Vishnu Dutt & Ors vs State Of Rajasthan & Ors on 15 December, 2005

Equivalent citations: AIRONLINE 2005 SC 1080

Author: C.K. Thakker

Bench: Ashok Bhan, C.K. Thakker

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           CASE NO.:
Appeal (civil)  1159-1170 of 2004

PETITIONER:
VISHNU DUTT & ORS.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT: 15/12/2005

BENCH:
ASHOK BHAN & C.K. THAKKER

JUDGMENT:
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J U D G M E N T WITH CIVIL APPEAL NO. 1172 OF 2004 C.K. THAKKER, J.

All these appeals have been filed against the orders passed by the Division Bench of High Court of Rajasthan in the D.B. Civil Special Appeal No. 662 of 2001 and cognate matters by which the Division Bench dismissed all appeals and confirmed the common order passed by the learned single Judge in various Writ Petitions. The litigation has a chequered history. By a Reciprocal Transport Agreement dated 5th/8th February, 1968 (hereinafter referred to as '1968 Agreement') entered into between the State of Rajasthan and the State of Haryana, Hanumangarh - Dabbwali via Sangaria inter-State route opened to traffic with a view to encourage movement of transport vehicles on such routes and to regulate and control their operation. The agreement stipulated that four return trips and eight single services will be allowed to buses belonged to State of Rajasthan and 13 permits will be granted. In accordance with the said agreement, the Rajasthan State Road Transport Corporation ('RSRTC' for short) was granted 13 stage carriage permits. On February 29, 1996, the Regional Transport Authority, Bikaner ('RTA' for short) granted additional stage carriage permits to private vehicle operators including the respondents in the present appeals. There was a clear stipulation on the permits that they were granted beyond the ceiling fixed under 1968 Agreement.

On July 14, 1997, the State of Rajasthan and the State of Haryana entered into a fresh inter-State agreement (hereinafter referred to as '1997 Agreement') in supersession of 1968 Agreement for 13 permits with 16 single trips. Clause 4 (iv) clarified that all previous stage carriage permits which

were counter signed by either State before the coming into force of 1997 Agreement shall remain in force till the valid period of such permits. According to the appellants, under 1997 Agreement, the route was made open exclusively for private operators. It was also their case that under 1968 Agreement, only RSRTC was granted permits which was within the scope and ceiling fixed by that Agreement and the respondents had no right to ply vehicles. After coming into force of 1997 Agreement, several applications were made by private vehicle operators for grant of permits. RTA, however, vide its orders dated April 25, 1998 and November 18, 1998 declined to grant permit to any applicant under Section 88 of the Motor Vehicles Act, 1988 on the ground that there was no vacancy in existence for the grant of such permits. Being aggrieved by the above orders passed by RTA, appeals were filed before the State Transport Appellate Tribunal, Rajasthan, Jaipur ('STAT' for short) by the persons whose applications were rejected. The main appeal was Appeal No. 398 of 1998 titled Sohanlal v. RTA. STAT, vide its order dated July 24, 1999 set aside the order passed by RTA and remitted the matter to RTA with a direction to reconsider all the applications under 1997 Agreement for grant of 13 permits with 16 trips. Against the order passed by STAT, RSRTC filed a Writ Petition in the High Court of Rajasthan. A Writ Petition was also filed by Sohanlal. The learned single Judge of the High Court passed an interim order on September 9, 1999 and stayed further proceedings before RTA consequent to the order of remand made by STAT directing RTA to reconsider applications and to pass orders in accordance with law. It is, however, the case of the appellants that the order of interim relief granted by a single Judge of the High Court on September 9, 1999 was not communicated immediately to RTA and RTA was not made aware of any such interim order passed by the High Court. Accordingly, on September 16, 1999, RTA held a meeting in which appellants as well as respondents participated and the parties were heard. By an order dated November 2, 1999, RTA, considering the case of the appellants on merits, was pleased to grant 11 permits to them and the remaining two permits were granted in favour of other persons. According to the appellants, they were not made parties in the proceedings before the High Court in the writ petitions and they were not aware of interim order dated September 9, 1999. It was also asserted by the appellants that neither RSRTC nor Sohanlal produced the order of the High Court before RTA on September 16, 1999 when the hearing took place, nor on November 2, 1999 when the order was passed in favour of appellants granting permits in their favour. According to the appellants, therefore, the order dated November 2, 1999 was legal, valid, proper and in accordance with law. It is the case of the appellants, that the interim order of the High Court was communicated to RTA only on November 13, 1999 but by that time, the order dated November 2, 1999 had already been passed by RTA. In view of the final order passed by RTA, RSRTC filed an application in the writ petition pending in the High Court seeking amendment of the petition, challenging the legality of the order dated November 2, 1999 by which RTA had granted 11 permits in favour of the appellants. The said application was made on November 29, 1999. The High Court granted the application on December 13, 1999 and vacated interim relief which was granted on September 9, 1999 in the light of the order dated November 2, 1999 passed by RTA but fixed the matter for final hearing. On December 24, 1999, the competent authority countersigned the permits in favour of the appellants taking into account the fact that interim relief had been vacated by the High Court. The matter was then heard by the learned single Judge on January 27, 2000. During the course of hearing, it was noticed by the learned single Judge that as against 13 permits under 1997 Agreement, 50 vehicles were plying on Hanumangarh - Dabawali via Sangaria inter-State route as on January 27, 2000 on the basis of the permits granted by RTA, which were outside the scope of the ceiling fixed by inter-

