

(1964) 05 MAD CK 0005
In the Madras High Court
Case No : Writ Appeal No. 215 of 1962

Cumbum Roadways (P) Ltd., Madurai	APPELLANT
Vs	
Somu Transports (P.) Ltd., Madurai and Another	RESPONDENT

Date of Decision : 01-05-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Motor Vehicles Act, 1988 — Section 47, 47(1), 57, 57(3), 57(4)

Citation : AIR 1965 Mad 79 : (1964) ILR (Mad) 799

Hon'ble Judges : Srinivasan, J; Ramakrishnan, J; Kailasam, J

Bench : Full Bench

Judgement

Kailasam, J.

(1) This writ appeal is preferred against the order of Veeraswami J. allowing the writ petition filed by the first respondent herein, Somu Transport (P) Ltd. Madurai. The route between Madurai and Sholavandan via Samayanallur was notified for grant of a stage carriage permit. There were 32 applicants, and the Regional Transport authority granted the permit to the 24th applicant before it, the Somu Transports (P.) Ltd. the first respondent herein. The appellant herein, the Cumbum Roadways (P.) was the 30th applicant. Ten of the applicants preferred appeals to the State Transport Appellate Tribunal. In the memorandum of grounds to the appeal preferred by the appellant No. 9 before the State Transport Appellate Tribunal, S. Mohammed Ismail, it was contended that one of the share-holders of Somu Transports (P.) Ltd. Sri K. Somasundaram, was having 100 equity shares in the respondent company, that he was a director of the respondent company at the time of the incorporation and that he resigned his directorship only on 12-10-1960 after making the application. It was also alleged that the said Somasundaram continued to be the managing director of Sri Arupukottai Jaya Vilas (P.) Ltd. and also a director in the respondent company.

It was contended that the respondent company was not a new entrant but was benami for Arupukottai Sri Jaya Vilas (P.) Ltd. This point was also raised by the

third appellant before the State Transport Appellate Tribunal, Ahalya Transports (P.) Ltd. In respect of this ground the Regional Transport Authority remarked that the point urged was not raised by the applicants in the representations made with reference to the notification under S. 57(3) of the Motor Vehicles Act. It is admitted that this objection to the respondent as benamidar for Arupukottai Sri Jaya Vilas (P.) Ltd. was not raised in the representations or during the hearing by the Regional Transport authority. A preliminary objection was taken before the State Transport Appellate Tribunal that the State Transport Appellate Tribunal was not competent to consider the grounds, which were not raised in the representations and not urged before the Regional Transport authority. This objection was overruled by the State Transport Appellate Tribunal. The State Transport Appellate Tribunal after considering the facts came to the conclusion that the respondent company was under the control and management or influence of Arupukottai Sri Jaya Vilas (P.) Ltd., which was a fleet owner. The State Transport Appellate Tribunal following two Government Orders, G. O. Ms. 432 Home dated 5-2-1953 and G. O. Ms. 526 Home dated 20-2-1956 held that the grant of the permit to a company like the respondent company would only lead to the concentration of permits in the hand of a few big operators, which was not in the public interest. On that ground the State Transport Appellate Tribunal set aside the order granting the permits to the respondent.

(2) The respondent preferred W. P. No. 890 of 1961 challenging the validity of the order of the State Transport Appellate Tribunal setting aside the permit granted in its favour by the Regional Transport Authority. In its petition the respondent submitted that under S. 57(4) of the Motor Vehicles Act, the Transport Authority was barred from taking into account against any applicant a matter, which was not raised in the representations filed under S. 57(3) of the Act, and, as the State Transport Appellate Tribunal was only an appellate authority, the bar would equally apply to it. The respondent also challenged the finding of the Appellate Tribunal that the company was the benamidar of Arupukottai Sri Jaya Vilas (p.) Ltd. It also submitted that, the Appellate Tribunal being a quasi judicial authority, its discretion and judgment cannot be fettered and directed by administrative instructions issued by the Government of Madras, and the Appellate Tribunal was in error in basing its judgment on the Government Orders issued in respect of the grant of the stage carriage permit. Neither before Veeraswami J. who heard the writ petition nor before us the finding of fact that the respondent company was benamidar to Arupukottai Jaya Vilas (P.) Ltd. was challenged.

