

(1960) 08 AHC CK 0027
In the Allahabad High Court
Case No : Special Appeal No. 8 of 1960

Regional Transport Authority and Another	APPELLANT
Vs	
Sri Kashi Prasad Gupta and Others	RESPONDENT

Date of Decision : 24-08-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 68C, 68F(2), 68G(2)

Citation : AIR 1962 All 551

Hon'ble Judges : O.H. Mootham, C.J.; S.S. Dhavan, J

Bench : Division Bench

Advocate : K.B. Asthana, for the Appellant; S.N. Kacker, for the Respondent

Final Decision : Allowed

Judgement

Mootham, C.J.—These are two appeals from an order of a learned Judge dated the 1st, January, 1960, Sri Ram Audh Misra, the first appellant in Appeal No. 11, held a permit permitting him to ply a stage carriage on the Deoria-Lar route, and Sri. Mohammad Ismail and Sri Mahabir Prasad, the second and third appellants in that appeal, were the holders of permits permitting them to ply on the Siswabazar-Thuthibari route. Schemes under Chap. IVA of the Motor Vehicles Act were prepared, whereunder these two routes were to be operated exclusively by a state transport undertaking; and in due course the schemes were approved and the two routes became notified, routes. The schemes involved the displacement of the three appellants, and provision was made in the schemes for the payment to them of compensation therefore. Although the schemes made no provision for the appellants being offered alternative routes, the Regional Transport Authority, Gorakhpur, offered permits to the three appellants permitting them to ply on the Gorakhpur-Khajni-Gola route. This offer was accepted, and an endorsement was made on the permits of the, three appellants, which had been cancelled with effect from the 21st June, 1959, that these appellants were permitted to ply on the Gorakhpur-Gola route for the

unexpired periods of the cancelled permits. The making of the offer and its, acceptance by the appellants was recorded in a resolution, No. 32, of the Regional Transport Authority, Gorakhpur passed at a meeting held on the 26th September 1959.

2. Gorakhpur is connected with Gola by two routes. Both routes pass through Khajni and, then one proceeds via Urva and the other via Urva Malkanpur. The number of stage carriages permitted to ply on the former route is ten and on the latter two and as the two routes largely overlap the Regional Transport Authority permits the holder of a permit for one route to ply on the other route. It is common ground that for all practical purposes the two routes can be treated as one, the number of stage carriages permitted to ply thereon being twelve,

3. Sri Kashi Prasad Gupta, the principal, respondent In both appeals, (to whom it is convenient to refer as "the respondent") is the holder of a permit permitting him to ply his stage carriage on the Gorakhpur-Gola via Khajni and Urva route. He filed a petition in this Court under Article 226 of the Constitution challenging the validity of resolution No. 32 of the Regional Transport Authority passed at its meeting on the 26th September 1959, and prayed that it be quashed by writ of certiorari. He further prayed for the issue of a writ in the nature of mandamus commanding the Regional Transport Authority to forbear from permitting the three appellants to ply on the Gorakhpur-Gola route. The learned Judge was of opinion that as the schemes provided for the cancellation of the appellants' licences for their old routes on payment of compensation, the Regional Transport Authority had no power to offer them an alternative route and the grant of permits to the appellants to ply on the Gorakhpur-Gola route was without jurisdiction. He accordingly allowed the petition, quashed the impugned resolution and directed the appellants in appeal No. 11 not to operate on the Gorakhpur-Gola route. It is from that order that these appeals have been filed, the appellants, in Appeal No. 8 being the Regional Transport Authority, Gorakhpur, and its secretary.

4. The case for the appellants in the two appeals is substantially the same. The main contentions are two: first, that the respondent is not an "aggrieved person" and is not therefore entitled to obtain relief on the petition under Article 226 of the Constitution; and, secondly, that the Regional Transport Authority had ample power to grant these displaced operators permits to ply their buses on an alternative route. Sri S. N. Kacker, for the respondent seeks also to support the order of the learned Judge on the additional grounds (a) that the Notifications issued under Sections 68C and 68F (11) were invalid and (b) that the Regional Transport Authority had no power to grant permits to the three displaced operators to ply their vehicles on the Gorakhpur-Gola route in contravention of the provisions of Sections 47(3) and 48 of the Motor Vehicles Act.