State agreement. Under the circumstances, the learned single Judge directed the Secretary, RTA to give exact figures and details about the permits granted within the quota and outside the ceiling fixed by 1968 Agreement as well as 1997 Agreement. The RTA submitted two separate Schedules marked 'A' and 'B'. In Schedule 'A', the names of the persons who were granted permits outside the scope and ceiling fixed by 1968 Agreement was filed. In Schedule 'B', the names of persons who were granted permits within the scope and ceiling fixed by 1997 Agreement were mentioned. In the light of the query raised by the Court and information supplied by RTA, the High Court finally disposed of the petitions on Feburary 14, 2000, inter alia, observing as under:

> "In the facts and circumstances of the case, it is desirable that the learned State Transport Appellate Tribunal be requested to examine the whole issue afresh and determine who are 13 permit-holders who have valid permits for the aforesaid inter-State route under the reciprocal agreement and who should be allowed to ply vehicles on the said inter-State route under such valid permits".

(emphasis supplied) The Court noted that "with the consent of learned counsel for the parties", the case was remitted to STAT with the request to dispose of the matter expeditiously, preferably within three months, keeping in view the decision of this Court in Ashwani Kumar v. Regional Transport Authority, Bikaner, (1999) 8 SCC 364 and the decision of the High Court of Rajasthan in M/s Zamindara Motor Transport Co-operative Society v. Regional Transport Authority, (1999) 2 RLW 1329. Till the matter was to be decided by STAT, Jaipur, RTA, Bikaner was restrained from granting any temporary or permanent permit on the route in question to any person. In pursuance of the order passed by the learned single Judge, STAT issued notices to all 50 permit holders. After hearing them, STAT, by an order dated May 29, 2000, held that 13 permits issued in favour of RSRTC were within the ceiling fixed by 1968 Agreement. Those permits, however, were not countersigned by the State of Haryana and hence they could not be said to be valid permits. When 1997 Agreement came into force, permits granted under 1968 Agreement in favour of RSRTC were considered, but since the earlier permits were not valid, the new permits also could not be said to be valid permits and were not saved under Clause 4(iv) of 1997 Agreement. So far as the permits granted in favour of respondents were concerned, according to STAT, they were countersigned by the State of Haryana but those permits were outside the ceiling fixed by 1968 Agreement and, therefore, those permits also could not be said to be valid in the light of the ratio laid down in Ashwani Kumar as also M/s Zamindara Motor Transport Co-operative Society.

