

(1966) 09 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 127 and 139 of 1966 and Writ Petition No. 1311 of 1966

Nagabhushanam

APPELLANT

Vs

Ankam Ankaiah and Others

RESPONDENT

Date of Decision : 16-09-1966

Acts Referred:

Andhra Pradesh High Court Rules — Rule 6
Andhra Pradesh Motor Vehicles Rules, 1964 — Rule 212, 212(1), 212(2)
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 2(23), 2(25), 2(29), 2(33), 47

Citation : AIR 1968 AP 74

Hon'ble Judges : P. Jaganmohan Reddy, C.J.;Obul Reddi, J

Bench : Division Bench

Advocate : G. Suryanarayana, in W.A. No. 127 of 1966, K. Ramachandra Rao, G. Vedantha Rao and V. Lakshi Devi, in W.A. Nos. 139 and 1311 in 1966, for the Appellant; G. Suryanarayana in W.A. No. 139 of 1966, 4th Govt. Pleader, K. Ramachandra Rao, G. Vedantha Rao and V. Lakshi Devi, in W.P. No. 127 of 1966 and M. Dwarkanath, for the Respondent

Judgement

1. These two writ appeals (Writ Appeals 127 and 139 of 1966) arise out of an order in Writ Petition No. 919 of 1966 made under Article 226 of the Constitution by our learned brother Gopal Rao Ekbote, J., quashing the orders passed by the State Transport Authority in A. 43/A1/65 in item 3 dated 9-3-66 and the order passed by the Government of Andhra Pradesh in G. O. Rt. 2079 Home (Transport II) Department dated 20th May, 1966 confirming the first cited order of the State Transport Authority. Writ Appeal 127/66 is filed by the fourth respondent in W. P. 919/66 and W. A. No. 139/66 and W. P. 1311/66 are filed by one Ankayya, the petitioner in W. P. 919/66.

2. The facts leading to the two writ appeals and writ petition 1311/66 are these: Applications were called for the grant of two pucca stage carriage permits on the route Mangalagiri to Vijayawada and there were 27 applicants for the two

permits. Among them are the two appellants and Gunaraju, the fourth respondent in W. P. 1311/66. The Regional Transport Authority, Guntur at its meeting held on 7-1-65 taking into consideration the marks obtained by each of the applicants and having regard to Rule 212 of the Andhra Pradesh Motor Vehicles Rules, 1964, hereinafter called the rules granted one permit to Ankayya, the appellant in W. A. 139/66 and the second to Gunaraju, the fourth respondent in W. P. 1311/66. Five of the unsuccessful applicants including the appellant in W. A. 127/66 preferred appeals to the appellate authority against the order of the R. T. A. granting permits to the aforesaid two persons and the appellate authority set aside the order of the R. T. A. granting one of the two permits to Ankayya the appellant in W. A. 139/66 and this permit was given to Nagabhushanam, the appellant in W. A. 127/66 subject to certain conditions. The reason for setting aside the order of the R. T. A. giving one of the two permits to Ankayya is that the permit given to him was not in accordance with Rule 212 as his history sheet contained more than six entries relating to the offences committed during the 24 months preceding the date of the order of the Regional Transport Authority. Aggrieved by the order of the appellate authority, Ankayya preferred a revision to the Government. The Government in exercise of its revisional jurisdiction upheld the order of the appellate authority in so far as it related to the grant of the permit to Nagabhushanam and also confirmed the grant made to Gunaraju, the fourth respondent in W. P. 1311/66. It is then that Ankayya sought relief under Article 226 of the Constitution and prayed for quashing of the orders of the appellate authority and the Government of Andhra Pradesh. Before our learned brother Gopal Rao Ekbote, J. It was argued by the appellant in W. A. 139/66 that the history sheet referred to Rule 212 (1) (iii) (2) relates to the stage carriage permits and that the appellate authority committed an error in considering or taking into account the history sheet of the public carrier service of the petitioner with the result that the appellate authority fell into an error on the construction and the applicability of the impugned rule while granting permits to stage carriages. The learned Judge after an elaborate discussion of this question held that :--

"There is no indication anywhere in the rules that the history sheet has to be maintained in a combined way, nor there is any direction that only one history sheet has to be maintained for all the vehicles for which separate permits are held, whether the vehicles for which the permit is so held belongs to the category of public carrier or stage carriage or any other type. . . . I am therefore satisfied that the expression "history sheet" used in Rule 212 means only the history sheet relating to the stage carriage which alone could be considered at the time when the question of grant of permit is before the R. T. A."