5. For the purpose of determining whether the respondent is an "aggrieved person" and as such entitled to approach this Court for relief under Article 226 it is necessary to look first at the reliefs which he seeks to obtain. Those reliefs are

two. The first is for the issue of a writ in the nature of certiorari or like writ or direction" to quash Resolution No. 32 passed by the Regional Transport Authority at its meeting held on the 26th September, 1959; the second is for a writ in the nature of mandamus commanding the Regional Transport Authority and its Secretary to forbear, from placing the appellants in Appeal No. 11 on the "Gorakhpur-Gola via Khajni and Urva route otherwise than in accordance with law." Now" the impugned Resolution No. 32 reads thus:

"32. (1) Ram Awadh Misra resident of Barhaj district Deoria displaced from Deoria-Lar.

(4) Mohd. Ismail Gorakhpur displaced from Siswa-Thuthi-Bari.

(iii) Mahabir Prasad, Gorakhpur

R. T. A. has offered these three displaced operators as an alternative route Gorakhpur Gola via Khajni in lieu of compensation u/s 68-6(2) of Ch. IV-A of Motor Vehicles Act of 1939 read with Section 68-B of Ch. iv-A. The above route has been accepted by these, operators."

The recording of this resolution was a purely administrative act, and although the resolution might be quashed by a direction or order it cannot be done by certiorari. I am however unable to appreciate how the quashing of this resolution can operate to the advantage of the respondent The resolution is merely the record of an already completed transaction, and the quashing of the record will not, per se affect the transaction. The Court does not make orders which are not effective and I do not think that the respondent was entitled to the first of the reliefs for which he asked.

6. The second relief sought is the issue of a writ in the nature of mandamus. Now it is I think well settled that mandamus issues only where there is a legal right and. no specific remedy--or no adequate alternative remedy--for enforcing that right. "Where there is no specific remedy and by reason of the want of that specific, remedy justice cannot be done unless a, mandamus is to go, then a mandamus will go": per Brett, M. R. in R. v. Commissioner of Inland Revenue, In re Nathan, (1884) 12 QBD 461 at p. 473. The question whether the respondent is possessed of any right at all in the present case is disputed. The appellants contend that he is objecting to competition and that his right to ply his bus gives him no right to raise such an objection. To this the reply is that the respondent does not, and cannot, object to fair competition; but that he is entitled to object to competition arising out of the grant to rival bus operators of permits not lawfully issued. For the reason which I shall state shortly. I do not think it is necessary in this case to define the nature of the right which a petitioner must possess before he can ask for the issue of the writ of mandamus; but I should be sorry to think the law is such that a person In the position of the respondent, provided he can show something more than nominal loss, is without a remedy. As the Supreme Court has pointed out in Saghir Ahmad Vs. The State of U.P. and Others, any member of the public can, within the limits imposed by State

regulations, carry on the business of transporting passengers by motor vehicle. His right to carry on that business is guaranteed under Article 19(1)(g), and he is entitled to challenge the constitutionality of any law which unreasonably curtails that right. I am disposed to hold that he can also challenge the legality of action purporting to be taken under a law if such action unjustifiably curtails that right.