As to order dated November 2, 1999 passed by RTA granting permits in favour of the appellants, STAT held that the said order was in violation of interim order dated September 9, 1999 passed by the High Court in writ petitions. STAT noted that the interim order was vacated by the High Court on December 13, 1999 keeping in view the order passed by RTA on November 2, 1999 but such vacation would not make order dated 2nd November, 1999 valid and would not cure the defect as the writ petition was finally allowed by the High Court. According to STAT, when the order dated July 24, 1999 passed by STAT remanding the matter to RTA was set aside by the High Court, no order could have been passed by RTA considering the applications and granting permits in pursuance of the order passed by STAT since that order was quashed by the High Court. No party, hence, could get benefit of an order dated November 2, 1999. The appellants, therefore, could not

claim the benefit under the said order. STAT, therefore, by an order dated May 29, 2000, again remanded the matter to RTA directing it to consider the applications which were decided on November 2, 1999. A direction was also issued to RTA not to consider any application filed prior to July, 1997 i.e. before coming into force of 1997 Agreement. The order dated May 29, 2000 passed by STAT was challenged by RSRTC by filing a writ petition. The learned single Judge, however, held that a finding had been recorded by STAT that the permits granted in favour of RSRTC had never been countersigned by the State of Haryana and hence RSRTC had no right to ply its vehicle on the said route. So far as 1997 agreement was concerned, permits were to be granted to private vehicle operators and hence, RSRTC had no right to claim any permit under the said agreement. The Court accordingly dismissed the petition filed by RSRTC. The order dated May 29, 2000 passed by STAT was also challenged by the appellants as well as by respondents by filing writ petitions. The learned single Judge heard the parties and disposed of all writ petitions by a common order. The learned single Judge, inter alia, held as under:

> 1. Permits granted on November 2, 1999 in favour of the appellants cannot be said to be legal and valid.
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> 2. 11 permits granted in favour of private operators (respondents herein) on February 29, 1996 had never been challenged on any ground whatsoever before any forum and it was only because an order was passed by learned single Judge on February 14, 2000 in the light of the fact that as against 13 operators, 50 vehicles were plying, STAT was directed to find out as to who those 13 persons were who held legal permits and had right to ply vehicles.
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> 3. As the respondents-private vehicle operators were holding valid permits, which were countersigned by the State of Haryana, their permits were legal and valid.
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> 4. Mere stipulation in the permits that they were over and above the ceiling under the Agreement would not disentitle private operators from continuing operation as the said provision had to be read in accordance with the agreement. Once it was held that 13 permits granted in favour of RSRTC were not countersigned, they could not be said to be legal permits under 1968 Agreement and hence they were required to be excluded.
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> 5. In view of exclusion of 13 permits issued in favour of RSRTC, permits issued in favour of respondents-private operators, counter-

signed by the State of Haryana, must be treated as legal.

6. The respondents were permit-holders and plying their vehicles since March 16, 1963 and they could not be thrown out on any technical ground.

Resultantly, writ petitions filed by appellants came to be dismissed and the writ petitions filed by respondents were allowed.

Two batch of original side appeals were filed by the appellants being aggrieved by the order passed by the learned single Judge. In one set of appeals, it was contended that the learned single Judge had committed an error of law in dismissing the writ petitions filed by the appellants as after considering the applications filed by the appellants in accordance with 1997 Agreement, their cases were considered by the RTA and permits were granted in their favour. The order which was passed on November 2, 1999 without any knowledge as to interim order passed by a single Judge of the High Court was legal and valid and could not have been invalidated by the learned single Judge. Their appeals were, therefore, required to be allowed.

