
(1960) 02 PAT CK 0006

In the Patna High Court

Case No : Misc. Judl. Case No's. 918 to 932, 965 to 978, 986 and 987 of 1959 and No's. 21 to 51 of 1960

Abdul Majid and Others

APPELLANT

Vs

The State Transport Appellate Authority and Others

RESPONDENT

Date of Decision : 09-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 44(2)

Citation : AIR 1960 Patna 333

Hon'ble Judges : V. Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : P.R. Das, Saptami Jha and Basudeva Prasad, in M.J.C. 918-932, 965-978, 986 and 987 of 1959, Govt and L.S. Sinha, in M.J.C. 21-51 of 1960, for the Appellant; Govt. Advocate, Govt. Pleader, L.S. Sinha, Saptami Jha and Nawal Kishore Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiya Singh, J.—These are 62 applications under Article 226 of the Constitution, the first thirtyone by various persons holding permits to ply motor vehicles on public road, hereinafter referred to as the petitioners, for a writ in the nature of certiorari to call up and quash the order of the State Transport Appellate Authority, Bihar (hereinafter referred to as the Appellate Authority) dated 12-12-1959, and the remaining thirtyone by the Bihar State Road Transport Corporation (hereinafter referred to as the Corporation) for a similar writ to quash the order of East Bihar Regional Transport Authority Bhagalpur (hereinafter referred to as the Regional Authority) dated 26-9-1959.

The Regional Authority and the Appellate Authority are opposite parties in all these applications. The Corporation is one of the opposite parties in the first thirtyone applications, and the different petitioners in those applications are opposite parties in the last thirtyone cases. Both the petitioners and the Corporation challenge the legality of the different orders passed either by the

Regional Authority or by the Appellate Authority in the same proceedings, and in fact the grounds made out by the Corporation in its petitions constitute its defence in the applications presented by the petitioners and vice versa. Thus, common questions of law arise in all these applications, and, therefore, they were heard analogously and will be disposed of by one judgment.

2. The facts which are relevant for the disposal of these applications may be briefly stated as follows. The petitioners hold stage carriage permits for plying motor vehicles on different routes within the jurisdiction of the Regional Authority. Before the dates of the expiry of the permits the petitioners made applications for their renewal in accordance with the provisions of Section 58(2) of the Motor Vehicles Act (hereinafter referred to as the Act). On the receipt of the said applications for renewal, the Regional Authority published the same in the Bihar Gazette, inviting objections, as provided in Section 57 of the Act. The Rajya Transport, Bihar filed objections to the renewal of their permits on the ground that it was likely to operate a stage carriage service on the routes in question in the near future and a scheme was to be published very soon u/s 68C of the Act.

In the meantime, in exercise of the powers conferred by Section 3 of the Road Transport Corporation Act, 1950 (LXIV of 1950), the State Government by notification dated 20-4-1959, established for the State of Bihar a Road Transport Corporation, called the Bihar State Road Transport Corporation, with effect from 1-5-1959. The said Corporation was empowered to exercise all the powers and perform all the functions which were being exercised and performed by the Rajya Transport. u/s 68C of the Act the scheme was prepared and was duly published in the Bihar Gazette on 3-6-1959, and was approved on 4-11-1959, after due compliance with the provisions of the Act. All these applications for renewal came up for hearing before the Regional Authority on 22-8-1959. Section 44 of the Act provides for the constitution of a State Transport Authority and Regional Transport Authorities, and Sub-section (2) of this section provides that

"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

The Regional Authority appointed for disposal of the renewal applications on 22-8-1959, consisted of the following members:

1. Sri R. Prasad, I.A.S., Commissioner, Bhagalpur Division Chairman
2. Sri K. Jha, I.P.S.. Superintendent Police, Bhagalpur Member
3. Sri B. Prasad, Superintending Engineer, Bhagalpur Division Do
4. Sri R. D. Pande. I.A.S., Deputy Commissioner. Dumka Do
5. Sri L. N. Sudhansu, M.L.A Do

6. Sri Kamaldeo Narain Singh, M.L.A Do
7. Sri Basukinath Roy, M.I.A Do
8. Sri Chumka Hcmhram. M.L.A. Do
9. Sri Jogendra Pd. Singh Advocate Do
10. Sri Bhushan Pd. Gupta Do

This authority heard the petitioners and the Corporation and their lawyers at full length and reserved judgment. No definite date for delivery of the judgment was fixed. It may be stated that the petitioners' counsel had raised before that Authority a preliminary objection that the Corporation had no legal right to oppose the renewal as it had not filed any objection, nor had it any right to press the objections preferred by the Rajya Transport.

The orders were passed on 26-9-1959, and the applications for renewal were allowed by the Regional Authority. On this date, i. e., on 26-9-1959, the members constituting the Regional Authority were as follows:

1. Sri B. Prasad, Superintending Engineer, Bhagalpur, East Bihar Circle, Bhagalpur, and Acting Chairman
2. Sri P. S. Kohli, I.A.S., District Magistrate, Sarharsa
3. Sri Lakshmi Narayan Sudhansu, M.L.A.
4. Sri Kamaldeo Narain Singh, M.L.A.
5. Sri Basuki Nath Roy, M.L.A.
6. Sri Chumka Hembrum. M.L.A.
7. Sri Md. Nurullah. M.L.C.
8. Sri Jogendra Pd. Singh, B.L., Advocate
9. Sri Bhusham Prasad Gupta

It is to be observed that the Regional Authority constituted on 26-9-1959, did not include three of the members forming the Regional Authority on 22nd August, 1959, namely, Sri R. Prasad, I.A.S., Commissioner, Bhagalpur Division, Sri K. Jha, I.P.S., Superintendent of Police, Bhagalpur and Sri R. D. Pande, I.A.S., Deputy Commissioner, Dumka, and instead took in two new members, namely, Sri P. S. Kohli, I.A.S., District Magistrate, Saharsa, and Sri Md. Nurullah, M.L.C. It is in controversy whether in view of this change in the constitution of the Regional Authority, the Regional Authority of 26th September, 1959, was different from the one that sat on 22nd August, 1959. Being aggrieved by the order of 26th September, 1959, the Corporation preferred appeals on 26th October, 1959, to the Appellate Authority u/s 64(f) of the Act. The appeals were heard on 12th December, 1959, and were allowed and the orders of renewal

dated 26th September, 1959, were set aside. It is this order of the Appellate Authority which the petitioners impugn as ultra vires and illegal and seek its reversal. On the other hand, the Corporation attacks the validity of the order of the Regional Authority dated 26th September, 1959, and prays for its annulment.

3. The main ground on which the Appellate Authority set aside the orders of renewal of the permits was that the Regional Authority which passed the final order on 26th September, 1959, was not validly constituted, inasmuch as the acting Chairman, Sri B. Prasad, had no judicial experience and was, therefore, not competent to act as Chairman. It is well to remember that the Regional Authority which heard the applications for renewal on 22nd August, 1959 was presided over by the Chairman, Sri R. Prasad, I.A.S., Commissioner, Bhagalpur Division, whereas the Regional Authority on 26th September, 1959, was presided over by Sri B. Prasad, Superintending Engineer, Bhagalpur. The Appellate Authority held that he had no judicial experience and was, therefore, not competent to act as Chairman. Sub-section (2) of section 44 of the Act which provides for the constitution of the Regional Authority, omitting the portions not relevant, reads 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;.." The Regional Authority which sat and took part in the deliberations on 26th (sic) August, 1959, was constituted in accordance with this provision of law, and the Chairman who presided over the meeting of the Regional Authority had indisputably judicial experience. Rule 42 provides for the formation of regions and also the constitution of Regional Authority, Sub-rules (b), (c) and (d), which are pertinent for disposal of the questions under consideration, provide as follows:

(b) The Regional Transport Authority shall consist of such members as may be appointed by Government.

(c) The number of members whose presence shall constitute a quorum shall be one-third of the total number of members of the Authority or three, whichever is greater.

(d) The Chairman, if unable to attend a meeting, shall nominate member to act as Chairman at the meeting."

It will be recalled that Sub-section (2) of Section 44 lays down the qualifications for the Chairman alone. According to this provision the Chairman must be a person who has had judicial experience. The other members of the Regional Authority need not have judicial experience. Rule 42 (d) authorises the Chairman to nominate member to act as Chairman at the meeting, if he is himself unable to attend the meeting. Under this rule only one of the members of the Regional Authority ought to be nominated to act as Chairman. The number of members who will constitute a quorum under Rule 42(c) is one-third of the total number of

members of the Authority or three, whichever is greater.

It will further appear that the number of members of the Regional Authority was obviously more than ten (sic). When it is not the requirement of section 44 that the members of the Authority other than the Chairman should also have judicial experience, rule 42 leaves the possibility that the three members who may constitute a quorum at a particular meeting may not have necessary judicial experience, and the Chairman may not be able to attend the meeting, with the result that he may have to nominate one of the members present, not having judicial experience, to act as Chairman at the said meeting.

The contention of Mr. P. R. Das appearing for the petitioners is that the Appellate Authority was wrong in holding that the Regional Authority which passed the orders on 26th September, 1959, was not properly constituted for the reason that the Chairman, who presided, over the said meeting, had no judicial experience. The argument put forward by him is that rule 42 is not necessarily in conflict with section 44. The Chairman has to perform various functions, and, therefore, it was prescribed by section 44 that he should have judicial experience. It did not necessarily follow that the member who was nominated to act as a Chairman for a particular meeting should also have judicial experience.

Therefore, even if the Chairman who presided over the Regional Authority constituted on 26th September, 1959, had no judicial experience, the constitution cannot be said to be ultra vires and illegal so as to nullify its order dated 26th September 1959. In the opinion of Mr. Das, the Chairman had ample authority to delegate his powers to a member to act as Chairman at a particular meeting, even if that member had no judicial experience, and consequently rule 42 was not repugnant to the provisions of section 44. He urged that if the contention of the Appellate Authority were to prevail, then one will necessarily have to read in rule 42 words which are not there. In this connection, he referred to the decision of the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, wherein their Lordships of the Supreme Court have observed that the rules of interpretation do not permit the Court to add words to a section or to a rule, unless the section or the rule as it stands is meaningless or of doubtful meaning.

He also referred to a decision of the Federal Court in AIR 1939 74 (Federal Court) and on the authority of the proposition of law laid down therein, he contended that "things are inconsistent when they cannot stand together at the same time; and one law is inconsistent with another law when the command or power or other provision in one law conflicts directly with the command or power or provision in the other." Mr. Das contended that rule 42 is in no way inconsistent with the provisions of Section 44 of the Act. He urged that this section does not require that all the members of the Regional Authority should have judicial experience, and rule 42 empowers the Chairman to delegate his authority to any of the members of the Regional Authority, and thus the acting Chairman need not have judicial experience and to insist upon the acting Chairman's possessing

judicial experience will be to introduce in this rule words which do not occur there.

4. Another contention of Mr. Das was that the Corporation had no locus standi to prefer appeal from the decision of the Regional Authority. It will be recalled that the Corporation came into being on 1-5-1959. The applications for renewal had been made in April 1959. The Bihar Rajya Transport had appeared and objected to the renewal. The renewal order was made on 26-9-1959, and the appeals by the Corporation were preferred on 26-10-1959. Section 64 of the Act enumerates the orders against which appeals may be preferred. Under Clause (f) of this section any person, being a local authority or police authority or an association which, or a person providing transport facilities who having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, may prefer an appeal.

Section 59 of the Act forbids transfer of permit from one person to another. The Corporation was subject to the laws in force regarding plying of stage carriage. Section 19(4) of the Road Transport Corporations Act 1950, provides that except as otherwise provided by this Act nothing in the foregoing provisions shall be construed as authorising the Corporation to disregard any law for the time being in force. Therefore, the Motor Vehicles Act applies to the Corporation also. There is no dispute about these legal provisions. Now, the contention of Mr. Das is that having regard to the provisions of sections 59 and 64(f) of the Act and section 19(4) of the Road Transport Corporations Act 1950, the Corporation was not competent to make any appeal, because (1) the permit was non-transferable, (2) the Corporation was not the successor-in-interest of the Bihar Rajya Transport and (3) it did not provide transport facilities.

5. The learned Government Advocate appearing for the Corporation, on the other hand, raised the contention that possession of judicial experience by the Chairman was a necessary qualification as laid down in Section 44(2) of the Act, and this provision could not be circumvented by delegating the power to an acting Chairman, as provided in rule 42. He says that to be consistent, the acting Chairman must also possess judicial experience, or there will be conflict between the rule and the substantive provision of the Act. He further urged that the Corporation was competent to make the appeal. It is common ground that the Bihar Rajya Transport had filed objections, and in the meantime the Corporation was constituted.

The learned Government Advocate pointed out that the notification issued u/s 3 of the Road Transport Corporations Act, 1950, establishing the Corporation, has provided that with effect from the date of its establishment (i. e. 1st May, 1959), the Corporation shall exercise all the powers and perform all the functions which are at present being exercised and performed by the Rajya Transport, Bihar. He urged that by virtue of this provision, the Corporation took upon itself the duties and the powers of the Rajya Transport and accordingly when the latter ceased to exist, it had to prosecute the proceedings for renewal of the permits and prefer

appeals.

He further argued that even under Clause (f) of section 64, the Corporation was competent to prefer appeals because it manifestly provided transport facilities. His alternative argument, and a more vital one, was that the order of the Regional Authority dated 26-9-1959, was a nullity as the Authority was not properly and legally constituted,

6. I will first deal with the alternative argument of the learned Government Advocate, which, in my opinion, is sufficient to dispose of these applications. It is admitted that the Regional Authority heard the applications for renewal at a full length on 22-8-1959 and reserved judgment. No date was fixed for delivery of the judgment. It appears from the report dated 2-12-1959, made by Mr. B. K. Mukharji, Secretary of the Regional Authority, that the judgment was kept reserved for certain further enquiries, and the parties were also informed of the judgment being kept reserved, and on receipt of the reply to the aforesaid enquiry, the judgment was finally delivered on 26-9-1959, allowing the renewal of the permits.

Mr. Mukharji further stated in the report that there was no further hearing on 26-9-1959 (vide Annexure A to the rejoinder filed by the Corporation to the counter-affidavit made by the petitioners in M. J. C. 24 of 1960). The judgment was eventually delivered on 26-9-1959. Now, as will appear from the above, the Regional Authority who delivered the judgment was different from the Authority which heard the applications for renewal and also considered the subsequent enquiry report and deliberated the propriety or otherwise of the renewal.

Three out of the ten members constituting the Regional Authority on 22-8-1959, did not take part in the proceedings on 26-9-1959, and instead two new members were included. Therefore, the Regional Authority which sat on 26th September was not legally authorised to determine the questions affecting the rights of the parties which had been heard and considered by a different body of persons. The contention of the learned Government Advocate was that in view of this change in the constitution of the Regional Authority and in absence of any fresh hearing on 26th September, the judgment delivered on that date had no force and effect in law and was liable to be set aside.

Learned counsel for the petitioners realised the difficulty in their way and contended that there was a fresh hearing on 26th September. This contention, however, is not borne out by the materials on the record. AS a matter of fact, in their original applications the petitioners never alleged that there was a fresh hearing on 26th September. They rather admitted in their applications that the renewal applications were fully and finally heard on 22nd August and judgment was reserved and delivered on 26th September. In their counter-affidavit to the applications of the Corporation, they, however, made out a new ground that on 26th September the parties were fully heard and then the decision was made. Apart from their adopting inconsistent position, it is demonstrated to be false by

the report of Mr. Mukharji referred to above.

There is no room for doubt that there was no fresh hearing of the renewal applications on 26th September. I need not pursue this matter further, because Mr. Basudeva Prasad, learned Advocate for the petitioners, did not press the objections of the petitioners that there was a fresh and full hearing on 26th September and assumed for the purpose of these applications that there was no hearing on 26th September. It is on that assumption that I proceed to consider this aspect of the case. Mr. Prasad has urged that no further hearing was necessary on 26th September, and all that the tribunal did was to deliver the judgment according to the decision on 22nd August.

He pointed out that there is no rule providing for delivery of the judgment by the Regional Authority which, heard the applications, nor was there any rule requiring that all the persons taking part in the deliberations should sign the judgment. Mr. Prasad urged, therefore, that if another tribunal delivered the judgment on 26th September, it cannot be said to be illegal or without jurisdiction. I do not think this contention of Mr. Prasad is well Founded. It is obvious that in absence of any legal provision, the body of persons who heard the applications should also deliver the judgment.

It is nowhere stated that what was done on 26th September was a mere mechanical act, and the judgment that was delivered was the judgment of the tribunal which heard the applications for renewal on 22nd August. It will be seen that the members had not made up their mind finally on 22nd August. They required further report in the matter, with respect to which an enquiry was made by Mr. Mukharji aforesaid. It is not the case of the parties that the members constituting the Regional Authority on 22nd August met again and deliberated and reached certain decision which in fact was pronounced by the Regional Authority on 26th September. Therefore, this contention has no basis and must be repelled.

7. Mr. Prasad further contended that the Corporation cannot be permitted to challenge the validity of the constitution of the Regional Authority of 26th September, as no such ground was taken before the Appellate Authority. In support of his contention, he referred to a Bench decision of this Court in Sarju Prasad Singh Vs. South Bihar Regional Transport Authority and Others, and to a decision of the Kerala High Court in N. Gopalan Vs. Central Road Traffic Board, Trivandrum, . These cases no doubt lay down that it is not open to a party to raise for the first time in certiorari proceedings the question of jurisdiction of the subordinate tribunal, unless he had challenged the jurisdiction before that tribunal itself.

There can be no quarrel with the correctness of the proposition of law laid down therein but this contention of Mr. Prasad is based upon an utter misconception of the real situation. The Corporation could not have questioned the jurisdiction of Regional Authority of 26th September, because, as stated above, it had no notice

of fresh hearing or of the delivery of the judgment on that date. The judgment was reserved on 22nd August after fuller hearing of the parties, there was no question of hearing the parties again on 26th September. Therefore, it is obvious that no such objection could have been raised before the Regional Authority itself by the Corporation. Before the Appellate Authority, however, the Corporation did raise this objection.

It challenged the legality of the constitution of the Regional Authority on 26th September. Therefore, on the facts of this case, the aforesaid decisions have no application, and no question of estoppel arises, as the jurisdiction of the tribunal of 26th September was in fact challenged before the Appellate Authority. This contention of Mr. Prasad also fails.

8. It is thus established that the tribunals constituted on 22nd August and 26th September, 1959, were entirely different and the cases were fully and finally heard on 22nd August, and the tribunal of 26th September delivered the judgment without hearing the parties afresh. Now, the question is what is the effect of such a judgment? In my opinion, the judgment of a tribunal which had no opportunity to hear the parties and determine the questions between them given in a case heard by another tribunal is a nullity and must be annulled. In *Lord v. Lord* (1855) 26 LJ QB 34 the parties had bound themselves in case the two arbitrators first appointed should not agree to perform the award of such third person, as the said arbitrators should by writing under their hands to be endorsed on the submission appointed as umpire. A disagreement had taken place between the arbitrators and James Clegg had been appointed umpire, and had made the award "in question. The validity of the appointment of the umpire was questioned by the parties. It was sworn by one of the arbitrators that the memorandum of his appointment was not made or signed by himself and the other arbitrators at the same time, or in each other's presence. Upon this ground, it was argued that he was not well appointed and consequently that there was no good award. It was held in that case that the award was not valid. Coleridge, J. delivering the judgment of the Court observed, "It is now clearly established that every judicial act to be done by two or more must be completed in the presence of all who do it, for these who are to be affected by it have a right to the united judgment of all up to the very last moment." It was laid down in that case further that the appointment of the umpire was a judicial act. In *Nand Ram v. Fakir Chand* ILR 7 All 523 a Bench of the Allahabad High Court has expressed a similar view. In that case the matters in dispute between the parties were referred with their consent for the decisions of three arbitrators one of whom was appointed by the plaintiffs, another by the defendant, and the third was the umpire. The parties agreed to be bound by a decision of the majority of the arbitrators. The first meeting of the arbitrators was held on 22-5-1882. The next day i. e. on 23-5-1882 the arbitrator appointed by the plaintiffs presented an application to the Court, stating his refusal to act and withdraw from the arbitration. The arbitrator appointed by the defendant and the umpire held their second meeting on 27-5-1882, passed an award and sent the same to the Court

under their subscription. It will be seen that although the parties had agreed to abide by the decision of the majority of the arbitrators, all the arbitrators had not conferred together and did not hear evidence and arguments together. In the circumstances, it was held therein that the absence of one of the arbitrators made the award given by arbitrators ultra vires and was of no effect. It has been observed that the presence of all the arbitrators at all meetings, and above all, at the last meeting, when the final act of arbitration is done-is essential to the validity of the award. "What the parties to a reference to arbitration intended is that the persons to whom the reference is made should meet and discuss together all the matters referred, and that the award should be the result of their united deliberations." Accordingly, the award was set aside. In *British Metal Corporation v. Ludlow* (1938) 1 All ER 135, the matter in dispute was referred to two arbitrators. At a certain stage in the proceeding, namely, after a full hearing, the said two arbitrators proceeded to appoint Mr. Woolf as a third arbitrator.

There was no fresh hearing before the third arbitrators, to be more precise, before the three arbitrators. The hearing was concluded before the two arbitrators appointed initially. It was laid down in that case that if the two arbitrators appoint an arbitrator after having proceeded some distance with "the arbitration, the arbitral tribunal will then consist of the three, and that directly the third was appointed, a new tribunal came into existence. There was a hearing not before the newly constituted tribunal, but before a different tribunal consisting of the two. Accordingly, the award was set aside. I may here reproduce the observations of Romer L. J. in that case:

"From the moment that Mr. Davey and Mr. Smith made up their minds that the appointment of a third arbitrator was necessary and appointed Mr. Woolf as such third arbitrator, the reference became a reference to three named arbitrators, and the arbitration had to be conducted on that footing. It follows, in accordance with the rules to which our attention has been called, that the three arbitrators should then have appointed a day for hearing and given notice in writing to the parties, who would then have been at liberty to attend before the arbitrators, to bring their witnesses and their documents and so on. That was not done, and that being so, it appears to me that this award is necessarily bad, and that, the judge was quite right in setting it aside."

In this connection, I may also refer to the case of *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, . In that, case, a tribunal consisting of three persons was appointed to adjudicate on the dispute, and the award was signed by two of them. The case was stated by the parties at a sitting when all the members of the tribunal were present and the arguments were heard by all of them. No sitting took place subsequent to this which would have necessitated the carrying on of proceedings by two members of the tribunal by a quorum. On these facts, Mahajan J, (as he then was), made the following significant observations:

"When the matter has been heard by all the three members, the award should

have been given by all of them. Therefore, the award given by two of them is not the award of "the tribunal constituted by the Government. It is therefore, vitiated and has to be quashed. The idea of three persons hearing a case and two of them deciding it is repugnant to all notions of fairness. It may well have been that the opinions of the third have influenced the other two or the decision arrived at may have been quite different. It so happened in this case that the two members of the tribunal differed on an important question of law, but somehow adjusted their differences and gave a unanimous award. The presence of the third in such a situation may have very vitally affected the result."

I would like to refer to a Bench decision of this Court in *Ganga Prasad Modi Vs. Nagarmal Modi and Another*, . In this case, the arbitrator took evidence behind the back of the parties without notice to them and based his award on that evidence. It was held that the award was vitiated and must be set aside. The Court relied upon the decision of the Queen's Bench in *In re, Plewa and Middleton* (1845) 6 QB 845, where each of the arbitrators examined the same persons separately and came to the same conclusion and made their award. Still, the award was held to be bad. In setting aside the award, it was said by Coleridge, J. :

"To uphold this award would be to authorise a proceeding contrary to the first principles of justice. The arbitrators here carried on examination apart from each other, and from the parties to the reference; whereas it ought to have been conducted by the arbitrators and umpire jointly in the presence of the parties."

This decision has no direct bearing on the facts found above, but I refer to it to emphasise that even if there was a hearing on 26-9-1959, as alleged by the petitioners, the decision of the tribunal would be void if the other party, viz., the Corporation was not given a hearing. These decisions establish that where the tribunal, as originally constituted, was not a tribunal which gave the decision, the decision is vitiated and of no effect. Mr. Prasad contended that all these decisions referred to arbitration proceedings and did not apply to the facts of the present cases. What is of importance is the principles laid down in those cases, and it appears to me that what is true of the decision of arbitration in arbitration proceedings is equally true of the decision by all tribunals, judicial or quasi-judicial. It sounds repugnant to all notions of justice and fairness that one tribunal would hear the matters in dispute and another tribunal, without hearing, would make the decision. It must be held, therefore, that the judgment of the tribunal constituted on 26-9-1959, was *ultra vires* and of no legal effect.

9. If the decision of the tribunal of 26th September is wholly void, and I have no doubt about that, it is not necessary to pronounce any concluded opinion, on the contentions raised by the learned counsel for the petitioners. I would assume that the order of the Appellate Authority, as contended for by them was illegal. What is the consequence of the order of the Appellate Authority? It is manifest that the order of the Appellate Authority, although illegal, set aside another illegal decision. If we give effect to the Contention of learned counsel and set

aside the order of the Appellate Authority dated 12-12-1959, it will amount to countenancing and perpetuating, an illegal act. This, to-my opinion, is not permissible for a Court exercising extraordinary jurisdiction vested in it under Article 226 of the Constitution. The writ of certiorari is not a writ of course. It is a discretionary remedy. The very object of this writ is to foster justice & right a wrong arising from the subordinate tribunals or bodies or officers acting wholly without jurisdiction or in excess or denial of it, or in violation of the principles of natural justice, and, therefore, where such wrong occurs, the Court intervenes and issues such prerogative writs, orders or directions, where the subordinate tribunals or bodies or officers act wholly without jurisdiction or in excess of it, or in violation of the principles of natural justice, or refuses to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act or omission or error, or excess, has resulted in manifest injustice. Vide *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, . There fore, before a person, can be entitled to invoke the prerogative power of the Court under Article 226 of the Constitution, it must be shown that the order to be set aside must have occasioned injustice to the parties, What is the position in the instant case? The order dated 26-9-1959, has no validity for want of jurisdiction and the order dated 12-12-1959, which the petitioners impugn operates to set it aside, with the result that even if the order of 12-12-1959, be erroneous and illegal, it does not work injustice to any party; rather it cures manifest illegality and, therefore, the extraordinary jurisdiction of the Court cannot be invoked to annul it.

10. For the reasons given above, the petitioners are not entitled to any relief. As regards the Corporation, if the application of the petitioners fail, the applications of the Corporation need not be allowed, as the order which it seeks to set aside is no longer in existence as it has already been set aside by the Appellate Authority.

11. Therefore, all the sixty-two applications fail.

12. In the result, all these applications are dismissed. In the circumstances the parties will bear their own costs.

Ramaswami, C.J.

13. I agree.