Badridass Kanhaiyalal and anr. Vs. Appellate Tribunal of State Transport Authority, Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-27-1959

Reported in : AIR1960Raj105

Judge : Sarjoo Prosad, C.J. and; J.S. Ranawat, J.

Acts : Constitution of India - Article 226; Code of Civil Procedure (CPC) , 1908 - Sections 9; Motor Vehicles Act, 1939 - Sections 44, 44(2) and 64; Motor Vehicles (Amendment) Act, 1956; Rajasthan Motor Vehicles Rules, 1951 - Rules 76, 77 and 108

Appeal No. : Civil Writ Petn. No. 337 of 1958

Appellant : Badridass Kanhaiyalal and anr.

Respondent : Appellate Tribunal of State Transport Authority, Rajasthan and ors.

Advocate for Def. : N.L. Jain and; J.G. Chhangani, Advs. for Non-Petitioners 3, 4 and 5 and;

Advocate for Pet/Ap. : C.L. Agarwal, Adv.

Disposition : Petition allowed

Judgement :

Ranawat, J.

1. This is a petition under Article 226 of the Constitution of India by Badridass Kanhaiyalal, a registered firm and Shri Mahmood Khan, Motor Contractor of Tonk against the Appellate Tribunal of the State Transport Authority, Rajasthan, the Regional Transport Authority, Jaipur and three others for writs of certiorari and prohibition quashing the orders of respondents No. 1 and 2 dated 29-9-1958, and 5 and 6-5-1951 respectively and restraining them from issuing further permits to respondents Nos. 3 to 5 on Tonk-Sawai Madhopur route.

2. The allegations of the petitioners are that they hold three stage carriage permits for plying buses on Tonk-Sawai Madhopur route and that the traffic on the said route is meagre and one only out of the three vehicles of the petitioners is used to meet the requirements of the traffic and the Collector and the Superintendent of Police, Tonk, after holding enquiries regarding the condition of the traffic on the route, came to the conclusion that the traffic was meagre and there was no Justification for increase in the number of vehicles on the route. It was further alleged that some persons applied for grant of stage carriage permits on the said route and the R.T.A. after publishing

their applications considered them in its meetings of 5th and 6th of May, 1958, and decided to advertise the route for inviting fresh petitions.

It is also alleged that 5 persons including respondents Nos. 3, 4 and 5 went in appeal to the Appellate Authority of the S.T.A. against the resolution of the R.T.A. No. 178 of the 5th and 6th of May, 1958, and the Appellate Authority accepted the appeals of respondents Nos. 3, 4 and 5 and ordered issue of one permit each to them. The petitioners challenge the order of the AppellateAuthority of 9-9-1958 granting permits to respondents Nos. 3, 4 and 5 far the following reasons:

1. The order of the R.T.A. of the 5th and 6th of May, 1958, did not amount to an order of refusal for permit and no appeal under Section 64 of the Motor Vehicles Act was competent from it and the Appellate Authority had, therefore, no jurisdiction to entertain appeals and to grant permits to respondents Nos. 3, 4 and 5.

2. Both R.T.A. and the Appellate Authority of the S.T.A, are not properly constituted for Rule 76 read with Rule 108 and Rule 77 of the Rajasthan Motor Vehicles Rules of 1951 are inconsistent with the provision of Section 44 (2) of the Motor Vehicles Act as amended by Act No. 100 of 1956, and are, therefore, invalid, and the Transport Minister, who acted has Chairman of the S.T.A, and that of the Appellate Auth 'fry by virtue of Rule 76 read with Rule 108 had no authority to do so.

3. The act of the R.T.A. in inviting fresh applications for stage carriage permits on Tonk-Sawai Madhopur route and the act of the Appellate Authority in granting permits to respondents Nos. 3. 4 and 5 are in violation of the provision of Section 57 of the Motor Vehicles Act for the requirements of the traffic have not been considered by the aforesaid authorities in inviting fresh petitions and also in granting permits to respondents Nos. 3 to 5.

3. The petitioners prayed for grant of a writ of certiorari quashing the order of the R.T.A. and the Appellate Authority of 29-9-1957 and 5th and 6th of May, 1958 respectively and for a writ of prohibition restraining the R.T.A. from issuing permits to respondents Nos. 3, 4 and 5.

4. The respondents Nos. 3, 4 and 5 filed a reply to the writ petition. They denied that the traffic 09 Tonk-Sawai Madhopur route was meagre and stated that there was sufficient traffic on the route to keep the vehicles of the petitioners and those of the respondents Nos. 3. 4 and 5 busy as the daily services on the route were increased from one to another. They also stated that the constitution of the R. T.A. and that of the S. T. A. were legal and that the order of the R.T.A. of 29-9-1958 was in fact an order of refusal of permits and an appeal lay from that order to the Appellate Authority.

5. Mr. Nathulal Jain, counsel for opposite parties Nos. 3, 4 and 5 has raised a preliminary objection that the petitioners not having challenged the jurisdiction of the appellate authority of the State Transport Authority on the ground that the constitution of the appellate authority was illegal for the reason that the appointment of the Chairman of the appellate authority was inconsistent with the provision of Section 44 (2) of the Motor Vehicles Act cannot now take up this objection in this petition for the first time. He has placed reliance on the following authorities : R. v. Williams, Ex parte Phillips, 1914-1 KB 608; Latchmanan Chettiar v. Corporation of Madras, AIR 1927 Mad 130 (FB); Mannarghat Union Motor Services Ltd. v. Regional

Transport Authority, Malabar, AIR 1953 Mad 59; Surya Rao Bahadur Varu, Rajah of Pithapuram v. The Board of Revenue (Settlement of Estates) Madras. AIR 1953 Mad 472; Elanak Ramakka v. State, AIR 1955 Hyd 97; Sarju Prasad Singh v. South Bihar Regional Transport Authority, Patna, AIR 1957 Pat 732; N. Gopalan v. Central Road Traffic Board, Trivandrum, AIR 1958 Kerala 341; Ebrahim Aboohakar v. Custodian General of Evacuee Property, New Delhi, AIR 1952 SC 319; . Pannalal Binjraj and others v. Union of India, (S)AIR 1957 SC 397; Gandhinagar Motor Transport Society v. State of Bombay, AIR 1954 Bom 202.

6. Mr. Rastogi, who was permitted to intervene, supported the preliminary objection and referred to the decision in Dholpur Co-operative Transport and Multi-Purpose Union Ltd. v. Appellate Authority Transport, Rajasthan, 1953 Raj LW 324: (AIR 1953 Raj 193) and Manak Lal v. Dr. Prem Chand Singhvi, (S) AIR 1957 SC 425.

7. Mr. C. L. Agarwal for the petitioners repudiated the preliminary objection by referring to the decisions in 1953 Raj LW 324: (AIR 1953 Raj 193); Barkatali v. Custodian General of Evacuee Property of India, 1955 Raj LW 95: (AIR 1954 Raj 214); United Commercial Bank Ltd. v. Their Workmen, AIR 1951 SC 230; Kiran Singh v. Cha-man Paswan, AIR 1954 SC 340 and Raghunandanlal v. State of Rajasthan, AIR 1952 Raj 184.