3. The fourth respondent in the writ petition (appellant in W. A. 127/66) before our learned brother raised a preliminary objection that the petitioner failed to implead Gunaraju to whom the other permit was granted as a necessary party to the writ petition and therefore the petition should fail on that ground alone. This objection was overruled by the learned Judge on the ground that

"he might have been made a party to the revision before the Government, but that does not make him a necessary party in so far as the permit in question In this writ petition is concerned".

The learned Judge also took the view that the dispute in regard to this permit was only between the petitioner and the fourth respondent before him and in that view Gunaraju cannot be called a necessary party to the writ petition. Against the order in W. P. 919/66, a writ appeal (W. A. No. 127/661 is filed by the fourth respondent the aggrieved party. The successful party, the petitioner (Ankayya) also filed Writ Appeal No. 139 of 1966 on the ground that the learned Judge instead of restoring the permit granted to him by the State Transport Authority remitted the matter back for consideration afresh according to law by the appellate authority.

4. For the sake of convenience, we may refer the appellant in Writ Appeal No. 139 of 1966 who is also the petitioner in Writ Petition No. 1311 of 1966 as the petitioner and the appellant in Writ Appeal No. 127 of 1966 as the appellant.

5. Mr. Suryanarayana appealing for the appellant contended that the appeal preferred by the petitioner without impleading Gunaraju (hereinafter referred to as Respondent 4) as a party to the proceedings in Writ Petition No. 919/66 and also in the appeal W. A. 139/ 66 is not maintainable and the subsequent petition, W. P. 1311 of 1966 which impleaded Gunaraju (Respondent 4) alone without impleading the appellant and other contestants is also not maintainable and that above all the petitioners cannot seek relief against an order mada in his favour in W. P. 919/66. It is also pointed out by him that the effect of the order of the learned Judge before whom respondent 4 Gunaraju was not impleaded as a party is to restore status quo ante thus making respondent 4 whose permit was confirmed by the re-visional authority to go once again before the appellate authority and the order of the learned Judge has the consequence of depriving the right which had accrued to respondent 4 behind his back and without affording an opportunity to him. It is further argued by mm apart from the fact that all the necessary parties are not impleaded in W.P. No. 1311, the petitioner is precluded or estopped from invoking the same reliefs in respect of which he had earlier filed a writ petition and obtained relief. The other argument of Mr. Suryanarayana is that R. 212 should be read along with the marking system, the Government had in view in respect of the history sheet of an operator as such irrespective of the fact whether it related to stage carriage transport or public carrier transport. It is also pointed out that when a rule is capable of two reasonable constructions the one taken by the Tribunal or inferior authority ought not to be lightly interfered with by the High Court.

6. Mr. Ramachandra Rao appearing for the petitioner has argued that the petitioner was screened and disqualified by the appellate authority not by the application of the factors that ought to be taken into consideration u/s 47(1) of the Motor Vehicles Act, but by the application of Rule 212 (1) (iii) (2) and mat the scope of the rule has been properly construed by the learned Judge as to

make it applicable only to the history sheet of the stage carriages, that the learned Judge rightly interfered as a wrong interpretation or construction was put on the impugned rule by the appellate authority and also the Government and as the permit given to the petitioner by the R.T.A. was not set aside and given to appellant, he only proceeded against him for relief in the writ petition and that respondent 4 is not a necessary party as no relief was sought against him and even otherwise that defect if any is set right by filing W.P. No. 1311 of 1966 and impleading respondent 4.