7. I think it however unnecessary to pursue this matter further for a Full Bench of this Court has, in *Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others*, laid it down that the Court, should exercise its powers under Article 226 only in those clear cases where, inter alia, the rights of a person have been seriously, infringed. That decision is binding on us, and in my opinion the respondent has failed to satisfy that requirement. In his affidavit in support of his petition the respondent merely states that the Gorakhpur-Gola route is uneconomic and that if the appellants in Appeal No. 11 are allowed also to ply on it the making of a respectable margin of profit would be impossible. The correctness of this assertion is denied by all the appellants in the counter-affidavits filed on their behalf, but notwithstanding this denial the respondent in his rejoinder affidavit is content to rely on his original statement. No figures in support of that statement have been given. Mr. Kacker has argued that, prima facie, an increase in the number of buses will necessarily result in a fall in the respondent's earnings; and that even if it be the case (as contended by the State) that there has been an increase in the number of the travelling public then, again prima facie, the respondent will obtain a smaller share in the increased business than he would have done had the appellants' buses not been on the road. This argument is not without force, but in the absence of figures, which in view of the attitude of the appellants the respondent ought to have produced, I am unable to hold that he has suffered or is likely to suffer serious loss and therefore that his rights (which for this purpose I assume him to possess) have been seriously infringed. This conclusion is enough to dispose of this appeal, but as the questions of law which arise in the appeal have been fully argued and are of considerable importance, I think it proper to express my opinion on them.

8. In considering the question of the validity of the acts done by the authorities it is convenient to state shortly the provisions of the Motor Vehicles Act regulating the establishment of a road transport service by a State Government. The principal provisions are to be found in Sections 68-A to 68-I which form Chap. IV-A of the Act and which, by virtue of Section 68-B, shall have effect notwithstanding anything inconsistent therewith contained in Chap. IV of the Act or in other law for the time being in force. The first step is for the State transport undertaking, which is defined as meaning an undertaking providing a road transport service carried on inter alia by a State Government, to prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars as may be prescribed, and to cause such scheme to be published in the Official Gazette. Section 68-D then provides that any person affected by the scheme may within

30 days from the publication thereof file objections before the State Government. The State Government will then, after giving an opportunity to the objector and the representatives of the State transport undertaking to be heard, either approve or modify the scheme. The scheme as approved or modified must then be published. In the Official Gazette. Upon publication the scheme becomes final and is known as an "approved scheme" and the area or route to which it relates is called a "notified, area" or notified route". The State transport undertaking must then u/s 68F (1) apply in the manner specified in Chap. IV for the appropriate permit in respect of the notified area or route, and the Regional Transport Authority: must thereupon issue such permit. Sub-section (2) of this section further provides that for the purpose of giving effect to the approved scheme, the Regional Transport Authority may by order refuse to entertain any application for the renewal of a permit, or cancel or modify the terms of an existing permit.

9. Section 68-G states the principles and method of determining Compensation. Sub-section (1) provides that where an existing permit is cancelled or the terms are modified in exercise of the powers conferred on the Regional Transport Authority by Section 68F, then the State transport undertaking shall pay to the holder of the permit compensation the amount of which shall be determined in accordance with the provisions of Sub-sections (4) and (5). The meaning and effect of Sub-section (2) has been the subject of much controversy. It provides that

"Notwithstanding anything contained in Sub-section (1) no compensation shall be payable on account of the cancellation of any existing permit or any modification of the terms thereof, when a permit for an alternative route or area in lieu thereof has been offered by the Regional Transport Authority and accepted by the holder of the permit."

Section 68H then provides that compensation under the preceding section shall be paid within one month from the date on which the cancellation or modification of the permit becomes effective. The last section of this chapter, Section 68-1, empowers the State Government to make rules for the purpose of carrying into effect the provisions of this chapter. Rules have been made by the State Government under this section, but before making any reference to them it is convenient to refer to Section 43 of the Act. This section provides that a State Government, after having regard to the considerations referred to in Sub-section (1), may by notification in the Official Gazette issue directions to the State Transport Authority with regard, to certain, matters including

"(iii) regarding the grant of permits for alternative routes or areas, to persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercise of the powers conferred by Clause (b) or Clause (c) of Sub-section (2) of Section 68F."

To this power there is however attached a proviso, namely that no such

notification should be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving "the representatives of the interests effected" an opportunity of being heard.