The contention of Mr. Agarwal is that where there is patent want of jurisdiction in the lower Court, no amount of consent on the part of a litigant can confer jurisdiction on the Court, find as in the present case there is inherent want of jurisdiction in the appellate authority of the S.T.A., the petitioners are entitled to relief by issue of a writ of certiorari even though they failed to question the jurisdiction of that authority at an earlier stage.

8. In 1914-1 KB 608, a baker was chargedunder Section 4 of the Bread Act, 1836 with selling bread otherwise than by weight and was convicted in presence of two justices. He obtained a rule nisi for a writ of certiorari to quash the conviction on the ground that one of the justices alleged to have taken part in the conviction was a person concerned in the business of a baker while by Section 15 of the Bread Act, 1836, no person concerned in the business of a baker was capable of acting as a justice of the peace under the Act.

The affidavit on which the rule nisi was obtained did not state that any objection to the competence of the Court was taken at the hearing before the justices, nor did it state that it the date of that hearing the applicant was without knowledge of the facts alleged to disqualify one of the justices. It was held on these facts that the petitioner was not entitled to the grant of a writ of certiorari ex debito justitiae for the reason that the affidavit of the applicant did not show that any objection to the competence of the Court was taker* at the hearing before the justices or that the applicant was without knowledge of the facts alleged by him to disqualify one of the justices at the date of the hearing.

9. It may be noted that the William's case, 1914-1 KB 608, is not an authority to show thatcertiorari would not lie even when there is patent want of jurisdiction in the inferior tribunal for in that case the justices had jurisdiction to try the case. Though one of them suffered with some disqualification, yet as no objection was taken when the petitioner was not unaware of facts disqualifying one of the justices, it was held that he had waived the objection. In the instant case validity of the constitution of the

appellate authority is challenged and if this defect is held to exist there would be a patent want of jurisdiction in the appellate authority and waiver or consent would not cure such a defect of jurisdiction.

10. In AIR 1927 Mad 130, the petitioner challenged the jurisdiction of the Commissioner of the Corporation of Madras and the Chief judge of the Court of Small Causes on the ground that theywere only empowered to enquire into disability appearing on the face of the nomination paper.A preliminary objection was raised that certiorari will not lie where the person who applies for a writ has by his conduct taken to the chance of a pronouncement in his favour by the lower Court on the merits. The High Court of Madras following the practice of the Court of the King's Bench in England allowed the preliminary objection holding that :

'Where the applicant armed with a point either of law or of fact which would oust the jurisdiction of the lower Court has elected to argue a case on its merits before the Court, he must be taken to have submitted himself to a jurisdiction which he cannot be allowed afterwards to seek to repudiate by applying for a certiorari.'

11. The decision in AIR 1927 Mad 130 was followed in AIR 1953 Mad 59. In that case a petition for writ of certiorari was dismissed for the reason that the petitioners submitted to the jurisdiction of the R.T.A. when they failed to take the objection regarding the jurisdiction of that authority to grant permits on the ground that fresh proceedings in the same matter would not be taken up when previous proceedings were already pending before it. The' High Court following the rule laid down in Latchmanan Chettiar v. Commissioner, Corporation of Madras (1) rejected the application. It would be noticed that the cases of Latchmanan Chettiar (2) and Mannarghat Union Motor Services Ltd. (3) are not the cases of patent lack of jurisdiction in the inferior Court. The jurisdiction could be ousted if an objection had been raised at the proper time before the tribunal. Consent or waiver in such a case would be a good ground for refusing a writ of certiorari.

12. In AIR 1953 Mad 472 the petitioner, who had submitted to the jurisdiction of the Revenue Board, it was held, was precluded from questioning the jurisdiction of that Court in proceedings for a writ of certiorari.

13. In AIR 1955 Hyd 97, the petitioner alleged that he was a pattadar by purchase of certain agricultural lands from Hermadri, respondent 4; that the 2nd and 3rd respondents claiming that they arc the cultivators of the land and were illegally dispossessed by the petitioner applied to the Collector for eviction of the petitioner under Section 98 of the Tenancy Act; that the Collector accepted the petitioner's defence and threw out the application of respondents 2 and 3; 'that the Board of Revenue relying upon Section 47, Hyderabad Tenancy Act, came to the conclusion that the sale-deed upon which the petitioner based his title was invalid inasmuch as prior permission required by that section was not obtained; and that the Revenue Minister whom the petitioner moved by way of revision refused to interfere and set aside the decision of the Board of Revenue. The High Court on these facts found that:

''The petitioner submitted himself to the jurisdiction of the Revenue Courts, indeed when the case was before the Collector it was with his agreement that the proceedings were converted into those under Section 32(1), Hyderabad Tenancy Act',

and it was observed that:

'In the matter of issue of a Writ by way of Certiorari the High Courts' powers are discretionary, and where the applicant armed with the point which would oust the jurisdiction of the subordinate tribunal has elected to get the case decided by the Court on its merits, he must be takento have submitted to its jurisdiction and he cannot be allowed later to repudiate that decision in a petition for a Writ of Certiorari.'

14. In AIR 1957 Pat 732, the petitioner had been carrying on the business of stage carriage services in the district of Gaya for a very long time. The petitioner's last permit expired on 31-12-1953. He made an application under Section 58 (2) of the Motor Vehicles Act, 1939 for renewal of his permit. On his application a notice as required by Section 57 (3) of the Act was published in the Gazette inviting objections, if any, to the application of the petitioner and others for renewal of the stage carriage permits within one month from the date of the publication of the notice,

No objection or representation was filed either by the Rajya Transport or any person within the specified time. The Government also made an application for stage carriage permits over the routes for which the petitioner had also applied. The application of the petitioner for renewal of permit was rejected on the ground that the Government proposed to run their own services in these areas, but temporary permits were ordered to issue to the petitioner and others till the nationalisation of the service. The applicant then moved the High Court under Article 226 of the Constitution and succeeded in obtaining an order directing the Regional Transport Authority to reconsider the application of the petitioner. The R.T.A. then reconsidered the application and rejected it again. He then moved the High Court under Article 226 a second time and one of the objections raised on his behalf was that:

'Mr. S. Akhouri, I. P. who is the State Transport Commissioner and as such the administrative head of the Rajya Transport, was also one of the members of the R.T.A., which considered the application of the petitioner for renewal of his permit as also the objection of the Rajya Transport and decided in favour of the Rajya Transport on 11-10-1955. The State Government have acquired 'financial interest' in the Raya Transport Undertaking, and, as such, Mr. Akhouri had also 'financial interest' in the Rajya Transport, as an employee of the State, and, therefore, he could not continue as a member of the R.T.A. because of the existence of this 'bias'' against the petitioner and in favour of the Rajya Transport.'

The High Court repelled the contention of the applicant On the ground that Mr. Akhouri had personally no financial interest in the Rajya Transport Undertaking, though the State may have had some financial interest in it, However, the learned Judges also observed that:

'When no objection to the constitution of the R.T.A. on the ground of bias of one of the members was taken by the petitioner when the R.T.A. considered his renewal application, or, when it decided the matter, he was estopped from raising that objection in an application under Articles 226 and 227 of the Constitution of India.'

15. It may be noted that this case is also distinguishable on the ground that on merits the objection was found untenable though the learned Judges also held that the petitioner was estopped from raising the objection on the principle of waiver. In this case as well as in the cases of AIR 1953 Mad 472 and AIR 1955 Hyd 97 there was no inherent want of jurisdiction in the lower court find thus had an objection been taken

the jurisdiction could be ousted. These cases cannot support the preliminary objection.

16. In AIR 1958 Kerala 341, an objection was raised relating to jurisdiction of the Central Road Traffic Board, Trivandrum inter alia on the ground that the Chairman and one other member were disqualified to be members of the Board since both of them were members of the State Transport Advisory Board which deals with finances and other matters of the State Transport undertaking. No such objection regarding want of jurisdiction was raised before the Board and the objection on the score of jurisdiction was raised for the first time before the High Court.

The learned Judges of Kerala High Court, alter discussing the case law on the point, held that this was not a case of inherent want of jurisdiction in the lower court and the petitioner not having raised the objection before was not entitled to take it in proceedings for grant of a writ of certiorari specially when the facts forming the basis of the objection relating to jurisdiction were within the knowledge of the petitioner.

17. In (S) AIR 1957 SC 397 the Supreme Court approved the decision of the Madras High Court in AIR 1927 Mad 130 (FB) and held that the petitioners were not entitled to invoke the jurisdiction of the Supreme Court under Article 32, when none of the 'petitioners raised any objection in the lower court and in fact submitted to its jurisdiction. Their Lordships observed that it was well settled that such conduct of the petitioners would disentitle them to any relief at the hands of the Supreme Court. Here also it may be noticed that the lower court did not suffer from the defect of inherent want of jurisdiction.

18. In AIR 1952 SC 319, one Tekchand Dolwani supplied information to the Additional Custodian of the Evacuee Property that Ebrahim Aboobakar was an evacuee, and that his property was an evacuee property. The Additional Custodian started proceedings under the Bombay Evacuees (Administration of Property) Act, 1949, against Aboobakar in the month of July, 1949. During the pendency of the said proceedings, the Government of India Ordinance XXVII of 1949 came into force, and the Additional Custodian issued a notice to the said Aboobakar under section 7 of the Ordinance and a further notice to show cause why his property should not be declared an evacuee property.

An enquiry was held by the Additional Custodian with the result that the said Aboobakar was held not to be an evacuee. The Additional Custodian, however, issued another notice to Aboobakar on the same day calling upon him to show cause why he should not be declared an intending evacuee under Section 19 of the said Ordinance, and thereafter the Additional Custodian adjudicated the said Aboobakar to be an intending evacuee. Tekchand Dolwani filed an appeal against the order of the 9th of February to the respondent (The Custodian General of India) in which a preliminary objection was raised that the appeal was not competent inter alia for the reason that Tekchand was not a person interested, and he had, therefore, no right to file an appeal, and that the appeal having been filed against the order of the 9th of February, 1950, the appellant was debarred from challenging the correctness of the order of the 8th of February, by which Aboobakar was held to be not an evacuee.

The Custodian General rejected the objection. An application under Article 226 was then filed in the High Court of the State of Punjab by the heirs of Ebrahim Aboobakar, he having died in the meantime, which was dismissed. They then went inappeal to the

Supreme Court against the order of the High Court and challenged the jurisdiction of the Custodian General of India in treating the appeal, which was in fact filed against the order of the 9th of February, as one from the order of the 8th of February, and also on the ground that Tekchand Dolwani was illegally held to be a person interested in and having a right to file an appeal. The Supreme Court observed as follows;

'The remaining three questions canvassed before us, unless they are of such a nature as would make the decision of the respondent dated the 13th May, 1950 a nullity, cannot be the subject-matter of a writ of 'certiorari'. It is plain that such a writ cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Want of jurisdiction may arise from the nature of the subject-matter, so that the inferior court might not have authority to enter on the inquiry or upon some part of it.

It may also arise from the absence of some essential preliminary or upon the existence of some particular facts collateral to the actual matter which the court has to try and which are conditions precedent to the assumption of jurisdiction by it. But once it is held that the court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a court has jurisdiction to decide rightly as well as wrongly. The three questions agitated before us do not seem to be questions which bear upon the jurisdiction of the court of appeal, or its authority to entertain them.'

19. Their Lordships then quoted with approval the following observations of Lord Esher, M.R., in 'R. v. Income-tax Commrs.', (1888) 21 QBD 313; and held that the powers of the Custodian General of India under Section 24 of the Evacuee Property Act were of the widest amplitude and the tribunal constituted by the Custodian General of India fell within Clause II of the Classification of the Mastes of the Rolls, and the High Court of Punjab was, therefore, right in refusing to grant a writ of certiorari:

'When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. - It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned and it will be held that they have acted without jurisdiction. 'But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction', on finding that it does exist to proceed further or do something more.

When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the secondof the two cases I have mentioned it is erroneousapplication of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the

facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends': and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.'

Question of waiver that has been raised in the instant case did not come up for consideration before the Supreme Court in Ebrahim Aboobaker's case, AIR 1952 SC 319, as the petitioners had not waived their right to challenge the jurisdiction of the lower court having raised similar objections in that court as well. The decision in this case has been cited by Mr. Jain to show that the first point raised by the petitioners that no appeal lay to the appellate authority cannot be raised before this Court as that Authority had jurisdiction to determine whether appeal lay to it from the impugned order of the E.T.A.

It may be noted that we shall consider this point later on. However, observations of their Lordships support the view that where the order of inferior court is a nullity on account of inherent want of jurisdiction, waiver or consent by a party cannot confer jurisdiction and certiorari cannot be considered to be barred in such a case.

20. In AIR 1951 SC 230, the facts were that by a notification of the Government of India dated the 13th of June, 1949, an Industrial Tribunal was constituted for the adjudication of industrial disputes in banking companies consisting of Mr. K. C. Sen, Chairman, Mr. S. P. Varma and Mr. J. N. Mazumdar. By a second notification of the 24th of August 1949 Mr. N. Chandrasekhara Aiyar was appointed in place of Mr. S. P. Varma, whose services ceased to be available. After the Tribunal commenced its regular sittings. Mr. Chandrasekhara Aiyar was absent from the 23rd of November, 1949 to 20th of February, 1950, as his services were placed at the disposal of the Ministry of External Affairs as a member of the Indo-Paldstan Boundary Disputes Tribunal, and Messrs. Sen and Mazumdar together sat at several places and made certain awards. Mr. Chandrasekhara Aiyar joined the Tribunal from the afternoon of the 20th of February, 1949 again by sitting with Mr. Sen and Mr. Mazumdar. The jurisdiction of the Tribunal was disputed before the Supreme Court on two grounds:

(1) That when Mr. Chandrasekhara Aiyar's services ceased to be available, the remaining two members had to be reappointed to reconstitute the Tribunal;

(2) That when Mr. Chandrasekhara Aiyar began to sit again with Mr. Sen and Mr. Mazumdar, it was imperative for the Government to issue a notification reconstituting a Tribunal under Section 7 of the Act.