7. We may first take up the question of the maintainability of the writ appeal and the writ petition before dealing with the other question whether the impugned rule prohibits the consideration of adverse entries relating to the public carrier permits, while considering the application for the grant of stage carriage permits. We may now notice the prayer of the petitioner in W.P. No. 919 of 1966 and the relief sought. The petitioner asked for quashing G.O. Rt 2097 Home (Transport. II) Department dated 20th May, 1966 of the Government of Andhra Pradesh confirming the proceedings in A. 43/A1/65 in item 3 dated 9-3-1966 of the appellate authority, Hyderabad. The relief sought by him was granted by the learned Judge and the impugned orders of the appellate authority and the Government were quashed with a direction to the appellate authority for disposal of the applications on merits according to law. It is on the basis of the prayer in the writ petition and the relief granted to the petitioner that Mr. Suryanarayana argued that the petitioner is not an aggrieved party as there is nothing further for the High Court to grant and the writ appeal filed by him (W.A. No. 139 of 1966) is therefore not maintainable. Mr. Ramachandra Rao contended that the learned Judge while quashing the orders of the authorities below should have restored the order of the R.T.A. and that made the appellant an aggrieved party and an appeal against an order or remand is permissible. He has relied on the following observations of a Division Bench of this Court in Kuppa Viswapathi Vs. Kuppa Venkata Krishna Sastry, : --

"A preliminary objection was raised by Sri Rajeswara Rao, learned counsel for the respondent, that no appeal would lie against the order in question as it did not amount to a "judgment" within the sweep and range of clause 15 of the Letters Patent. The chief ground urged by the learned counsel for the respondent is that the order of remand could not be invested with the character of "judgment" as it had not put an end to the litigation. We do not think that we could accede to this proposition. It is now a generally accepted concept that any adjudication, which puts an end to a suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or the order which affects the merits of the controversy between the parties, is a "judgment".

The test propounded by the Full Bench of the Madras High Court in Tuliaram Rao v. Alagappa Chettiar¹⁹¹⁰ 21 M LJ 1, which has been adopted by several of the High Courts as the correct one is as follows:--

"If its effect, whatever its form may be, and whatever may be the nature of the

application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a "judgment" within the meaning of the clause." It is on this principle that Mr. Ramachandra Rao rested his case that an order of remand is appealable. What has to be looked into is not whether an order of remand is not appealable or not but whether the party by such an order aggrieved so as to entitle him to prefer an appeal. What all was prayed for by the petitioner was nothing more than seeking the quashing the order of the two tribunals and when that was granted and nothing more was asked or remained to be done, it will not put the petitioner in the possession of an aggrieved party. In *Kuppa Viswapathi Vs. Kuppa Venkata Krishna Sastry*, , what the learned Judge of the High Court sitting single did was to set aside the decree by his remand order which the appellant in the L.P. appeal had obtained in his favour from the Sub-Court, and as may be seen, the Letters Patent appeal against the remand order in that case is by an aggrieved party. By no test or criterion can the petitioner before us be said to be an aggrieved party merely for the reason that the order in W.P. No. 919 of 1966 was a remand order.

8. Mr. Suryanarayana relied upon an un-reported decision of the Supreme Court in Civil Appeal No. 34/7 of 1961 to show that the appeal is incompetent as the order under appeal was wholly in favour of the appellants. Before the Supreme Court on similar facts an identical objection was raised and the view taken by their Lordships is this:

"At the hearing of the appeal, after learned counsel for the appellants had commenced arguments a preliminary objection was raised on behalf of the respondents to the effect that this appeal was incompetent as the order of the High Court under appeal was wholly in favour of the appellants and it granted to them all the reliefs they had claimed in their petition. We accept this objection. The appellants prayed for the quashing of the order of the Minister dated April 18, 1961 and the G.O. Ms. No. 2230 Home (Transport I) Department dated 26-10-1960 and these reliefs had been granted by the High Court. The appellants could not therefore have any cause for grievance against the order of the High Court.

An appeal is not filed against mere findings of the Court. An appeal is filed against the operative order or decree. The result of the order of the High Court under appeal is that the scheme had to be reconsidered by the Government. Of course, the Government would have to take into consideration what might have been declared by the High Court to be the legal position in connection with certain contentions raised before it. If dissatisfied with the order of the Government on remand, the appellants would be free to take such action as may be available to them for redress. At present they cannot have any grievance against the order of the High Court when it fully went in their favour. The mere fact that the High Court granted leave to appeal to this Court to the respondents

against whom the order of the High Court operated, could be no reason for granting leave to the appellants when the order of the High Court was in their favour. We, therefore, uphold the preliminary objection."