10. Rules have been made by the State Government under Sections 68-I and 68 (which latter section empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chap. IV) known as the U. P. State Road Transport Service (Development) Rules, 1958. Rule 3 lays down, that every scheme framed in pursuance of Section 68C shall provide for "all or any" of the several matters thereafter enumerated and Rule 4 provides that a scheme framed u/s 68-C of the Act shall be published in Form I appended to the Rules, and that form includes a clause which reads, thus:

"(9) The route covered by permit No./Nos. shall be curtailed so as to exclude.... Permit No./Nos. shall be transferred to route/s. . the holder of permit No./Nos. shall get compensation for premature cancellation of, or curtailment of any route or area covered by the aforesaid permit/s."

11. It is convenient now to look a little more closely at the schemes by which the Deoria-Lar and Siswabazar. Thulhibari routes became approved routes. The schemes as finally approved were published in the Gazette on the 16th May, 1959. As the provisions of the two schemes are in all material respects the same it is sufficient to refer to the scheme regarding the Siswabazar-Thuthibari route. Omitting the immaterial provisions the scheme was In these terms:

"Scheme regarding Siswabazar-Nichloul-Thuthribri route of Gorakhpur Region.

1. The State Road Transport Services shall commence to operate from June 1, 1959, or thereafter,

2. State Road Transport Service shall be provided on the route Siswabazar-Nichloul-Thulhibari of Gorakhpur Region.

3.

4. No persons other than the State Transport undertaking will be permitted to provide any Road Transport Services on the route or portion thereof specified in Clause (2) above.

5.

6. The transport vehicles which may be used on the route indicated in Clause (2) above, shall be of country type and their carrying capacity shall be 30 to 40 seats

7. The permit Nos. (1) 9/SC and (2) 24/SC which have been granted to Sarvsi (1) Mohd. Ismail and (2) Mahabir Prasad "for Siswabazar-Nichloul-Thuthibari route by the Regional Transport Authority, Gorakhpur, under ch. IV of the Motor

Vehicles Act, 1939, shall be cancelled.

8. The number of Transport vehicles plying on the route or, portion thereof specified in Clause (2) above Shall be reduced to nil.

9. The permit Nos. (1) 9/SC and (2) 24/SC shall be cancelled and the holders of these permits Sarvsri (1) Mohd. Ismail and (2) Mahabir Prasad shall get compensation for the premature cancellation of the aforesaid permits."

12. It is contended by the appellants that the learned Judge was wrong in holding that as neither of the schemes made provision for the offer of alternative routes to the displaced operators the Regional Transport Authority laid no jurisdiction to give them new permits permitting them to ply their buses on the Gorakhpur-Gola route. For the respondents it is argued that even if it be unnecessary for such provision to be made in the schemes the Regional Transport Authority could not issue permits to the displaced, operators without following the procedure laid down in Section 47 and that therefore in any event it acted in excess of its powers in granting the permits in the present case.

13. Section 68-C of the Act provides that a scheme proposed by a State transport undertaking shall give

"particulars of the nature of the service proposed to be rendered, the area or route proposed, to be covered and such other particulars respecting thereto as may be prescribed."

With this must be read Rule 3 of the U. P. State Road Transport Services (Development) Rules, 1958, which lays down that every scheme shall provide for

"all or any of the matters therein enumerated as Clauses (a) to (m)."

The only clause relevant for our present purpose is (j) which reads thus:

"(j) The curtailment of the route or portion thereof covered by the existing permits or transfer of the permits to any other route or routes and giving of compensation, if any."

14. It is not easy to understand what exactly is meant by the words" "transfer of the permits to any other "route". It is argued by the respondents that notwithstanding the use of the word "transfer" these words really refer to the offer by the Regional Transport Authority of an alternative route for which provision is made in Section 68-G (2). I do not think that this is so.

15. It is useful in this connection to look at the provisions of the U. P. Road Transport Services (Development) