necessarily the same in England and India but it is, I think, important to remember that these three classes of rights exist in the one country as well as the other."

169. In the case of Manzur Hasan v. Muhammad Zaman, A. I. R. (12) 1925 P. C. 36: (47 ALL. 151) the question arose before their Lordships whether the public had a right of conducting a religions procession with its appropriate observances along a highway The answer of their Lordships was in the affirmative, subject to the important qualification that the executive had a right to make any arrangement they chose including that of forbidding certain acts within a certain distance of the mosque in question. Their Lordships were careful, however, to add that the order passed was in respect of special circumstances, not a general pronouncement as to rights. The case of Sadagopa Chariar v. Krishnamorty Rao, 30 Mad. 185 : (17 M. L. J. 240) is an authority for the proposition that in a street vested in the local board all members of the public have equal rights.

170. The cases cited before us establish that the dominant objective for which public streets and highways exist is public travel and if this is so, there is undoubtedly point in the argument that all persons have an equal right to use them for purposes of travel by means which impose no additional burden on them and consistently with their obligations as passengers of transport carriers to other members of the public. Undoubtedly the right to run buses on these highways had, subject to a licence for police purposes existed for a very long time. And if the right to use highways for plying buses on hire is regarded as solely dependent on the attitude of the State towards highways, I cannot see how a transportation business can be carried on at all. The requirement that it is subject to a licence that hired carriages or buses will be allowed to run in highways is in the nature of a police regulation and does not, and cannot affect the right of the public to use the high ways. It further strikes me that the dedication for use of highways is a general one and it cannot be so limited as to be confined to one section of the community only (13 Ruling Cases, p. 361).

171. To quote:

> "The primary and paramount object in establishing streets and highways is for the purpose of public travel and the public and individuals cannot be rightfully deprived of such use, nor can the rights of the public therein be encroached upon by private individuals or corporations, even with the consent of the Municipality. Any occupation of them for other purposes, or any appropriation of them by a legislative sanction must be deemed to be in subordination to this use, un less a contrary intent is clearly expressed. Moreover, streets and highways are for the use of the public in general for passage and traffic without distinction, and all persona have an equal right to use them for purposes of travel by proper means and with due regard for the corresponding rights of others" (13 Ruling oases p. 251).

172. In the case of A.J. Buck & Co. v. Kuykendau reported in, 69 Law Ed. 623 which was a case in which motor vehicles were prohibited to enter into the State of Washington the view was expressed by Brandeis J. that a citizen has no eight under the 14th Amendment to make highways his place of business by using them as a common carrier for hire. Such use is 'a privilege which may be granted or with held by the State in its discretion without violating either the due process clauses or the equal protection clause . . . .' The highways belong to the State. It may make provisions appropriate for securing the safety and convenience of the public in the use of them. The provision in question was not regulation. So said Brandeis, J. with a view to safety or to conservation of the highways but the prohibition or competition.

173. I am not sufficiently familiar with the American Law on the point to be able to say whether the view taken in some American cases which were cited before us by the learned Advocate General is due to some special feature of the American Law relating to public highways.

174. I would, therefore, not rely on American cases on this point. I am merely referring to the case in, A. J. Buck & Co. v. Kuykendall, 69 Law Ed. 623, in order to indicate that the question which has been raised is a difficult one and necessarily the opinion expressed by me is on the material supplied to us in argument.

175. It is clear that the highways in question are public highways. The Grand Trunk Road was built according to history by Sher Shah who flourished in the 15th Century of the Christian Era. For centuries they have been used for plying all manners of vehicles including motor vehicles. Can it be said that an additional burden will be imposed upon them if they are allowed to be used for plying motor vehicles on hire. I do not think it can.

176. It strikes me that if transportation is business, and undoubtedly it is a business, it must be carried on somewhere or other. Now it can be carried on either on land or water or air. There is no other way in which it can be carried on. Where we find that a highway has been used for plying buses on their subject to a licence, which was given only for regulatory purposes, we may assume that the public has been using the highways as of right, the licence requirement being one in the interest of the security and safety of the public.

177. The conclusions, on such consideration as I have been able to give to this part of the case on the materials brought to our notice are: (1) The highways in question are public high ways and have been used as such for a very long time. The Grand Trunk Road was built, as I have already pointed out, in the time of Sher Shah. These roads have been used for passing and repassing by the public as of right and almost from the time they came to be used as public roadways, they have been used, according to modes of transport of the time, for plying bullock carts to motor vehicles. (2) In view of the above facts, it cannot be said that any additional burden will be imposed upon them if they are allowed to be used for motor vehicular traffic. The cases cited by Mr. Banerji which lay down that they cannot be used for certain purposes are all cases of misuse of these highways: vide Liddle v. Yorkshire (North Riding) County Council, (1934) 2 K. B. 101 : (103 L. J. K. B. 527), Hickman v. Masrey, (1900) 1 Q. B. p. 762, see at p. 757 : (69 L. J. Q B. 511). They are, therefore, not relevant for the purposes of deciding whether a right to ply motor buses exists on highways or not. (8) Whatever be the origin and history of the grant of these highways, the one thing that is certain is that in the case of public highways the State, assuming that the ownership of them vests in the State, is a trustee for the public which has an unlimited right of user of these highways. The effect of a statutory vesting of the streets in the District Board, Municipal Board, or the Provincial Government is not to transfer to the bodies concerned the ownership of the soil or the right over which the street exists. The street qua street vests in the District Board, Municipal Board or Provincial Government concerned. All that vesting involves is a transfer to public ownership of only so much of the air stated above and so much of the soil surface below as is reasonably necessary for the public body concerned to manage the streets vested in it. It cannot be presumed that the intention of the legislature was to confer upon the bodies concerned the rights of private property of a private owner.

178. A more reasonable way of looking at the matter, in my opinion, is that the right of the owner had been abridged only to the extent necessary for the discharge of duties which had been cast on the public bodies concerned.

179. The result of all this discussion is that bus-drivers have a right to ply motor buses on the public highways in question subject, of course, to the right of the State to lay down conditions for the better regulation of traffic, etc.

180. The two reliefs to which I shall now focus attention are reliefs (b) and (c). By these reliefs the applicants desire the withdrawal of notices, dated 1-7-1949 and 22-11-1949 issued by the Regional Transport Officers from Agra and Meerut. They also desire the opposite parties to be directed not to introduce or ply on hire roadways on Delhi-Bulandshahr, Khurja route unless authorised by a valid law. In order to support this case on this ground it became necessary for Mr. Pathak to argue that it was not competent to the State to introduce its own roadways because by so doing it "was engaging itself in trade which was not a normal function of the executive power of Government. Mr. Pathak went to the length of arguing that under the Constitution it was not open to the State even by legislation to nationalise or socialise any trade or business or to enter a trade on a competitive basis with its citizens. The main contention of learned counsel for the appellant on this point of the case is that Section 42 (3) as also Sections 47 (c) and 48 (2) (a) and 42 (2) (a) and 48 (4) are invalid as they are inconsistent with the Motor Vehicles Act. In fact he has attacked vigorously both Section 47 (c) and Section 48 and particularly the two sub-sections of Section 48 to which I have invited attention as sections which coupled with Section 42(3) enable a Regional Transport Authority inclined to be supine and submissive to Government to create a virtual monopoly in favour of the State and impede that right of carrying on one's business which are guaranteed by Article 19 of the Constitution. The arguments on this question have covered a wide ground and in order to test their validity, it is necessary to subject the Constitution to a careful scrutiny.

181. It was further urged by Mr. Pathak that under Section 19 (g) of the Indian Constitution a citizen had an absolute right to practice any profession or to carry on any occupation or trade or business and that Sub-article (6) which allows the legislature to make laws imposing, in the interest of the general public, reasonable restrictions on the exercise of the right confer red by the said sub-clause, cannot be held to go to the extent of virtually prohibiting the exercise of a profession, occupation, trade or business in which as citizens they happen to be engaged. Some of the sections of the Motor Vehicles Act, so it is urged, go to this extent.

182. Mr. Pathak has urged that the Regional Transport Authority's refusal to renew permits was not within the contemplation of the Motor Vehicles Act, that his client had an absolute right to carry on his business of plying motor buses on hire on the highways and that the action of Government in introducing roadways and creating a virtual monopoly by use of the power vested in the Regional Transport Authority amounts to, in effect, an interference with the rights of his clients and the creation of a virtual monopoly and that too without legislative sanction, Learned council for the appellants has further contended that Sections 42 (3), 47(c) (d) (e) and 48 (a)(b)(i) and (iia), Motor Vehicles Act, are inconsistent with the Constitution and Article 301 of the Constitution and, therefore, void.

183. Before I deal with the arguments relating to the validity or otherwise of the provisions of the Motor Vehicles Act on the ground of their inconsistency with the Constitution, I should like to notice some arguments which were used by Mr. Pathak in regard to the correct method of approach to the Constitution. Mr. Pathak's argument is that the Constitution with which we are dealing and which has been framed for this country is a Constitution similar in principle to that of the United States, though the framers of the Constitution have borrowed freely certain ideas from other Constitutions also. He has, therefore, invited our attention to a number of American authorities on the point that

the Constitution contemplates a complete separation of judicial, legislative and executive functions.

184. In the opening part of his arguments Mr. Pathak went to the length of asserting that the Constitution with its fundamental rights and Article 301 has ruled out completely a state monopoly or nationalisation or socialisation of any profession, business, trade or commerce even by legislative action. According to him, some of the provisions of the Motor Vehicles Act are inconsistent with both Article 14 and Article 301 of the Constitution Act which, so it is argued, is analogous to Section 92 of the Australian Constitution and must be interpreted as that section has been interpreted by the Judicial Committee and the Australian Courts. I propose to deal seriatim with these arguments.

185. A discussion of the points raised by Mr. Pathak necessarily involves a consideration of the nature of the Constitution which the Constituent Assembly representing the people of India has given to this country. From the Preamble of the Constitution it is clear that the framers attached importance to the sover-eighty of the people. In other words, to use the language of Marshall C. J., in Marbury v. Madison, 2 Law E. D. 60, their standpoint was--

> "That the people have an original right to establish for their future Government such principles as in their opinion shall meet conduce to their own happiness" (vide John Marshall's complete Constitutional Decisions edited by John Dillon, p. 32).

186. In Marbury v. Madison, (2 Law Ed. 60), Marshall C. J., observed at p. 33 (John Dillon's Ed. as John Marshall's Complete Decisions):

> "Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such Government must be that an act of the Legislature repugnant to the Constitution is void." (Vide John Marshall's Constitutional Decisions edited by John Dillon, p. 33.)

187. The Constitution is again to use the language of Lord Birkenhead in MaCawley v. The King, (1920) A. C. 691 : (89 L. J. P. C. 130), a "Controlled Constitution" in the sense that its terms can only be altered with some formality.

188. The resolve of the people to constitute India into a sovereign Democratic Republic is stated in noble language in the preamble and the objects which the Republic will strive to achieve are justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity of the nation. Now all these words have come to acquire a vast significance in the world as we know it today To describe the Constitution as Mr. Pathak did as one framed for the perpetuation of a capitalist society through democratic forms is to do it less than justice. Whether capitalism is or is not consistent with notions of economic and political justice or whether it can provide or cannot provide social or economic justice in a land which was left behind in the economic sphere in the race of life is a question with which this Court is not concerned. Indeed it would be improper for this Court to enter into questions of social ideology or party politics. But reading the Act as a whole 'not

in a narrow and pedantic sense' but in the manner in which a Constitution should be interpreted. I would say that what the framers of this Constitution have given to this country is a Democratic State, the essence of which is the possibility of the achievement of any particular political or social programme by any party in power through the democratic process, i, e,, through the process indicated in the Constitution itself In Australian National Airways Ltd. v. Commonwealth, vide 71 commonwealth Law Rep,, 20 at p. 85, Dixon J. observed :

> "We should avoid pedantic and narrow constructions in dealing with an instrument of Government and I do not see why we should be fearful about making implications."

189. In dealing with the question which had come up before him he observed :

> "That it is absurd to contemplate a Central Government with authority over a territory and yet without power to make laws, wherever the jurisdiction may run, for the establishment, maintenance and control of communications with the territory governed."

190. In the case of James v. Commonwealth of Australia, No. 2 (vide 1936 A. C. 578) (105 L. J. P. C. 115), it was observed by Lord Wright: "It is true that a Constitution must not be construed in any narrow and pedantic sense. The words used are necessarily general and their full import and true meaning can often only be appreciated when considered as the years go on, in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the words changes but the changing circumstances illustrate and illuminate the full import of that meaning. It has been said that 'in interpreting a constituent or organic statute such as the Act (i. e. the British North American Act) that construction most beneficial to the widest possible amplitude' of its powers must be adopted' (Britsh Coal Corporation v. The King, 1935 A. C. 500; (A. I. R. (22) 1935). (P. C. 158.)

191. On the question of the spirit in which a Constitution must be interpreted, we must never forget to use the language of Marshall C. J. in McCulloch v. Maryland, 4 Law Ed. 579 (vide John Marshall's Complete Decisions edited by Dillon, p. 265), that it is a Constitution we are expounding.

192. In a written Constitution certainly a legislative Act contrary to the Constitution can not be a good law. The Constitution being to quote the language of Chief Justice Marshall "the fundamental and paramount law of the nation" (Vide John Marshall's Complete Decisions edited by John Dillon, p. 33, Marbury v. Madison: (2 Law Ed. 60), "the theory of every such government must be that an act of the legislature repugnant to the Constitution is void. This theory is essentially attached to a written Constitution and is consequently to be considered by this Court as one of the fundamental principles of our Constitution". Quoted from John Marshall's Complete Opinion (p. 265.)

193. I have referred to some elementary principles in the interpretation of a written Constitution in order to indicate the point of view from which I am approaching the difficult questions which this case raises. But before I discuss the questions whether; (a) the State could create, having regard to the terms of the Constitution, a State monopoly of the transport business: (b) whether in effect the

executive order created that monopoly and (c) whether the State can nationalise any profession, business or trade even by legislation having regard to Article 90(a) of the Constitution or Section 301 of the Constitution, perhaps a consideration of the concept of fundamental rights will not be out of place.

194. The notion of fundamental rights is foreign to the British Constitution. "There is" observed Professor Dice in his Law of the Constitution p 197 Edn. 1949:

> "In the English Constitution there is an absence of those declarations or definitions of rights so dear to foreign constitutionalists, Such principles, moreover, as we can discover in the English Constitution are like all maxims established by judicial legislation, mere generalisations drawn either from the decisions or dicta of judges, or from statutes which, being passed to meet special grievances, bear, a close resemblance to judicial decisions, and are in effect judgments pronounced by the High Court of Parliament."

195. The insertion of fundamental rights in the Constitution is thus a deliberate departure from British concepts and it is necessary to seek the reasons for it, particularly as they limit the sovereignty assigned to Parliament.

196. The history of the evolution of thought on the tights of man takes us back into the seventeenth century or even earlier. From the time of Tom Paine's Rights of Man, Jefferson's Declaration of Bights, Rousseau, and the French Revolution, schools of thought have existed down to H. G. Wells and the U. N. O. discussions on human rights which assert that man has certain natural or inalienable rights and that it is the function of the State, in order that human liberty might be preserved and human personality developed, to give recognition and free play to those rights. Fundamental rights were practically to be found in every Constitution that came into existence after World War no. 1, After World War No. 2, as a result of the discussions on the proposed United Nations Charter of Human Bights, they have become even more visibly important in most Constitutions framed after that war.

197. Suffice it to say that they represent a trend in the democratic thought of our age.

198. I shall also say a few words about the directives of State policy which, though not justiciable, may be taken into account in considering the Constitution as a whole. These directries lay down the principles which it will be the duty of the State to apply in the making of laws and their execution. Article 38 states that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life.

199. Article 39 lays down the principles which must inspire State policy, Articles 40 to 51 concern themselves with such questions inter alia, as, for example, the right to work, to education and to public assistance, the promotion of educational and economic interest of scheduled castes and the duty of the State to raise the level of nutrition and to improve public health.

200. My object in drawing attention to the nature of these objectives is to show that what the framers of the Constitution were after was to establish, what is generally known, now as the 'welfare' or the 'social service state', in this country. They had taken a comprehensive view of State activities and it is quite clear that they were not dominated by the laissez-fairs thought of the last century. So much about Directives. Now we come to fundamental rights

201. The object of these fundamental rights, as far as I can gather from a reading of the Constitution itself, was not merely to provide security to and equality of citizenship of the people living in this land and thereby helping the process of nation-building, but also and not less importantly to provide certain standards of conduct, citizenship, justice and fair play. In the background of the Indian Constitution, they were intended to make all citizens and persons appreciate that the paramount law of the land has swept away privilege and has laid down that there is to be perfect equality between one section of the community and another in the matter of all those rights which are essential foe the material and moral perfection of man.

202. Moat of these rights were to be found in the Constitution of the German Republic. The function of these fundamental rights as conceived by the Weimar Constitution was: "to supply standards and prescribe limits for the legislature, the executive and administration of justice. both in the federation and in the states. They were intended according to a writer whose language I adopt, to put no brinks in the building but to be the bread at life of the Constitution. The object behind them was that they should sink deeply into the soul of the nation and they had, therefore, to offer more than dry paragraphs."

203. In approaching the question of fundamental rights the Court has, therefore, a heavy responsibility to see that the objective behind them is not frustrated. At the same time they cannot be interpreted in such a manner as to entrench the very privileges they were intended to sweep away.

204. On the assumption that transport is business and that the owner of a bus has a right to ply his buses on hire on highways the argument of Mr. Pathak is that Article 19(a) has conferred on him a right by reason of which it is neither competent for the executive nor the legislature to interfere, save for such regulatory requirements as may be necessary, in the exercise of the police power of the State, for security, safety, convenience or health of the public.

205. We ate indebted to the research of Mr. Pathak for many cases which came up before the Courts of the United States in which the limits of this police power were discussed. They have been noticed by my brethren but before commenting on them or tracing the history, scope and meaning of police power, I may say that I do not look upon the words in Article 19 of the Constitution that "A citizen shall have the right of" as equivalent to a guarantee or assurance that existing or future businesses shall not be subject to the regulation and control of the State extending, in suitable cases, to their virtual prohibition by legislation. Article 19(1)(g) concedes to all citizens the right to practice any profession, or to carry on any occupation, trade or business. What is conceded by this section is a guarantee that all persons shall be equally free to carry on any profession, trade or occupation. It is, as I see it, the counterpart of Article 15 and Article 16. The important point about 19 (6) is that it

saves the right of the State to impose any 'reasonable restrictions' on the exercise of the right conferred by the said sub-clause. That these restrictions cannot have reference only to restrictions which provide technical qualifications necessary for practising any profession or carrying on any occupation, trade or business is quite evident from the wording of the section (Article?) itself. It strikes me that after having dealt with the matter of access to shops, public restaurants, hotels and the use of wells, tanks bathing ghats etc, and also the matter of employment or appointment and also after dealing in Article 17 with untouchability, the framers of the Constitution proceeded to give protection to certain rights regarding freedom of speech etc., we are concerned in this case, with Article 19(1)(g), i.e. the right to carry on any profession occupation, trade or business. The main object behind the insertion of these fundamental rights in the Constitution appears to have been a desire on the part of the framers of the Constitution : (a) to prescribe standards of conduct for the new Governments which they were setting up and (b) to provide safeguards for cultural and political minorities. For example, without a right of freedom of speech it would not be possible for citizens to meet together and discuss their views and formulate their actions. Similarly, it may be that the framers thought that having conceded to all citizens the right of equality to enter Government service, it was essential to ensure it in the case of businesses, professions and trades also. I would, therefore, interpret the words "a citizen shall have the right to" as equivalent to "a citizen shall not be prevented from" or "a citizen shall not suffer from any disability from exercising his free choice in selecting any business, trade or profession." Viewed in this light, these rights are not in the nature of an absolute guarantee to the effect that there shall be no interference, by way of regulation, restriction or control, of any profession, trade or business. They are, it strikes me rather intended to assure citizens that subject to such restriction as the State may, at any time deem to be in the public interest by legislation all persons shall have an equal right to carry on any profession, trade or business. This is quite evident from Article 19(6) which runs in the following terms:

> "19 (6). Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law Imposing in the interests of the general public reason able restrictions on the exercise of the right conferred by the said sub-clause and in particular nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe or prevent the State from making any law prescribing or empowering any authority to prescribe the professional or technical qualifications necessary for practising any profession or carrying on any occupation trade or business ....."

206. The important point about Article 19(6) is, that it saves the right of the State to impose any 'reasonable restrictions' on the exercise of the right conferred by the Sub-article (g) of that Article and that these restrictions cannot have reference to only restrictions which provide for technical qualifications necessary for the practice of any profession or the carrying on of any occupation, trade or business is perfectly clear from the wording of the article itself.

207. The two questions therefore, that arise in construing Article 19(6) are, (a) what is the meaning of the words 'reasonable restrictions;' (b) who is going to judge that they are in the interest of the general public.

208. Mr. Pathak's argument has taken the form that in providing Article 19 the framers of the Constitution had necessarily an American background and that they were dominated by the ideas which were current in the latter part of the 18th century when the American revolution took place. It strikes me that there is no adequate reason to make the assumptions on which this argument is founded. A Constitution is the expression in national life of the genius of a people. It reflects the tendencies of the age and the articles have to be interpreted, without doing violence to the language, in the light of the prevailing phase of sentiment in the country in which the Constitution is intended to operate.

209. Now it strikes me that in laying down these fundamental rights the framers had been influenced by certain currents of thought in the modern world and light, as I have said before, is thrown on them by a reference to directives of State policy. I shall start by considering the background of these rights. The American War of Independence preceded the French Revolution. It took thirteen years for the fathers of the American Constitution to evolve a constitution for themselves. The American colonists who rebelled against the Government of Lord North were relying as Britishers who had carried British traditions with them on the principle of "No repre5entation no taxation" and it was because Lord North had violated these principles that they declared that they owed no allegiance to the British Crown. They were anxious to insert the freedoms which had been guaranteed to them by the Magna Charta, the Bill of Rights, the Petition of Right, the Act of Settlement and to preserve their glorious inheritance. They were living in an age when the nature of the British Constitution with its combination of functions had been misinterpreted by Montesque's Spirit of the Laws. To them property was as sacrosanct as life and liberty. They believed in the rule of law and hence inserted in their Article 14, the Due Process of Law Clause. "Due Process of Law was intended to protect the citizen by ensuring that there shall be no change in ancient procedure in disregard of the fundamental principles .... which .... protect the citizen? in his private right and guard him against the arbitrary action of Government." (vide Norton Constitution of the United States (241). (See also Gerspenberg American Constitutional Law, pp. 6-15.)