21. Kama C.J., who delivered the majority judgment, held that when the services of a member had ceased to be available to the Tribunal, the remaining members by themselves had no right to act as the Tribunal and for this reason the award of the Industrial Tribunal was without jurisdiction. His Lordship, the Chief Justice, further observed as follows:

'The final contention that the sittings in the interval constituted only an irregularity in the proceedings cannot again be accepted because, in the first place, an objection was raised about the sitting of the two members as the Tribunal. That objection, whether it was raised by the applicants or the other party, is immaterial. The objection having been overruled, no question of acquiescence or estoppel arises. Nor can consent give a Court jurisdiction if a condition which goes to the root of the jurisdiction, has not been performed or fulfilled. No acquiescence or consent can give

jurisdiction to a Court of limited jurisdiction which it does not possess.

In our opinion, the position here clearly is that the responsibility to work and decide being; the joint responsibility of all the three members, if proceedings are conducted and discussions or several general issues took place in the presence of only two followed by an award made by three, the question goes to the root of the jurisdiction of the Tribunal and is not a matter of irregularity in the conduct of those proceedings. The absence of a condition necessary to found the jurisdiction to make the award or give a decision deprives the award or decision of any conclusive effect. The distinction clearly is between the jurisdiction to decide matter and the ambit of the matters to, be heard by a Tribunal having jurisdiction to deal with the same. In the second case, the question of acquiescence or irregularity may be considered and overlooked. When however the question is of the jurisdiction of the Tribunal to make the award under the circumstances summarized above, no question of acquiescence or consent can affect the decision.'

22. The decision of the Supreme Court in the above noted case is clearly against the opposite parties on the point of preliminary objection.

23. In AIR 1952 Raj 184 the facts were that a shop was mortgaged for a sum of Rs. 850/- by Certain persons, who later on migrated to Pakistan, and became evacuees, in favour of Girdharilal the father of the petitioner. Under the Matsya Evacuee Property Ordinance, and various other Acts that came into force from time to time, the equity of redemption which belonged to the Muslim evacuees vested in the Custodian of the Evacuee properties. The Deputy Custodian of Bharatpur, after holding an enquiry, ordered that Rs. 850/-be paid to Girdharilal, the mortgagee and the possession of the property be taken by the Custodian Department.

On appeal the Custodian Evacuee Property Rajasthan at Jodhipur, confirmed the order of the Deputy Custodian. Steps were then taken to eject the petitioner and he filed an application under Article 226 in the High Court of Rajasthan. An objection was raised on behalf of the opposite parties that the petitioner having submitted to the jurisdiction of the lower courts was not entitled to any relief in proceedings for issue of a writ of certiorari on the principle of acquiescence and waiver.

It was held that as the mortgagee rights never vested in the Custodian under any law and as no proceedings for declaring such mortgagee rights to be evacuee property by issue of a notice under Section 7 of the Administration of the Evacuee Property Act were taken, the decisions of the Assistant Custodian and the Custodian of the Evacuee Property were without jurisdiction and nullity and the waiver or acquiescence on the part of the petitioner could not confer any jurisdiction where the lower court had none. A writ of certiorari was under the circumstances issued and the decisions of the Deputy Custodian and the Custodian were quashed, and they were restrained from ejecting the petitioner otherwise than taking recourse to legal proceedings. The decision in Raghunandan lal's case (AIR 1952 Raj 184) is directly on the point, and is against the preliminary objection.

24. In 1953 Raj LW 324: (AIR 1953 Raj 193),a petition for a writ of certiorari was filed on the ground that the decision of the lower court was without jurisdiction for the reason that the Chairman of the Appellate Authority acted as such without being appointed in accordance with law and the constitution of the Tribunal, therefore, was illegal.

A preliminary objection was raised by the opposite parties that the petitioners having acquiesced in running their vehicles by rotation in accordance with the orders of the Tribunal, and not having challenged the jurisdiction of the tribunal before it were not entitled to a writ o[certiorari. It was hold that as the constitution of the Tribunal was illegal its decision was a nullity and no amount of consent or acquiescence could confer jurisdiction upon the Tribunal. We may refer to the following observations in the judgment of that case:

'Coming to the third objection, it is true that if a party does not raise any objection to the jurisdiction of a court or tribunal, which depends upon the allegations and proof of certain facts, that party will not be allowed to raise objections about jurisdiction in an application under Article 226. Where, however, the lack of jurisdiction is patent, the mere fact that no objection was taken before the statutory authorities would not disable the applicant from raising such question in an application under Article 226.'

25. It may be noted that the decision in 1953 Raj LW 324: (AIR 1933 Raj 193), is against thecontention of Mr. Jain. The following observations in 1955 Raj LW 95: (AIR 1954 Raj 214), are also against him:

'It is urged that as the applicant did not challenge the order of the Assistant Custodian before the Custodian or the Custodian General on tho two grounds which he has urged before us, he should not be heard in this case. It may be accepted that it was open to the applicant to urge before the'Custodian that a Naib Tehsildar was not authorised at all to act as Assistant Custodian, and that ho failed to do so. But this is a case where the lack of jurisdiction is patent, and the mere fact that no objection was taken before the Custodianor the Custodian General would not disable the applicant from raising the point before us.

The matter would have been different if the question of jurisdiction depended upon the allegation and proof of certain facts. In that case, if no objection had been taken, we would not have heard the applicant. In the present case, however, the order itself shows that it was passed by a Nail) Tehsildar and it is not in dispute that Naib Tebsildars were never authorised to act as Assistant Custodians. As there was total absence ofjurisdiction on the face of the proceedings, we are of opinion that we are entitled to grant a writ even though the applicant acquiesced in the exercise ot jurisdiction by the inferior court. Reference in this connection may be made to 1953 Raj LW 324: (AIR 1953 Raj 193).'

26. In AIR 1954 Bom 202, the facts were that the petitioners were granted a permit to run a transport bus for carrying passengers on the Kolhapur-Valivade route. Later On the petitioners applied to the Regional Transport Authority for the grant of a second permit which was also granted, The Regional Transport Authority in granting a second permit to the petitioners also refused the applications of respondents Nos. 4 and 2 for grant of permits.

They went in appeal to the Appellate Authorityunsuccessfully. Respondent No. 4 then went in appeal to the Government and succeeded in obtaininga permit in his favour. The petitioners then filed an application under Article 226 in the Bombay High Court challenging the jurisdiction of the Government to hear an appeal. An objection was raised by the opposite parties that the petitioners not having questioned the jurisdiction of the Government to hear an appeal were debarred from challenging the jurisdiction of that authority in proceedings for grant of a writ of certiorari. The

learned Judges observed as follows:

'Before a question of jurisdiction of a tribunal is raised on a petition under Arts. 226 and 227, objection to jurisdiction must be taken before the tribunal whose order is being challenged.'

27. The decision in AIR 1954 Bom 202 to some extent supports the contention of Mr. Nathulal Jain but it may be noted that this Court has consistently held in a number of cases, some of which have been referred to above, that where the decision of the lower court amounts to a nullity and the objection to jurisdiction goes to the root of the jurisdiction of the lower court, it is1 open to the High Court to quash such a decision in proceedings for grant of a writ of certiorari notwithstanding the fact that the petitioner failed to question the jurisdiction of the lower court before it and challenged the jurisdiction of the inferior court before the High Court for the first time.

The view adopted by this Court is supported by the decision of the Supreme Court in AIR 1951 SC 230.

28. The contention of the petitioners is that the constitution of the Appellate Authority is not consistent with the provision of Section 44(2) of the Motor Vehicles Act inasmuch as the Transport Minister acted as the. Chairman of the Appellate Authority in pursuance of Rule 76 read with rule 108 of the Rules made by the Government under the Act, and the said rule became inconsistent with Section 44(2) of the Act when the Amendment Act came into force on the 16th February, 1957.

We shall presently examine this contention of the petitioners but so far as the preliminary objection is concerned the contention of the petitioners goes to the root of the jurisdiction of the Appellate Authority rendering its decision a nullity. Thud waiver or consent of a party cannot confer jurisdiction upon the appellate authority in such a case. The preliminary objection in this view of the matter cannot be accepted and is, therefore, rejected.

29. We would take up the second point raised on behalf of the petitioners first as that point is common to a number of petitions which are pending before this Court and a decision on that point would dispose of the whole case.

30. The Motor Vehicles Act was introduced in Rajasthan by the Rajasthan Motor Vehicles Act Adaptation Ordinance of 1950. The Government made rules under it which are called the Rajasthan Motor Vehicles Rules of 1951. Subsequently the Motor Vehicles Act of 1939 of the Central Legislature was extended to Rajasthan by Part 'B' States (Laws) Act No. III of 1951 and the Rajasthan Mofor Vehicles Act Adaptation Ordinance of 1950 was thereby repealed.

The rules which were framed by the Government under tho Rajasthan Motor Vehicles Act Adaptation Ordinance of 1950, continued to be rules under the Motor Vehicles Act of 1939. By rule 76 the S.T.A. was constituted with the Transport Commissioner as Chairman and 5 other members. Subsequently by an amendment of rule 76 the Transport Minister was substituted for the Transport Commissioner as Chairman of the S.T.A.By rule 108, the authority to decide an appeal against the orders of the Regional Transport Authority under Clauses (a) (b) (c) (d) (e) (f) of Section 64 of the Act was constituted of the Chairman and two members of the State Transport

Authority from time to time to be appointed by the Government. Section 44 of the Act as it originally stood was as follows:

'A State Transport Authority or a Regional Transport Authority shall consist of such number of officials and non-officials as the State Government may think fit to appoint; but 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 State or Regional Transport Authority and if any such 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 State Government of the acquisition of such interest and shall vacate office.'

31. Section 44(2) of the Act was substantially amended by Motor Vehicles Amendment Act of 1956 and it now stands as follows:

'A State Transport Authority or a Regional Transport Authority, shall consist of a Chairman who has had judicial experience and such other officials and non-officials, not being less than two, as the State Government may think fit to appoint; but 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 State 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 State Government of the acquisition of such interest and shall vacate office.'

It would be noticed that formerly no qualifications for the Chairman of the State Transport Authority or the Regional Transport Authority were prescribed by the Act but now the law provides that the Chairman of the State Transport Authority and the Regional Transport Authority should be a person of judicial experience. As the Chairman of the State Transport Authority is also the Chairman of the Appellate Authority under rule 108, he must also fulfil the qualification of being a person of judicial experience. The Transport Minister who acted as the Chairman of the State Transport Authority and that of the Appellate Authority under rule 76 and rule 108 respectively continued to act as such even after section 44(2) was amended as mentioned above.

32. The argument of the learned counsel of the petitioners is that after the amendment of section 44(2) the rule 76 has become inconsistent with the Act and is, therefore, invalid at least to the extent of the inconsistency. It is urged that the Transport Minister may or may not be a person of judicial experience and if the rule is allowed to stand as it is, it is likely that the State Transport Authority and the Appellate Authority may be presided over some times by a person not possessing the qualification as laid down by section 44(2).

Thus, it is argued that the authority which made the impugned order was not properly constituted having been presided over by a person acting under rules 76 and 108 which had become invalid after the amendment of Section 44(2) of the Act and for this reason the impugned order is a nullity. In short it is contended that the Authoritywhich passed the order in question was not the Authority constituted under the law and thus it had absolutely no jurisdiction to function as Appellate Authority of the State Transport Authority. The defect, it was urged, goes to the root of the jurisdiction of the said authority.

33. Mr. Chhangani for the State has urged that so long as the Transport Minister was a person of judicial experience the constitution of the State Transport Authority and the Appellate Authority could not be regarded as bad notwithstanding the fact that the Rules 76 and 108 were not in accord with Section 44(2) and left a loophole permitting a person of non-judicial experience to act as Chairman of the said authority. It was urged that the constitution of the State Transport Authority and the Appellate Authority would become illegal only when under rules 76 and 108 a person of non-judicial experience actually became Chairman in disregard of the provision of section 44(2) of the Act.

34. Mr. Nathulal Jain and Mr. Rastogi supported the contention put forth by Mr. Chhangani and urged further that in the present case the Transport Minister was a person of judicial experience and he was qualified to act as Chairman of the State Transport Authority and the Appellate Authority. It was further urged by the learned counsel that Mr. Mirdha, who is the Transport Minister has decided about hundred appeals as Chairman of the Appellate Authority and the experience gained by him in deciding those appeals should be considered sufficient judicial experience in the eye of law to fullil the qualification as laid down by section 44(2) of the Act. It was also urged that Mr. Mirdha was an Advocate of the High Court of a little more than, four years standing, and being a member of the learned profession of lawyers he must be deemed to be a person of judicial experience. It was contended that the functions of the members of the Bar and of the Rench are very similar, they being two parts of the same machinery.

A lawyer, it was urged, gains judicial experience by observation and coming into close touch with the Bench. Lastly, it was pointed out that Mr. Mirdha worked as Revenue Minister of the former State of Jodhpur and in that capacity he must have dealt with Patta cases, revenue cases, Lawaldi cases and municipal cases, and he must have gained judical experience by dealing with those cases. The learned counsel however, abandoned the stand taken by him as regards the experience earned by Mr. Mirdha as Revenue Minister of the Jodhpur State when the learned counsel of the petitioners invited his attention to the fact that Mr. Mirdha was appointed Krishi Panchayat Minister of the former Jodhpur State on the 3rd of March, 1948 and the jurisdiction to hear appeals in revenue and judicial cases, etc. etc, was transferred to the Board of Revenue on the 23rd of March, 1948 by a notification published in the Gazette on the 27th of March, 1948.

35. The term 'judicial experience' has not been defined in the Act. The length of judicial experience necessary to qualify a person for appointment as Chairman of the State Transport Authority has also not been stated in the Law. However, when the legislature lays down the qualification of the Chairman of the State Transport Authority with reference to judicial experience it should be assumed that the intention of the legislature is that a person must possess judicial experience in a substantial measure, Nominal judicial experience for a short period would not qualify a person to beI appointed as Chairman of the State Transport Authority.

The term 'judicial' is an ajdective from French word 'index' meaning a 'judge'. It means 'of or pertaining or appropriate to the administration of justice or Courts of justice or a judge thereof or the proceedings therein.' Experience denotes the knowledge, skill or technique resulting from actual living through an event or events or participating in them through sensation or feeling.