It was urged before Veeraswami J. that Section 57(4) of the Motor Vehicles Act prohibited the Regional Transport authority from taking into account a representation not made in writing before the appointed date and that the Regional Transport Authority would be acting in excess of its jurisdiction, if a ground not taken in the representation was allowed to be urged before it. The learned Judge after discussing the authorities on the question felt that the Appellate Tribunal could not be said to have committed any error of jurisdiction in

allowing the point as to benami to be taken for the first time and deciding the same on the basis of additional evidence but the learned Judge found himself bound by the decision in W. A. No. 95 of 1958 and following that decision held that the Appellate Tribunal committed an error of jurisdiction in allowing a new point to be raised in the appeal. The appellant preferred a writ appeal, and because of the conflicting authorities the matter is placed before a Full Bench.

(3) Two questions were raised for consideration in this appeal. The first question is whether the Regional Transport Authority has jurisdiction to entertain a new plea from an objector, which he failed to raise in his representations under S. 57(4) of the Motor Vehicles Act. The second question that arises for consideration is whether the respondent could challenge in the writ petition the validity of the order of the State Transport Appellate Tribunal having raised the grounds before the State Transport Appellate Tribunal.

(4) Section 47(1) of the Motor Vehicles Act states that the Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the matters enumerated in clauses (a) to (f) therein. Under S. 47(1)(a) the Regional Transport authority shall have regard to the interests of the public generally. The section also provides that the Regional Transport Authority shall take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area, or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies. Section 57 lays down the procedure in applying for and granting permits. Under S. 57(3) on receipt of an application for a stage carriage permit, the Regional Transport Authority shall (1) make the application available for inspection at the office of the authority and (2) publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations may be submitted (the date being not less than 30 days within such publication) and (3) state the time and place at which the application and any representations received will be considered.

Section 57(4) bars the consideration of any representation in connection with an application referred to in sub-section (3), unless the representation is made (1) in writing, and (2) before the appointed date, and (3) a copy thereof is furnished simultaneously to the applicant by the person making such representation. Under S. 57(5) when a representation is made under S. 57(3) the Regional Transport authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard. Thus, under S. 57, it is enjoined on the Regional Transport Authority on receipt of applications for a stage carriage permit to make the applications available for inspection and to publish the applications or the substance thereof with a notice that representations may be submitted before a particular date and

that the applications and representations will be considered at a particular place and time. The persons who have representations to make, should make the representations in writing within the appointed date and furnish copies simultaneously to the applicants. If the aforesaid conditions are fulfilled, the Regional Transport Authority is bound to dispose of the applications at a public hearing at which the applicants as well as the persons making the representations should be given an opportunity of being heard. If no representation is made in writing before the appointed date and a copy furnished to the applicant, it should not be considered by the Regional Transport Authority. If the representation is not in the manner prescribed, S. 57(4) bars taking into consideration any representation.

(5) In granting a stage carriage permit the Regional Transport Authority is not solely guided by the representations under S. 57(4). Under S. 47(1) the Regional Transport Authority is bound to take into consideration matters enumerated in clauses (a) to (f). In addition to matters enumerated in clauses (a) to (f), the Regional Transport Authority should also take into consideration representations made by persons. The important consideration, therefore, by The Regional Transport Authority is the interests of the public. Incoming to a conclusion in granting a permit the Regional Transport Authority should also take into consideration the representations. It is not disputed that the Regional Transport Authority is required under the statute to have regard to the matters set forth in S. 47 of the Act in addition to representations made under S. 57(3) of the Act.

(6) Mr. M. K. Nambiar, learned counsel for the respondent, submitted that there is no restriction on the right of the Transport Authority to collect information. He conceded that it is the statutory duty of the department to collect information in order to enable it to grant a permit with a view to serve the public interests best. But he contended that the right to represent under S. 57(3) is restricted and that, if the requirements under S. 57(4) of the Act are not strictly complied with no representation should be considered by the Regional Transport Authority. According to the learned counsel, what is in terms prohibited should not be allowed to be circumvented by the Regional Transport Authority. Learned counsel submitted that no representator can take a plea not taken in the representations, and the Regional Transport Authority has no jurisdiction to entertain or consider such a plea. Learned counsel pointed out that the plea of benami in this case not having been taken in the representations or argued before the Regional Transport Authority should not have been allowed to be raised before the Appellate Tribunal. The facts relating to the benami nature of the transaction were brought to the notice of the Appellate Tribunal by the objector, and therefore, according to the learned counsel, should not be treated as information furnished by the Transport Authority for deciding public interests u/s 47(1), but should be excluded as representations not being in conformity with the requirements under S. 57(4).