210. The thought of the period when the American Constitution was drawn up regarding restrictions on the exercise of absolute right of private property or to carry on one's business as one liked was severely individualistic. In these circumstances and in view of the "due process clause" what was called the Police Power of the State came to be in the hands of Judges like Marshall C. J., Holmes and Douglas JJ.--a beneficient power. I am making these general observations because some of the cases that Mr. Pathak has cited seemed to me to be of an early period in the history of the Supreme Court. The point about "reasonable restriction" has assumed importance because Mr. Pathak's argument is that parts of the Motor Vehicles Act, viz., Sections 42 (3) (I shall treat this separately) 47 (c) and 48 (a) and (e) are void as going beyond the legitimate bounds of reasonable restrictions or regulations as he calls restrictions. He relies upon Article 13 for the proposition that these pro visions of the Motor Vehicles Act were not saved by the Constitution. Before discussing the cases illustrating the implications of Police Power I would like to explain what exactly is meant by Police Power and the extent to which it can be carried or has been carried in the United States,

211. Much was said by Mr. Pathak about the Police Power of the State. Many cases were cited by him in which a narrow view about the nature of Police Power was taken. I would like to quote in this connection Taney C. J. in the License Cases, 6 Howard, 504 at p. 584 given in Evan's American Constitutional Law, 1216 Ed., p. 370 who discusses Police Powers in these terms:

> " What are the police powers of a State? They are nothing, more or less, than the powers of Government inherent in every sovereignty to the extent of its dominions (see also the observations of James B. Thayer reproduced in Evan's American Constitutional Law at p. 370, Willoughby on the Constitution, Vol. 3, pp. 776, 7 and 8 and Gooley's Constitutional Limitations, Vol. 2 pp. 1320, 1407.)"

212. In an early case (Mugler v. State of Kansas, (1837) 81 Law. Ed. 205) the State of Kansas passed a law, in accordance with its Constitution, prohibiting the manufacture and sale of intoxicating liqours except for medical, scientific and mechanical purposes. In delivering his opinion Harlan J. observed that "there was hardly any ground for the Judiciary to declare that the prohibition by Kansas ot the manufacture or sale, within her limits, of intoxicating liquors, tot general use there, as a beverage, is not fairly adapted to the end of protecting the community against the evils which confessedly result from the excessive use of ardent spirits. There is no justification for holding that the State, under the guise merely of police regulations, is here aiming to deprive the citizen of his constitutional rights; for we cannot shut out of view the fact, within the knowledge of all; that the public health, the public morals, and the public safety, may be endangered by the general use of intoxicating drinks, not the fact, established by statistics accessible to everyone, that the idleness, disorder, pauperism, and crime existing in the country are, in some degree at least, traceable to this evil . . . . "

213. Again in another case, viz., Gity of Chicago v. Strurges, 66 Law. Ed. 215, where the question was whether an Act of indemnity compensating the owners of property for damages occasioned by mobs and riots was valid. Lurton J. who delivered the opinion of the Court made the following observation:

> "Primarily Governments exist for the maintenance of social order .... A recognition of this supreme obligation is found in those exertions of the legislative power which have as an end the preservation of social order and the protection of the welfare of the public and of the individual. If such legislation be reasonably adapted to the end in view, affords a hearing before judgment, and is not forbidden by some other affirmative provision of constitutional law, it is not to be regarded as denying due process of law under the pro visions of the 14th Amendment."

In Atlantic Coast Line Bail Road Co. v. State of Georgia, 234 U. S. A. 38: (58 Law. Ed. 1312) on a question arising whether a certain clause had contravened the 14th Amendment of the States, the view expressed by Hughes J. was that "It cannot be denied that the protective power of Government, subject to which the carrier, conducts its business and manages its property, extends as well. to the regulation of this part of the carrier's equipment as to apparatus for heating oars or to automatic couplers." In Plumley v. Massachusetts, 155 U. S. 461: (39 Law Ed. 223) where the question was

whether a law passed to prevent deception in the manufacture and sale of imitation butter, was valid, it was observed that the Constitution of the United States does not secure to any one the privilege of defrauding the public and that a State enactment forbidding the sale of deceitful imitations of articles of food in general use among the people does not abridge any privilege secured to citizens of the United States, nor, in any just sense, interferes with the freedom of commerce among the several States.

214. In Sligh v. Kirkwool, Sheriff of Orange County, Florida, 237 Under Section 52: 69 Law. Ed. 835, Day J. made the following important observation:

> "The police power, in its broadcast sense, includes all legislation and almost every function of civil Government . .. It is not subject to definite limitations but is co-extensive with the necessities of the case and the safeguards of public interest... It embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health."

It was also further observed that:

> "The police power was the most essential as also at time the most insistent and always one of the least limitable of the powers of Government (Eubank v. Richmond, 226, U. S. 137 at p. 142). In the case of Munn v. Illinos, 94 I. S. 113: 24 Law Ed. 77, the question was whether the fixing of maximum charges for the storage of grain in warehouses at Chicago and other places in the State having not less than one hundred thousand inhabitants, was valid or not, the Chief Justice observed that:
>
> "When one becomes a member of society, he necessarily parts with some rights or privileges which, as an individual not affected by his relations to others, he might retain."

In his dissenting judgment in Tyson and Bro. v. Banton, 71 Law. Ed. p. 718, where the question was whether a statute fixing the price of theatre tickets was valid or not, Holmes J. commented on the fact that the phrase 'police power' was used to apologise for the general power of the legislature to make a part of the community uncomfortable by a change. He added that he did not believe in such apologies. He thought that the proper course was to recognise that a State legislature could do whatever it seemed proper unless it was restrained by some express prohibition in the Constitution and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court might happen to entertain. He add ed that the truth was that, subject to the compensation, the legislature might forbid or restrict any business when it had a sufficient force of public opinion behind it. Emphasis was laid on public opinion and the desirability of Courts not substituting their opinion for those of the legislature. "lam far from saying" observed Holmes J., "that this particular law is a wise and rational provision. That is not my affair. If the people of State speaking by their authorised voice say that they want it, I see nothing in the Constitution of the United States to prevent them from having their

will."

In other words Holmes J., broadly asserted the right of the legislature to determine what is in the public interest and to determine whether a particular business is affected with ft public interest and is in the public interest.

215. With great respect I would say that I entirely agree with the Judge. The fact that in this particular ease Holmes J. was in a minority is immaterial.

216. In Queenside Hills Realty V o v. Sexl, 90 Law. Ed. 1096, which was a case in which a legislation was attacked on the ground that it had provided for the installation of an automatic wet pipe sprinkler system in the appellant's building, but permitted it in identical or inferior buildings adjacent to and directly competing with the appellant without the necessity of any sprinkler system, Douglas J. made the following observations:

> "Little need be said on the due process question. We are not concerned with the wisdom of this legislation or the need for it. Protection of the safety of person is one of the traditional uses of the police power of the States. It is for the legislature to decide what regulations are needed to reduce fire hazards to the minimum. Many types of social legislation diminish the value of the property which is regulated. The extreme cases are those where in the interest of the public safety or welfare the owner is prohibited from using his property. We are dealing with a less drastic measure. But in no case does the owner of property acquire immunity against exercise of the police power because he constructed it in full compliance with the existing laws. The police power is one of the least limitable of governmental powers and in its operation often cuts down property rights."

217. I may say with respect that I entirely agree with the remarks of this eminent Judge.

218. In the case of Otis and Gasman v. Parker, 47 Law. Ed. 323, the Californian Constitution had forbidden the sale of stocks on margin or to be delivered at a future date. It was argued that in doing so it had interfered in an unwarrantable manner with the freedom of contract. In upholding the validity of the law, that great jurist, Holmes J. made the following observations:

> "It is true, no doubt, that neither a State legislature nor a State Constitution can interfere arbitrarily with private business or transactions, and that the mere fact that an enactment purports to be for the protection of public safety, health, or morals, is not conclusive upon the Courts. But general propositions do not carry us far. While the Courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view, as well as for possible peculiar conditions which this Court can know but imperfectly, if at all. Other wise a Constitution, instead of embodying only relatively fundamental rules of right as

> generally understood by all English speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held sembar ubique et db omnibus."

219. Even if the provision before us should seem to us not to have been justified by the circumstances locally existing in California at the time when it was passed, it is shown by its adoption to have expressed a deep seated conviction on the part of the people concerned as to what that policy requited. Such a deep seated conviction is entitled to great respect. If the State thinks that an admitted evil cannot be prevented except by prohibiting a calling, or transaction not in itself necessarily objection able, the Courts cannot interfere, unless, in looking at the substance of the matter, they can see that it "is a clear, unmistakable infringement of rights secured by the fundamental law".

220. Another learned Judge Wanamaker, says:

> "The dimensions of the Government's duty is to protect and promote the public welfare. The measure of police power must square with the measure of public necessity. The public need is the pole star of the enactment, interpretation, and application of the law, . . . Moreover the growth of the police power must from time to time conform to the growth of our social, industrial, and commercial life. You cannot put a straight-jacket on justice any mere than you can put a straight jacket on business. Private initiative, enterprise and public demand are constantly discovering and developing new methods and agencies, honest, and dishonest, and the police power must be always available to afford apt and adequate protection to the public."

221. Reference was made by Mr. Pathak to a number of oases from the United States Supreme Court in which it struck me that a narrow interpretation had been put upon this police power (notably the case Dobbins v. Losanglos, 49 Law. Ed. 169.)

222. I have said enough I, think, to indicate the extent to which the police power can go in the United States,

223. The concept of the State, as it was understood at the time when the American Revolution took place in the early part of the 19th century, has very much changed. In that era, the idea which held the field, was that liberty was all important and by liberty, thinkers of that age, meant absence of restraint. The writers of that period emphasised that maximum happiness could be achieved only by each individual pursuing his own happiness without any interference by the State. The State was not conceived of as an organization which must, actively work for the promotion of social and economic justice. The idea of 'distributive justice had not dawned or dawned only dimly. It was regarded as intrinsically wrong for the State to interfere with the freedom of action of any citizen as regards his profession or his occupation or his trade, his business or his property for it was felt that such interference, howsoever beneficient its intention, would be fatal to the prosperity both of the individual and the community. Reaction against that theory started early and it would be irrelevant to indicate the processes of trial and error through which the concept of a State which would secure

to every individual an adequate livelihood, develop the resources of the country to their fullest extent and provide for every citizen the greatest possible degree of physical and moral well being, has developed. Liberty has come to have a positive meaning for now with a deeper understanding of the social and economic causes responsible for poverty and unemployment, disease, squalor and ignorance, etc., men have come to appreciate that it is impossible, in the circumstances of today, to do without an expansion of State activities. The problem, in the modern world is to reconcile liberty with social and economic planning and to achieve social justice. It is in this age of the Welfare State that this Constitution was drawn up. Necessarily, therefore, with, out doing violence to the text of the Constitution, this background has to be kept by us in view. This is in accordance with the latest views of decisions in the United States.

224. Keeping in view this fundamental view point I have been led to ask whether the words "reasonable restrictions" can in the context in which they have been used include "prohibition." Do they permit a business or an occupation or a profession to be nationalised if it is in the public interest to do so ? Does the section allow the Courts to constitute themselves into a third chamber and exercise a sort of supervisory control over the declared will of the legislature by imposing its own ideas of what is reasonable and what is not reasonable, or what is in the public interest and what is not in the public interest ? I think that Courts should accept what the legislature thinks as reflecting a true criterion of what is in the public interest and the test in this sense would be a subjective one [See Rex v. Halliday, 1917 A.C. 260 : (86 L. J. K. B. 1119); Liversidge v. Anderson, 1942 A. C. 206 : (110 L. J. K. B. 724) and Greene v. Secretary of State for Home Affairs, (1942) A. C. 284 :.(111 L. J. K. B. 24).]

225. I have quoted profusely from the opinions of American Judges in order to bring out the point that it is not correct to say that reasonable restrictions mean nothing more than seasonable regulations ensuring the safety, health security or morals of the public. The U. S. A. Supreme Court has given a wide interpretation to the term "police powers" so much so that Judges have regarded it as "the least limitable of all powers". The cases which have been cited establish that restrictions can mean, in suitable cases, prohibitions and both Holmes and Douglas JJ., are clear on the point that it is only in those exceptional cases where the prohibition would amount to a fraud on the Constitution that Courts would be justified in interfering with the declared will of the legislature. It strikes me that on the analogy of the American law on which Mr. Pathak has relied reasonable restrictions can be placed on Article 19(1)(g) and that these reasonable restrictions, if in the public interest, can amount to prohibitions. The conclusion I have come to is that even on the assumption that fundamental rights which incidentally are changeable under the Constitution by a less cumbersome procedure than some articles in some other chapters constitute a guarantee to existing businesses, professions and trades and the restrictions placed upon them can, in the interest of the public, amount to virtual prohibitions. In any case, the impugned provisions with the exception of Section 44 (3) (a) of the Motor Vehicles Act do not go beyond the stage of regulations and are, what ever test be applied to them, valid.

226. I personally think that interference of Courts with statutes passed by the legislature on the ground that they are unreasonable should be exercised only in such exceptional cases as where, for example, in the guise of a general law, an Act constituting a denial of the freedom guaranteed under

Article 15 or the equality clause under Article 14 is passed by the legislature. The Courts are in no better position than legislators to assess the social and economic necessity of any measure, viz., regulating, restricting or prohibiting any profession, calling or trade in the interest of the public. Of the social and economic necessity of measures calling for the exercise of the restricting power given in Article 19(1)(g), the legislature must be the final Judge. This being my view I am not prepared to accept the contention of Mr. Pathak that the sections of the Motor Vehicles Act impugned by him viz., 47 (c) and 48A which is a control measure designed to regulate competition in the interest of the safety of the travelling public, are, in view of the provisions of the new Constitution, ultra virus except to the extent I shall indicate hereafter. This part of the case, therefore, fails and I shall now proceed to consider some other parts of Mr. Pathak's argument.

227. Before, however finally parting with the part of the case relating to Article 19(1)(g) and 19(6) I shall deal with one of the arguments which has been used by learned counsel for the applicants viz., that it is not competent for the State, having regard to the provisions of Article 19(1)(g), to start running its own buses and Vehicles as thereby it is restricting the scope of free enterprise which is the essence of this Constitution. I confess that I am unable to accept this argument as correct. Whether the State can or cannot run its own buses is a question which I shall examine at another place. Here I would like to point out that the right which has been guaranteed under Article 19(1)(g) is the right of free choice of ones own business, but there is, it strikes me, having regard to Article 19(6), no guarantee in that article as to the mode or extent of its exercise. There is nothing to indicate in the Constitution that the provisions of Part III of the Constitution are to prevail over other Chapters of the Constitution if there is any repugnancy between the two and I can read in Article 19(1)(g), no guarantee, having regard to Article 19(6), that the State shall not impose, in the interest of the general public, restrictions, on the right conferred by that section. The basis of Mr. Pathak's argument is that the Constitution contains an absolute guarantee of free enter prize in trade, business or profession. I regret that I am unable to make any such assumption. The basis of the Constitution, if we look to the preamble and the State directives, in democracy and social, economic and political justice. It is clear from these words that the framers were not thinking in terms of a capitalist democracy any more than in terms of State which had accepted as an article of faith, nationalisation of the means of production, exchange and distribution. The impugned provisions of the Motor Vehicles Act, namely, Sections 47 (c) and 48 (a) and (a) are, therefore, clearly not void. It is urged, however, that though they do not directly create a State monopoly in motor buses they are so capable of being worked by a submissive Transport Regional Authority as to virtually create a State monopoly The Motor Vehicles Act and impugned provisions of it were perfectly valid when it was passed. The requirements laid down in Sections 47 (o) and 48 (a) are clearly in the interest of the public. They give to the Regional Transport Authority necessary powers to enable it to ensure public safety and fair competition by limiting the number of buses on roads. The real grievance against the impugned provisions is that they are being administered in a perverse manner. That is, however, a different matter.

228. A reading of the Motor Vehicles Act leaves no doubt in my mind that refusal to renew permits was not within contemplation of the Motor Vehicles Act. As a matter of fact applications for renewals were to have priority over others. The Act was not a measure intended to create either a State monopoly or nationalisation of the motor vehicular business on the highways. Barring the fact

that cars owned by the Central Government or the Provincial Government were not required to have any permits, there is nothing to indicate in the Act that it was with a view to usher in a scheme of nationalisation that it was passed. The user of the power of regulation of motor traffic by issue of permits vested in the Provincial and the Regional Transport Authorities for purposes of creating a virtual monopoly constitutes a misuse of the Act. The straight course, if Government was of the view that nationalisation was in the interest of the public, was to go before the legislature and have a proper Act. What actually the Transport Authority on some routes at all events has been doing is to use the power of refusing to issue permits to accommodate Government to create a virtual monopoly. There is force in the contention of Mr. Pathak that by this misuse of the Act, Government has created, for all practical purposes a monopoly by executive order and that some petitioners have been virtually prohibited from carrying on their normal avocation in some cases by executive order. It is clear that by an executive order the right of a citizen to carry on his ordinary avocation cannot be restricted. The Executive Government cannot without legislative sanction create a monopoly for a monopoly affects the right of others. On this part of the case, the following observations of Scott L. J. endorsing the conclusions of the Ministerial Powers Committee in Blackpool Corporation v. Looker, (1948) 1 K. B. 349 are important and I quote them below :

> "It is a principle of out Constitution that whatever laws are passed by Parliament are binding as the law of the land, on everybody. But it Is also a principle of our constitution that no one may be deprived of his liberty or of his rights except in due course of law that is, unless he has done something which the law says specifically shall have that effect. In the absence of a common law or a statutory authority, "A" cannot be deprived of rights by an executive act of a minister and it the minister claims to have made a regulation entitling him to interfere with 'A's' rights, the Court will interfere to stop the minister unless he can show by what authority, statutory or otherwise, he has made the regulation In question."

[See also the case of monopolies Thoma's Leading Cases on Constitutional Law, p. 12, full report in Gunendra Mohan v. Corporation of Calcutta, 44 Cal. 689 : (A.I.R. (4) 1917 Cal. 95).]

229. Reliance is placed on some observations of Mathews J. in Vickwo v. Hopkins, 80 Law. Edn. 222 at p. 226. In that case, which is a remarkable one, that learned Judge declared an ordinance demanding heavy pains and penalties of all persons who washed clothes for hire in frame on the ground that it was capable of being and was so operated and enforced as to discriminate against Chinese laundrymen in a manner contrary to the 14th Amendment [See a discussion of this case in Willoughby on the Constitution of the United States (Vol. 3, p. 1931.)] While delivering his opinion, Mathews J. observed as follows:

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights the denial of equal justice is still within the prohibition of the Constitution."

230. The soundness of the principle enunciated by Mathews J. cannot be questioned. (See also Tarranee v. Florida,, (188 U. 8. 519) in which the administration of a law being questioned the Court said 'such an actual discrimination is as potential in creating a denial of equality of rights as a discrimination made by law', vide Tarranee v. Florida, 188 Under Section 519; see also Willoughby's the Constitution of the United States, pp. 1931-33). British authorities, in the very nature of things, cannot be of much help in interpreting the 'equality' clause as there is Britain they have the supremacy of Parliament and no 'equality' clause in a written constitution. I should have, on the analogy of the principles laid down in the above case been disposed to declare Section 48 (a) of the Motor Vehicles Act illegal had it not been for the fact that I do not think it fair to assume that even after we have pointed out that it is the imperative duty of the Regional Transport Authority to administer the section in such a manner as not to give a virtual monopoly to Government in the matter of State carriages, the Regional Transport Authority will persist in disregarding the directions implicit in our judgment. A monopoly cannot be created by executive order for it impugns upon the rights of others and what cannot be done directly cannot be allowed to be done indirectly. (Vide Luckmeswar Singh v. Chairman of the Darbhanga Municipality, (18 Cal. 99 at p. 101.))

231. The Motor Vehicles Act had not contemplated at the time it was passed its possible misuse in the interest of Government-owned motor vehicles. If Government roadways were not running and preferential treatment was not being accorded to them to the extent of creating a virtual monopoly on some routes, the section in question would be a perfectly good section. For it is a section intended to safeguard the safety of the public and ensure fair competition. It is because of the fear that the provisions of the section shall be perversely administered that the question of its being declared invalid arises. I do not think it proper to take note of this fear. For this reason, I am not prepared to declare the sub-section in question, namely, 48 (a) as invalid.

232. I have made it perfectly clear that in my opinion the nationalization policy and the introduction of roadways are extraneous considerations with which the Regional Transport Authority must not concern itself. In a later part of my judgment, I have further made it clear that Section 42 (3) which lays down that Government or State vehicles can be plied without permits is void. Whether the situation created by these observations requires a change in the law is for the legislature to decide.

233. Having cleared the ground, I come now to the important contention that Sub-section (3) of Section 42 of the Motor Vehicles Act, which exempts from the requirement of a permit, any transport vehicle owned by or on behalf of the Central Government or a Provincial Government is invalid as being inconsistent with Article 11 of the Constitution which lays down that :

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

The word "person" has been used in various articles of the Constitution. It has been used in Articles 5, 6 and 7, 8 and 9 of part in, Articles 14, 23, 25, 27, 28, 30, 31, 34, 202, 226, 276, 285, 287, 289 and 289(2) of the Act. The Act has used four words, viz. citizen, person, individual and human beings. In some articles the word "person" is of wider import than citizen, individual or human being and would include an "authority" also. The question is, what is the sense in which it has been used in

Article 14. But before examining the meaning of the word "person" I should like first of all to say that what the article does is to declare that equality before the law or the equal protection of the laws shall not be denied by the State to any person. There is no exception made as regards this duty of ensuring equality to a person. Is it unreasonable to say that the assurance of equality before the law and equal protection of the laws extends to every one--whoever he may be including even the State classifiable in the same category or the same business or trade? I think not. In principles I can see no justification for any differentiation. The principle enunciated is of equality and it should apply to all coming within the same category, classification or, as is the case here, the same business.