Therefore, applying the principle to the present appeal of the petitioner (W.A. No. 139 of 1966), we have no alternative but to hold that he is not aggrieved by the decision of Gopal Rao Ekbote, J., as it gave all the reliefs prayed for by him and was entirely in his favour. The question is, even apart from the fact that the finding went fully in favour of the petitioner, whether it is maintainable in view or the fact all the necessary parties were not added as parties to the Writ Petition No. 919 of 1966. It is Mr. Ramachandra Rao's contention that no relief was sought against the fourth respondent in the writ petition (W.P. No. 919 of 1966) and, therefore it was not necessary to implead him and even if it is to be found to be a defect that defect is cured by filing W.P. No. 1311 of 1966 during the pendency of the appeal (W.A. No. 127 of 1966). The argument advanced by Mr. Suryanarayana against W. P. No. 1311 of 1966 is also on the ground that it suffers from two infirmities, viz., (1) the appellant who is a necessary party is not impleaded in it and (2) it is not permissible to ask for reliefs, which were already granted in the subsequent writ application filed during the pendency of an appeal preferred against the original writ petition. Mr. Ramachandra Rao invited our attention to the rules of the High Court made under Article 226 of the Constitution and contended that Rule 6 of the said rules gives the High Court power to implead parties at any stage. Rule 6 reads:

"At the hearing of the petition, any person who desires to be heard in opposition to the petition and appears to the Court to be a proper person to be heard shall be heard, notwithstanding that he has not been served with notice, and subject to such conditions as to costs as the Court may deem fit to impose." This rule is intended to give opportunity to such parties who are necessary or proper parties to the proceedings and are not impleaded by a petitioner. So any person who desires to be heard in opposition to the petition and appears to the Court to be a proper person to be heard, can make an application under this rule and come on record subject to such conditions as to costs as the Court may deem fit to impose. Mr. Ramachandra Rao relied on a decision of the Calcutta High Court in *Makhan Lal Chakraborty Vs. S.K. Chatterjee and Others*, , relating to the procedure to be adopted for amendment of the pleadings or addition of parties in applications filed under Article 226 of the Constitution. As no rules were framed for regulating the nature of the proceedings, the following procedure was laid down by Sinha, J.:--

"1. In an application under Article 226 all persons must be made parties, who are or likely to be affected by the issue of a writ or order. In the case of mandamus or prohibition, all parties must necessarily be before the Court who are required to obey the directions of the Writ or whose presence is necessary to make such directions effective:

2. The artificial rules under the English practice, where in certain cases such writs

can be made ex parte in the first instance, do not prevail in Courts of India:

3. Any party likely to be affected by a Writ or order may appear at the hearing (or make a prior application) and ask for leave to Join the proceedings or to have the rule served upon it.

4. The Court may order that a petition used as grounds for the issue of a rule nisi be amended and/or a rule nisi be amended, by the addition of parties.

5. If a necessary party or a party likely to be affected by the writ or order, or a party whose presence may be necessary to make the writ effective is not before the Court, the Court may, either upon an application made for that purpose, or of its own motion direct that such a party be added and the rule nisi served upon him, or simply that the rule nisi be served upon him or even that he may be allowed to be present at the hearing without being served with a rule nisi. In such a case the person served with the rule nisi or permitted to attend the hearing would be deemed to be party and be entitled to show cause or support or oppose a cause already shown.

6. Such amendments should ordinarily be done upon notice to the party proposed to be added or served. There is however no rule of law which prevents an ex parte order being made in a suitable case.

7. Upon such an amendment being effected directions should be given for the use of affidavits and/or additional affidavits." This procedure was prescribed by the Calcutta High Court at the time when the case came up for consideration as no rules were framed for regulating the nature of the proceedings. We are governed by the rules framed by the High Court to regulate the proceedings under Art. 226 of the Constitution and undoubtedly R. 6 empowers the High Court to implead persons who desire to be heard in opposition to the petition provided they are necessary or proper parties.