We are unable to accept this submission. The Regional Transport Authority as

well as the Appellate Tribunal are statutorily bound to ascertain all relevant facts by themselves. There can be no objection to any information being collected by the transport authority, but if that information is volunteered by one of the objectors, according to the learned counsel, that information should not be taken note of. If after the representations are made and the applications are heard one of the applicants becomes an insolvent and if that information is given by any other applicant, that information is given by any other applicant, that information has to be eschewed, if the contention of the learned counsel has to be accepted. It is not disputed that, if information is collected by the transport authority, the Appellate Tribunal would be perfectly justified in acting on the information. If the transport authority gets the information from one of the applicants and then verifies the correctness of the information and makes the information available to the Appellate Tribunal it was submitted by the learned counsel that that information cannot be taken into account, for, that would be circumventing the prohibition raised under S. 57(4) of the Act. This argument, if accepted, would lead to strange results. The applicant knowing his disability could successfully prevent the Appellate Tribunal from taking note of the disability by inducing one of the operators to volunteer the information to the transport authority before they ascertained the information themselves and the information so given by one of the applicants would be one that is prohibited under S. 57(4).

In our opinion, so far as the information furnished by the transport authority is concerned, there is no restriction whatsoever. It would not make any difference whether the information was furnished by the applicants themselves or by the transport authority. But the objector would not have the right to be heard in person and his representation disposed of at a public hearing under S. 57(5). The result will be that the representator, who makes the representation otherwise than under S. 57(4), will not have a right to have his objection heard and considered, but there is no prohibition against the authority taking the information furnished by the objector and acting on it after giving an opportunity to the affected party, to prove that the information is false or that it should not be acted upon. The jurisdiction of the Regional Transport Authority or the Appellate Tribunal to act upon any information, whether it was brought to its notice by the objector or by the Transport Authority cannot be questioned. But it is within the discretion of the Regional Transport authority or the Appellate Tribunal to accept the information taking into account the relevant circumstances under which the information was brought before it. If the authority decides to accept, it is bound to give a reasonable opportunity to the affected person to show cause as to why the information should not be acted upon. When the authority is acting on the information, but not as a representation by the objector, the person affected cannot object to the authority considering the information on the ground that it was brought to its notice by one of the objectors without including the information in the representation made by the objector. The right of the representator as such is no doubt limited, for, he has no right to insist that any representation made otherwise than under S. 57(4)

should be considered in the manner prescribed under S. 57(5) of the Act. But that does not in any way debar the authority under S. 47(1) of the Act from taking the information into account for deciding to whom the permit should be given in the interests of the public.

(7) In *M. Ramayya Vs. The State of Madras and Another*, a Bench of this court, accepting the contention that there was nothing in the Motor Vehicles Act, which prohibited the authority from taking into consideration matters other than representations contemplated under S. 57(3), observed that S. 47 of the Act laid down the substantive law regarding the procedure of the Regional Transport Authority in considering the application for a stage carriage permit, and in deciding whether to grant or refuse a stage carriage permit the Regional Transport Authority should have regard to matters mentioned in sub-clauses (a) to (f) of sub-section (1) of S. 47. It was further held that apart from objections put forward by the individuals against the granting of permits the Regional Transport Authority should also consider matters mentioned in S. 47 of the Act. With respect, we are in complete agreement with the view expressed by the Bench.

(8) We will now refer to the Bench decision of this Court in W. A. No. 95 of 1958, where the question for consideration was whether a particular place was the principal place of business or not. It was observed in W. A. No. 95 of 1958 as follows:

"Representations made by the rival applicants did not challenge the fact that the appellant's place of business was at Ettayapuram. Under S. 57(4) of the Motor Vehicles Act, it is not competent for the transport authorities to consider any representation made in regard to an application unless it is made in writing before an appointed day and a copy of it is furnished to the party concerned. In this state of circumstances it must be taken that it was accepted by all the parties and the Regional Transport Authority that the appellant's principal place of business was at Ettayapuram. At any rate it was not competent for the respondents to this appeal to contend otherwise, they not having taken any ground of objection in their representations. There is also the further circumstance that this fact was not challenged before the State Transport Appellate Tribunal, namely, that the appellant was not having his principal place of business at Ettayapuram. Under the circumstances, the Appellate Tribunal had no jurisdiction to consider the question whether the appellant had his principal place of business at Ettayapuram or not.