234. I shall now deal with another aspect of the matter.

235. It is to be noticed that the word used in the article is "person." In order to bring out its meaning it seems necessary to contrast the provisions of Article 14 with those of Articles 15 and 16. Article 15(1) for example, says :

> "That the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." Article 16(1) lays down that:
>
> "There shall be equality of opportunity for all citizens is matters relating to employment or appointment to any office under the State."

236. It is unnecessary to consider any other part of the articles for the purposes of the point I am considering. It is obvious that the word "citizen" as used in Article 15 or Article 16 or Article 18 can have reference only to human beings. The word "person" in Article 14 is clearly of wider import and the question is, what is its exact significance and meaning as used in that article? The word "persons" had been used in Section 24 of the British North America Act, 1867, and on a question arising whether that word would include female persons also, so far as to qualify them for membership of the Senate, it was held by the Judicial Committee in H. M. Edwards v. Attorney-General for Canada, 1930 A. C. 124 : (A. I. R. (17) 1930 P.C. 120), that women were included in the expression "persons." In point of fact we know that the law classifies persons as either natural or legal. While a human being: is a natural person, legal persons are beings, real or imaginary, who possess juridical significance in the sense that they are treated in law, in greater or lesser degree, in the same way as human beings. These legal persons are termed' either as artificial, fictitious, juristic or normal persons (vide Salmond's Jurisprudence, p. 319). That the word person would, therefore, include corporations or other juristic or artificial persons or corporations sole or corporations aggregate, appears to be a reasonable assumption. A municipal corporation would, for example, be a corporation aggregate. In many cases the state has endowed certain holders of high offices with the personality of a corporation sole, e. g. in Britain for example, the postmaster-general, the Secretary to the Treasury, the Secretary of State for War, the Minister of Town and Country Planning and the Minister of Education (vide Salmond's Jurisprudence, p. 328)

237. The development of this principle of artificial personality has very much helped the growth of limited joint stock companies, which are regarded as essential for free industrial and commercial enterprise. Corporations have been held to be persona in America and the equality clause applies to

them also. That the word 'person' as used in Article 24, includes what would be called a corporation aggregate, does not seem to me to be open to doubt. That it would include the holders of certain State offices who have been given the status of a corporation sole also would seem to admit, in my opinion, of no doubt. The question is whether legal personality can be attributed to the State when it, for example, acts through a department to which no separate personality has been given, as distinct and apart from the State itself.

238. In discussing the question whether the State is a body politic and corporate endowed with legal personality and having, as its members, all those who owe allegiance to it Prof. Salmond points out that "English law does not look upon the State as a person because it is superfluous to do so on account of the real personality of the King or the Crown as the bead of the State." Whatsoever is done in England by the State is in law done, by, and in the name of the King. It is to this circumstance, as Prof. Salmond says, that the reluctance of English law to recognise the State as an incorporate commonwealth res publica or regni must be attributed (vide Salmond, p. 340). In England the position is that citizens of the State are not fellow-members of the great Juristic person called State but fellow-subjects of a common sovereign. Since semi-public bodies or corporations, such as the London Passenger Board and the British Broad-casting Corporation have a personality distinct from the Grown they cannot be looked upon as identical with the State. In his public capacity, the King is referred to as the Grown but the Grown is a mere figure of speech and it is not recognised by the law, as a legal or fictitious person.

339. Prof. Salmond also points out that the various constituent self-governing States, of which the Commonwealth and the British Empire are made up, are represented by the Grown. In the case of the great Dominions the position is that they owe allegiance to the King and Government is carried on in his name. In other words, the institution of Kingship in England and the Dominions makes the position different from that of India which is an independent Republic It is to be noted that according to the view taken by the Australian Courts, the Commonwealth of Australia as also its constituent states are, for certain purposes, deemed to be body politic and corporate. They can now sue and be sued in their own names, and this undoubtedly is an attribute of personality. Nevertheless, the position would seem to be that the corporate character which the States of Australia enjoy is concurrent with and not exclusive of the principle which identifies the State with the King (See Salmond's footnote page 343.)

240. I have made frequent references to Prof. Salmond in order to indicate that, from a juristic point of view, he is driven to the conclusion that the State must be recognised as a legal personality.

241. With reference to Australia, the position may be stated, in the language of Griffith C. J., in the Municipal Council of Sydney v. the Commonwealth, 1 C. L. R. 231 (231) that:

> "It is manifest from the whole scope of the Constitution that, just as the Commonwealth and the State are regarded as distinct and separate sovereign bodies, with sovereign powers limited only by the ambit of their authority under the Constitution, so the Crown as representing those several bodies, is to be regarded not as one, but as several juristic persona, to use a phrase which well expresses the idea.

> No better illustration can be given than is afforded by the lands now sought to be rated, which, having originally been 'property of the State, i. e., lands of the Crown In New South Wales, have become 'vested in the Commonwealth,' i. e., vested in the Crown any right of the Commonwealth. ..... The term 'the Crown' as used In Sydney Corporation Act must be taken to mean the Crown in its capacity as representing the State of New South Wales."

242. I may on this part quote from Dicey's Law of the Constitution, introduction CXIIX; with reference to Australia, the author says, "For example, both in the Commonwealth of Australia and the State' of Victoria proceedings against the Crown have been assimilated to a large extent to proceedings between subject and subject. In particular, the Crown in light of the Commonwealth is liable in contract as well as in tort."

Judiciary Act, 1903; Baune v. Commonwealth, (1906) 4 C. L. R. 97: On the whole question see Dicey's Law of Constitution introduction p. C. 1.

243. Prof. Holland, in his Jurisprudence, p. 387, looks upon the State "as a great juristic person which enjoys many quasi-rights against the individual as well as strangers as subjects and is liable to many quasi-duties in their favour."

244. He emphasises that "there is no essential difference between these rights and duties and those subsisting between one individual and another." The State, apart from the eminent domain which it enjoys over the property of its subjects, is usually a great landed proprietor and in this capacity entitled to servitudes over the estates of individuals and subject to servitudes for the benefit of such estates. It owns buildings and pictures and personal property. 'It carries on', says Prof. Holland.

> "gigantic manufacturing undertakings, lends and borrows money, issues promissory notes and generally enters into all kinds of contracts. Its employees can either wilfully or negligently occasion damage to individuals. It can become a mortgagee and is capable of taking under a will and inherits property by escheat."

Now the point which Prof. Holland makes is that though its rights and inabilities are different from those of an individual or of even private artificial persons, it is when it acts in any of these non-sovereign capacities, a quasi-private juristic person. The view of Prof. Holland is based upon the English concept of the Monarchical State. Even so, it is important to note that to the State as a quasi private ' juristic personality he would accord a different treatment from the State as a legal person.

244a. Prof. Paton discusses the subject at pages 143,144 in his 'Jurisprudence'. In considering the question how far the State is a legal person liable to actions brought by persons, he notes that English Law looks upon a suit against a sovereign as a contradiction in terms. We may ignore the Fascist Jurists for whom the State is everything and the individual nothing. Again it is unnecessary to refer to Russian writers on the subject. Professor Paton says that if, as in the case of modern countries, we do desire to make the State liable in tort, there as no reason why this should not be

done. In theory he finds that there is nothing against the State being liable both in contrast and tort and after referring to Prance, he comes to the conclusion that the problem of State responsibility is today much more acute on account of the increasing complexity of modern life.

245. The question of the State as a legal person is discussed by living writer, Prof. Morgan in his introductory chapter to G. E. Robinson's "Public Authorities and Legal Liability" at p. liv. Discussing the question of legal remedies against the Crown (the procedure of petition of rights has been abolished now), Prof. Morgan says that the identification of the State With the King is nothing but a survival of mediaeval times, when the King in fact not only administered justice in person but also chose his own servants. He points out that in German Law a clear distinction has always been made between the sovereign in his political capacity and the sovereign in his natural capacity, with the result that the former cannot defeat the claims of the subject by invoking the privileges and prerogatives peculiar historically to the latter. The State in German Law, and this applied both to the position before and after the Wemar Constitution, is a person in private law who is just as much the subject of legal rights and duties as any natural or artificial person. The state has no claim to any prerogative except a preferential claim in bankruptcy proceedings to the payment of taxes. It can sue and be sued in ordinary Courts both in contract and tort. More particularly it is important to note that, under the Weimar Republic the State, entering the commercial or industrial sphere, could do so only on the same terms, legally speaking, as (my other corporation.

246. From the following discussions it is clear that the position of the State as a 'great juristic person' is not identical with that of a juristic person in all respects. At the same time it is further clear that when the State engages itself in a commercial undertaking, trade or business or enters into a contract, it is acting, to use the language of Prof. Holland, as a quasi private juristic person, who should have in that sphere of business no more rights than any other private citizens.

247. I may also refer in this connection to the case of Peninsular and Oriental Steam Navigation Co., v. Secretary of State, 5 Bom. H. C. R. App. 1 at p. 12 : (Bourke 166), in which the question whether the East India Company which had certain sovereign powers and also used to engage in trade, came up before the Supreme Court. In that case which is reported in Peninsular and Oriental Steam Navigation Co. v. Secy, of State, 5 Bom. H. C. R. App. 1 at p. 12: (Bourke 166), was observed that "If the East India Company was allowed for the purpose of Government, to engage is an undertaking such as the bullock train and the conveyance of goods and passengers on hire, it was only reasonable that it should do so subject to the game liabilities as individuals. If by reason of its having been entrusted with the powers of the Government, it were exempted from the ordinary liabilities of individuals in matters of business, exercised either for their own benefit as it was at one time or for the purpose of Government as it was at another, private individuals would have to compete with them upon many disadvantageous terms."

See also judgment of Seth J., in Ram Ghulam v. U. P. Government, A. I. R. (37) 1950 ALL. 206 at p. 209: (1960 A. L J. 46).

248. With its vast resources the modern State can, by entering into competition with private business and keeping tight control and regulation of business in its own hands, easily, drive out

private business altogether from the field and establish, without legislative approval or sanction, a virtual monopoly. By engaging itself in commercial and industrial enterprises, without the sanction of the legislature, the modern state can develop sources of revenue which might make it unnecessary for it to depend for the running of its services on annual supplies granted by Parliament., Fortunately, under a system of responsible government it is impossible for any state, except perhaps in an ultra-constitutional manner, to do any of the things I have indicated above. Nevertheless, if the 'equality clause' is to have any real meaning and serve as a protection to all persons including corporations, it must apply as equally to the State as to citizens when the State starts a trade or enters into business or starts, as in this case roadways of its own, without express legislative authority. It strikes me that the framers of the Constitution were perfectly cognisant of the difficulties that would arise if the State was not treated for certain purposes, as a private juristic person. In this country even before the birth of the Republic, the Secretary of State could sue or be sued and could enter into contracts and be made liable for them. In this sense his position before the Republic was no higher in this respect than that of any private person. Article 300 is important as it lays down that the Government of India may sue or be sued by the name of the Union of India and the government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Parliament or legislature of a State enacted by virtue of powers conferred by this Constitution, sue or be sued in relations to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted. It is not unfair to assume from this provision that the framers of this Constitution were familiar with the trends of thought in regard to the question of the legal personality of the State and that they felt that by continuing the right of the State to sue or be sued in contractual or other liability they would be maintaining the principle of equality in a republican Constitution between the State when it enters into competition with private business and also assuring to private corporations concerned a guarantee that they will not be squeezed out in an unfair manner, by the State. It strikes me that, on a fair reading of this article, the juristic principle that can be evolved is that, for certain purposes, the great juristic person is like any other juristic person and can claim when it enters into any business no preference over others -- natural or artificial. I have had to refer to living authorities as the question raised is not covered by any direct authority and has, therefore, to be argued out from the point of view of first principles. It is from this point of view that I approach a consideration of Section 42 (3) and indeed some other sections of the Motor Vehicles Act. At the time when Section 42 (3), Motor Vehicles Act was passed it was perfectly valid because there were no fundamental rights and no Article 14 of the Constitution. We have now to apply the test whether that section is consistent with the fundamental rights guaranteed is the Constitution, If it is not, it would fee void under Article 18(1) of the Constitution. The conclusion that this discussion has led me to is that Section 42 (3) (a) is invalid inasmuch as it makes a distinction in the provision requiring permits between a Central Government or a Provincial Government vehicle and a transport vehicle owned by a private owner. This distinction can have vast effects upon the fortunes of concerns in the same business, i. e. the same category. It strikes me that no equal protection of laws as equality before the law would be possible were the State buses exempted from permits and if distinction in the matter of permits were allowed between buses owned by the State and other stage carriages permitted, even though the provisions regarding permit is clearly capable of" misuse. It is possible under that provision for a Regional Transport Authority to act is an arbitrary manner, particularly having regard to the provisions of Section 48

(1), Motor Vehicles Act. The conclusion I have been driven to is that the State is a juristic person for the purposes of Article 14 read with 19 (1) (g) and that that section is, in the circumstances of the case, invalid.

249. I come now to another part of the case. It has been contended that it was outside the scope and powers of the executive of this State to carry on any business, or trade or to ran any commercial enterprise, without express legislative authority. The contention is that Roadways cannot be lawfully run by the executive government as it has not obtained the sanction of the legislature for this activity and indeed Mr. Pathak wants us to issue a mandamus restraining government from running its Roadways on the highways id question. Indeed Mr. Pathak went to the length of arguing in one part of the case that, as this was a Constitution of enumerated powers and there was no provision for State trading, the State could not run busses, even with legislative sanction. The principle, which he urged we must apply to the Constitution, is that what is not permitted is prohibited.

250. It is well known that the distinction between what are called in jurisprudence and political science fundamental laws and other laws is unknown to English lawyers. The Parliament of the United Kingdom is supreme and can make any law it thinks fit and the question whether a law passed by it is beyond its competency cannot arise. Where a Court finds a later law inconsistent with a former law of the British Parliament, the later law is allowed to prevail. Obviously, this rule cannot be applicable to States governed by a written Constitution. There is no power in the United Kingdom which is capable of overriding or curtailing the authority of Parliament. The British Constitution is a historic growth in the sense that it has evolved continuously without any such revolutionary changes as to necessitate its restatement in a single instrument establishing a Constitution "to include all rules which, directly or indirectly, affect the distribution or the exercise of the sovereign power in the State". (A. V. Dicey, Law of Constitution, 8th Ed. p. 22). Here in this country we have had to pass from the stage of a monarchy to republicanism and quasi-federalism and have a written Constitution of 'enumerated' powers.

251. That the Constitution of the Indian Republic, baaed as it is on the principle of responsible Government, and with its fundamental rights, directive principles of State policy, a system of unified judiciary, and provisions regarding the vesting of residuary powers in the Union and not in the States, is similar in principle to that of the Constitution of the United States is, however, a proposition which I am not prepared to accept without grave qualifications. It focusses attention on one feature of it, viz., its written and, therefore 'paramount' character, and ignores the others. Professor Dicey's remark that the Canadian Constitution is similar in principle to that of the U. S. A. inasmuch at it proceeds upon federation has been criticized on the ground that it ignores the fact that it is also dissimilar to the U. S. A. Constitution, in the sense that in Canada the executive is responsible to the legislature where. as in the U. S. A. they have what is called the Presidential executive. (Vide Dicey : Law of the Constitution. 9th Edn. by Wade p. 163, see foot note). Similarly from the mere circumstance that the Constitution is a Constitution of 'enumerated powers' the inference cannot be drawn, more particularly when the principle of responsible Government has been provided for by the Constitution itself that there is in the Constitution, what Mr. Pathak called, a complete separation of powers. It strikes me that the remark that the Constitution is similar to the Constitution of the U. S. A. in the sense that there is under it, what Mr. Pathak called, a complete

separation of powers is wide of the mark. It, in any case, ignores the basic fact that the Constitution, based as it is upon the principle of responsible Government, secures a harmony between executive and legislative sources such as is utterly impossible in the Presidential system of Government, whether the executive can carry on any trade under the Constitution and, more particularly, whether it can run buses on highways on a competitive basic with private enterprise has got, however, to be ascertained not by any general theorising about the nature of the Constitution but from the written text and such implications as inevitably flow from it.

252. The words "executive power" are no-where defined in the Act and in order to understand their full import I have felt it necessary to refer to books of Political Theory, Comparative Politics and Comparative Administration Law. Professor Goodnow, for example, in his book 'Comparative Administrative Law' defines the executive scope of administration as being divisible into five classes : (1) Foreign Relations, (2) Military Affairs, (3) Judicial Affairs, (4) Financial Administration or the Administration of Financial Affairs and (5) The Administration of Internal Affairs. (Vide Goodnow's Comparative Administration Law, pp. 1/5).

253. The executive power of the State in this sense would include the entire activity of Government, exclusive of that of the legislature and the purely judicial work of the Courts. The function of the executive is to administer: the administration is the totality of executive and administrative authority. The "executive" may be defined as the authority within the State which administers the law, carries on the business of Government and maintains order within, and security from without, the State. All executive powers under the British system are vested in and exercisable by the Crown which is, according to one view one and indivisible throughout the Commonwealth. (Per Wynes' Executive and Legislative powers of the Crown, pp. 818, 319, 820.)

254. In order to find out what the extent of the executive power conceded by the Constitution in our country is we have necessarily to look to the Constitution itself. In determining the extent of these powers we cannot proceed on the assumption that the framers of our Constitution have made any such distinction between the primary and secondary functions of Government as used to be made by jurists of an earlier gene-ration. I would quote on this point the observations of Latham C. J.:

> "There is no universal or even general opinion as to what are the essential functions, capacities, powers or activities of a State. Some would limit them to the administration of public and police and necessary associated activities. There are those who object to State action in relation to State health, education and the development of natural resources. On the other hand, many would regard the provision of social services as an essential function of Government, When Lord Watson said in Coomber v. Justices of Berks, (1883) 9 A. C. 61 at p. 74 : (53 L. J. Q. B. 289) that 'the administration of justice, the maintenance of order and the repression of crime are among the primary and inalienable functions of a constitutional Government, be was not purporting to give an exhaustive definition of the functions of Government. In a fully self-governing country where a Parliament determines legislation policy and an executive Government carries it out, any activity may become a function of government If Parliament so determines. It is not for a Court to

> impose upon any political doctrine as to what are and what are not functions of government, or to attempt the impossible task of distinguishing, within the functions of government, between essential and non-essential or between normal and abnormal. There is no sure basis for such a distinction." [Per Latham, C. J., in South Australia v. Commonwealth, (1942) 65 C. L. R. 373 (H. C.) taken from Lawyers Australian Constitutional Cases, 1948 Ed. at p. 80 and 81.]

255. The advent of the Welfare State has vastly increased the field of administration or executive power everywhere. We know, for example, that in out own country government owns and manages the railways; it carries mails, it owns large landed and other property. After quoting from the late Professor Sidgwick's 'Principles of Polities' the late Sir John Marriott, himself, an authority on Comparative Politics, states that the executive is concerned With the defence of the realm against external or internal enemies, with the maintenance of law and order and with the performance of such other functions as may be claimed for the legislature. (Vide Marriott's 'The Mechanism of the Modern State' Vol. II, p. 2.)

256. In his 'Grammar of Politics' at pp. 296 and 297 the late Professor Harold Laski discusses the question of executive power in the following terms:

> "Since the time of Aristotle, it has been generally agreed that political power is divisible into three broad categories. There is, first, the legislative power. It enacts the general rules of the society. It lays down the principles by which the members of the society must set their course. There is, secondly, the executive power. It seeks to apply those rules to particular situations; where, for instance, an Old Age Pension Law has been enacted, it pays out the specified sum to those entitled to receive it. There is, thirdly, the judicial power. This determines the manner in which the work of the executive has been fulfilled."

257. Later Professor Laski further observes;

> "These categories are of art and not of nature. It is perfectly possible to conceive of all these functions being performed by a single body or even in the name of a single person; and in the modern democratic State the distinction between them cannot, in fact, be consistently maintained. The separation of powers does not mean the equal balance of powers.... If it is, broadly speaking, the business of the executive to carry out those principles of general policy enacted by the legislature, it must retain the confidence of the latter body, and such confidence implies the power to compel subordination of the executive to its will. The legislature, that is to say, can directly secure as a matter of right, that the substance of executive acts is suffused with what it deems to be its purpose... In general, therefore, the powers both of executive and judiciary find their limits in the declared will of the legislative organ."

258. Another distinguished political theorist) looks upon the executive as the residuary legatee, that is to say, it exercises all those functions which are not entrusted to the legislature, and which do not

involve the regular functions of the judiciary. I shall illustrate the meaning of 'executive power' by a reference to the British concept of it. In England, where the monarchical form of government prevails all executive acts are done in the name of the King. The vastness of the authority vested in the Grown was described by Bagehot in his English Constitution, in the following words :

> "The Queen, 'he wrote,' could disband the army (by law she cannot engage more than a certain number of men) ; she could dismiss all the officers, from the Central Commanding-in-Chief downwards ; she could dismiss all the sailors too ; she could sell of all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall, and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a peer; she could make every parish in the United Kingdom a 'university; she could dismiss most of the civil servants ; she could pardon all offenders. In a word, the Queen could by prerogative upset all the action of civil government within the Government, could disgrace she nation by a bad war or peace, and could by disbanding our forces, whether laud or sea, leave us defenceless against foreign nations." (Bagehot's English Constitution, 2nd Ed. (1872), p. Ixxi).

259. In this striking phraseology, Bagehot described the extent and the nature of the prerogative in Britain. The history of the prerogative is very easily told. Britain started as an absolutist State and in the course of centuries has developed into the moat perfect democracy known to the modern world. The period of this transition from absolutism to complete democracy was marked by various stages in the country's growth. The King's prerogative at one time covered the entire field of government legislative, judicial and executive. At various times many statutes made cuts in that prerogative. There is a part of the old powers still surviving. Dicey defines the term "prerogative" as meaning the discretionary authority residing at any time in the executive. Now at one time the King-in-Council was the real executive. Today the real executive is the Cabinet. The King-in-Council is merely the formal executive to give effect to what the Cabinet decides. These prerogative powers are, in fact, wielded by the Cabinet. Thus a complete correspondence is brought about between the executive and Parliament and the "prerogatives of the Crown have become the privileges of the subject" (vide Dicey's Law of Constitution, p. XCVII.)