9. The High Court's power to implead parties in opposition to the writ petitions is not disputed but the question is, can the appellant file a fresh petition to rectify the initial defect of not impleading proper or necessary parties after the first petition in respect of the same subject-matter was disposed of and an appeal has been preferred against it and during the pendency of the appeal when an objection is taken that all the necessary parties have not been impleaded in the petition against which the appeal is preferred. Mr. Suryanarayana invited our attention to a decision of the Punjab High Court in Mool Raj Vs. Anjuman Imdad Bahmi Bafindgan and Another, and contended that successive applications for certiorari or mandamus on the same facts and grounds are not maintainable and that the principles of res judicata are attracted. The learned Judge observed in that case:

"It is now beyond question that the rule of res judicata is not confined to Section 11 of the Code of Civil Procedure. It is a rule of general application and is based on a sound principle. On the same facts no person can be twice harassed. So far

as successive proceedings under Article 226 of the Constitution on the same facts and the same cause of action are concerned, the rule of res judicata has been applied in Radha Shyam Datta and Others Vs. Patna Municipal Corporation, . Also see in this connection, the decision of the Supreme Court in Godavari Parulekar Vs. State of Bombay and Others, . So far as the English Courts are concerned, the decision in R. v. Bodmin Corporation 1892 2 OB 21 is in point wherein it was observed as under:--

"Such a writ is an extraordinary remedy, and persons seeking it may very reasonably be required not to apply for it unless they have sufficient cause for doing so. They must come prepared with full and sufficient material to support their application, and if those materials are incomplete, I think it is quite right that they should not be allowed to come again." To the same effect is a decision of the Calcutta High Court in Makhanlal Roy and Others Vs. State of West Bengal and Others, :

"" A previous disposal on the merits even though summary, of an application under Article 226 of the Constitution, bars a subsequent application for the same reliefs under the same Article. The principle of res judicata is applicable to writ applications as much as to other proceedings, provided the requisite conditions are satisfied. Where the objects of the two applications, the questions involved there in, the grounds and the reliefs asked for are the same, the mere fact that the first application under Article 226 was not disposed of on contest in the presence of the other side will not make the order ineffective for the purpose of barring a second application on principles analogous to res judicata."

10. In another case relied upon of the Rajasthan High Court, Smt. Rita Mazumdar Vs. University of Rajasthan and Another, it was contended that the previous decision was not a speaking order and so the dismissal was not on merits and the question for consideration was whether the second petition with some additions relating to facts which were within the knowledge of the petitioner when the first petition was filed should be permitted and regarded as maintainable. It was observed by the learned Judges:

"The decision dismissing the previous petition in limine was on merits and not on account of other reasons of there being alternative remedy or an account of laches on the part of A. The second petition, therefore, was barred by the principle of res judicata and could not be entertained."

The Supreme Court in Daryao and Others Vs. The State of U.P. and Others, , observed:

"We hold that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining

the same or similar orders or writs If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar except in cases which we have already indicated."

Therefore, there is no doubt from what is laid down by the Supreme Court that a fresh writ petition on identical facts or even on similar facts if the earlier petition was disposed of on merits would be barred as the decision in that petition would stand in the way of a fresh petition being filed. We are, therefore, of the opinion that the earlier petition filed by the petitioner and decided on merits has the effect of barring the petitioner from instituting this petition on identical facts and no questions raised and decided

11. The next question that falls for consideration is whether the fourth respondent in W.P. No. 1311 of 1966 was a necessary party to the proceedings in W.P. No. 919 of 1966 before the learned Judge of this Court. The facts as already narrated would show that on the route Mangalagiri to Vijayawada applications were called for grant of two stage carriage permits. The grant of permits is regulated by the procedure prescribed in the Act and the Rules and only such of the applicants as could secure the highest number of marks would be selected in order of merit and efficiency to run a stage carriage having regard to the factors to be considered u/s 47(1). The Regional Transport Authority on a consideration of the history sheets gave 5 marks to each of the applicants, the petitioner the appellant and respondent 4; but taking into account the business and technical experience, financial soundness and other factors like past history gave one permit each to respondent 4 and the petitioner. The appellate authority taking into consideration the history sheet of the petitioner in respect of his public carrier vehicles screened and disqualified him from consideration and it is against this disqualification that the subsequent revision to the Government and the Writ Petition No. 919 of 1966 were filed. Therefore, from the above facts, it is clear that the permits are to be given in order of merit and the marks awarded as shown in the tabular statement. No applicant or operator is entitled to a permit as such unless he secures the highest number of marks or when the marks are equal his superiority or competence over the other applicants regarding the technical experience, financial soundness and past history sheet and similar factors have to be taken into account. When the appellate authority confirmed the grant of permit to the fourth respondent and set aside the grant of permit to the petitioner he impleaded the fourth respondent also; but he failed to implead him in the proceedings under Article 226 of the Constitution in W.P. No. 919 of 1966. The question is whether Ins failure to implead the fourth respondent amounts to omitting a necessary party to the proceedings before the High Court. Mr. Ramachandra Rao relied on the finding of Ekbote J., that the mere fact that respondent 4 was made a party to the proceedings before the Government will not make him a necessary party so far as the permit in question in the writ petition is concerned. The finding of the learned Judge is:

"The dispute in regard to this permit is only between the petitioner and the fourth respondent. Merely because he was made a party to the revision before the Government, he cannot be called a necessary party in this writ petition."

With great respect, we are unable to agree with the view expressed by the learned Judge. The necessary parties are parties who ought to have been joined; in other words, parties necessary to the institution of the proceedings without whom no relief can be given. In order to make respondent 4 a necessary party in the first instance, there must be a right to some relief against him in respect of the subject-matter and (2) his presence should be necessary to enable the Court to effectively and completely settle the question of the parties. It is well to remember in this case that no applicant or operator is entitled as such to any one of the two permits nor are the two permits divided between those who succeed and those who do not succeed before the hierarchy of tribunals provided for in the Act. There is nothing in the Act or Rules to prevent both the permits going to one applicant or operator if the other applicants are not fit to be chosen or suffer from the disqualifications by virtue of punishments in the history sheets. It cannot reasonably be said that, one who is given one of the two permits by the R.T.A. and that order having been confirmed by the appellate and the revisional authorities is not a necessary party when proceedings relating to the grant of the permits by the appellate authority and the re-visional authority on a particular route are called in question in the writ petition. It is not a case where no relief was sought against the fourth respondent; for the prayer in the petition was for quashing the orders of the Government and the appellate authority which involved the quashing of the orders which had confirmed the permit given to the fourth respondent by the Regional Transport Authority. The relief granted in the writ proceedings (W.P. No. 919) has undoubtedly resulted in determining a question which vitally affected the rights of the fourth respondent as he has to go back to the stage of the appellate authority with all the attendant uncertainties of litigation which consequence makes him an aggrieved party without having had notice or being heard in the writ proceedings. The Supreme Court in *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, , laid down:--

"The law as to who are necessary or proper parties to a proceeding is well settled. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. In a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties."

Their Lordships extracted the following from the Law of Extraordinary Legal Remedies by Ferris, the procedure in the matter of impleading parties, at p. 790 :--

" These parties whose action is to be reviewed and who are interested therein

and affected thereby and in whose possession the record of such action remains are not only proper but necessary parties. It is to such parties that notice to show cause against the issuance of the writ must be given, and they are the only parties who may make return or who may demur. The omission to make parties those officers whose proceedings it is sought to direct and control goes to the very right of the relief sought. But in order that the Court may do ample and complete justice, and render a Judgment which will be binding on all persons concerned, all persons who are parties to the record or who are interested in maintaining the regularity of the proceedings of which a review is sought, should be made parties respondents."

Therefore, there is no doubt from the principle laid down that not only the authorities whose orders are sought to be quashed but also the persons who are interested in maintaining the legality or the regularity of the proceedings of the authorities should be added as parties in the writ proceedings. In this case the petitioner has undoubtedly failed to implead a necessary party, viz., the fourth respondent as the orders challenged have affected the rights of the fourth respondent accrued to him under the said orders.