Thus 'judicial experience' would mean the knowledge or skill gained by a person by actually working as a judge in a court of law. In other words it denotes the experience which a judge obtains by regular application of his unbiased and unprejudiced mind to the determination of disputes between two or more parties adjudicating upon their legal rights or liabilities. Thus, where a person is called upon regularly to determine rights of parties in contested cases and to investigate the merits of the claims of the parties and to aply his unbiased and impartial mind in order to determine the contest he may be regarded as thereby acquiring judicial experience. We are supported in this view by the following^ observation in Royal Aquarium and Summer and Winter Garden Society v. Parkinson, 1892-1 QB 431:

'The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind - that is a mind to determine what is fair and just in respect of the matters under consideration. Justices;, for instance act judicially when administering the law in court, and they also act judicially when determining in their private room what is right and fair in some administrative matter brought before them, as, for instance, levying a rate.'

Out of the two meanings of the term 'judicial' referred to in Royal Aqurium and Summer and Winter Garden Society's case, (1892) 1 QB 431 the one which relates to the discharge of the duties by judge in court is relevant for purposes of interpretation of the term as used in Section 44(2) of the Motor Vehicles Act.

36. Members of the Bar are no doubt part of the judicial machinery. However, the functions that are performed by lawyers are different from those of the Bench. Members of the learned profession of lawyers get little opportunity to apply their impartial and unbiased mind to judicial matters and though they may acquire legal knowledge and experience yet by the very nature of the work they perform, they cannot claim actual opportunity to acquire judicial experience in its true sense. They represent a party to the suit and consequently their approach is generally speaking partial and not impartial.

Thus, though lawyers are indispensable in the work of administration of justice by the courts of law in discharging their judicial functions they do not themselves act judicially and they cannot be regarded to be in a position to gain judicial experience by practising their profession of law. Their legal experience cannot be regarded as indicia] experience. It was argued, that judges of the High Court and of subordinate judiciary are very often recruited from the Bar and an appointment of a Chairman of State Transport Authority from the Bar should, therefore, be considered to be quite proper.

It may be noted that this court cannot assume the function of the legislature and make the lawon the point. The function of the Court is to interpret the law so as to give effect to the true intention of the legislature. The legislature has provided that a person of Judicial experience alone is qualified for appointment as Chairman of the State Transport Authority. Consequently it would be wrong for this Court to substitute legal experience for judicial experience in Section 44(2) of the Act. Obviously they are both distinct and one cannot be confused for the other.

It was argued by Mr. Rastogi that members of the Bar come in close touch with the

proceedings of the judicial courts and they can acquire-judicial experience by observing the courts discharge their judicial functions. No doubt members of the Bar are in a position to observe the proceedings of courts of law; but at the same time they hardly get any opportunity to gain judicial experience themselves for they are not required to bring to bear their minds judicially upon the problems; of law canvassed by them. On the contrary their1 approach as discussed above is ordinarily from the stand point of a party.

37. The learned counsel of the opposite parties referred to a number of cases in which the term 'judicial' was interpreted in a liberal sense and urged that 'judicial experience' should be understood in a wide sense so as to include experience of persons presiding over quasi-juidicial tribunals or bodies. We shall now proceed to examine these authorities one by one.

38. In the Bharat Bank Ltd. Delhi v. The Employees of the Bharat Bank Ltd., Delhi, and the Bharat Bank Employees' Union, Delhi, AIR 1950 SC 188, the question raised was whether an appeal lay to the Supreme Court under Article 136 from a decision of the Industrial Tribunal set up under section 7 of the Industrial Disputes Act. It was held that though industrial tribunal was not a court yet its functions and duties are very much like those of a body discharging judicial functions, and in view of the wide language of Article 136 the Supreme Court had jurisdiction to entertain an application for special leave to appeal from its decision.

39. It may be pointed out that the decision in the case turned upon the scope of the language of Article 136 of the Constitution and the quasi-judicial tribunals like the Industrial Tribunal were held included in the meaning of Article 136. Much assistance, therefore, cannot be gained from the decision in Bharat Bank's case (AIR 1950 SC 188).

40. In Venkata Narasimha Rao v. Municipal' Council, Narasaraopet, AIR 1931 Mad 122 a writ of certiorari was claimed by the petitioner for setting aside the resohition of the Municipal Council declaring respondent No. 1 to have been duly elected as Chairman. The petitioner was the other candidate for election and it was alleged on his behalf that the was improperly held to be disqualified to stand for the Chairmanship of the Municipal Council. The High Court while dealing with the question whether writ of certiorari could issue in the matter, observed that

'a writ of certiorari lies for the purpose of quashing the determination of bodies, who are entrusted with judicial functions while performing judicial as distinguished from ministerial acts.'

Reliance was placed On the following dictum of May. C. J. in R. v. Dublin Corporation, (1878) 2 Ir. R. 371, which was quoted by Lord Atkinson in Frome United Breweries Co. v. Bath Justices (1926) AC 586:

'In this connection the term 'judicial' does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matter of law, but for the purposes of this question a judicial act seems to be an act done by competent authority upon a consideration of facts and circumstances, and imposing liability or affecting the rights of others. And if there is a body empowered by law to enquire into facts, make estimates to impose a rate on a district, it would seem to me that the acts of such a body involving such consequence would be judicial acts.'

The Council or the Chairman in that case it was held, performed ministerial functions in declaring the result of the poll and for this reason the council was held not to be amenable to a writ of certiorari.

41. In R. v. London County Council; Ex parte Entertainments Protection Association, (1931) 2 KB 215, a company applied for licence to open and use premises for cinematograph entertainments, and also for permission to open the premises for such purposes on Sundays, Christmas Day and Good Friday. The application was opposed by the Entertainments Protection Association, Limited. The County Council, after hearing both the sides, made an order to the following effect:

'Subject to arrangements at the premises being completed to 'its satisfaction, the Council will take no action for the present in the event of the above named premises being opened for cinematograph entertainments on Sundays, Christmas Day and Good Friday provided that a sum of 35 be paid to charity in respect of each Sunday, Chrismas Day and Good Friday on which the premises are opened for cinematograph entertainments.'

The Entertainments Protection Association then moved the High Court for a writ of certiorari and obtained a rule nisi, which was later made absolute and the order of the County Council was quashed. On appeal by the London County Council, Scrutton L. J. upheld the order of the High Court and in doing so made the following observations which are relied on by the learned counsel of the opposite side in this case :

'There has been a great deal of discussion and a large number of cases extending the meaning of 'Court.' It is not necessary that it should be a Court in the sense in which this Court is a Court; it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a Court; if it is a tribunal which has to decide rights after hearing evidence and opposition it is amenable to the writ of certiorari.'

42. In Province of Bombay v. Khushaldas S. Advani, AIR 1950 SC 222, the scope of a writ of certiorari came up for consideration before the Supreme Court and Kama C. J. quoted with approval the dictum of May, C. J. in (1878) 2 Ir. Rule 371 at page 376 and the observations of Scrutton L. T. in (1931) 2 KB 215 at p. 233, which have already been quoted above in this judgment. His Lordship Kama, C. T. also quoted the following observation of Atkin L. J. in R. v. The Electricity Commissioners, (1924) 1 KB 171 :

'Wherever any body of persons having legal authority to determine questions affecting the right of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.'