260. The Crown possesses now only a remnant of its formal legislative power apart from Parliament. In those dominions, which owe allegiance to the King, such prerogative powers, as are still possessed by the King and applicable to it, are exercised in the King's name on the advice of the ministry of the day. Though many inroads have been made into the theory of the indivisibility of the Crown yet the position would seem to be that throughout the Common-wealth barring India the King is the same person, though governments are many. (See Jennings' Constitutional Laws of the British Empire, p. 3).

261. I have said all this to emphasise that in the case of India, which from the stage of a Dominion became a Republic, it cannot be assumed that the executive power conceded to the President or the Governor is co-extensive with the powers which the head of government possessed before she was declared a Republic on 26-1-1980. Mr. Pathak is, therefore, indisputably right in his contention that

the executive power of the Indian Union and U.P. State has to be gathered, not from our fixed notions of what the prerogative powers of the Crown are and were as applicable to India before 26-1-1950, but from the text of the Constitution itself. There is, therefore, no doubt, that there is to this extent a similarity between the Constitution of the Indian Republic and that of the United States. Moreover, there is no universal rule as regards the extent of executive power, possessed by the head of a democratically governed State, whether it be a republic or a constitutional monarchy for the nature and powers of States differ with each country. (See an illuminating discussion on this topic in R.M. Maclver's The Modern State, p. 311.) The extent of executive power, therefore, has to be gathered from an examination of the Constitution itself and the laws consistent with it. In undertaking the task of determining the extent of executive power it is, I hope, permissible for Courts to take into account the nature of the relationship between the executive and the legislature, contemplated by a particular Constitution.

262. With these remarks, I now proceed to examine what, according to the Constitution, is the extent of executive authority possessed by the President of the Indian Republic. Article 53(1) vests the executive power of the Union in the President. Sub-article (2) vests, without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union in the President. Article 72(1) authorizes the President to grant pardons, reprieves, respites or remissions of punishment or suspensions, remissions or commutations of sentences in certain cases. It is not necessary to consider this article at any length. Article 154 vests the executive power of the State in the Governors and Article 162 defines the ambit of that power.

263. Article 73 is a most important article and it may be quoted in extenso:

> "73. (1) Subject to the provisions of this Constitution, the executive powers of the Union shall extend--
>
> (a) to the matters with respect to which Parliament has power to make laws; and
>
> (b) To the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:
>
> Provided that the executive power referred to in Sub-clause (a) shall not, lave as expressly provided in this Constitution or in any law made by Parliament, extend in any State specified in Part A or Part B of the First Schedule to matters with respect to which the Legislature of the State has also power to make laws.
>
> (2) Until otherwise provided by Parliament a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution."

264. The important point from the point of view of this case is that it makes the executive power of the Union co-extensive with all matters with respect to which Parliament has power to make laws subject to the proviso mentioned in that article.

265. Now Article 73(2) authorizes a State or any officer or authority of a State to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of the Constitution.

266. Article 216 lays down the limits of the law-making powers of Parliament and the Legislature of States. It has to be read with reference to the Lists to be found in Schedule VII and List III is the Concurrent List. Item No. 85 of this Concurrent List relates to mechanically propelled Vehicles including the principles on which taxes on such vehicles are to be levied." It is obvious that the execution of the powers given under the Motor Vehicles Act was within the competence of the "executive power" of the Union as also the State of Uttar Pradesh. The executive power cannot, however, extend to the point of legislation. An examination of the Constitution discloses that it goes into minute details and has reduced into writing many of the conventions of the British Constitution. I need only refer to Article 78, which lays down the duties of the Prime Minister to illustrate my point. The framers of our Constitution had, no doubt, before them the Government of India Act, 1935, and the previous enactments and it may be assumed that they knew what the significance of the words "executive power" was. It is clearly distinguishable from both legislative and judicial powers and there can be no doubt that it is within the competence of the executive power of the President to carry out into execution the provisions of the Motor Vehicles Act. So far there is no difficulty. The specific point, which, however, Mr. Pathak has pressed, is that the State is, by running buses of its own, establishing a virtual monopoly, and that it is not open to it, without express legislative authority, to run any buses at all. I wish to keep the two questions of running buses of its own and of establishing a virtual monopoly distinct. I shall, therefore, first take up the question whether in the exercise of its executive power it is open to the executive to run buses of its own. The Motor Vehicles Act especially exempt State buses from the requirement of a permit. In considering this point, I may refer to para. 12, Chap. 3 of the Constitution.

267. Article 294 in that Chapter lays down that: "As from the commencement o! this Constitution--

(a) All property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the right, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,"

subject, of course, to any State readjustments required by the creation of Pakistan.

Article 295 deals with succession to property, assets, rights, liabilities and obligations in other cases than those specified in Article 294.

Article 296 deals with property accruing by escheat or lapse or as bona vacanta.

Article 297 lays down that all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.

Article 298 is important and I quote it below:

"298. (1) The executive power of the Union and of each State shall extend, subject to any law made by the appropriate Legislature, to the grant, sale, disposition of mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for the purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Union or of a State shall vest in the Union or in such State, as the case may be."

268. Article 299 relates to contracts and Article 300 lays down that the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State, subject to any provisions of that article.

269. From this survey, it is clear that under Article 298 it is open, unless, of course, any law is made to the contrary by the appropriate legislature for the executive power of the Union and of each State to purchase or acquire property. It is further laid down in this article that it will be within the competence of the executive power to grant, sell, dispose of or mortgage any property held for the purposes of the Union or of such State, as the case may be, and the power extends to the making of contracts also. Now it strikes me that motor buses are a form of property. It is quite clear that under Article 298 it is within the competence of the executive power of the Union to own motor buses which are a form of property. If it is within the competence of the executive power of the State to own motor buses, why is it not within the power of the State to utilize that property and make profit out of it, either by running buses itself or by giving contracts for running them to others. By inferring a power in the power of holding or acquiring property to utilize that property for gain we shall not be enlarging the authority vested in the executive but merely laying down that where the Constitution vests some property in the State it also makes it competent for the State to utilise, administer and manage that property to the best advantage of the country. It is implicit in Article 498 that the State has a right to utilise the property owned by it.

270. In regard to the extent to which an inherent power may be implied in the term 'executive power' the following observations of Isaacs J. in The King v. Kidman, (1915) 20 L.L. R. 425 (H. C.)

taken from Wyer's Australian Constitutional oases at p. 384 are helpful and I quote them below:

> "Wherever any such power is given (i. e. power under Section 51 of the Australian Constitution), there is given with it by implication every ancillary power that is necessary to the existence of Government and the proper exercise of the direct power it is intended to exercise. Such ancillary powers must, in my opinion, be truly incident to the main powers, in other words, they must be impliedly included in the grant." (See also in the same case the observation of Haggins J. that frauds on the Commonwealth and the punishment of such frauds as well as protection from such frauds are, matters incidental to the execution of the powers vested by the Constitution in the Government of the Common wealth, etc."

271. In the case of M'Culloch v. State of Maryland, (Evan's Leading Cases on American Constitutional Laws, (p. 12 at p. 16)) the question was whether among the enumerated powers there was any powers of establishing a bank or creating & corporation. Dealing with this state of affairs Chief Justice Marshall observed:

> "Among the enumerated powers we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument, which, like the articles of Confederation, excludes incidental or implied powers, and requires that everything granted shall be expressly and minutely described.... A Constitution to contain an accurate detail of all sub-divisions of which its great powers will admit, and of all the means by which they may carry into execution, would partake of the prolixity of a legal Code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves." (Page 16).
>
> In a later part of the same judgment, Marshall C. J., observed that:
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> "Although among the enumerated powers of Government we do not find the word 'bank' or 'incorporation', we find the great powers to lay and collect taxes, to borrow money, to regulate commerce, to declare and conduct a war, and to raise and support armies and navies. ..... But it may with great reasons be contended that a Government entrusted with such ample powers, on the due execution of which the happiness and prosperity of the Nation so vitally depend, must also be entrusted with ample means for their execution, The power being given, it is the interest of the Nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the moat appropriate means" Also Evans, p. 17, M'cullock v. Maryland, L.R. p. 519).
>
> Later at another place, Marshall C.J. observes:

> "It is not denied that the powers given to the Government imply the ordinary means of execution. . . . The Government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to elect the means; and those who contend that it may not select any appropriate means. ..... take upon themselves the burden of establishing that exception." (Evans, p. 18).
>
> Again in the same case, dealing with the question where the power to punish in cases not prescribed by the Constitution arises, Marshall I). 3, observed :
>
> "All admit that the Government may legitimately punish any violation of its laws; and yet this is not among the enumerated powers of Congress."

272. I have quoted profusely from Marshall C. J., in order to indicate what the extent of implied powers is. In the particular case before him the view that was taken was that the law passed by the legislature of Maryland imposing a tax upon the banks of the United States was unconstitutional. With that result we are not concerned. By holding that the State has a right to utilize its property we are not enlarging the scope of the executive power as gathered from the written text of the Constitution. We are merely inferring from the existence of the fact that it holds property a power of utilization, management and administration, and this is inherent in the very ownership of property. That State trading was within the contemplation of the Constitution would appear from a perusal of Article 289 which does not exempt a trade or business, not declared by law to be incidental to the ordinary functions of Government, from Union taxation, unless Parliament otherwise declares. It may be further pointed out that the Motor Vehicles Act also did visualize the ownership by State of some buses and the possibility of their running on routes.

273. I would in determining the extent of executive power bear in mind the following observations of Griffith C.J. in D'Emden v. Pedder [1 Com. L.R. 91] at p. 102.] "We cannot disregard the fact that the Constitution of the Commonwealth was framed by a convention of representatives from the several Colonies. We think that, sitting here, we are entitled to assume--what after all is a fact of public notoriety--that some, if not all, of the framers of that Constitution were familiar not only with the Constitution of the United States, but with that of the Canadian Dominion and those of the British Colonies. When, therefore, under these circumstances, we find embodied in the Constitution even indistinguishable in substance, though varied In form, some of the provisions of the Constitution of the United States which had long since been judicially interpreted by the Supreme Court of that Republic, it is not an unreasonable inference that its framers intended that like provisions should receive like interpretation."

I would use this to emphasis that inasmuch as it was responsible Government, that is to say, the Cabinet form of Government that the framers were establishing by this Constitution and as this system had been in work in this country from before the introduction of the Republican Constitution it must be assumed to the extent it is possible from an examination of the Constitution itself that the concept of executive power which the framers had was, more or less, the same as that to be given to it in the British Constitution or in other Dominion Constitutions.

274. Having come to the conclusion that it is open to the State to own buses and to run them for the sake of profit, I shall now come to the question whether the State could enter into competition with private bus owners in running them on the routes in question. If the State is a person, as I have held it to be, and is running as a person a business, I cannot understand how and why it cannot enter into competition with private business. There is no law prohibiting free competition in a business. No businessman can claim an injunction restraining a rival businessman from trading in the same business. Undoubtedly, the State possesses certain vast advantages which may make it a formidable competitor so much so that it may by entering into business with others squeez out its rivals altogether and establish indeed a form of State capitalism. At the same time, I cannot also overlook the fact that there are in this country strategic areas and undeveloped regions for maintaining communications with which private enterprise may not be an effective or willing instrument. Possibly, the only method by which communications with them can be maintained is by State buses. This, however, admittedly, is not the case here. Nevertheless, I can see no law which prevents a person from entering into a business and competing with others for all have equal rights to do so, provided, of course, no one gets any preferential treatment such as to bring him under Article 11 of the Constitution.

275. It is well known that a covenant in restraint of trade in general, as well as partial, is prima facie void. The principles, as stated by James V.C. in Leather Cloth Co. v. Lordsont (1869) 9 Eq. 345 at p. 353: (39 L.J. Ch. 86), is as follows :

> "Public good also requites that every man shall be at liberty to work for himself, and shall not be at liberty to deprive himself or the State of his labour, skill or talent by any contract that he enters into.

276. It was observed by Lord Watson in Bradford Corporation v. Pickles, (1895) A.C. 687 at p. 598: (64 L.J. Ch. 759), that :

> "No use of property, which would be legal if due to a proper motive, can become illegal because it is prompted by a motive which is improper or even malicious."

277. In the same case Lord Watson observed that :

> "Motives are Immaterial. It is the act, not motive for the act, that must be regarded. If the act, apart from motive, gives rise merely to damage without legal injury, the motive, however reprehensible it may be, will not supply that element."

278. In the case of Alien v. Flood, (1898) A.C. 1 at p. 92: (67 L.J. Q.B. 119), Lord Watson observed :

> "Although the rule may be otherwise with regard to crimes, the law of England does not, according to my apprehension, take into account motive as constituting an element of civil wrong."

279. There is no law prohibiting persons from entering into competition with one another in the same business. Whether it is against public policy or not for the State to enter into competition with private business is a question of economics and political theory with which Courts have no concern. Undoubtedly, by entering into competition with private business and keeping regulation of that business in its own hands the State has a powerful lever in its hands which it can use to create, as it no doubt, seems to have done in this case, a virtual monopoly. No monopoly can be created either in favour of the State or in any other person save by acts of legislation, for monopolies affect other people's interests. On this point see the case of Monopolies. See Thomas' Leading Cases on Constitutional Law, 4th Edn., p. 12.

280. The real difficulty in this case, however, is that the State has not only entered into business as a competitor with private owners but is, it is alleged, using the system of permits for denying the equal protection of the laws and equality before the law to other persons engaged in the business. On the analogy of the case reported in You Wick's case 30 Law, Ed. p. 220 and the observations of Mathews J. at p. 226 I should have been disposed to hold that the action of the State in administering the Motor Vehicles Act perversely was of such a character as to justify this Court in holding that that law, which is being worked in an evil manner was invalid, on the ground of its inconsistency with the spirit of Article 14 of the Constitution. I am not, however, prepared to go as far as that because there is no material before me which would enable me to say that even when the implications of Article 14 are brought home to the executive government the executive government will persist in so manipulating things that the Regional Transport Authority is left with no discretion to deal with the applications on their individual merits. Unless, of course, the position is regularised by law and a State monopoly or scheme of nationalization is actually put into operation, I am clear in my mind that the provisions of the Motor Vehicles Act cannot be worked by the Regional Transport Authority in such a manner as to give preferential treatment to the State in the same business. It is unnecessary to go into any further details in regard to this point.

281. Our attention was drawn to the fact that the Legislature has sanctioned expenditure for running buses in its Appropriation Act. As I am taking the view that the running of buses is an activity, which government could take up, the question as to the exact nature of an Appropriation Act is merely of academic interest. But since it was raised, I may say that an Appropriation Act merely authorises expenditure, but cannot sanction the activity itself. [For a full treatment of this question see May's Parliamentary Practice, pp. 712 and 713; also see Section 263 (3) of the Constitution Act; Ilbert's Parliament, p. 79].

282. I, therefore, hold that it was permissible for the government to run buses.

283. I now come to Mr. Pathak's argument in regard to Article 301 of the Indian Constitution, which he says is analogous to Article 92 of the Commonwealth of Australia Act. It is only fair to Mr. Pathak that I should deal with it as his point was that Section 47 (c) and 48 (a) are invalid for the reason that they prevent free movement throughout the territory of India and are also inconsistent with Article 301 of the Constitution. Mr. Pathak's argument on this point has covered a very wide field. Properly speaking, the point does not arise at all. However, as it was raised, I shall state my conclusion on it. Section 92 of the Australian Act is generally known as the commerce clause. Mr.

Pathak's argument has taken the shape that as transport is commerce and indeed essential for free intercourse, interference with it is, such as is to be found in the impugned sections of the Motor Vehicles Act or the virtual monopoly which under the power of allowing or refusing permits Government has created for itself is tantamount to an interference with freedom of commerce, trade and intercourse, and therefore, void. He went at one stage to the length of arguing that many parts of the Motor Vehicles Act are invalid and that, indeed, it is not open even to the Parliament of this country or the State Legislature to pass laws creating, what he called, a State monopoly or nationalization of transport.

284. The assumption underlying this argument is that Section 92 of the Australian Act is on all fours with Article 301 of our Constitution. A few facts will help to clear the mist that has gathered round this question. In the first place, properly speaking, there is in the Australian Constitution no chapter on fundamental rights. The attitude of the Australian Constitution to the question of fundamental rights is, generally speaking, much the same as that of the British Constitution. Having said this, I shall now consider the question as to whether Articles 301 and 19(1)(g) wholly or partially overlap. Do Articles 301 and 19(1)(g) or (e) wholly or partially overlap ? I do not think they do. They refer, in my opinion, to two different matters. In support of this view, I may point out that in the original draft Constitution what is now Article 301 was inserted as Article 13 under the chapter on fundamental rights. Later it was, I take it, deliberately taken out of that chapter and put in the place where we find it now in the Constitution. The second consideration to remember in this connection is the history of Section 92 in the Australian Act. We know that it took some years for the Australian States to evolve in their conventions their own Constitution. At the time when the Constitution was enacted or became law there were six autonomous States in Australia--Western Australia, South Australia, Victoria, New South Wales, Queensland and Tasmania. These States had their own tariff arrangements and residence requirements. There was no free flow of trade between one State and another. The factors, which made for Australian federation, have well been summarized in Ridges' Constitutional Law, p. 456. They were as follows:

> "The sole considerations of trade exchange; the advantage of uniformity of laws of commerce; the risk of the development of foreign interests in the Pacific, suggested by the presence of France in the New Hebrides and New Guinea, and by the rise to power of Japan after war with China (1894); the need for an effective unit; in defence preparations by land and sea; and the desirability to prevent the influx of criminals and Chinese and Japanese by a common immigration restriction policy. Local autonomy was reluctantly surrendered and in as limited a degree as possible (p. 456)."

285. The predominant object of Section 92 was to do away, with all legislative or executive acts, the necessary consequence of which is to burden or restrict inter. State trade, commerce or intercourse, so as to establish an economic system based on inter-State free trade, a system which allowed a citizen and his goods to pass from State to State with the same freedom as in England. The section was not intended to restrict the power of the State alone; it included the Commonwealth also. Section 92 of the Commonwealth of Australia Act is in the following terms:

> "On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of Internal carriage or ocean navigation, shall be absolutely free. But notwithstanding anything in this Constitution, goods Imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall on thence passing into another State within two years after the imposition of such duties be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation."

286. In regard to this section Lord Wright in James v. Commonwealth of Australia, (1936) A.C. 578 : (105 L.J. P.C. 115) observed that :

> "The words used are necessarily general, and their full import and true meaning can often only be appreciated when considered, as the years go on in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning. It has been said that in interpreting a constituent or organic statute such as the Act (i. e. the British North America Act), that construction most beneficial to the widest possible amplitude of its powers must be adopted. But that principle may not be helpful, where the section is, as Section 92 may seem to be, a constitutional guarantee of rights, analogous to the guarantee of religious freedom in Section 116, or of equal right of all residents in all States in Section 117, true test must as always, be the actual language used."

Later in the judgment Lord Wright observed :

> "It may be that in 1900 the framers of the Constitution were thinking of border tariffs and restrictions in the ordinary sense, and desired to exclude difficulties of that nature, and to establish what was and still is called 'free trade,' and to abolish the barrier of the State boundaries so as to make Australia one single-country. Thus they presumably did not anticipate those commercial and industrial difficulties which have in recent years led to marketing schemes and price control, or traffic regulations such as those for the coordination of rail and road services, to say nothing of new inventions, such as aviation or wireless. The problems, however, of the Constitution can only be solved as they emerge by giving effect to the language used."

287. Thus the view taken in regard to this section in James v. Commonwealth of Australia, (1936) A.C. 578 :(105 L.J. P.C. 115) is that Section 92 is the declaration of a guaranteed right and that by the word "free" is meant freedom at the State Frontier or barrier and that in every case it is a question of fact whether there is an interference with this freedom or passage.

288. In the latest case of the Commonwealth of Australia v. Bank of Australia, (1949) 2 A.E. R. 755 in refusing to entertain an appeal on behalf of the Commonwealth on the ground that the High Court had refused leave and that their Lordships had no power to grant leave as to do so or not was

within the exclusive power of the High Court, their Lordships of the Judicial Committee took the opportunity to explain what exactly was the full import of their decision in James v. Commonwealth of Australia, (1936 A.C. 578 : 105 L.J. P.C. 115) already referred to. I take leave to quote Lord Porter :

> "Their Lordships do not intend to lay it down that in no circumstances could the exclusion of competition so as to create a monopoly either in a State or Commonwealth agency, or in some other body, be justified. Every case must be judged on its own facts and in its own setting of time and circumstance and it may be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation and that inter-State 'trade, commerce and intercourse' thus prohibited and thus monopolised remained absolutely free" (1949 2 All. Eng. Rep. p. 755)."

289. These cases illustrate clearly the full import of Section 92 in Australia. Mr. Pathak's argument is that any restriction on transport impedes a free movement of trade and for that reason many parts of the Motor Vehicles Act exceed the needs of police regulation and constitute a violation of the constitutional guarantee given to the citizen of free trade by the method of free enterprise. I can read nothing in Article 301, which guarantees free enterprise or competition. The question whether the fllow of trade is impeded by the State assuming charge of transportation or not is not to my mind a legal but a socio-economic question. Into those regions Courts cannot and should not enter.

290. The decisive answer to Mr. Pathak's argument as developed in this part of the case is that Article 301 has a different history and is indeed subject to qualifications and restrictions which make it quite distinct from Section 92 of the Australian Act. A cursory perusal of the various articles in part XIII will show that power has been reserved to Parliament to impose restrictions under Article 302 on freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Articles 302 to 306 substantially cut down the supposed guarantee given under Article 301. Article 305 furnishes a conclusive answer to Mr. Pathak. It lays down that nothing in Articles 302 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise provide. The Motor Vehicles Act was at the time when the Constitution came into existence an existing law. This provision i. e. Article 305 completely saves it and the other impugned provisions except those indicated before. Apart from this the other articles, not-ably Article 304, empower the legislature of the State to impose restrictions on trade, commerce and intercourse among States, which are not in existence, and thus cut down the freedom given in Article 301.