12. The other finding that Rule 212 does not envisage or contemplate taking into consideration the history sheet of an operator other than the history sheets of the stage carriages is assailed by Mr. Suryanarayana on the ground that the rule does not admit of the construction put upon it by the learned Judge and that the history sheet contemplated under the rule covers the history sheet of an applicant irrespective of the fact whether it related to the stage carriages or public carriages. Mr Ramachandra Rao's contention is that clause (iii) (2) of Rule 212 prohibits the consideration of adverse entries relating to public carrier permits while considering the applications for grant of stage carriage permits. It is also his case that the petitioner has been screened and disqualified by the application of Rule 212 and not by the consideration of public interests u/s 47(1) (a) of the Act and therefore the Screening of the petitioner is not germane to Section 47 of the Act. It may be necessary to look into the relevant provisions of the Motor Vehicles Act and Rules. Chapter IV of the Act deals with the control of transport vehicles, "Transport vehicle is defined in Section 2 (33) meaning a public service vehicle or a goods vehicle. "Public service vehicle" is defined in Section 2 (25). "Public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a motor cab, contract carriage and stage carriage. "Stage carriage" is defined in Section 2 (29). "Stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. "Public carrier" means u/s 2 (23) an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association, or company engaged in

the business of carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported". u/s 47 of Chapter IV, the procedure is prescribed for consideration of the applications for stage carriage permits. Section 49 deals with applications for contract carriage permits. Section 52 deals with the applications for private carrier's permits. Section 57 prescribes the procedure in applying for and granting permits. Section 58 deals with the duration and renewal of stage carriage and public or private carrier permits. Section 67 under Chapter IV empowers the State Government to make rules as to stage carriages and contract carriages. Section 68 empowers the Government to make rules for the purposes of carrying into effect the provisions of Chapter IV. The impugned Rule 212 (iii) (2) read:

"Grant, variation, suspension or cancellation of stage carriage permit--guiding principles-(iii) The transport Authorities shall in deciding whether to grant or refuse to grant a stage carriage permit have regard to the following matters in addition to those specified in Sub-section (1) of Section 47.

The applicants shall first be screened and those who are found to be unsuitable on one or more of the following principles shall be disqualified, reasons being given for the decision of the Transport Authority whenever an applicant is disqualified.

(2) If the history sheet is not clean and contains more than six entries relating to offences committed within twenty-four months preceding the date of grant of the permit."

13. It is on the basis of these provisions which are designed to apply to the different categories of transport vehicles that Mr. Ramachandra Rao argued that the scheme of the Act is to lay down separate conditions for the grant of permits to stage carriages and other transport vehicles, and as such the guiding principles laid down in Rule 212 including the consideration of the history sheet is referable only to stage carriages and not to public carriers. It is further contended that the rule is not intended to encroach upon the rights of an applicant for stage carriage permit nor is it intended to impose any burden on him by considering the extraneous circumstances not provided for in the rule. He quoted a passage from Maxwell's Interpretation of Statutes (10th Edn.), at p. 285:--

"Statutes which encroach on the rights of the subject whether as regards person or property are similarly subject to a strict construction in the sense before explained. It is a recognised rule that they should be interpreted if possible so as to respect such rights. If there is ambiguity as to the meaning of the section inasmuch as it is a disabling section, the construction which is in favour of the freedom of the individual (to contract) should be given effect."

14. It is from this that he argues that the rule permits only of a strict interpretation and does not permit a liberal construction, nor is it of wide import as to bring in adverse entries relating to the public carriers within its ambit.