The Bench found that the rival applicants did not challenge the fact that the appellant's place of business was at Ettayapuram either in the representations or in the Memorandum of appeal before the State Transport Appellate Tribunal. The rival applicants had, therefore, no right to contest the question as a representation under S. 57. But the competency of the State Transport Appellate Tribunal to take into consideration the material placed before it by the rival claimants as information for selecting the best applicant under S. 47 of the Act

was not raised before the Bench, as it is now conversed before us. We cannot find any objection to the Appellate Tribunal acting on the information, though furnished by the rival applicants, provided sufficient opportunity was given to the affected party to challenge the information. The rival applicants will not have a right to insist that the particular information should be taken into consideration; but it is within the competence of the Appellate Tribunal by itself to take the information into account. The observation of the Bench that the Appellate Tribunal had no jurisdiction to consider the question whether the appellant had his principal place of business at Ettayapuram or not, was made with reference to the fact placed by the rival applicants as representation under S. 57(4) of the Act. As already pointed out, there can be no objection to the Appellate Tribunal taking the facts as information for deciding the question under S. 47(1).

(9) This decision was followed by one of us (Srinivasan, J.) in W. P. No 574 of 1960, who expressed his view in the following terms:

"It was therefore open to the Regional Transport Authority and, indeed that authority was bound, to go into the question whether any of the applicants before it was affected by any disqualification as prescribed in the Government Order. Though the Regional Transport Authority had the report of the Motor Vehicles Inspector before it to establish that the petitioner did not possess even the minimum equipment necessary for efficient repair of the vehicles, it failed to go into that question; and if the possession of such facilities is a factor that contributes to the efficiency of operations on the route, the interests of the public naturally call for an examination of this aspect of the matter. The Tribunal would appear to be fully justified in examining that question. That would be clearly in conformity with S. 47 of the Act."

(10) The view thus expresses cannot be questioned. The authority is bound to take into consideration the information in the report of the Motor Vehicles Inspector, whether it is contained in the representation of the parties or not. Referring to the Bench decision in W. A. No. 95 of 1958 cited before him the learned Judge observed as follows:

It seems to me however that representations with regard to the possession of a place of business claimed by an applicant and representations as to the adequacy of a workshop stand on different footing. All that the other persons would be able to know about the claims to a workshop facility possessed by another applicant would be that he appeared to have a premises purporting to be a workshop. It was impossible for any of these parties to ascertain whether the workshop was properly equipped or not.....Section 57(4) of the Act was intended to prevent the parties bringing up new objections at subsequent stages of the esquire, but whether an objection is of a kind which cannot become apparent except upon an examination of a claim of the applicant by a proper officer of the Department, it does not seem to me that S. 57(4) prevents the consideration of such an objection."

The learned Judge was of the view that, as the objection was not apparent to the rival claimants, the consideration of such objection was not barred under S. 57 (4). The information found in the report of the Motor Vehicles Inspector is bound to be taken into consideration by the authority for deciding the most suitable person for the grant of permit. The bar under S. 57(4) is not applicable to the report of the Motor Vehicles Inspector. As the Inspector's report is not a representation by the objector, the circumstance, whether the objector was in possession of the fact when he made the representation or not would be immaterial.

(11) The judgment in W. A. No. 574 of 1960 was taken on appeal and was disposed of by a Bench in W. A. No. 67 of 1962. The Chief Justice, who delivered a separate judgment approved the view expressed by the trial Judge, Srinivasan J. and observed as follows:

"The former (possession of a place of business) is a matter which could be observed by anybody while the latter (adequacy of workshop), namely, possession of the prescribed number of tools being a matter exclusively within the knowledge of the operator who claims to possess them, cannot be expected to be within the knowledge of the others; the same kind of consideration cannot apply to both the cases. It must be noticed that the requirement as to an operator possessing a specified number of tools is contained in the government Order, and the consideration which generally apply to representations, relating to those under S. 47, cannot be made to apply in all their rigour to matters, which from their very nature are peculiarly within the knowledge of the operator, who applies for the permit".