291. The fact of the matter is that the framers of the Constitution in this country had not the same problem of respecting State prejudices as the framers of the Australian Constitution had. They enunciated in Article 301 a general principle the reason for which was that in India they found Indian States in which there used to be separate systems of custom duties, etc. After declaring in general terms that there shall be freedom of trade, commerce and intercourse they proceeded to lay down the methods whereby that freedom could be curtailed or restricted. From the words of Lord Porter, however, it is quite evident that restrictions can in suitable cases amount to prohibitions and

as one reads Lord Porter's judgment, nationalisation, whether of transport or any other activity, is not ruled out, provided a case is made out for it under Section 92 of the Australian Act. I am, therefore, satisfied that the argument of Mr. Pathak that the Motor Vehicles Act is void as being repugnant to Article 301 of the Indian Constitution and that, in any case, some sections of it are invalid as they infringe upon that Article, has no force.

292. I now come to the last but most difficult part of this case. The appellants have applied to this Court under 226 of the Constitution. That Article has conferred upon us the power to issue to any authority, including in appropriate cases, any government, directions, orders or writs, including writs in the nature of habeas corpus, mandamus prohibition quo warranto and certiorari for the enforcement of any of the rights conferred by Part-III and for any other: purpose. Thus the constitutional remedies provided by this Article are of a very extensive nature. It is clear that they go to the extent of enabling us to issue, in appropriate cases, directions, orders or writs, that is to say, other writs than the writs of habeas corpus, mandamus prohibition, quo warranto and certiorari. The article confers upon us a much wider jurisdiction than the jurisdiction which the Presidency High Courts possess under Section 45 of the Specific Relief Act before the Republican Constitution came into force in the matter of the writs mentioned above. The words 'and for any other purpose' make it quite plain that it is not only for the enforcement of the rights conferred by Part III that these writs, directions or orders can be issued. This is also clear from the fact that Clause (2) of Article 32 which confers these powers on the Supreme Court, does not contain the words 'and for any other purpose.'

293. This power has been conferred by the constitution in order that in a proper case this Court might be in a position to maintain the rights, inter alia, which have been guaranteed to the citizen under the constitution.

294. The responsibility cast upon the Courts by these wide powers is of a supremely important nature. The power given to us under 226 is, it strikes me, even wider than the power which Courts possess of issuing the well-known writs in England. For, as I have indicated before, the terms in which this power has been conferred makes it clear that it can be used by this Court not only for giving reliefs in suitable cases under part III of the Constitution but also for other purposes. The general principle which has been followed in regard to applications for mandamus in the country of its origin is that it will be issued only where the Court considers it essential to render it as far as it can the supplementary means of substantial justice in every case where there is no other specific legal remedy for a legal right; and provides as effectually as it can that others exercise their duty wherever the subject-matter is 'properly within its control'. (Per Lord Ellenborough C.J. in the King v. Archbishop of Canterbury, (1815) 15 East 117, at p. 136 : (13 R.R. 409).

295. Under the English law mandamus may be described as a peremptory order issued by the King's Bench Division of the High Court commanding a person or authority to do that which he or it is under a statutory obligation to do. An important point to remember is that the writ can be only issued where (a) the applicant has a right to the performance of a legal duty and (b) has no other specific or equally appropriate, beneficent or convenient means of compelling the performance of that duty. The cases lay down that the Court will not issue it where any more convenient remedy is

available to the applicant -- vide Be Nathan, (1884) 12 Q.B. D. 461 : (53 L.J. Q.B. 229). At the same time it must be remembered that the principle observed by Courts is, as observed by Ridley J. in King v. Bishop of Saram, (1916) 1 K.B. 466 : (55 L.J. E.B. 544) that where a person has a right and no other remedy is open to him for asserting it except mandamus, the writ will be issued in that case.' A writ was issued to the Bishop of Saram directing him to allow a certain person to make a declaration as a Church Warden under Section 9, Statutory Declaration Act, 1835.

296. Another point to be remembered about the authority to whom the writs desired to be issued is that the duty cast upon them must be an imperative nature. In this case the opening words of Section 47 (1) of the Motor Vehicles Act "that the Regional Transport authority shall have regard to the following matters" make it clear that the obligation cast upon the authority concerned was of a mandatory character. It is true that the section gave a discretion to the statutory body concerned to grant or refuse a permit but in doing so it could not act in an arbitrary or high handed fashion and refuse to consider the applications presented to it without considering them in the light of the requirements laid down by the section itself. (See on this point the observations of Darling J. in The King v. London County Council, (1918) 1 K.B. D. 68: (87 L.J. K.B. 303), and Wills, J. in Queen v. Cotham, (1898) 1 Q.B. 802 : (67 L.J. Q.B. 632) and Lord Esher, M.R. in R. v. Vestry of St. Pancras, (1890) 21 Q.B. D. 371 at p. 375 : (59 L.J. Q.B. 244) and of Lord Cairns in Julius v. Bishop of Oxford, (1889) 5 A.C. 214 at p. 225 : (49 L.J. Q.B. 597).

297. That the rigour of the above rule can be mitigated in cases which clearly call for relief by reason of a consistent attitude on the part of the authority concerned of refusing to perform the statutory duties cast upon it in accordance with the considerations laid down for it by the law as illustrated by the case of Queen v. Thomas, (1892) l Q.B. D. 426 : (61 L.J. M.C. 141). In this case the justices refused an application without assigning any ground for the licence of a beer house which had been licensed on 1st May 1869 and bad continued to be so licensed. On these facts it was held that a mandamus will issue. It is perfectly correct that as a general rule a mandamus will not issue unless there has been an application and refusal of the application. Further it will not issue where there is a right of appeal and an appeal provides a proper and effectual remedy. Dealing with the question in the above case that there was in that case a right of appeal and that, therefore an appeal was the proper and effectual remedy and mandamus should not be granted, Wills J. observed that the distinction did not apply to the case before him as the applicant would have to appeal without knowing what the grounds of decision against her were and would, therefore, be in the same position upon an appeal as she would have been if the appeal had been granted.

298. Again in the case of Queen v. Leicester Guardians, (1899) 2 Q.B. 632 : (68 L.J. Q B. 945). It was held by Darling J. that where a statute creates a duty and provides a means of performing to that duty, the Court may grant a mandamus if it be of the view that there is no other equal beneficient and effectual remedy open to the applicant, provided the circumstances are, such, in other respects, as to warrant the granting of the writ. See also Queen v. Leicester-Guardians. (1899) 2 Q B. 632: (68 L.J. Q.B. 945), Queen v. Farmer, (1684) Trem P.C. p. 103; The Queen v. Thomas, (1892) 1 Q.B. D. 426 (61 L.J. M.C. 141) Halsbury (Vol. 9) 744.

299. It may further be stated that it is not open to the Court by using the machinery of mandamus to direct what the order passed by the authority should be. What the Court does in a fit case is to direct that the application received by it should be heard by the authority whose duty it is to dispose of it in accordance with law.

300. No doubt the power to issue mandamus is discretionary but this discretion has to be exercised in accordance with judicial principles and Courts will not refuse to issue it where they find that the applicants have made out a case that it should be issued. Willoughby observes at p. 1656 of the Constitution of the United States (Vol. 3) that mandamus is used by the Courts as an aid to as well as a restraint upon the administrative branches of the Federal Government. In Marbury v. Madison, 2 Law Edn. 60 Marshall C.J. made the following observations:

> "Where a specific duty is assigned by law and individual rights depend upon the performance of that duty it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy."

301. The question whether a right has vested or not is, in its nature, judicial and must be tried by judicial authority. It is possibly because of the observations of Marshall C. J., that the wording of 226 is so wide. Vide Willough by, p. 1657.

302. The conclusion I have arrived at is that the principle that mandamus will not issue where the applicant has not exhausted his right of appeal, is not a rule from which no deviation can be made in appropriate oases. It is, however, only in the most exceptional cases where the conduct of the authorities concerned is such as to make it clear that they have not been discharging their duties and are not likely to do so without the guidance of the Court, that the Court will be justified in issuing mandamus. It is in the light of the principle laid down above that I approach a consideration of the question whether any relief should be given to the applicants in this case, I have already pointed out that one thing that can be said against them is that they had a right of appeal and that they never exercised it. The answer to that is as indicated before that I am satisfied that the strategy of the Transport Department was to pass no orders which could be appealed against. In these circumstances it was impossible for them to appeal and in any case the appeal would have yielded no result as it was the policy of Government to whom the appeal lay that the Transport authorities were carrying into effect. It is quite obvious that a regular suit could have yielded no result as it would have been barred under Section 56, Specific Relief Act. The facts in regard to the various applications have been set forth by the learned Chief Justice. I am satisfied in my mind that the reliefs (b) and (c) should not be granted.

303. To sum up, I find that in cases Nos. 118 and 120 applications for regular permits were made according to the agreed statement of the parties on 30-4-1949 and on 10-4-1949 respectively. These applications cannot be deemed to have been disposed of because the Regional Transport authority has been allowing itself to be guided by considerations of an extraneous nature. I would, therefore, issue a mandamus in regard to these two applications. The position in regard to cases other than Nos. 142 and 143 is that the Regional Transport authority made them definitely understand that he was not going to entertain any applications for renewal of permits as the whole question of policy

involved in the granting and renewing of permits was under the consideration of U.P. Government.

304. The applicants were further told by a further notice that they mast stop plying buses as from a certain date Government was going to start its own roadways. I am not surprised that in these circumstances the applicants came to the conclusion that there was not much use in their applying for permanent permits. The arbitrary nature of the notice given by the Regional Transport authority is proof of the fact that the applicants had reasonable grounds for entertaining an idea that an application for regular permits will merely irritate him and serve no useful purpose. I think that technical considerations, therefore, should not stand in the way of our granting a constitutional remedy to which the Constituent Assembly has attached importance as being an appropriate method of giving relief against the failure of a statutory authority to carry out its obligations.

305. As regards the others the position is that regular applications were made by some of them before the 15th of March, and by some others again on and after the 15th of March when the interim order was passed by this Court. There are some cases in which no applications have been made so far.

306. I am clear in my mind that reliefs (b) and (c) cannot and should not be granted. I have given my reasons for holding that the running of buses by the State is not by itself an illegal activity. I am not prepared to go as far as to give the applicants the reliefs sought for, because apart from everything else, the granting of relief (c) will very much inconvenience the public. In regard to those who have made no applications at all, I may say that an undertaking was very properly given by the Advocate-General that the applications, both pending and future will be considered by the appropriate authority in the light of our observations. I trust that the Regional Transport authority will honour the undertaking given by the learned Advocate-General and receive and consider application on their merits. I have come to the conclusion that I should issue a mandamus in two cases. In some other cases I think directions would be the more appropriate relief. Again in some other cases, I have no alternative but to dismiss the applications hoping that they will be considered on their merits by the authority concerned in the light of the law laid down by me in my judgment. I would issue a writ of mandamus in cases Nos. 118 and 120 directing the Regional Transport authorities concerned to hear and determine in accordance with as explained by me in this judgment, applications, dated 30-4-1949 and 18-4-1949, respectively made under Section 58 (2), Motor Vehicles Act, 1939, for the renewal of permits granted to the applicants in the aforesaid case I would allow costs to the applicants.

307. In the following cases, namely, cases Nos. 4 to 7, 71 to 98 and 183 to 140, my view is that having regard to all the circumstances of the case and notwithstanding the undertaking given by the Advocate-General that the applications for permits which were made after some applications under 226 had been made to this Court, will be considered on their merits by the Regional Transport Authority, a direction should issue to the Regional Transport Authority, Meerut, directing it to hear and determine in accordance with law as explained in this judgment the applications made by the petitioners, dated 15-3-1950, under Sections 45 and 46, Motor Vehicles Act for grant of permits to the applicants. The applicants would be entitled to their costs. In cases Nos. 8 to 70 I would issue a direction to the Regional Transport Authority, Meerut directing it to hear and determine in

accordance with law as explained in this judgment applications, dated 20-3-1950, made under Sections 45 and 46, Motor Vehicles Act for the grant of permits to the applicants in the aforesaid cases. I would hold that the applicants are entitled to their costs.

308. I would with regard to applications Nos. 99, 100 and 104 to 116 direct the Regional Transport Authority, Meerut, to hear and determine the applications in accordance with law, dated 8-3-1950, made under Sections 45 and 46, Motor Vehicles Act, 1939, for grant of permits to the applicants in the aforesaid cases. The applicants would be entitled to their costs.

309. In the following cases, namely, cases Nos. 103, 117, 119, 121 to 132, 144 to 154, 156 to 168 and 170 to 176, I would dismiss the applications and I would also dismiss the applications Nos. 142 and 143 but would make no order as to costs of the former. I would dismiss Nos. 142 and 143 with costs.

310. I see no reason why, even though the learned Advocate-General has given an undertaking that these applications will be considered on their merits, directions should not in the special and peculiar circumstances of the cases be issued to the Regional Transport Authority to deal with them according to the requirements of law. I am signing the order proposed to be passed by Agarwala J. subject to the qualification that the Regional Transport Authority shall dispose of the applications in the light of the interpretation given by me to the law applicable to the applicants.

311. Agarwala J. -- I have had the benefit of reading the judgment prepared by the Hon'ble the Chief Justice. The facts are all narrated in that judgment and I need not repeat them.

312. The first question that falls to be determined is: Whether the applicants have a right to carry on motor transport business on the routes in dispute ?

313. It was not disputed on behalf of the opposite parties that the roads on which the applicants ply their buses or used to ply their buses before they were stopped are public highways and have not been diverted or closed. The applicants' right to ply their buses for hire has been denied on two grounds: First, that on highways there is no right of plying motor buses on hire for gain, and second, that after all public highways vest in the State and are State property and the permission to use them is merely by sufferance and can be revoked at any time.

314. By the common law of England, there are three distinct classes of right of way and other similar rights. First there are private rights in the strict sense of the term vested in particular individuals or the owners of particular tenements and such rights commonly have their origin in grant or prescription, Secondly, there are rights belonging to certain portions of the public such as freemen of a city, tenants of a manor, or the inhabitants of a parish or village. Such rights have their origin in custom. (They cannot be based upon either the principle of dedication or that of lost grant. Vide Lakshmidhar v. Rangalal, A.I. R. (37) 1950 P.C. 56 : (76 I.A. 271)). Thirdly, there are public rights in the full sense of the term which exist for the benefit of all the subjects and the source of these is either a statute or a dedication by the owner of the soil. These classes of rights of way have been recognized as existing in India as well. Chuni Lal v. Ram Kishen Sahu, 15 Cal. 460 (F. B.).

315. Unless the Statute of the act or dedication creates restrictions in the user of these public rights of way, the public way or highway remains a public highway for all purposes. The presumption is that the dedication is for an unrestricted user and the burden of proving the restrictions is upon the person contending for them. (Vibudapriya Thirthaswamy v. Esoof Sahib, 35 Mad. 28 : (8 I.C. 175).) Where no restrictions on the user of a highway are proved, the right of the public extends not merely to the forms of traffic which were usual and accustomed when the dedication was made but also to new means of locomotion, which are reasonably similar or incidental thereto and which neither make the right substantially more burdensome to the owner of the soil nor the way less safe or commodious to the public using it. (Pratt and Mackenzie on Highways, p. 52.)

316. No doubt, the State has the power by Statute to impose regulations confining certain classes of traffic to certain highways, directing observance of the rules of the road or otherwise restricting common law rights, for purposes of safety, peace, health, morals and general well-being of the persons using the highways.

317. But subject to these regulations a person is entitled to use any highway which has been dedicated for such traffic as he desires to conduct on it -- (Halsbury's Laws, of England Hailsham Edn. Vol. 31, p. 649).

318. The use of a highway may be for pleasure or on business. Vide note (b) in Halsbury's Laws of England, Hailsham Edn. Vol. 16, p. 181.

319. The mere fact that a person passes and re-passes on a highway on business or for gain can be no objection to the use of a highway. In Amba Prasad v. Jugul Kishore, 1936 A.L. J. 438 I (A.I. R. (23) 1936 ALL. 112), it was held by this Court that "the mere fact that a highway is used to make money by charging hire is not an illegitimate use of the highway as in so doing the man who charges the hire does not exercise any greater right than that of passing and re-passing over the highway, a right which he shares, with the public at large."

These words were used in respect of the user of a Municipal street for plying motor buses on hire.

320. It is true that the user of a highway must not be an abuse of the right to pass and re-pass. In other words, the user must not be for a purpose which is not the purpose of passing: or re-passing, but some other purpose, e. g. holding of meetings on the highway -- vide Ex Parte, Lewis (1882) 21 Q.B. D., 191 : (57 L.J. M.C. 108).

321. The case of Hickman v. Maisey, (1900) 1 Q.B. 762 : 69 L.J. Q.B. 511), falls under this category. There the defendant walked backwards and forwards on a portion of the highway on the plaintiff's land about 16 yards in length for a period of about an hour and a half watching and taking notes of the trials of race-horses on the plaintiff's land adjoining the highway. It was held that --

> "The defendant had exceeded the ordinary and reasonable user of a highway as such to which the public were entitled, and was, therefore, guilty of trespass on the plaintiff's land."

322. On behalf of the opposite parties reference has been made to four decisions--William F. Davis v. Commonwealth of Massachusetts, 42 Law. Ed. 71; W.H. Packard v. Banton, 68 Law, Ed. 696; Stephensen v. Binford, 77 Law. Ed. 288 and Valentine v. Chrestensen, 86 Law. Ed. 1262.

323. In all these cases, certain laws were challenged as being opposed to the fourteenth amendment: "Nobody shall be deprived of his property without due process of law." The laws in question merely regulated the user of a public carries on a public highway. The regulation was justified under the police powers of the State and was made by or under an enactment of the legislature. Nobody questions the right of the legislature to regulate the use of highways for the benefit of the travelling public. The actual decision in those cases, therefore, is not relevant for the present purpose but certain observations were made therein and more particularly in two of the cases upon which great reliance has been placed.

324. In W.H. Packard v. Banton, 68 Law. Ed. 596, it was observed that:

> "The streets belong to the public, and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary, and generally at least, may be prohibited or conditioned as the legislature deems proper."

The observations in Stephensen v. Binford, 77 Law. Ed. 288 were similar.

325. The user of a highway by motor buses may be a special and extraordinary user of the highway but it was not held to be an illegal user. On the contrary, these cases establish that such user is legitimate. As regards the observation that the streets belong to the public, we shall see in a moment that the vesting of streets in municipal bodies or the State does not affect the rights of the members of the public in using them for the purposes of traffic.

326. On the contrary in Hiram Barney v. The City of Keokuk, 24 Law. Ed, 324 at p. 329, it was held that--

> "On the general question as to the rights of the public in a city street, we cannot see any material difference in principle with regard to the extent of those rights, whether the fee is in the public or in the adjacent land-owner or in some third person. In either case, the street is legally open and free for the public passage, and for such other public uses as are necessary in a city, and do not prevent its uses as a thoroughfare."

327. It may also be pointed out that in the present cases it has not been shown that the soil of the highways in dispute belongs to the State. Learned counsel appearing on behalf of the opposite-parties were asked to file an affidavit in support of their contention that the highways in dispute are on State lands but none was filed. No doubt some of the routes cover portions of the Grand Trunk Road which is said to have been constructed by Sher Shah Suri. The fact that it was constructed by a Prince does not mean that the soil belonged to him or to the State: It is quite possible that the owners of the soil adjoining the road consented or acquiesced in the construction of

the road which was for the benefit of the public including themselves. The general presumption of law both in England as well as in India is that the soil up to the middle of the road (ad midium filum) belongs to the owners of the laud adjoining the highway on both sides. See Haigh v. West, (1893) 2 Q.B. 19 at p. 29 : (62 L.J. Q.B. 532); London North-Western Railway v. Westminster Corporation, (1902) 1 Ch. 269; Nihalchand v. Azmat Ali Khan, 7 ALL. 362 : (1885 A.W. N. 56) and N. Narhari Singh v. Secretary of State, A.I. R. (28) 1941 Bom. 161 : (I.L. R. (1941) Bom. 226).

328. Nor does the fact that a highway vests either in Municipal Boards under Section 116 of the Municipalities Act or in the District Boards under Section 146 of the District Boards Act or even in the State affect the rights of user by the public.

329. As observed by Lord Morris in Municipal Council of Sydney v. Young, (1898) A.C. 457 : (67 L.J. P.C. 40).

> "The vesting of a street or public way vests no property in the municipal authority beyond the surface of the street, and such portion as may be absolutely necessary incidental to the repairing and proper management of the street; it does not vest the soil or the land in them as owners. If that be so, the only claim that they could make would be for the surface of the street as being merely property vested in them qua street, and not as general property."

330. To the same effect are the observations of Romer L.J. in Finchley Electric Light Co. v. Finchley Urban Council, (1903) 1 Ch. 437, at pp. 443 and 444 : (72 L.J. Ch. 297).

331. The same view has been taken by the Privy Council in an Indian Case, vide, Man Singh v. Arjun Lal, A.I.R. (24) 1937 P.C. 299 : (I.L.R. (1937) ALL. 901).

332. In Louisa Sauer v. City of New York, 45 L. Ed. 1176 at p. 1185, it was held :

> "The trust upon which streets are held is that they shall be devoted to the uses of public travel. When they, or a substantial part of them, are turned over to the exclusive use of a single person or corporation, we see no reason why a State Court may not hold that it is a perversion of their legitimate uses, a violation of the trust, and the imposition of a new servitude."

333. The highways in question are all those on which for a long time motor buses have been plying on hire. The plaintiffs have, therefore, established their right of using the highways for the purpose of carrying on their business of motor transport subject to the provisions of any valid statutory enactment.

334-335. The right of the applicants to ply buses on the routes in question on hire having been established, the next question for consideration is whether the Regional Transport Authority was justified; (a) in refusing to accept an application for the grant of a regular permit under the provisions of the Motor Vehicles Act, (b) in issuing permits for a period of 3 mouths only, and (c)

whether the order of the Regional Transport Officer directing the applicants to stop plying buses on the ground that the Government was taking over the routes in pursuance of its nationalisation policy was justified.

336. Under Section 42 of the Motor Vehicles Act, no owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of a permit granted by a Regional or Provincial Transport Authority. The Act provides for the constitution of those two bodies (Section 44). Permits are of two kinds, a regular or permanent permit and called in the Act as "permit" simpliciter, and a temporary permit. A temporary permit is granted under the provisions of Section 62 for a limited period not exceeding 4 months for one or more of three purposes; (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or (b) for the purposes of a seasonal business, or (c) to meet a particular temporary need.

337. A regular permit for stage carriages is granted under Section 48. Section 47 provides for the matters that "shall" be considered by the Regional or Provincial Transport Authority in determining whether a permit shall be granted or not. Sections 47 and 48 are in the following terms :

> "Section 47--A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit have regard to the following matters, namely;
>
> (a) the interest of the public generally;
>
> (b) the advantages to the public of the service to be provided, including the saving of time likely to be affected thereby and any convenience arising from journeys not being broken;
>
> (c) the adequacy of existing road passenger transport services between the places to be served the fares charged by those services and the effect upon those services of the service proposed;
>
> (d) the benefit to any particular locality or localities likely to be afforded by the service;
>
> (e) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services; and
>
> (f) the condition of the roads included in the proposed route or routes.
>
> "Section 48--A Regional Transport Authority may, after consideration of the matters set forth in Sub-section (1) of Section 47,
>
> (a) limit the number of stage carriages or stage carriages of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region;

(b) issue a stage carriage permit in respect of a particular stage carriage or a particular service of stage carriages;

(c) regulate timings of arrival or departure of stage carriages whether they belong to a single or more owners, or

(d) attach to a stage carriage permit any prescribed condition or any one or more of the following conditions, namely:

(i) that the service specified in the permit shall be commenced not later than a specified date and be continued for a specified period;

(ii) that the service may be varied only in accordance with specified conditions;

(iia) that the stage carriage or stage carriages shall be used only on specified routes or in a specified area;

(iii) that copies of the fare-table and time-table shall be exhibited on the stage carriage and that the fare table and time table so exhibited shall be observed;

(iv) that not more than a specified number of passengers and not more than a specified amount of luggage shall be carried on any specified vehicle at any one time;

(v) that within municipal limits and in such other areas and places as may be prescribed passengers shall not be taken up or set down at or except at specified points; or

(vi) that tickets shall be issued to passengers for the fares paid."

338. If the Regional Transport Authority refuses an application for a permit of any kind, it shall give the applicant in writing its reasons for refusal--Section 57 (7).

339. Section 64 provides for appeals by persons aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or by the revocation or suspension of the permit or by any variation of the conditions thereof, etc.

340. The Provincial Government has framed certain rules under the Motor Vehicles Act. Under Rule 69 :

"(a) Upon application made in writing by the holder of any permit, the Regional Transport Authority may at any time, in its discretion, vary the permit or any of the conditions thereof subject to the provisions of the following sub-rules :

* * * * * *

> (c) Notwithstanding the provisions in Sub-rule (b) a Regional Transport Authority may vary and stage carriage permit or any public carrier's permit without affording any person an opportunity of making a representation."

341. Now a perusal of Sections 47 and 48 clearly shows that the statutory body empowered in the Act to grant or refuse permits has been directed to consider matters mentioned in Clauses (a) to (f) of Section 47 (1). The words "shall have regard to the following matters" are mandatory. The section does not give an absolute discretion to the statutory body to grant or refuse a permit. It cannot therefore arbitrarily refuse to entertain an application or refuse to grant the same without considering those matters. Said Lord Cairns in Julius v. Bishop of Oxford, (1879) 5 A.C. 214 at p. 225 : (49 L.J. Q.B. 577) :

> "Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise; that power ought to be exercised and the Court will require it to be exercised."

342. In the words of Darling J. in The King v. London County Council, (1918) 1 K.B. 68 : (87 L.J. K.B. 303) :

> "The body on whom is conferred the jurisdiction of granting such licences must hear each application on its merits and cannot come to a general resolution to refuse a licence to every body who does not conform to some particular requirements."

(See also Alcock Ashdown & Co. Ltd. v. Chief Revenue Authority, Bombay, 50 I.A. 227 at p. 236 : (A.I. R. (10) 1923 P.C. 138).

343. The second point to be noted is that when a statutory body is required by Statute to take into consideration certain specific matters, it cannot take into consideration other matters.

344. In Queen v. Cotham, (1898) 1 Q.B. 802 :

> (67 L.J. Q.B. 632), Wills, J. observed :
>
> "When it appears that they (Justices) have taken into consideration matters which are absolutely outside the ambit of their jurisdiction and absolutely apart from the matters which by law ought to be taken into consideration, then they have not heard and determined according to law."

345. In R. v. Vestry of St. Pancras, (1890) 24 Q.B. D. 371 at p. 375: (59 L.J. Q.B. 244), Lord Usher M.R. held that :

> "If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion ... the legislature has entrusted the sole discretion to them and.... no mandamus could go to them to alter their decision. But they must fairly consider the application and exercise their discretion on it fairly, and not take into account any reason for their decision which is not a legal one."

346. To the same effect ace the observations of Lord Reading in R. v. Brighton Corporation, (1916) 85 L.J. K.B. 1552 at p. 1555: (114 L.T. 800).

> "The Court ought to be very slow in Interfering with the decisions of local authorities, and this Court has always taken the view that, assuming the local authority has come to a decision upon the merits of the case, without taking into account or being influenced by matters outside their proper sphere of consideration, this Court should not interfere, notwithstanding that it might have arrived at a totally different conclusion ... Bat when the Court comes to the conclusion that the local authority has not properly exercised its discretion because it has taken extraneous matters into account and allowed them to influence it, then it is the duty of this Court to intervene."

347. The same principle has been followed in India: Rustom J. Irani v. Hartley Kennedy, 26 Bom. 396: (4 Bom. L.R. 1); Gell v. Taja Noora, 27 Bom. 307 : (5 Bom. L.R. 133); In re Haji Hassan Muhammad, 4 Bom. L.R. 773 and Ratan Shaw v. G. William, I.L. R. (1942) Bom. 259: (A.I. R. (29) 1942 Bom. 1).

348. In this connection it may be mentioned that where relevant considerations are in extricably mixed up with irrelevant considerations by a statutory body in deciding a matter, its action is bad in the eye of the law.

349. In Sadler v. Sheffield Corporation, (1924) 1 Ch. 483 at p. 504: (93 L.J. Ch. 209), in connection with the dismissal of a teacher who could be dismissed only on educational grounds, Lawrence J. observed :

> "Mixed financial and educational grounds, in my judgment, are not educational grounds within the meaning of Sub-section (2) (a), Educational Act, 1921, Section 29. In my opinion, it would not be right (even if it were possible) to attempt to resolve the mixed grounds into their component parts, and then to cast away the financial grounds, so as to leave the educational grounds as the undiluted and sole grounds for the dismissal. It seems to me ... that here the financial grounds and the educational grounds were inextricably mixed and must stand or fall together. Another way of putting the same point is that Sub-section (2) (a) confers upon the local education authority a discretionary power to require the dismissal of a teacher in a non-provided school on educational grounds only, and, if the authority in exercising

> the discretionary power takes other grounds into account, the power is not well exercised."

350-351. Two other principles applicable to such cases are also well settled: A statutory body must act bona fide. Its action may be, on the face of it, regular and within its power. But if it is merely a colourable exercise of its power while in fact serving another purpose it is bad in law. As observed by the Earl of Halsbury L.C. in Westminster Corporation v. London and North Western Railway, (1905) A.C. 426 at p. 428 : (74 L.J. Ch. 629):

> "If the power to make one kind of building was fraudulently used for the purpose of making another kind of building, the power given by the Legislature for one purpose could not be used for another."

352. Again, a statutory body must act reasonably. As observed by Lord Wrenbury in Robert v. Hopwood, (1925) A.C. 578 at p. 613: (94 L.J. K.B. 542):

> "A discretion does not empower a man to do what he likes merely because he is minded to do so--he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably."

353. In Halsbury's Laws of England, Vol. 31, p. 533 the law has been summarised as follows:

> "Statutory powers must be exercised bona fide, reasonably and without negligence and when they are conferred for a purpose unknown to the common law, it is assumed that what is not expressly or impliedly authorised is prohibited."

354. Thus the Regional Transport Authority which is a statutory body constituted under the Motor Vehicles Act must not arbitrarily refuse to exercise its functions. It must act judicially and take into consideration only those matters which are mentioned in Section 47 (1) and in making its decisions, it must act bona fide and reasonably. Now the nationalization of motor transport ser. vices, and the fact that the Government has taken over the routes in question for its roadways, are considerations which do not find place in Section 47 (1). It was faintly contended by the learned Advocate General that nationalization of transport services may fall under Section 47 (1) (a) and taking over of the routes in question by Government roadways may fall under Section 47 (1) (c), Section 47 (1) (a) refers to the interest of the public generally. By 'public generally' is meant the travelling public. This was the precise point that was decided by the Madras High Court in Sri Ramvilas Service Ltd. v. Road Traffic Board, Madras, A.I. R. (35) 1948 Mad. 400: (1948-1 M.L. J. 85), with which decision I respectfully agree.

355. Again the fact that Government has taken over the routes with the intention of nationalizing motor transport service and of ousting everybody else from the field, is also not a consideration which is covered by Clause (c) of Section 47 (1), or, for the matter of that, by any other clause of that section.

356. Section 47 (1) (c) authorises the Regional Transport Authority to take into consideration the sufficiency or otherwise of the existing transport services in order to decide whether to allow fresh applications for permits or not. The idea is that congestion on roads may be avoided. The object of the clause is not that the Government may be allowed to have the monopoly of motor transport service to the exclusion of all other competitors. I shall later on discuss whether the Government is entitled to run its buses at all or at any rate, without permits being applied for in the ordinary manner, and, if not, whether the existence of Government roadways can be taken into consideration by the Regional Transport authority. At the present moment, I am only concerned in pointing out that the mere fact that the Government has launched upon the policy of nationalization of motor transport services and has put its own buses in the field to achieve that end is not a valid consideration for the Regional Transport Authority in determining an application under Section 47.

357. Temporary permits for a period of three or four months could be granted only under Section 62 for the purpose specified therein. It is conceded that the Regional Transport Authority in the present case, granted temporary permits not on any of those grounds. It seems to me that the Regional Transport Authority was declining to grant regular permits valid for three years or more in compliance with the wishes of the Government because the latter intended to take over the routes for its own roadways.

358. Thus the Regional Transport Authority has throughout acted not as an independent statutory body performing its function in a judicial manner uninfluenced by extraneous consideration, but as an imbecile agent of the Government carrying out its wishes and behests. There can be little doubt that it naturally misconceived its functions and failed to perform its duties in the manner required by law.

359. The notices issued by the Regional Transport Officer whether acting for the Regional Transport Authority or as an officer of the Government could not be justified under any provision of the Motor Vehicles Act.

360. In the counter-affidavit filed on behalf of the opposite party, the notices were attempted to be justified under Rule 69 (c) of the Rules framed under the Motor Vehicles Act. It is obvious that Rule 69 (c) only applies when an application for the variation of the permit has been made by the applicant himself. The opening words of the rule 'upon an application made in writing by the holder of any permit' in Sub-rule (a) govern Sub-rules (b) and (c) of that rule. In the present cases, no application for the variation of the permit was made by the applicants and, therefore, Rule 69 did not authorise the Regional Transport Officer to issue the notices in question.

361. If the action of the Regional Transport: Officer could not be justified under the Motor Vehicles Act and there is no other law under which it could be justified, the notices were issued without any authority and were void and of no effect. As was observed in Blackpool Corporation v. Locker, (1948) 1 K.B. 349 at p. 369:

> "It is a principle of our constitution that no one will be deprived of his liberty or of his right except in due course of law i. e., unless he has done something which the law

> says specifically shall have that effect. In the absence of a common law or statutory authority 'A' cannot be deprived of his rights by an executive act of a Minister."

362. These remarks were made in connection with the rule of English law as it prevails in England. But the position is entirely the same in India as Ghosh has pointed out in his Comparative Administrative Law at p. 127 :

> "For every new encroachment on the rights of a subject as determined by the law in force at any particular moment, the Executive Government must seek authority from the legislature; and in any case, it is always open to British subjects in India to test the validity of any act of the Executive by an appeal to Courts of law."

363. The Constitution of India has now placed the matter beyond all controversy.

364. The Constitution guarantees certain fundamental rights to the citizens and residents of India. Article 19(1) provides : "All citizens shall have the right. . . (g) to practise any profession or to carry on any occupation, trade or business."

365. Clause (6) of this Article provides the restrictions which can be placed upon this freedom. It runs as follows :

> Article 19(6).-- "Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as It imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes of empowers any authority to prescribe or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade, or business."
>
> Article 301 provides: "Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free." Articles 302 to 305 refer to the restrictions which may be placed upon the exercise of the right conferred under Article 301 by any existing or future law. Article 301 appears to have been taken from Section 92 of the Australian Constitution, which is in these terms :
>
> "On the imposition of uniform duties of customs, trade, commerce and intercourse among the States whether by means of internal carriage or ocean navigation, shall be absolutely free."

This section has been interpreted as not being merely confined to freedom from taxation or other duties but as including the freedom from unreasonable Governmental interference. As remarked by Lord Porter in The Commonwealth of Australia v. Bank of New South Wales, (1949) 2 ALL E.R. 755

at p. 765 : "It is no longer arguable that freedom from customs or other monetary charges alone is secured by this section." The same rule must be applied to Article 301.

366. Article 301 is, if anything, wider than Section 92 inasmuch as it secures freedom of movement not only inter-State but throughout the territory of India. While Article 301 contemplates the right of trade, business or inter-course, in motion, Article 19(1)(g) secures the right of occupation, trade or business at rest. To the extent that a business may consist of an activity of movement from one place to another, it is covered by both Articles and in that respect they overlap.

367. If motor transport service is a business --and it cannot be denied that it is--its freedom is protected both by Article 19(1)(g) and Article 301. In so far as it is covered by Article 19(1)(g) it is a fundamental right protected by the Constitution and enforcible by a writ, order or direction under Articles 32 and 226, and can be regulated under Clause (6) of Article 19 by a "law placing 'reasonable restrictions' upon the exercise of the right in public interest." Under Article 301 it can be interfered with only by an existing law under Section 305 or by some future law under Articles 302 to 304. In every event, it must be a 'law" and not an executive order. It may be pointed out that the word "law" means a legislative enactment and not an executive order. In this respect the meaning of the word "law" defined in Article 13(3) is perhaps wider and it may include an executive order but the definition is for the purposes of that Article alone and is not applicable to the other Articles of the Constitution.

368. The word "Existing Law" in Article 305 has been defined in Article 366(10), which shows that executive orders are not included within the definition. Since the notices issued by the Regional Transport Officer are merely executive orders, they cannot affect the rights guaranteed by Articles 19(1)(g) and 301.

369. It was urged that even a legislative enactment creating State monopoly of motor transport service or authorising the nationalization of motor transport service would be invalid as it would not be covered by Clause (6) of Article 19(1)(g). I express no opinion on this point as it does not arise in the present case; there being no such law in existence at the pre. sent moment.

370. But it is urged that although there is no law authorising the nationalization of motor transport service--and the Motor Vehicles Act admittedly has not been enacted with that object --yet the discretion vested in the Regional Transport Authorities constituted by the Act is so wide and unbridled that it can be worked, and it is, in fact, being worked, to create, in an indirect manner, a monopoly of the business of motor transport in favour of the Government. On this ground, Sections 47 (1) (c), (d), (e) and 48 (a) (b) (d) (iia) are impugned as interfering with the freedom granted under Article 19(1)(g) and the equality of all persons protected under Article 14; and Section 42(3)(a) and the proviso to Section 58 (2) are challenged as being contrary to the equality guaranteed under Article 14; and it is urged that all these sections should be declared void under Article 13(1).

371. In support of the fear expressed on behalf of the applicants that the Regional Transport Authority will manipulate the Act in favour of the Government, the issuing of the challenged notices

and the recent action of the Transport Authority in refusing some applications for permits on the sole ground that Government roadways are running on the roads in question are pointed out.

372. I am sorry to say that the conduct of the Transport Authorities lends itself to such as interpretation. But the question is whether the impugned provisions of the Motor Vehicles Act can be declared to have become invalid on these grounds ?

373. On behalf of the applicants, reliance has been placed on the American case of Yick Wo v. Hopkins, 30 Law. Ed. 220, and on the Australian cases of Gratwick v. Johnson, 70 C.L. R. 1; Australian National Airways Proprietary Ltd. v. The Commonwealth, 71 C.L.R. 29 and Bank of New South Wales v. The Commonwealth, 76 C.L. R. 1, as approved by the Privy Council in Australia v. Bank of New South Wales, (1949) 2 ALL E.R. 755.

374. In Yick Wo's case, (30 Law. Ed. 220) an ordinance of the city of the county of San Fran-Cisco provided that it shall be unlawful for any person to engage in the laundry business within the corporate limits, without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone. The ordinance, however, did not prescribe rules and conditions for the regulation of the use of laundry property, to which all similarly situated may conform.

375. It was held that the ordinance conferred--

> "a naked and arbitrary power upon the Board to give or withhold consent and made all concerned the tenant-at-will as to their means of living under the Board of supervisors and was bad in law"; and it was observed:
>
> "Though a law be fair on its face and impartial in appearance, yet, if it is administered by public authority with an evil eye and an unequal head, so as practically to make illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition." The important facts that have be to observed in connection with this case are that the ordinance did not prescribe any rules for the control of the discretion of the board of supervisors, and it was in fact worked "with an civil eye and an unequal hand."

376. In Gratwick v. Johnson, 70 C.L. R. 1, the facts were these : Para (3) (a) of the Restrictions of Interstate Passenger Transport Order made under the National Security (Land Transport) Regulations provided that no person should without a permit travel by rail or commercial passenger vehicle from any State in the Commonwealth to any other State therein. Para. 5 provided that the Director General of Land Transport might grant or refuse any application for a permit. The question was whether para. 3 (a) was a direct interference with Section 92 of the Constitution. It was held that it was, and, therefore, it was held to be invalid.

377. It will be observed that in this case also the discretion to refuse a permit or grant it, was uncontrolled and could be used at the sweet will of the Director General, without contravening the

letter or the spirit of the order.

378. In Australian National Airways Proprietary, Ltd. v. The Commonwealth, 71 C.L. R. 29, it was held that in view of the provisions of Section 92 of the Australian Constitution, the Parliament of the Commonwealth could not create a corporation with the exclusive right to conduct inter-State service for the transport by air, for reward, of passengers or goods. A regulation by which the Director-General was empowered all his sweet will to grant or refuse a licence for carrying on of air transport service was held to be void as being in contravention of Section 92. So far as the decision with regard to the monopoly being created in favour of a corporation by an Act of Parliament of the Commonwealth is concerned, it is not relevant for our present purpose. But so far as it was held that the regulation which authored the Director General to refuse or to issue a licence was invalid, it is relevant. But it has again to be noticed that the regulation gave a naked and arbitrary power to the Director General to grant or refuse a licence without laying down the rules according to which his refusal or grant of the licence was to be guided.

379. Latham C.J. in that case made the following observations :

> "I venture to repeat what I said in the former case (viz. Milk Board, N.S. W. v. Metropolitan Cream Pty. Ltd., 62 C.L. R. 127. One proposition which I regard as established is that simple legislative prohibition (Federal or State), as distinct from regulation, of inter-State trade and commerce is invalid. Such a law does not regulate such trade, it merely prevents It. But a law prescribing rules as to the manner in which trade (including transport) is to be conducted is not a mere prohibition and may be valid in its application to inter-State trade, notwithstanding Section 92."

380. The case of Bank of New South Wales v. The Commonwealth, 76 C. L R. 1, was taken up to the Privy Council whose decision is reported in Australia v. Bank of New South Wales, (1949) 2 ALL E.R. 755. In that case the question was whether Section 46, Australian Bank Act, 57 of 1947, contravened Section 92 of the Constitution. Under Section 16 of the Act of 1947, the treasurer of the Commonwealth Bank may, by publishing in the Gazette require the private banks to which notices were given not to carry on banking business in Australia. It was held that the section was invalid. In the course of the judgment the observations of Latham C.J. in the case of Australian National Airways Pty. Ltd. v. The Commonwealth (71 C.L. R. 29), as quoted above, were approved by their Lordships and it was further observed as follows :

> "Yet about this, as about every other proposition in this field, a reservation must be made, for their Lordships do not intend to lay it down that in no circumstance could the exclusion of competition so as to create a monopoly either in a State or Commonwealth agency, or in some other body, be justified. Every case must be judged on its own facts and in its own setting of time and circumstance, and it may be that in regard to some economic activities and at same stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation and that inter-State 'trade, commerce, and intercourse,' thus prohibited and thus monopolised remained absolutely free.

> Nor can one further aspect of prohibition be ignored. It was urged by the appellants that prohibitory measures must be permissible, for otherwise lunatics, infants and bankrupts could without restraint embark on inter-State trade and diseased cattle or noxious drags could freely be taken across State frontiers. Their Lordships must, therefore, add what, but for this argument so strenuously urged, they would have thought it unnecessary to add, that regulation of trade may clearly take the form of denying certain activities to persons by age or circumstances unfit to perform them or of excluding from passage across the frontier of a State creatures or things calculated to injure its citizens. Here, again a question of fact and degree is involved which is nowhere better exemplified than in the Potato Case."

381. Their Lordships further pointed out that, "there was a discriminatory test between a restriction which is direct and one that is too remote" and that indirect restrictions did not interfere with the freedom guaranteed by the commerce clause.

382. It will be observed that in the above case the express object of the impugned Act was a total prevention of private banking business.