15. It may be necessary to go into the history of the maintenance of the history sheets. We may point out that there are no rules as to how and in what manner, or form the history sheets should be maintained and whether they should be maintained vehicle-wise or operator-wise. This aspect of the case need not detain us on the consideration of the scope of the impugned rule. We are not also concerned with the executive instructions issued, from time to time regarding the maintenance of the history sheets, but it does appear that the Central Road Traffic Board, Madras and the successor authority the State Transport Authority have been issuing instructions to the subordinate officials of the department to maintain history sheets of an operator in two parts separately one for public carriers and another for stage carriage. This fact is borne out by the admission of the Government Pleader and the affidavit filed on behalf of the Government. It is also pointed out that on 16-6-1966 subsequent to the filing of W.P No. 919 of 1966. the State Transport Authority has directed the officers of the department to maintain only one history sheet for all the transport vehicles of any particular operator and since then a consolidated history sheet is being maintained in the name of the operator. Mr. Suryanarayana contended that the impugned rule relating to the history sheet should be read with Section 47(1) as then the screening and the disqualification based also on the adverse entries relating to public carrier would become apparent as it is intended to serve the interests of the public generally and hence germane in considering an application for a stage carriage permit u/s 47(1)(a) of the Act. Mr. Ramachandrarao also invited our attention to the two different types of forms prescribed for application for stage carriages and other transport vehicles to show that the grant of permit for the two categories of transport vehicles is governed by separate conditions. History sheet is not defined anywhere in the Act or the rules and the history sheet referred to in the impugned rule undoubtedly relates to an applicant and not to a vehicle or categories of vehicles. The history sheet as ordinarily understood having regard to the dictionary meaning of "History" is a continuous methodical record of public events or whole train of events connected with a person or a thing. It would also refer to aggregate of past events or course of human affairs. So the applicants as well as the authorities ever since this rule has been incorporated in the rules have understood that the history sheet contemplated under the rule is the combined history sheet of the two categories of vehicles and the applicants in that view submitted their history sheets of both the transport services, stage carriages and the public carriers.

16. Mr. Ramachandra Rao has argued that while the consideration of other factors like the adverse entries relating to the public carriers might be germane and relevant u/s 47 of the Act, nevertheless, the adverse entries in the history sheet of a public carrier of the applicant cannot be brought into play under the impugned rule as it would be an extraneous consideration not germane or pertinent for the grant of a stage carriage permit. In short, it is his argument that under the impugned rule the history sheet means the history sheet of the stage carriage only and not the history sheet of any other transport service. Mr.

Ramachandra Rao, however has not been able to persuade us to put the construction that he placed upon the impugned rule; for it is the applicants history sheet as such that has to be taken into consideration and not the applicant's history sheet in respect of a particular service. What has to be assessed of an applicant is his suitability and fitness for the grant of a permit and for that the authorities have to look into the applicant's past and it is not possible to dissect or bisect his history sheet relating to the transport vehicles into separate categories. That would be defeating the very object of maintaining a history sheet for the purpose of ascertaining the suitability or otherwise of an applicant. In our view the whole trail of events connected with his experience in the running of motor vehicles, whether stage carriages or public carriers, has to be taken into consideration. It is his past record or history as a whole that would render him fit or suitable and the history sheet is expected to serve the interests of the public generally. If a narrow construction is put upon the rule that it covers only the history sheets of stage carriages and if a public carrier operator whose history sheet is not clean and contains more than six adverse entries applied for stage carriage permits, then if Mr. Ramachandra Rao's interpretation is to be accepted, it would not be disqualification; for he has no history sheets in respect of stage carriages and hence his history sheet is clean. This rule, therefore, is not capable of such restricted scope and applicability and takes within its fold the history sheet of an applicant whether it relates to stage carriages or public carriers. Even assuming that the rule permits the construction placed upon it by Mr. Ramachandra Rao and the rule is reasonably capable of two constructions and one construction has been adopted by the inferior Tribunals, the question is whether in the exercise of the extraordinary jurisdiction under Article 226 of the Constitution this Court can interfere. In *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, :--

"Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record.... If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

The Supreme Court in another case, *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, , observed that where the question involved is one of interpreting a Regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the Regulation in question is capable of two constructions and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by such authorities on the relevant Regulation appears to the High Court less reasonable than the alternative construction which it is pleased to accept. Therefore, it is apparent that when a statutory rule is reasonably capable of two interpretations and it has been construed reasonably by the inferior tribunal, its conclusion is not necessarily open to correction by a writ of certiorari. In view of the foregoing discussion and findings, the orders of the Government confirming the order of the appellate authority do not call for interference.

17. In the result, the order made in W.P. No. 919 of 1966 is set aside and Writ Appeal No. 127 of 1966 is allowed with costs against the petitioner. Writ Appeal No. 139 of 1966 and Writ Petition No. 1311 of 1966 are dismissed with costs. Advocate's fees Rs. 100 each.