Regarding writ petitions filed by respondents, it was contended by the appellants before the Division Bench that admittedly they were holding permits over and above the ceiling fixed by 1968 Agreement. An express stipulation was made in the Agreement that they were in excess of quota under the said Agreement. It was submitted that it was the case of RSRTC that 13 permits were granted in favour of Corporation and as under 1968 Agreement only 13 permits could be granted, even if it is held that those permits were not as per the Agreement, the respondents could not claim benefit of the fact- situation that the permits, in favour of RSRTC were held illegal, they must get the benefit and permits issued in their favour should be held legal. The learned single Judge, therefore, was in error in granting relief in favour of the respondents.

The Division Bench considered the question in detail and held that the learned single Judge was right in dismissing the writ petitions filed by the appellants- petitioners and also in allowing the petitions filed by the respondents (petitioners before the High Court). The Division Bench observed that since RTA was not aware of interim order dated September 9, 1999 passed by the learned single Judge in the writ petition, consideration of applications of the appellants on September 16, 1999 and grant of permits on November 2, 1999 might not be treated as an order passed by RTA in disobedience of interim order passed by the learned single Judge of the High Court. But the fact remained that the order of STAT remanding the matter to RTA and the direction to reconsider the applications of all applicants on merits was finally quashed and set aside by the High Court. Hence, the order passed by RTA could not be said to be valid in the eye of law and, hence, could not operate or be implemented. The appellants, therefore, could not base their claim on the said order. The order passed by the learned single Judge dismissing the petitions of the appellants-petitioners, therefore, could not be held contrary to law and accordingly their appeals were liable to be dismissed.

As far as the petitions of the respondents and grant of relief in their favour, which was objected by the appellants, the Division Bench observed that the learned single Judge was right in allowing their petitions. The Bench noted that under 1968 Agreement, only 13 permits could be granted. As per the Agreement, the permits could be said to be valid and effective only if they were countersigned by either State. Though it was the case of RSRTC that 13 permits were granted to the Corporation, admittedly, they were not countersigned by the State of Haryana. The said permits, therefore, rightly held to be not as per the Agreement. Obviously, therefore, 13 permits which were issued in favour of respondents and countersigned by the State of Haryana must be held legal and valid irrespective of mentioning of the fact in the permits that they were in excess of quota. Once it was held that permits granted in favour of RSRTC were not in accordance with agreement, permits issued to respondents

countersigned by the State of Haryana must be held valid. If it is so, the learned single Judge was right in granting the relief in favour of respondents, ruled the Division Bench. In view of the said findings, the Division Bench disposed of all Appeals. Being aggrieved by the said orders, the appellants have approached this Court. Notices were issued by this Court on November 18, 2002 and after hearing the parties, leave was granted. The matters have been placed before us for final hearing.

We have heard learned counsel for the parties. Two questions, which were raised before the learned single Judge as well as before the Division Bench of the High Court, were raised before us by the learned counsel for the appellants. Firstly, it was contended that in pursuance of inter-State Agreement of 1997 entered into between the State of Haryana and State of Rajasthan, applications were invited from private operators and the appellants submitted applications. In accordance with the Agreement, applications of the appellants were considered by the RTA, Bikaner along with other applications and permits were granted in their favour which were duly countersigned by the State of Haryana. Those permits, therefore, were legal and valid and could not have been declared illegal. The High Court ought to have granted relief to the appellants rejecting the contention of RSRTC and of the respondents. Since the High Court did not grant relief in favour of the appellants, the orders deserve to be quashed and set aside.