383. Now it may be conceded that "reasonable restraints in the public interest" mentioned in Clause (6) of Article 19 to which the freedom of every citizen to carry on any occupation, trade or business is subject, may presumably be assimilated to the police power of the State as evolved by American Courts or the regulatory power to which absolute freedom of commerce and trade guaranteed under Section 92, Australian Act, was made subject by the Australian Courts and their Lordships of the Privy Council. I do, not think that there is much distinction between the words "reasonable restrictions" as used in Clause (6) and "regulation" as used in American and Australian oases. Every regulation is a restriction of some kind, though every restriction may not be a regulation. But every 'reasonable restriction' is, to my mind, nothing more than what has been held to be a justifiable regulation.

384. Since the object of the Motor Vehicles Act is not the nationalization of Motor transport and since the nationalization of exclusion of all competition altogether is not one of the matters that are required to be considered under Section 47, the working of the Act by the Transport Authorities in order to bring about that result will be a fraud upon the Act and will be set aside by the Court in a proper action. But for that reason the provisions of the Act themselves do not become void. All the cases cited on behalf of the applicants and discussed above show that an Act or a portion of it may be declared invalid in two cases : (1) Where the object of the Act itself is the exclusion of competition and the creation of a monopoly, or (2) where though the Act "be fair on its face and equal and impartial in appearance" yet a naked and arbitrary power is vested upon an authority uncontrolled by any regulatory provision and it is in fact so administered by the public authority concerned.

385. It may further be conceded that the creation of a monopoly in the State or in some other corporate body or individual would unless justified by special circumstances, be invalid, as interfering with Articles 19(1)(g) and 14. It may also be conceded that none of these special conditions under which exclusion of competition and the prohibition of all but the State from

carrying on motor transport business have been proved to exist in the present cases. Nevertheless, in my opinion the impugned parts of Sections 17 and 48 do not fall under any of the above propositions and cannot be declared invalid.

386. The matters mentioned in Section 47 are matters which are intended to guide the exercise of the discretion by the Regional Transport Authority. None of those provisions taken by themselves are unreasonable or unfair and since they provide a measure for the regulation of the exercise of discretion vested in the Regional Transport Authority it cannot be said that a 'naked and arbirary power' has been conferred on the authorities.

387. The considerations which apply to Section 42 (3) (a) are, however, different. Section 42 (3) (a) makes a discrimination between private persons on the one hand and the Central or the Provincial Government on the other, even though they carry on the same business and stand exactly on the same footing so far as the business is concerned. This clause was enacted when the Central or the Provincial-Government did not conduct the business of motor transport for gain. Now that the Provincial Government are carrying on this business, the clause no doubt works unequally between private owners and the State doing the same kind of business.

388. Article 14 imposes upon the State a duty not to deny to any person equality before the law or the equal protection of the laws within the territory of India. The article does not necessarily prohibit reasonable discrimination or classification. It is well settled in America that the State may make distinction between classes of person provided the distinction is not arbitrary. The Article does not require things which are different in fact or in opinion to be treated in law as though they were the same (Tigner v. Texas, 310 U.S. 141) Nor do I think the Article prevents a State from recognising differences of capacity, physical or moral, and of social functions as provided specifically in Section 40 (1) of the Irish Constitution. But it certainly does prohibit the State from making "illegal discrimination" between persons in similar circumstances material to their rights as laid down in Yick Wo's case, 30 Law. Ed. 220; and from interposing impediments to a pursuit by one person except as apply to the same pursuit by others in like circumstances, when no greater burdens are laid upon one than are laid upon others in the same calling or condition, Francis Barbier v. Patric Connoly, 113 U.S. 32.

389. The principles thus settled not only apply between individual and individual but also between one individual and a corporation or the State itself. Through the Article merely speaks of the "person" for whom equality is guaranteed and not of the person who is favoured, it is obvious that in considering the protection of one person we must see whether any other person situated in the same circumstances or condition and carrying on the same calling is put on a preferential footing and it is in this connection that the question arises whether the State can discriminate against person in its own favour. To my mind, if this were allowed it would be a negation of the equality guaranteed under Article 14.

390. That the State itself is a "person" can admit of no doubt. The State is a juristic corpotion having a personality of its own. (The Municipal Council of Sydney v. The Commonwealth, 1 C.L. R. 208 at p. 231,). It can sue and be sued (Article 300).

391. As Holland observes:

> "Besides its tights and duties as the guardian of order, in which respect little analogy can be remarked to anything in private law, the State, as a great juristic person, enjoys many quasi-rights against individuals, as well strangers as subjects, and is liable to many quasi-duties in their favour. These rights and duties closely resemble those which private law recognises as subsisting between one individual and another." (Holland's Jurisprudence, 10th Edn., p. 376.)

392. The word "person" in Article 14 is not necessarily confined to human beings. A comparison of the various Articles in the Constitution in which the word "person" is used shows that the word "person" is not confined to human beings, vide Articles 20, 27 and 31. Article 20 must include a corporation because a corporation can be convicted of an offence and, though not sentenced to imprisonment, can be fined and it will be anomalous to hold that the protection guaranteed by Article 20 is not to be applied to a corporation. Similarly in Articles 27 and 31 it is natural to Suppose that a corporation is given the same protection as human beings. Similarly, in Articles 226(2) and 287 the word "person" must include a corporation.

393. In America, it has been held that the word "person" includes a corporation within the meaning of the fourteenth amendment, vide Santa Clara Co. v. Southern Pacific Railway, 30 Law Ed. 118, followed in Re Atlantic City Rail Rd. Co., 164 U.S. 578; Holtoman v. Douglas, 169 U.S. 466 and Kentucky Finance Corporation v. Paramount Antonih Co., 262 U.S. 544. There is no reason to hold a different view with regard to the meaning of the word "person" in Article 14.

394. In Peninsular and Oriental Steam Navigation Co. v. The Secretary of State for India, 5 Bom. H.C. R. App. A, p. 1 at p. 12, it was observed:

> "Now if the East India Company were allowed, for the purpose of government, to engage in undertakings, such as the Bullock Train and the conveyance of goods and passengers for hire, it was only reasonable that they should do so, subject to the same liabilities as individuals. If, by reason of their having been entrusted with the powers of government, they were exempted from the ordinary liability of individuals in matters of business, exercised either for their own benefit, as it was at one time, or for the purposes of government, as it was at another, private individuals would have had to compete with them upon very disadvantageous terms."

395. In my judgment when the State itself descends into the arena of competition with private persons, it must compete with them on equal terms, and not claim-preferential treatment.

396. It is true that the vehicles of the State used for a purpose other than that of carrying passengers or goods on hire fall under a distinct category and can by law be treated separately, and if Section 42 (3) (a) had been confined to such vehicles of the State, there could have been no objection to its validity. But since the impugned clause is not restricted in its operation to such vehicles of the State and is applicable to the vehicles which are used by the State for the purpose of carrying on motor

transport business for profit in competition with private individuals, the clause must be held to be bad.

397. The proviso to Section 58 (a) empowers the Regional Transport Authority to entertain applications for renewal and fresh applications for permits. I do not consider that this clause infringes the right of equality guaranteed in Article 14. The classification of old permit-holders and new seekers for permits cannot be said to be unreasonable. The old permit-holders, who merely apply for renewal, are persons who have already invested an amount of labour and money in running the service and have gained experience thereby. They may, if the State thinks fit, be protected against new-comers in the field in certain circumstances. The clause does not entirely vest a discretion in the authority concerned to refuse the grant of new permits at all. This refusal will have to be a refusal on one or other considerations mentioned in Section 47. But when considering those matters the clause requires that a preference may be given to old permit-holders who seek renewal over new applicants for permits. I do not think that this clause is invalid.

398. Before I part with the Motor Vehicles Act, I must refer to two other points urged before us on behalf of the applicants-- (1) That the temporary permits issued to the applicants must be construed as regular permits, and (2) that the persons in government employ cannot be members of the Regional or Provincial Transport Authority.

399. Under Section 58--

> "A permit other than a temporary permit issued under Section 62 shall be effective without renewal for such period, not less than 8 years and not more than 5 years, as the Regional Transport Authority may in its discretion specify in the permit."

400. The temporary permits issued in the present cases were hot under Section 62. Can they, therefore, be held to be effective without renewal for at least 3 years? A Bench of the Calcutta High Court held that they could be; vide United Motor Transport Co., Ltd, v. Shri Lakshmi Motor Transport Co., Ltd., I.L. R. (1914) Cal. 631 : (A.I. R. (32) 1945 Cal. 260). I am, however, of opinion that a "permit other than a temporary permit issued under Section 62" in Section 53 refers So a regular permit granted after the procedure laid down by the Act has been followed. It does not refer to a temporary permit issued in contravention of the provisions of Section 62 and also in Contravention of the provisions provided for the issue of regular permits.

401. I would, therefore, hold that the temporary permits in the present cases cannot be construed as regular permits. In cases in which applications were made for regular permits or for renewal of regular permits, they must be deemed to be still undisposed of in the eye of law, even if they were in fact disposed of by the grant of temporary permits.

402. Section 44 of the Motor Vehicles Act which provides for the constitution of the Provincial or the Regional Transport Authorities lays down that :

> "No person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a Provincial or Regional Transport Authority, and, if any person being a member of any such authority acquires a financial interest in any transport undertaking, he shall within 4 weeks of so doing, give notice in writing, to the Provincial Government of the acquisition of such interest and shall vacate office."

403. It is clear that a person can be said to have a financial interest if he is an employee of a body carrying on any transport undertaking. Government employees in the Roadways Department will undoubtedly fall under the said clause and will be said to possess a financial interest in the Government undertaking. If any such persons have been appointed as members of the Provincial or Regional Transport Authority, such bodies are not properly constituted and such persons should not continue to be members of those bodies. But as the facts have not been properly placed before us, I am not in a position to say which of the members of the Regional Transport Authority have financial interest in the Government Roadways. I am, therefore, unable to make any order in this regard.

404. The next contention raised on behalf of the applicants is that the Government has no power to carry on the business of motor transport in competition with private agencies unless authorised by law.

405. The argument addressed to us was that there has been a separation of powers under the present Constitution between the legislative, executive and judicial authorities and that the executive cannot do anything more than what it is authorised to do under the Constitution. It is urged that the executive can only execute laws passed by the legislature and to do other acts specified in the Constitution, and that since there is no law authorising it to carry on the business of motor transport its activity is illegal.

406. On behalf of the Government it is pointed out that by the Appropriation Act, 1950, the Government is authorised to incure expenditure on motor vehicles and that this is the law which authorised them to do this business.

407. The Constitution does not define the powers of the executive. The Constitution certainly separates the three organs of the State, the Legislature, the Executive, and the Judiciary. There is no difficulty in defining the powers of the Legislature and the Judiciary. The Legislature makes laws, the Judiciary interprets them with reference to the rights and liabilities of individuals or the State. What function does the Executive perform ?

408. Article 53 states :

> "(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution."

So also in the case of States, Article 164 vests the executive powers of the State in the Governor. Articles 73 and 162 define the ambit of the executive powers of the Union and the States respectively.

409. Article 73 states :

> "(1) Subject to the provisions of the Constitution, the executive power of the Union shall extend--
>
> (a) to the matters with respect to which Parliament has power to make laws ; and
>
> (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement....."

410. Article 162 states :

> "Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws....."

411. None of these Articles, therefore, defines precisely what functions the executive per-forms.

412. States in ancient times were generally police States and the executive function of the State used to be confined to the defence of the realm against external or internal enemies and the maintenance of law and order. But this conception of the State has undergone a change. States are no longer merely police States, but have become Welfare States.

413. Bluntschli divided powers of Govern, meat into legislative, administrative and judicial, but to these he added two other groups of functions or organs, each subordinate to the administration: (a) superintendence and care of the elements of civilization (in German, Stoatskultur); (b) the administration and care of material interests. Bluntschli regarded both these matters as not properly belonging to the administration, as being outside Government, and all that Government could do in their case was to superintend and foster.

414. Sidgwick in his Elements of Politics states :

> "The Governmental business classed as executive should include all the measures required for the due protection of the interests of the community and its members in their relation with foreigners, specially the organisation and direction of the military forces of the State; all the actions not strictly judicial required to prevent members of the community from causing injury to each other or to the public interests and to secure their co-operation for common ends, so far as this is not better left to voluntary association and finally all the industry required for utilising such part of the wealth and resources of the community as it is expedient to keep in public

ownership, and for providing all commodities needed by the State or its members that are not better provided by private industry and free exchange."

415-417. Assuming that modern Governments are not merely police States but are welfare States to carry on certain industries "required for utilising such part of the wealth and resources of the community as it is expedient to keep in public ownership,"

the question still remains whether all this can be done by the executive without specific authority of the legislature.

418. It is suggested that the sovereign power of people vests either in the Legislature or the Executive or the Judiciary, that the sovereign power includes trading or doing a business, that this power must vest in either of the three organs of the State, and that since it does not vest in the Legislature or the Judiciary, it must vest in the Executive. There is a confusion of thought, if I may respectfully say so, in the argument.

419. No doubt, the sovereign power of the people vests in the State as a whole or, in other words, in the various organs of the State. It may also in one sense be stated that what is not vested in the Legislature or the Judiciary must be deemed to be vested in the Executive. But from this it does not follow that the Executive may do whatever it likes without the sanction of the Legislature.

420. The legislative power of a sovereign State includes the power of laying down laws for the guidance not only of its citizens, but also of the executive organ of the State subject to any limitations imposed thereon by the Constitution. The legislative power includes the power to authorise one activity and to prohibit another. It includes the power of regulating the activity which is permitted. When the Executive launches upon a new or undefined activity it performs two functions, firstly, it resolves that a particular activity shall now be carried on, by it and it further lays down regulations as to how that activity shall be carried on, and secondly, it carries out that activity according to those regulations. In so far as the executive performs the first function, it is legislating, which function is the proper domain of the Legislature. In resolving for the first time that it shall enter upon a new activity which has not so far been conferred upon it by the legislature, and, in laying down the regulations for its own guidance or for the guidance of its Ministers or officials, it is usurping the functions of the Legislature. It is for this reason that it is said that the function of the Executive is merely to carry out the law.

421. And so in Wharton's Dictionary, the various organs of the State are defined as follows :

"The body that deliberates and enacts the law is legislative, the body that judges and applies the laws in a particular case is judicial and the body that carries the laws into

> effect, or superintends the enforcement of them is executive."

So also Willoghby in the Constitution of the United States of America, Vol. I, p. 1 states :

> "The fundamental principle of American constitutional jurisprudence is that laws and not men shall govern. This means that when a power, exercised by an official or by a Governmental organ, is challenged, legal authority therefor, derived from some existing: law must be shown, and that no valid law can exist save that which is recognised as such by the Courts."

422. It is true that the Executive performs certain functions without express authorisation by specific enactment. These functions are functions which are necessary for the very purpose of its existence, such as, the defence of the realm and the maintenance of law and order. They are performed by the Executive because the law by necessary implication authorises it to perform them. As Sir John Marriott in his "Mechanism of the Modern State" writes :

> "The business of the legislature is to enact general rules for the conduct of citizens and to impose taxes. It is the function of the executive to carry out those rules and to collect and expend taxes authorised by the legislature."

423. Again at another place he observes:

> "The executive is concerned with the defence of the realm against external or internal enemies, with the maintenance of law and order, and with the performance of such other functions as may be claimed for the State by the legislature."

424. In Wyne's Legislative and Executive Powers in Australia, Chap. XI, pp. 824-325, it is stated :

> "Government operations are of two kinds--essential 'primary and inalienable functions of Government' and ordinary social matters such as industrial operations normally exercisable only by statutory authority, but susceptible in time of war of being brought within the implied authority of the executive in the exercise of the suprema potestas. But in such a case, it must appear that the Executive considered the step necessary for the national security and in fact acted on that basis."

425. It is sometimes said that under the British Constitution the King in whom executive powers vest has certain prerogatives and he can act not only when the law passed by Parliament authorises him to do so, but also because of his prerogatives.

426. As Burgess states in his "Political Science and Constitutional Law, pp. 198 and 199:

> "The English Crown has a double character as to powers. It is, in the first place, executive. It executes the statutes of the Parliament and the judgments of the Courts. But it is more than executive. It is general residuary government. The powers of the

> Crown originated in the period when the Crown was the State, i. e., was sovereign. When the sovereignty shifted from the Crown to the aristrocracy and then to the people, the Crown remained government; but its powers gradually decreased as the sovereignty imposed upon it fresh limitations. The sovereignty has withdrawn from the Crown almost the whole legislative power, but not the whole; almost the whole judicial power, but not the whole; and has required that the Crown shall neither violate nor suspend any law in the course of administration. It will thus be seen that, in addition to its purely executive power, the Crown is still possessed of some fragments of what was once its sovereignty. The aggregate of these fragments is what I term the general residuary powers of Government; and I define this sphere, negatively, as follows: The Crown may do anything which the Parliament has not forbidden it to do, or the doing of which the Parliament has not itself assumed, or the power to do which the Parliament has not vested exclusively in some other body. The Crown has therefore the power, by orders in council, to regulate any matters not regulated by the statute or common law, provided the Parliament has not forbidden it to do so, either directly or by vesting some other body with the power. A fortiori, the Crown may ordain, in Council, the measures for executing the laws, provided the Parliament shall not itself have created these measures or vested the power to do so in some other body."

427. But it must be clearly understood that, when it is stated that the Crown in England has the residuary governmental power, what is really meant is that it has the residuary legislative and judicial power. The Crown in England may authorise the performance of any executive function by orders in Council. The orders in Council are, however, the exercise of the Crown's residuary legislative power and, therefore, even in respect of the English law, it will be true to say that the function of the executive is to execute the law--law here including Acts of Parliament and laws promulgated by the Crown by orders in Council etc.

428. According to Chalmers and Asquith (Constitutional law, p. 159, 5th Edn.) "The King has power at common law to legislate by Order in Council, for conquered and ceded colonies, until he, without express reservation of his rights, sanctions, a constitution and also for protectorates, (See North Charterland Exploration Co. v. The King, (1930) 46 T.L. R. 566: (1931-1 Ch. 169), where it was held that an executive act of the Crown, whereby it granted land in a protectorate, could not preclude it from recalling the grant by legislative act in the form of an order in Council)."

429. One of the meanings assigned by Dicey, to his "Rule of Law" is.:

> "The absolute supremacy or predominance of regular law as opposed to the Influence of arbitrary power, and excludes the existence of 'arbitrariness of prerogative or even of wide discretionary authority on the part of Government. Englishmen are ruled by the law and by the law alone: a man may, with us, be punished for a breach of the law, but he can be punished for nothing else."

429a. Says Jennings in his "Law and the Constitution" pp. 46 and 47.

> "Expressed in English terms, the rule of law in its liberal terms requires that the powers of the Crown and of its servants shall be derived from and limited by either legislation enacted by Parliament or judicial decisions taken by independent Courts. . . . There are many facets to free government and it is easier to recognise it than to define it. It is clear, however, that it involves the notion that all Governmental powers, save those of the representative legislature, shall be distributed and determined by reasonably precise laws. Accordingly a King or any other person acting on behalf of the State cannot exercise a power unless he can point to some specific rule of law which authorises-his act. The State as a whole is regulated by law."

430. It is admitted that the executive cannot encroach upon or otherwise infringe the legal rights of any member of the public.

431. But is there any other basis for this principle, than the rule of law as stated by Dicey or Jennings?

432. However it may be with regard to the English law, it should be remembered that the Indian Constitution does not confer upon the executive organ of the State those residuary governmental functions which are vested in the English Crown. Whatever legislative powers the President or the Rajpramukhs enjoy are specifically stated in the Constitution. Beyond those provisions, they have no power to legislate in the manner of the King of England.

433. The Indian Constitution is a written Constitution. Any powers that the different organs of Government enjoy must have their source in that Constitution or in what is necessarily implied from what is stated therein,

434. Thus it may be laid down that the executive powers of the Governments in India must be confined to -- (a) powers expressly conferred by the Constitution; (b) powers expressly conferred by the legislature and (a) implied powers.

435. Implied powers are also of two kinds. (i) Those which vest in the Government by virtue of what is called "its primary and inalienable functions" or sovereign power i. e, defending the State against external and internal enemies and maintaining law and order, and (it) those which are necessary for the exercise or performance of a general power conferred or duty enjoined by the Constitution or statutory enactments.

435a. It is suggested that since the Government owns property, trading or doing of business is incidental to its ownership of property and, therefore, falls under the doctrine of implied powers.

436. No doubt Article 298 of the Constitution confers upon the executive the power to acquire and dispose of property and to enter into contracts. If in the proper management of State property some contracts have to be entered into, or something has to be done, which may fall within the conception of trade or business, the Government will undoubtedly have an implied power of carrying on that activity.

437. Again, if trade or business is incidental to the performance of its governmental functions authorised by the legislature, it will have the power to carry on such trade or business. But the Constitution clearly makes a distinction between trade or business, which is incidental to the performance of governmental functions and other trade or business activity; vide Article 289.

438. It has not been shown to us or even urged by the learned Advocate-General in his argument that the business of motor transport by the Government was merely incidental to its ownership of motor buses purchased in connection with governmental functions. It is not denied that the activity is not a temporary activity, but is a continuous activity carried on from year to year on a commercial basis. Such an activity, to my mind, requires a specific authority of the legislature and cannot be implied.

439. One of the settled principles of the doctrine of implied powers is that an implied power must be a necessary implication and not a conjectural or argumentative one. (See Cooley's Constitutional Limitations, Vol-1, pp. 138 and 139).

> "This however is obvious; that every grant of power draws after it others not expressed, bat consequential, incidental and vital to its exercise; not substantive and independent but auxiliary and subordinate" (Quick and Garran on the Australian Commonwealth pp. 651-652).

440. Crais in "Statute Law" states (at pp. 229, 230).

> "One of the first principles of law with regard to the effcet of an enabling Act is that if the legislature enables something to be done, it gives power at the same time, by necessary implication to do everything which is indispensable for the purpose of carrying out the purpose in view, on the principle', as Parke B. said in Clarence Ry. v. Great North of England Ry. (1845) 13 M. & W. 706, at p. 721 : (4 Q.B. 46): That ubi aliquid conceditur conceditur etiam id sine quo res ipsa non esse potest."