His Lordship also quoted the following observations of Viscount Simon, L. C. in the Ryots ofGurabandho v. Zamindar of Farlakimedi,, 70 Ind App 129: (AIR 1943 PC 164):

'This writ does not issue to correct purely executive acts but, on the other hand, its application is not narrowly limited to inferior 'Courts' in the strictest sense. Broadly speaking, it may be said that if the act done by the inferior body is a judicial act, as

distinguished from being a ministerial act, certiorari will lie. The remedy, in point of principle, is derived from the superintending authority which the Sovereign's superior Courts and in particular the Court of King's Bench, possess and exercise over inferior jurisdictions. This principle has been transplanted to other parts of King's Dominions and operates, within certain limits, in British India.'

43. His Lordship summed up the point in the following language :

'It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed. In my opinion, the conditions laid down by Slesser L. J. in his judgment correctly bring out the distinction between a judicial or quasi-judicial decision on the one hand and a ministerial decision on the other.'

44. In Kulwant Singh v. Appellate Authority of State Transport Authority, Rajasthan, 1956 Raj LW 595 r (AIR 1957 Raj 237), it was observed that it was settled law that the Regional Transport Authority and the Appellate Authority were quasi-judicial bodies when dealing with the grant or refusal to grant permits and were amenable to a writ of certiorari.

45. In Maqbool Hussain v. State of Bombay, AIR 1953 SC 325, Bhagwati J. quoted with approval the following observations from Cooper v. Wilson, (1937) 2 KB 309 at page 340 with reference to the judgments of Mahajan and Mukherjea JT. in AIR 1950 SC 188 :

'A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites : (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) If the dispute between them is a question of law, the submission of legal argument by the parries, and (4) A decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so Found, including where required a ruling upon any disputed question of law.'

46. His Lordship, after examining the nature of the functions and duties of the Sea Customs Authority in the light of the observations from Cooper v. Wilson, came to the conclusion that Sea Customs Authorities were not judicial tribunals in the matter of confiscation and collection of increased rate of duty or penalty under the provisions of the Sea Customs Act, and their order did not amount to judgment or order of a Court or Judicial Tribunal for the purpose of supporting a plea of 'double jeopardy'.

47. In Mahabir Prasad v. District Magistrate, Kanpur, AIR 1951 All 501, the term 'judicial or quasi-judicial' was interpreted liberally so as- toinclude the order of the Tribunal and authority other than the regular Courts of justice and it wasobserved that:

'To constitute a quasi-judicial or a judicial order, the authority passing the order should be under an obligation to hear the parties, to make an enquiry, to weigh the

evidence and to base its conclusion thereon.'

48. In all these cases the judicial or quasi-judicial tribunals were considered in the context of the scope of a writ of certiorari. In the instant case the term 'judicial' is not required to be interpreted in the same or similar context and the observations in the above cases are, therefore, not of much help. The intention of the legislature in introducing the qualification in Section 44 (2) for appointment of a chairman of S.T.A. or R.T.A. cannot be regarded to use the term in a liberal sense. A person presiding over a quasi-judicial tribunal may gain a semblance of judicial experience but such experience can hardly be considered to be 'judicial experience' in its true and legal sense.

When law prescribes a qualification of judicial experience, the intention appears to be that judicial experience in its strict sense is meant by the term. Experience as, a judge of a quasi-judicial tribunal cannot be regarded to be judicial experience in its true sense. We are, therefore, of the opinion that a person who has acted as a judge or magistrate in a civil or criminal Court of law and has gained experience in that capacity in a reasonable measure alone is qualified for appointment as a chairman of the S.T.A. or R.T.A. and the experience of presiding over quasi-judicial tribunals, which are not courts of law cannot be considered to be judicial experience in the meaning of the term as used in Section 44 (2).

49. We would now proceed to examine whether Mr. Mirdha who acted as Chaiman of the State Transport Authority can be regarded to be a person of judicial experience. In the first place it is stated that he remained a member of the Bar for a little more than four years. As discussed above experience at the Bar cannot be regarded to be judicial experience and the qualification of being a member of the learned profession of lawyers cannot, therefore, qualify Mr. Mirdha for appointment as Chairman of the State Transport Authority.

It was next stated that he had disposed of about 100 appeals as Chairman of the State Transport Authority and this experience should be regarded sufficient to qualify him for appointment as Chairman of the State Transport Authority. It may be observed that experience of Mr. Mirdha which he acquired in the capacity of the Chairman of the State Transport Authority in deciding about 100 appeals is no more than the experience of a person acting as the Chairman of a quasi-judicial tribunal and in our opinion such experience cannot be regarded to be judicial experience in its strict sense.

A point regarding Mr. Mirdha having had the experience of deciding revenue cases has not been pressed but even if that experience had been there it could not have been regarded as judicial experience in its strict sense.

50. The argument that has been advanced by the learned counsel of the opposite side that since Mr. Mirdha who presided over the State Transport Authority possessed judicial experience, the constitution of the State Transport Authority should be regarded to be proper notwithstanding the fact that Rule 76 read with Rule 108 may be inconsistent' with Section 44 (2), has in this view of the matter no basis.

51. It may be noted here that Rule 76 that was in consonance with the provision of Section 44 as it stood before the coming into force of the Motor Vehicles Amendment Act became invalid after the amendment of Section 44 (2) for the simple reason that

under Rule 76 a person having no judicial experience whatsoever can act as Chairman of the State Transport Authority by virtue of his appointment as the Transport Minister, who need not always be a man of judicial experience.

It was urged that in fact because the law requires the Chairman of the State Transport Authority to be a man of judicial experience the Government would appoint a person of judicial experience alone as the Transport Minister. This argument proceeds on the assumption that the Government would act in a particular manner in filling the vacancy of the office of the Transport Minister.

The Government is however, not bound to appoint a man of judicial experience to fill the office of the Transport Minister and it is not improbable that the Government may deem it proper to appoint a person having no judicial experience to fill in the office of the Transport Minister. The fact how the Government may choose to act is beside the point.

In order that Rule 76 may be in strict accord with Section 44 (2) it is necessary that it should not permit the appointment of a person having no judicial experience as Chairman of the State Transport Authority. Rule 76 as it now stands takes no notice of the qualifications that are provided for the appointment of the Chairman of the State Transport Authority under Section 44 (2), and for this reason it is abundantly clear that Rule 76 is repugnant to Section 44(2) and cannot be regarded as valid.

52. Mr. Jain vehemently urged that in interpreting Rule 76 and Section 44 (2) this Court should try to reconcile both of them. He has referred to the decisions in Vithoba Chimnaji v. Govindrao Vithalrao, AIR 1933 Nag 193; Khetsidas Girdharilal v. Prataprnull Rameshwar, AIR 1946 Cal 197; Mul Chand Gulabchand v. Mukund Shivram, AIR 1952 Bom 296 and Appala Narshnha Raju v. Brundavanasahu, AIR 1943 Mad 617.

53. It may be observed that these cases cannot help the decision in the present case for in those cases the two seemingly inconsistent provisions of law were framed by the legislature consciously. In the present case the rule was framed in 1950 when the provision of Section 44 (2) of the Act was not the same as it now stands and the authority which framed Rule 76 could have had no idea of the amendment which was introduced in 1956.

Thus, there: is no basis for thinking that the two patently inconsistent provisions of law were made by the legislature with the intention that they should be so interpreted as to reconcile with each other. Evidently Rule 76 became invalid when Section 44 (2) was amended in 1958, for the simple reason that Rule 76 did not take into account the qualifications of the Chairman of the State Transport Authority which were introduced for the first time by the Motor Vehicles Amendment Act of 1956.