Secondly, it was submitted that the High Court was in error in granting relief to the respondents. Under 1968 inter-State Agreement, only 13 permits could have been granted. Admittedly, those 13 permits under the Agreement were granted in favour of RSRTC. The said fact was neither disputed before the authorities, nor before the High Court. It is true that 11 permits were granted to private operators-respondents herein, and they were countersigned by the State of Haryana, but it was expressly stipulated in those permits that they were in excess of quota and hence no right would flow from those permits. Hence, even if it is held that 13 permits issued in favour of RSRTC were not legal and valid, since they were not countersigned by the State of Haryana, private operators-respondents could not get the benefit as their permits were in excess of quota under the Agreement. The High Court was, therefore, in error in granting relief in their favour. It was, therefore, submitted by the learned counsel for the appellants that the orders require interference by declaring the permits issued in favour of respondents as illegal and by granting relief in their favour declaring the permits issued by RTA, Bikaner in their favour and countersigned by the State of Haryana as legal and valid. The learned counsel for the contesting respondents, on the other hand, submitted that the High Court was right in dismissing the writ petitions filed by the appellants and allowing the writ petitions of the respondents and in granting benefit in their favour. According to the counsel, under 1968 Agreement, 13 permits could be granted. They were required to be countersigned by the State of Haryana. True it is that 13 permits were granted by RTA, Bikaner to RSRTC, but admittedly they were not countersigned by the State of Haryana. On the other hand, permits granted to respondents were countersigned by the State of Haryana. Therefore, only those permits were legal and valid and could be said to be 'under the Agreement'. A statement to the effect that permits granted in favour of respondents were in excess of quota, therefore, had no relevance. Once it is held that permits issued in favour of RSRTC were not valid, other permits issued in favour of respondents and countersigned by the State of Rajasthan, must necessarily be treated as valid and in accordance with the terms of the Agreement. The High Court was, therefore, justified in granting

relief to the respondents.

The learned counsel for the State of Rajasthan also supported the respondents and submitted that the orders passed by the High Court are legal and proper and no interference is called for.

Having heard the learned counsel for the parties, in our opinion, the orders of the High Court are legal, valid, proper and do not deserve interference by this Court under Article 136 of the Constitution.

As is clear from the facts enumerated hereinabove, under 1968 Agreement, 13 permits were granted in favour of RSRTC, but as has been rightly held by the High Court, those permits could not be termed valid permits inasmuch as they were not countersigned by the State of Haryana. Since 13 inter-State permits could be granted under 1968 Agreement, the High Court was justified in taking into account permits granted in favour of respondents which were countersigned by the State of Rajasthan. To us, the High Court was right in observing that the fact that in those permits, it was stated that they were in excess of quota under 1968 Agreement, was of no consequence since those permits were not in excess of quota if invalid permits issued in favour of RSRTC were to be excluded and ignored. It is settled law that inter-State permits must be countersigned by the other State. In this connection, the High Court relied on Ashwani Kumar wherein this Court expressly held that reciprocal agreement is a condition precedent for grant of permits and if such agreement provides for countersignature of the other State, obviously that condition has to be fulfilled. Reference was also made to T.N.R. Reddy v. Mysore State Transport Authority, (1970) 1 SCC 541 : AIR 1971 SC 1662. The High Court was, therefore, fully justified in granting relief to the respondents and no grievance can be raised by the appellants against such relief granted to the respondents.

Regarding permits granted in favour of the appellants and countersigned by the State of Haryana, it is clear that the same was issued by RTA in accordance with the direction issued by STAT vide its order dated July 24, 1999. By the said order, STAT quashed the orders passed by RTA on April 25, 1998 and November 18, 1998 and directed RTA to reconsider the applications submitted by various private parties. But it has come on record that the order of STAT was challenged by RSRTC as also by other parties in the High Court of Rajasthan by filing writ petitions. The learned single Judge, not only entertained writ petitions, but even granted prohibitory interim orders on September 9, 1999 and RTA was restrained from considering the applications as directed by STAT. It is true that the said interim order had not been communicated immediately to RTA and RTA was not made aware of the interim order passed by the learned single Judge. Though it was stated by the learned counsel for the respondents that the interim order was passed by the learned single Judge in presence of the learned counsel appearing for RTA and as such RTA must be deemed to be aware of the interim order and the learned single Judge has also taken into account the said fact, we may not enter into larger question since in our opinion, the Division Bench was right in observing that even if it is held that RTA was not aware of interim order passed by the learned single Judge and hence it could consider the applications submitted by the appellants and other applicants, when the petitions were allowed and the order of STAT remitting the matter to RTA for reconsideration was quashed and set aside, the action taken by RTA had no effect in the eye of law. On STAT direction being set aside, there could not be said to be an order of reconsideration of applications by RTA. Hence, an order

granting applications and issuing permits in favour of the appellants had no legal effect whatsoever and the appellants cannot derive any benefit under the said order of November 2, 1999.

In this connection, we may refer to a decision of this Court in Mulraj v. Murti Raghunathji Maharaj, (1967) 3 SCR 84: AIR 1967 SC 1386. In that case, execution proceedings were pending in the Executing Court. Stay was granted against execution by the appellate Court but the said order was not communicated to the Executing Court. A question which came up for consideration before this Court was whether further proceedings before the Executing Court, after the order was passed by the appellate Court, staying the execution had any sanctity in law? This Court, after drawing the distinction between 'stay' and 'injunction', observed:

> "An order of stay in an execution matter is in our opinion in the nature of a prohibitory order and is addressed to the court that is carrying out execution. It is not of the same nature as an order allowing an appeal and quashing execution proceedings. That kind of order takes effect immediately it is passed, for such an order takes away the very jurisdiction of the court executing the decree as there is nothing left to execute thereafter. But a mere order of stay of execution does not take away the jurisdiction of the court. All that it does is to prohibit the court from proceeding with the execution further, and the court unless it knows of the order cannot be expected to carry it out. Therefore, till the order comes to the knowledge of the court its jurisdiction to carry on execution is not affected by a stay order which must in the very nature of things be treated to be a prohibitory order directing the executing court which continues to have jurisdiction to stay its hand till further orders. It is clear that as soon as a stay order is withdrawn, the executing court is entitled to carry on execution and there is no question of fresh conferment of jurisdiction by the fact that the stay order has been withdrawn. The jurisdiction of the court is there all along. The only effect of the stay order is to prohibit the executing court from proceeding further and that can only take effect when the executing court has knowledge of the order. The executing court may have knowledge of the order on the order being communicated to it by the court passing the stay order or the executing court may be informed of the order by one party or the other with an affidavit in support of the information or in any other way. As soon therefore as the executing court has come to know of the order either by communication from the court passing the stay order or by an affidavit from one party or the other or in any other way the executing court cannot proceed further and if it does so it acts illegally. There can be no doubt that no action for contempt can be taken against an executing court, if it carries on execution in ignorance of the order of stay and this shows the necessity of the knowledge of the executing court before its jurisdiction can be affected by the order. In effect therefore a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well-settled that in such a case the party must have knowledge of the injunction order before it could be penalized for disobeying it. Further it is equally well-settled that the injunction order not being addressed to the court, if the court proceeds in

> contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That in our opinion is the only difference between, an order of injunction to a party and an order of stay to a court. In both cases knowledge of the party concerned or of the court is necessary before the prohibition takes effect. Take the case where a stay order has been passed but it is never brought to the notice of the court, and the court carries in proceedings ignorance thereof. It can hardly be said that the court has lost jurisdiction because of some order of which has no knowledge. This to our mind clearly follows from the words of O. XLI R. 5 of the Code of Civil Procedure which clearly lays down that mere filling of an appeal does not operate as stay of proceedings in execution, but the appellate court has the power stay of execution. Obviously when the appellate court orders the stay of execution the order can have affect only when it is made known to the executing court. We cannot agree that an order staying execution is similar to an order allowing an appeal and quashing execution proceedings. In the case where the execution proceeding is quashed, the order takes effect in immediately and there is nothing left to execute. But where a stay order is passed, execution still stands and can go on unless the court executing the decree has knowledge of the stay order. It is only when the executing court has knowledge of the stay order that the court must stay its hands and anything it does thereafter would be a nullity so long as the stay order is in force".