The learned Chief Justice held on the above reasoning that the prohibition under S. 57 could not be extended to facts which could not have been within the knowledge of the rival claimants. Ramamurti J. delivering a separate judgment in W. A. No. 67 of 1962 reserved his opinion on the question as to how far it would be competent to the Appellate Tribunal to consider the objections raised by the rival claimants, which were not raised in the representations. The learned Judge without expressing any final opinion was inclined to agree with the view expressed in M. Ramayya Vs. The State of Madras and Another, where it was held that the Appellate Tribunal was entitled to consider every objection available from the record, whether or not the same was pressed at the enquiry before the Regional Transport Authority. We have expressed our view with regard to W. P. No. 574 of 1960 and it is equally applicable to the writ appeal.

(12) In W. P. No. 637 of 1960 one of us (Srinivasan J.) was of the view that in a case where the rival claimants would have had knowledge of a particular fact and failed to bring the matter in the representations before the Regional Transport Authority under S. 57(4), the entertainment of such a representation is prohibited at a subsequent stage, as the jurisdiction of the appellate authority cannot be more extensive than that of the original authority. Ganapatia Pillai J. in W. P. No. 991 of 1960 was of the view that representations strictly so-called

could be confined to matters within the knowledge of the competitors. Regarding disqualifications that lie peculiarly within the special knowledge of the officers of the Government, the learned Judge observed that the rule, that nothing which was not mentioned in the representations should be allowed to be urged, could not be applied. The decision of one of us (Srinivasan J.) in W. P. No. 637 of 1960 and that of Ganapatia Pillar J. in W. P. No. 991 of 1960 are to the effect that the information, which the rival claimants could not have known, is not prohibited from being canvassed under S. 57(4) of the Act. We are of the opinion, whether the information was available or not at the time of the representation, it could be taken into account by the appellate authority as information, though not as representation under S. 57(4) of the Act.

(13) In W. P. No. 1274 of 1960 one of us (Srinivasan J.) stated as follows:

"I am also not satisfied that in a matter where the public interests are vitally in question, principally on the ground that existing operators are enjoying monopoly, detrimental to the interests of the public, it is not open to the Transport authorities to take into consideration relevant date, though it might not be in the representations made by the other applicants. Under S. 47(1) of the Act, the interests of the public have to be taken into account. The Regional Transport Authority has also to consider "the operation by the applicant of other transport services". In so far as these two heads upon which the Regional Transport Authority is called upon to bestow his attention are concerned, it is not necessary that these matters should form part of the representations made by the other applicants under S. 57(3) of the Act. In fact, in so far as other transport services operated by the other applicants are concerned, it is a matter of record and the Regional Transport authority is fully at liberty to consult its own records and ascertain the relevant date. It is not prevented from relying upon its own records in this regard, nor can I see anything in S. 57(4) of the Act, which prevents the Transport Authority from reaching a conclusion whether the grant of a permit to a particular person would be in the interests of the public generally, except on the basis of the representations under S. 57(3). From the records, therefore, the Regional Transport Authority was entitled to discover whether the appellant had other permits on the route and whether in the light of that fact the grant of yet another permit to the same operator would be in the interests of the public.

(14) We are in agreement with the view expressed. We would add that the authority would be entitled to rely not only on its own records but also on the information made available by the rival claimants, whether contained in the representation or not, after giving a fair opportunity to the persons affected.

(15) In the view we have taken we hold that the State Transport Appellate Tribunal was justified in taking into consideration the evidence placed by the rival claimants before it and coming to the conclusion that the respondent was a benamidar.

(16) Mr. M. K. Nambiar learned counsel for the respondent, referred to a recent judgment of the Supreme Court in C. A. No. 19 of 1964, wherein it was held that G. O. 1298 dated 28-4-1956, which purported to give administrative instructions to quasi judicial tribunals was ultra vires of the powers of the Government under S. 43(a) of the Motor Vehicles Act. In this case, the State Transport Appellate Tribunal followed the instructions in the government Orders, Go O. 432 Home dated 5-2-1953 and g. O. 526, Home dated 20-2-1956 and in accordance with the instructions in the Government Orders held that the respondent was a benamidar for Arupukottai Sri Jaya Vilas (P.) Ltd. and therefore not entitled to the permit. The learned counsel submitted that as administrative instructions by the government to quasi judicial tribunals are ultra vires, the two Government orders relied on by the Appellate tribunal are ultra vires and the decision based on the Government Orders should be set aside. It is not disputed by Mr. Mohan Kumaramangalam, learned counsel for the appellant, that the two Government Orders relied on by the Appellate tribunal would be hit by the decision of the Supreme Court in C. A. No. 19 of 1964. He also conceded that the decision of the Appellate tribunal is based on the two Government Orders; but he sought to support the order of the Appellate tribunal on the ground that the validity of the two Government orders was not questioned by the respondent before the Appellate Tribunal.

According to the learned counsel, Mr. Mohan Kumaramangalam, without raising the question as to the validity of the Government orders before the Appellate Tribunal, its order cannot be questioned in the writ petition. He submitted that, if only the validity of the Government Orders was questioned before the Appellate Tribunal, the Appellate tribunal might have come to the conclusion on the facts that in spite of the government Orders the respondent was not entitled to the permit. Learned counsel relied on a decision in Pannalal Binjraj Vs. Union of India (UOI), at p. 412 where it was found that the petitioners did not raise any objection to the cases being transferred and in fact submitted to the jurisdiction of the Income Tax officers, to whom their cases had been transferred. It was held by the Supreme Court that when the petitioners acquiesced in the jurisdiction of the Income Tax Officers, they were not entitled to invoke the jurisdiction of the court under Art. 32 of the Constitution of India. The learned counsel also relied on the decision in Gandhinagar Motor Transport Society Vs. State of Bombay, . Chagla C. J. following the principle laid down in the King v. Williams, Ex parte, Phillips, 1914 1 KB 608 held that the petitioners not having challenged the jurisdiction of the Government could not ask for relief from the Court exercising writ jurisdiction. The learned Judge adopted the observation of Rowlatt J. that a party aggrieved must either show that he had taken his objection at the hearing below or state on his affidavit that he had no knowledge of the facts which would enable him to do so. In this case, it is conceded that at the time when the matter was pending before the State Transport Appellate Tribunal, the law as it then stood recognised the validity of the administrative orders issued by the Government. In W. P. No. 139 of 1955 the High Court held that the

administrative instructions issued in the government Orders were valid. In the state of law, as it stood then, the respondent cannot be reasonably expected to challenge the validity of the government Orders before the Appellate Tribunal. In *Arunachala v. Southern Railways*, AIR 1958 Mad 236 Rajamannar C. J. held as follows:

"Now it is well established that before a person aggrieved is refused a relief to which he would otherwise be entitled on the ground of acquiescence in the wrong complained of, it is necessary to establish that he knew, or ought to have known, his right, which he is alleged to he omitted to assert. A person who has no knowledge of his right and is not guilty of culpable negligence in being ignorant, will not be denied a relief to which he is entitled on the ground that he omitted to assert that right. In this case, as the learned Judge has pointed out, "the ignorance of the true legal position was virtually shared by every one concerned, the operators, the statutory authorities and the Government themselves and even this court". In such circumstances, it is not just to apply the rule of acquiescence".

We are in agreement with the observations of the learned Chief Justice. before the respondent could be said to he acquiesced, it is necessary to show that he knew or ought to have known his rights, which he is alleged to he omitted to assert. It is not disputed that he was ignorant of the true legal position. In *A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd.*, the supreme Court agreed with the view of the High Court in *Arunachala v. Southern Roadways*, AIR 1958 Mad 236 and held as follows:

"In our opinion, although the respondent had submitted to the jurisdiction of the Regional Transport Officer and had not in his petition under Art. 226 in the High Court taken the object in that that Officer had no jurisdiction to vary the conditions of a permit, the High Court acted rightly in allowing the respondent to urge that the Regional Transport Officer had no jurisdiction to vary the conditions of a permit, It was not until the decision of the High Court in *W. P. No. 107 of 1955* that it became the considered view of this Court that the Regional Transport Officer had no jurisdiction to make any such variation. When the law was so declared by the High Court it would not reasonably be said that the High Court erred in allowing the respondent to take this point although in its petition under Art. 226 the point had not been taken".

(17) The facts of this case are on all fours with that of the supreme Court, and the learned counsel for the appellant cannot contend that the respondent is not entitled to challenge the validity of the Government Orders in the writ petition. As the Government Orders, on which the order of the Appellate Tribunal is based, are held to be ultra vires, the order of the State Transport Appellate Tribunal cannot be upheld, and on that ground has to be set aside.

(18) In the result, while holding that the Appellate Tribunal was entitled to take into consideration the information that the respondent was the benamidar for

Arupukottai Sri Jaya Vilas (P.) Ltd., we remit the case to the Appellate Tribunal for fresh disposal, in view of the recent Supreme Court decision in C. A. No. 19 of 1964 holding the Government Orders as ultra vires. No costs.

(19) Order accordingly.