Rule 76 having become invalid on account of its inconsistency with Section 44 (2), the constitution of the State Transport Authority became illegal for the Transport Minister could not act as the Chairman by virtue of his appointment as the Transport Minister and no other person having been appointed as Chairman of the State. Transport Authority possessing the requisite qualification as required bySection 44 (2), the State Transport Authority came to be improperly constituted with the Transport Minister as its Chairman. The Chairman of the State Transport Authority

was under Rule 108 ex-officio Chairman of the State Transport Authority (Appellate Authority?), and when the Transport Minister could not act as the Chairman of the State Transport Authority he could not fill the office of the Chairman of the Appellate Authority also. The order of the Appellate Authority which is impugned in this case was passed when it was illegally constituted as discussed above and it consequently suffers with patent want of jurisdiction.

54. Mr. Chhangani referred to the provision of Section 24 of the General Clauses Act in order to show that the establishment of the State Transport Authority and the appointment of its members continued to have legal force even after the coming into force, of the Motor Vehicles Amendment Act of 1956.

55. It may be noted that the argument of the learned counsel proceeds on the assumption that the continuance of the State Transport Authority and the appointment of its members made under the previous law are consistent with the amendment Act. The assumption of the learned counsel in this behalf is without foundation. The amendment Act expressly requires that the Chairman of the State Transport Authority should be a person of judicial experience. The appointment of a person having no judicial experience under the old law cannot be held to be valid under the Amendment Act for the obvious reason that it is inconsistent with it.

56. The petition can succeed on the decision of point number two alone but as the parties have addressed extensive arguments on point No. 1 also it would not be improper for us to deal with that point as well. The Regional Transport Authority by its resolution decided to advertise the route and it passed no orders on the merits of the applications that were before it for the grant of permits. In other words it neither granted permits nor refused them. The argument of the petitioners is that an appeal lav to the Appellate Authority only when the Regional Transport Authority had refused permits, and when no order of refusal of permits was passed, no appeal lay to the Appellate Authority and in allowing the appeal which did not lie according to law, it exercised its jurisdiction illegally which it did not possess.

Reply of the learned counsel of the respondents is that it was within the jurisdiction of the Appellate Authority to consider the nature of the order of the Regional Transport Authority and to arrive at its decision whether the order of the Regional Transport Authority amounted to an order of refusal It is also urged that the Appellate Authority was of the class of the second category of Tribunals referred to by Lord Esher, Master of Rolls, in (1888) 21 QBD 313, and it would not be open to this Court to examine the correctness of the order of the State Transport Authority even if its judgment may be wrong for if the matter was within the jurisdiction of the Tribunal it could decide it rightly or wrongly.

57. It may be noted that a perusal of the order of the Appellate Authority shows that it did not apply its mind to the point whether the order or the Regional Transport Authority was or was not of refusal of a permit. The Appellate Authority proceeded on the assumption that it was an order of refusal from which an appeal lay to it. On the face of it the order of the Regional Transport Authority is not of refusal of an applicationfor grant of permit for it only stated that the route is to be advertised which necessarily means that the pending applications shall be considered after the route was again advertised. In an order of refusal it is obligatory for the Regional Transport Authority to give reasons for refusal. No reasons were given for refusal of the permits by the Regional Transport Authority in the instant case for the reason

that the applications for grant of permits were not considered at all on merits.

By no stretch of imagination such an order of the Regional Transport Authority could be regarded as one of refusal of permits. In fact the Appellate Authority failed to apply its mind and to determine whether the order was one of refusal from which an appeal lay to it. Thus there is an error patent on the very face of the record which suffers with an illegality regarding the exercise of jurisdiction by the lower court. In such a case it becomes the duty of this Court to interfere by a writ of certiorari.

The Appellate Authority no doubt is an authority falling within the second category of tribunals specified in the judgment of Lord Esher, Master of Rolls, in (1888) 21 QBD 313, but in cases where there is an illegality patent on the face of the record in the matter of exercise of jurisdiction its decision is amenable to a writ of certiorari. We may in this connection refer to the observations of the Supreme Court in Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, AIR 1958 SC 398, which are as follows :

'One of the grounds on which the jurisdiction of the High Court on certiorari may be invoked, is an error of law apparent on the face of the record and not every error either of law or fact, which can be corrected by a superior court, in exercise of its statutory powers as a court of appeal or revision.'

58. The point that has been raised in the instant case cannot be regarded to be of the nature of a mere formal or technical error. The error or illegality in the present case is material for it affects the rights of the parties and is patent on the face of the record inasmuch as the Appellate Tribunal failed to apply its mind to it and the older of the Regional Transport Authority does not purport to be one of refusal On its were face.

The State Transport Authority had no jurisdiction to hear an appeal from an order which was not an order of refusal but was merely an order on its very face adjourning the consideration of the applications for grant of permits. Thus the error in the present case is apparent on the very face of the record and amounts to a serious illegality relating to the exercise of jurisdiction of the lower court.

59. No appeal lay from an order adjourning the consideration of the application by the Regional Transport Authority and the Appellate Authority was, therefore, not competent to hear an appeal against it. The orders granting permits to the opposite parties Nos. 3, 4 and 5 are, therefore, without jurisdiction.

60. Arguments were also advanced regarding the illegality in the constitution of the Regional Transport Authority similar to those that have been discussed above regarding the constitution of the Appellate Authority. It is urged that by Rule 77 the Commissioner of the Division concerned was ex-officio Chairman of the Regional Transport Authority and it is not necessary in every case that the Commissioner may be a man of judicialexperience. Thus it is argued that Rule 77 is in-consistent with Section 44 (2) and the constitution of the Regional Transport Authority is illegal.

61. It may be noted that in the instant case the Regional Transport Authority has not passed any order and there is no question of illegal exercise of jurisdiction by the Regional Transport Authority. However, as the matter has been argued we may point out that Rule 77 suffers from the same defect as Rule 76.

62. It was urged that generally the Commissioner of a Division would come from the services and it is hardly possible that a man who had no occasion to act as a District Magistrate for some time would come to be appointed as Commissioner of a Division. In most cases the reasoning that has been advanced would work out satisfactorily but there may be cases where a person coming from pure revenue or settlement side may be appointed as a Commissioner of the Division and in such a case his appointment as Chairman of the Regional Transport Authority would suffer with illegality. Thus Rule 77 is inconsistent with Section 44(2) and is invalid.

63. It may be observed here that in view of our decision on points Nos. 1 and 2, it is not necessary to express any opinion On the third point raised by the petitioners regarding there being no scope for issue of more permits on the route.

64. The result is that the constitution of the Appellate 'Authority which passed the impugned order suffered from serious illegality and under the law the authority so constituted cannot be regarded as having Jurisdiction to hear appeals from the Regional Transport Authority, Secondly, the order from which the appeal was preferred to the State Transport Authority was on its very face not an order of refusal of a permit and no appeal lay against it to the Appellate Authority. The Appellate Authority had thus no jurisdiction to hear an appeal from such an order and the exercise of jurisdiction by the Appellate Authority suffered from an illegality patent on the face of the record.

65. The petition under Article 226 succeeds and in allowed and the order of the lower court granting permits to opposite parties Nos. 3, 4 and 5 is quashed.