The Court then stated;

> "Though the court which is carrying on execution is not deprived of the jurisdiction the moment a stay order is passed, even though it has no knowledge of it, this does not mean that when the court gets knowledge of it is powerless to undo any possible injustice that might have been caused to the party in whose favour the stay order was passed during the period till the court has knowledge of the stay order. We are of opinion that section 151 of the Code of Civil Procedure would always be available to the court executing the decree, for in such a case, when the stay order is brought to its notice it can always act under Section 151, and set aside steps taken between the time the stay order was passed and the time it was brought to its notice, if that is necessary in the ends of justice and the party concerned asks it to do so. Though, therefore, the court executing the decree cannot in our opinion be deprived of its jurisdiction to carry on execution till it has knowledge of the stay order, the court has the power in our view to set aside the proceedings taken between the time when the stay order was passed and the time when it was brought to its notice, if it is asked to do so and it considers that it is necessary in the interests of justice that the interim proceedings should be set aside"

An interesting question came up for consideration before this Court in Nawabkhan Abbaskhan v. State of Gujarat (1974) 2 SCC 121 : AIR 1974 SC 1471. In that case, an externment order was passed

against N on September 5, 1967 under the Bombay Police Act, 1951. In contravention of the said order, N entered the forbidden area on September 17, 1967 and was, therefore, prosecuted. During the pendency of the criminal proceedings, however, the externment order passed against N was challenged in the High Court under Article 226 of the Constitution and was set aside on July 16, 1968. Taking note of the said fact, the trial Court acquitted N but an appeal filed by the State against the order of acquittal came to be allowed by the High Court holding that when the contravention took place in September, 1967, the order was very much operative and hence N was liable for committing breach of that order. He was, therefore, convicted by the High Court. N approached this Court.

Allowing the appeal and reversing the decision of the High Court, this Court held that once the externment order was declared illegal, it was of no effect, and N could never be held guilty of flouting such order. Rubinstein was quoted by the Court who stated;

> "How does the validity or nullity of the decision affect the rights and liabilities of the persons concerned? Can the persons affected by an illegal act ignore and disregard it with impunity? What are the remedies available to the aggrieved parties? When will the courts recognize a right to compensation for damage occasioned by an illegal act ? All these questions revert to the one basic issue; has the act concerned ever had an existence or is it merely a nullity ?
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> Voidable acts are those that, can be invalidated in certain proceedings; these proceedings are, especially formulated for the purpose of directly challenging such acts..... On the other hand, when an act is not merely voidable but void, it is a nullity and can be disregarded and impeached in any proceedings, before any court or tribunal and whenever it is relied upon. In other words, it is subject to 'collateral attack'."

Kelson's pure theory of law was also considered who stated that when a Court holds an act as nullity, it is not merely a declaration of nullity, "it is true annulment, an annulment with retroactive force". Though, no final opinion was expressed on wide ranging problems in public law of illegal orders and violations thereof by citizens, the Court ruled that in the facts and circumstances of the case, when the order of externment was held illegal by a competent Court on the ground that it was passed in violation of the principles of natural justice, it was of no effect. The Court quashed the order not killed it then but performed the formal obsequies of the order which had died at birth. "The legal result is that the accused was never guilty of flouting an order which never legally existed". (emphasis supplied) In the instant case, admittedly, the order passed by STAT was finally set aside by the High Court in writ petitions. Therefore, even if the contention of the learned counsel for the appellants is held to be well founded that RTA, Bikaner was not made aware of interim order passed by the learned single Judge and hence it could consider the applications and pass appropriate orders thereon, since the order of STAT remitting the matter to RTA was finally quashed and set aside, all consequential actions must be held illegal and of no effect. In our opinion, the High Court was perfectly right and wholly justified in ignoring the directions issued by STAT and grant of permits by RTA in favour of the appellants. For the foregoing reasons, all the appeals deserve to be dismissed

and they are accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.