441. In Doyle v. Falconer, (1886) 4 Moor P.C. (N. S.) 203 : (36 L.J. P.C. 34) it appeared that the Legislative Assembly of the Island of Dominion was constituted by a Royal Proclamation, but had no special power given to it to punish members for contempt. It was argued, however, that in accordance with the above mentioned maxim, such a power was indispensable to its exercise, but the Privy Council held that it was not. "It is necessary", said their Lordships, "to distinguish between a power to punish for a contempt and a power to remove any obstruction offered to the deliberations of a legislative body, which last power is necessary for self-preservation ..... The eight to remove for self-security is one thing, the right to inflict punishment is another. The former in all that is warranted by the legal maxim which has been cited, but the latter is not its legitimate consequence."

I am afraid the power to carry on a trade or business, not being one which is merely incidental to the ownership of property, or to the performance of a governmental function, cannot be held to be covered by the doctrine of implied powers except perhaps in times of war.

442. It is conceded that no Act was passed by the legislature authorising the Uttar Pradesh Government to enter into trade or business of plying motor buses. But it is urged that the Appropriation Act whereby money was authorised to be spent by the Government on motor vehicles and buses is sufficient authority for it to enter into this business.

443. The object of an Appropriation Act is simply to furnish the Government with authority and opportunity to obtain the money it desires for the government of the country out of the consolidated fund.

444. Article 266(3) of the Constitution lays down that money out of the consolidated fund of India or the consolidated fund of the State shall be appropriated only in accordance with law and for the purposes and in the manner provided in the Constitution.

445. In May's Parliamentary Practice, 14th Edn., pp. 712 and 713, the question regarding authorisation of expenditure by an Appropriation Act without specific legal sanction has been discussed as follows:

> "Expenditure by a department for purposes not covered by its existing legal powers normally requires to be specifically authorised by a financial resolution associated with a bill according to the procedure described in the next chapter. General legislative authority, is, however, given to expenditure demanded by way of an estimate by the annual Appropriation Act. The question has repeatedly arisen in the past whether, in a particular case, the authority given by the Appropriation Act is an adequate substitute for authorisation by a specific bill.
>
> On the one hand, there is, so far as this question is concerned, no legal restraint on the discretion of the Crown in presenting an estimate, or on that of Parliament in authorising the expenditure provided by such an estimate by the Appropriation Act. On the other hand, the Appropriation Act is a general measure, containing a great many items and is not adapted to defining the conditions, etc., of expenditure. Also this Act only gives authority for a single year, and is therefore not appropriate for expenditure which is meant to continue for a period or indefinitely. There have been cases, too, in which the Appropriation Act has been used, not merely as a substitute for specific legislation, but to override the limits imposed by existing legislation.
>
> The Public Accounts Committee have repeatedly drawn attention in their reports to cases of what they considered the misuse of the Appropriation Act in either of the above-mentioned ways, and the Treasury, in answer to such comments, have justified the practice on grounds of emergency rather than of principle."

446. It would, therefore, appear that it is doubtful if a mere Appropriation Act without specific legislation would justify expenditure on an activity which is carried on from year to year and is not extraordinary or temporary. It may, therefore, be improper for the Government to incur expenditure without the authority of specific legislation for the purposes of trade. But I do not think it can be

held that the expenditure incurred by the Government was unauthorised 'by law.' The Appropriation Act is, in my opinion, 'the law' within the meaning of Article 266(3). It, therefore, justified expenditure by Government on its motor buses. It cannot, however, justify the trade activity itself.

447. In Commonwealth of Australia v. The Colonial Ammunition Co. Ltd., 34 C.L. R. 198, Issacs and Rich JJ, held that trading agreements made without specific legislative authority were not validated by the passing of the Appropriation Act.

448. At one time it struck me that the provisions in the Constitution specifically stating that such and such power shall not be exercised except by authority of law (e. g., Article 265--no tax shall be levied except by authority of law) imply that in other cases the executive could act without specific authorisation by law. But on further consideration this view seems to me to be incorrect. The Constitution provided for these matters because it did not intend that the executive may lay claim to them under its implied powers.

449. I am, therefore, of opinion that the activity of the Uttar Pradesh Government in carrying on the business of motor transport is without jurisdiction and illegal because it lacks specific legal authority for that purpose.

450. This brings us to the last question in the case : whether any, and, if so, what, directions, orders or writs, can be issued in the case?

451. The reliefs claimed by the applicants in most of the cases are : (a) that a writ of mandamus be issued to the opposite parties directing them to accept, entertain, hear, determine and grant the applications of the petitioners for the renewal of the permits and to issue valid renewed permits according to the provisions of the Motor Vehicles Act, 1939, for the continuance of the petitioners' business of plying vehicles ; (b) that the opposite parties be directed to withdraw the notices issued by the Regional Transport Officers; (a) that the opposite parties be directed not to introduce or ply on hire roadways unless authorised by a valid law; and (d) that such other suitable writ or writs, directions or orders as the Hon'ble Court may; in the interest of justice, deem necessary in the circumstances of the case be issued to the opposite parties.

452. As regards reliefs (a), the Advocate General on behalf of the opposite parties has given an undertaking that the Regional Transport Officers will accept, entertain, hear and determine all applications for the grant of permits that may be made to them. But his contention was that since no applications were made to the Regional Transport Authorities before the present applications for the issue of writs were made to this Court, there was no demand and refusal by the Regional Transport Authorities and that, therefore, the applications did not lie and Ought to be dismissed.

453. His further contentions were that there was another remedy provided under the Motor Vehicles Act itself, namely, that of an appeal to the higher authorities; and since the applicants did not pursue that remedy, the Court will not grant them the writs asked for, and that in any case the Court would not order the Regional Transport Authorities to "grant" the permits prayed for. With regard to relief (c), his contention was that no such writ or direction could be issued.

454. Article 266 of the Constitution runs as follows :--

> "Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, qua warranto, and certiorari, or any of them, for the enforcement of any of the rights conferred by Part 3 and for any other purpose."

454a. The powers thus conferred on the High Courts in India are wider than those possessed by the Superior Courts in England. Directions, orders, or writs which the Supreme Court and High Courts in India are empowered to issue are not confined to wits of habeas corpus, mandamus, prohibition, quo warranto or certiorari. The word 'including' signifies that the expression preceding it includes that which may not have ordinarily been so included, and that it is not confined to the things included.

[Rodger v. Harrison, (1893) 1 Q. B. 161 : (62 L.J. Q.B. 213).]

455. In administering relief, however, the Court may no doubt be guided by the practice of the Courts in England in issuing the various writs. The conditions subject to which a writ of mandamus is granted in England are well known : (a) It being a high prerogative writ is issued sparingly and in exceptional cases where there is no other specific legal remedy, equally convenient, beneficial and effective.

> "It may issue in cases where, although there is an alternative legal remedy, yet such mode of redress is less convenient, beneficial and effectual."

[R. v. Bank of England, (1819) 2 B. & Ald. 620, Per Bayley J., at page 622].

456. So also in B. v. Thomas, (1892) 1 Q.B. 426 : (62 L.J. M.C. 141), where, although there was an appeal to quarter sessions in the matter in question, yet a mandamus was granted as being, in the circumstances, the more satisfactory and effectual remedy. [See Halsbury's Laws of England, Vol. 9, p. 744, note (p) (456a).] (b) "The legal right to enforce the performance of a duty must be in the applicant himself." [R. v. Lewisham Union, (1897) 1 Q.B. 498 : (66 L.J. Q.B. 103), Per Wright, J.].

457. The Court will, therefore, only enforce the performance of statutory duties by public bodies on the application of a person who can show that he has himself a legal right to insist on such performance. [Per Brace J.B. v. Lewisham Union, (1897) 1 Q. B, 498].

458. The mere fact a person is interested that in the performance of a duty as a member of a class of persons, all of whom may be regarded as equally interested, but himself having no particular ground, for claiming such performance, will not be sufficient grounds for granting a mandamus. [R. v. London City Assessment Committee, (1907) 2 K.B. 764; Jatindra Mohan Sen v. H.E. A. Cotton, 61 Cal. 874: (A.I. R. (12) 1925 Cal. 48).

459. Not only must it appear that the applicant is himself a person having a real interest in the performance of the duty sought to be enforced, but also that he makes the application in good faith and not for an indirect purpose. [R. v. Paterborough Corporation, (1875) 44 L.J. Q.B. 85].

460. (c) The writ will not be granted unless the party complained of has known what it was he was required to do, so that he bad the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that such demand was met by a refusal. [R. v. Breakneck and Abergavenny Canal Co. (1836) 3 Ad. & EL 217 : (111 E.R. 395), Per Cokridge J.]

461. But it has been held that the requirement that before the Court will issue a mandamus there must be a demand to perform the act sought to be enforced and a refusal to perform it cannot be applicable in all possible cases, and does not apply where a person has by-inadvertence omitted to do some act which he was under a duty to do, and where the time within which he can do it has passed. [R. v. Hanley Revising Barrister, (1912) 3 K.B. 518 at pp. 531-532 : (81 L.J. K.B. 1152).]

462. Again it is not necessary that there should have been a refusal in so many words. All that is necessary is that the party complained of has made up his mind not to do what is his duty to do. (R. v. Breakneck and Abergavenny Canal Co., (1835) 3 Ad. & El. 217).

463. And further, it is also settled that the objection that there has been no sufficient demand and refusal must be taken, on cause being shown, before the merits of the case are discussed. [R. v. Eastern Counties Rail Co., (1840) 10 Ad. & El. 531 : (113 E.B. 201).] 463a. (d) The object of a mandamus is to compel the performance of a duty, and the duty must be an imperative duty. A mere discretionary power not amounting to an absolute duty will not be enforced by mandamus. (Julius v. The Bishop of Oxford, (1880) 5 A.C. 214 : (49 L.J. Q.B. 577) and [R. v. Bishop of Oxford, (1879), 4 Q.B. D. 525 : (48 L.J. Q.B. 609).]

464. When a duty is of a judicial nature a mandamus to enforce its performance will only lie in cases where the performance of it has been refused, and not merely where it has been improperly performed. The Court cannot dictate by mandamus the judgment which another Court shall give. [R. v. The Justices of Middlesex, (1839) 9 Ad. & E. 540 at p. 546 : (112 E.R. 1316).]

465. For if the law requires a certain thing to be done, the party upon whom the obligation is imposed may be ordered to do it. If he is to act according to his discretion, and he will not act or even consider the matter, he may, by mandamus, be compelled to put himself in motion to do the thing, but his discretion cannot be controlled. (R. v. The Justices of the North Biding, (1823) 2 Barn & Cress 291).

466. In the case of licencing authorities, mandamus has been issued where the licencing authority has not stated the grounds for its decision contrary to a statutory provision. [Re Ex. Parte Smith, (1878) 3 Q.B. 874 : (26 W.R. 682) ; and R. v. Thomas (1892) 1 Q.B. 426 : (61 L.J. M.C. 141),] or

467. Where the justices have claimed an absolute discretion to refuse a licence where, in "fact, restrictions upon such discretion were imposed by statute. (R. v. Scott, (1889) 22 Q.B.D. 481 : (58 L.J. M.C. 78); or

468. Where the justices so far departed from the plain words of the Act--deciding upon some extraneous considerations that they could not be said to have heard and determined according to law. [R. v. Cotham, (1898) 1 Q.B. 802 : (67 L.J. Q. B 632)]; or

469. Where what the justices did was "to decide in favour of a renewal with a condition which they had no power to impose and which is, therefore, nugatory", so that a mandamus had to go "to compel them to deliver the renewal licences without the condition." (R. v. Dodds, (1905) 2 K.B. 40 : (74 L.J. K.B. 599), per Collins M. R.).

469a. (e) The writ cannot be demanded ex dobito justitia, but is issued only in the discretion of the Court. The discretion of the Court however is a judicial discretion and will always be exercised whenever there is a fit case for its exercise.

470. In my opinion, so far as relief (a) claimed by the applicants is concerned, all the five conditions mentioned above are satisfied in the present cases with the exception of cases Nos. 142 and 143 of 1950. It is objected that conditions (a) and (c) mentioned above have not been satisfied. As regards alternative remedy being available, there was no alternative legal remedy equally convenient, beneficial and effectual. Regular suit would have been barred under Section 56, Specific Relief Act. No appeal to the appellate authority under the Motor Vehicles Act lay because there was no definite order of refusal.

471. As for demand and refusal, in two cases, cases Nos. 118 and 120 of 1950 applications for non-temporary permits were made--in case No. 118 on 30-4-1948, and in case No. 120 on 10-4-1949. According to the agreed statements of counsel, these applications are still pending and have not been disposed of. There are clearly cases of applications having been made and of the refusal to consider the applications on irrelevant grounds. There can be no doubt that a mandamus can be issued in these two cases. As regards other cases, with the exception of cases Nos. 142 and 143 of 1950, the affidavits sworn by the applicants show that the Secretary of the Regional Transport Authority definitely told them that :

> "No farther applications for the renewal of stage carriage permits should be entertained and that the matter of granting and renewing of permits was under the consideration of the U.P. Government in connection with the nationalization of motor transport."

472. This was confirmed by the notices issued later on ordering the applicants to stop plying buses from a certain date on account of the nationalisation policy of the Government and because the Government Roadways will commence operation of the said routes. In these circumstances, the applicants were justified in coming to the conclusion that there was no use making the applications for the grant of non-temporary permits and that if one were made it will be refused. It could be

inferred from the conduct of the Regional Transport Authorities that they were not prepared to entertain or allow any such applications, if made. In my opinion, this conduct of the Regional Transport Authorities furnishes a sufficient ground for the applicants to seek redress from this Court.

473. The condition that there ought to be a demand and refusal before an application for mandamus is made ought not to be considered as an absolute legal bar so as to deprive an applicant of the redress to which he is otherwise entitled, as the case already cited (R. v. Handy, Revising Barrister, (1912) 3 K.B. 518 : (81 L.J. K.B. 1152)), would Show.

474. Further, the objection that there has been no sufficient demand or refusal should have been taken before the merits of the cases were discussed; vide R. v. Eastern Counties Ry. Co., (1839) 10 Ad. & El. 531:(113 E.R. 201). In the present oases, this objection was raised at a late stage, after Mr. Pathak bad finished his arguments and when the Advocate-General commenced his address.

474a. I think the circumstances of the present cases amply justify the conclusion that this condition should be waived or should be held to have been substantially complied with.

475. Again in cases Nos. 4 to 7, 71 to 98 & 133 to 140, applications for permits were made on 15-3-1950. In cases Nos. 8 to 70, applications for permits were made on 20-3-1950. In cases NOS. 99, 100 and 104 to 116, applications for permits were made on 8-3-1950. Though these applications were made during the pendency of the present proceedings, it will be too technical in my opinion to dismiss them on the ground that applications were not made to the Regional Transport Authority before the applications for writs were made. One maxim that runs through our law is "Boni judicis est ampliare justitiam" (It is the duty of a judge to extend his justice).

476. As Lord (sic) said, "It is the duty of a Court to amplify its remedies, and, without usurping jurisdiction, to apply its rules to the advancement of substantial justice." (Russel v. Smyth, (1842) 9 M. & W. 810 at 818 : (11 L.J. Ex. 308).

> "I commend the judge" observed Lord Hobart, "that seems fine and ingenious, so it tend to right and equity ; . ... and I condemn them that either out of pleasure to show a subtle wit will destroy, or out of incuriousness or negligence will not labour to support, the act of the party by the art or act of the law." (Pits v. James, Hob 121 at p. 125) quoted in Broom's Legal Maxims, 10th Edn. pp. 44-45.
>
> Let us remember the words of Martin B. :
>
> "Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, it is the duty of the Court to be vigilant to apply it in every case to which by any reasonable construction it can be made applicable."

(The Mayor etc. of Rochester Corporation v. The Queen. (1858) 27 L.J. Q.B. 434 : 6 W.R. 838.)

477. Of course no direction can be made for the grant of the applications. That will be a matter for the Regional Transport Authority to determine.

478. As regards relief (b), it is enough that we have declared the notices as being void in law. It is not necessary to direct the opposite parties to withdraw them.

479. As regards relief (c), the applicants' only ground for claiming it was that the Government is not justified in spending public money on an activity which has not been authorised by law. I have held that although the Government is not authorised by law to carry on the business of motor transport, nevertheless the expenditure incurred by them has been sanctioned by the Legislature under the Appropriation Act. The only ground, therefore, upon which this relief was claimed disappears.

480. At the same time, even if there was no sanction for the expenditure incurred by the Government on its unauthorised activity the applicants could not be said to have possessed a personal right which was infringed by the action of the Government. They paid public taxes along with thousand of others and were not personally affected by the unauthorised expenditure. Once again I would have refused the relief because, though it may have given some relief to the applicants themselves, it may have caused unlimited hardship to a vast majority of the travelling public. As I have already observed the issue of the writ or direction is in the discretion of the Court and one of the principles which should be taken into consideration when exercising discretion is that in awarding relief to one person no injury is caused to others not before the Court. At the same time, injury to the applicants would be avoided because the Regional Transport Authority in considering their applications shall not take into consideration the existence of Government transport services as the same are not being carried on in accordance with law, and for which no permits have been obtained, Section 42 (3) (a) under which the Government was exempted from the necessity of obtaining a permit being void.

481. In cases Nos. 103, 117, 119, 121 to 132, 144 to 154, 166 to 168, and 170 to 176, we haves not been informed whether any applications have been submitted to the Regional Transport Authority. In view of the undertaking given by the Advocate-General on behalf of the opposite parties, I have no doubt that applications for permits, whenever made, shall be considered by the Regional Transport Authority on their merits in accordance with law and it is not necessary to issue any direction with respect to them.

482. As regards case No. 142 of 1950, I am of opinion that it should be dismissed.

483. In case No. 142 of 1960, the applicant held a regular permit which is valid up to May, 1951. He has, however, been stopped from using one of the routes included in this permit--Dehra Dun, Mussoorie route--from 1-3-1950. This action cannot be too strongly condemned and is plainly unwarranted and illegal, but the question is whether the relief claimed for can be granted. The relief claimed by the applicant is for a writ of prohibition. The claim for a writ of prohibition is misconceived. Writ of prohibition is a prerogative writ which is directed to a tribunal performing judicial or quasi-judicial functions and forbidding it to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. Writ of certiorari is also issued against a

body performing judicial or quasi-judicial functions either for the purpose of transferring proceedings pending before it or for quashing orders of that body which have been either in excess of jurisdiction or without jurisdiction.

484. As the applicant has been stopped by a servant of the Government, the action of the Government is neither judicial nor quasi-judicial and therefore neither the writ of prohibition nor the writ of certiorari can be issued. And although Section 226 is wider in its scope than the various writs, one condition for the exercise of the power under Section 226 which the Court will always observe is that no other legal remedy equally convenient, beneficial or effectual was obtainable. Upon the facts narrated by the applicant it is a clear case of tort by a servant, of the Government and could have been remedied by a regular suit in the civil Court.

485. As regards case No. 143 of 1950, the applicant had obtained a non-temporary permit for the route Kishanpur-Mainpuri. But subsequently, before the expiry of the time fixed in the permit, a portion of the route was withdrawn. This order was clearly illegal and is void. But the applicant could get his remedy by a regular suit. For this reason the application is not maintainable in this Court. I would, therefore, dismiss this application.

486. I would not allow costs to the opposite-parties in cases Nos. 142 and 148 as well as other cases which I would dismiss, on the ground that the action of the opposite parties that led to the petitions for writs was high handed and illegal, involving unmerited loss to the applicants.

487. I would, therefore, propose the following order:

488. Let a writ of mandamus issue in eases Nos. 118 and 120 directing the Regional Transport Authorities concerned to hear and determine in accordance with law as interpreted by me in this judgment, application dated 30-4-1949 and 18-4-1949 respectively made under Section 58 (2), Motor Vehicles Act, 1939, for the renewal of permits granted to the applicants in the aforsaid cases. The applicants are entitled to their costs.

489. In each of the following cases, namely, cases NOS. 4 to 7, 71 to 98 and 133 to 140 let a direction issue to the Regional Transport Authority, Meerut, directing it to hear and determine, in accordance with law as interpreted by me in this judgment, applications dated 15-3-1950, made under Sections 45 and 46, Motor Vehicles Act, 1939, for grants of permits to the applicants in the aforsaid cases. The applicants are entitled to their costs.

490. In each of the following cases, namely, cases Nos. 8 to 70 let a direction issue to the Regional Transport Authority, Meerut, directing it to hear and determine, in accordance with law as interpreted by me in this judgment, applications, dated 20-3-1950, made under Sections 45 and 46, Motor Vehicles Act, 1939, for grants of permit to the applicants in the aforesaid cases. The applicants are entitled to their costs.

491. In each of the following cases, namely, cases Nos. 99, 100, and 104 to 116, let a direction issue to the Regional Transport Authority, Meerut, directing it to hear and determine, in accordance with

law as interpreted by me in this judgment, applications, dated 8-3-1950, made under Sections 45 and 46, Motor Vehicles Act, 1939, for grants of permits to the applicants in the aforesaid cases. The applicants are entitled to their costs.

492. The following cases, namely, cases Nos. 103, 117, 119, 121 to 132, 144 to 154, 156 to 168 and 170 to 176 are dismissed. No order is made as to costs.

493. Cases Nos. 142 and 143 are dismissed but no order is made as to costs.

Sapru J.

494. I agree with the order proposed to be made by Agarwala J., subject to the qualification that the Regional Transport Authority shall dispose of the applications in the light of the interpretation given by me to the law applicable to the applicants.

495. By the Court.--(1) In each of the following cases, namely, cases, Nos. 118 and 120, a writ in the nature of mandamus will issue to the Regional Transport Authority, Agra, directing it to hear and determine in accordance with law, applications dated 30-4-1949, and 18-4-1949, respectively, made under Section 58 (2), Motor Vehicles Act, 1939, for the renewal of permits gaanted to the applicants in the aforesaid cases. The applicants are entitled to their costs. (2) The following cases, namely, cases NOS. 4 to 100, 103 to 117, 119, 121 to 140, 144 to 154, 156 to 163 and 170 to 176, are dismissed, but there will be no order as to costs. (3) The following cages, namely, cases Nos. 142 and 143, are dismissed, but there will be no order as to costs.

496. We certify under Article 132 of the Constitution that the cases involve substantial questions of law as to the interpretation of the Constitution.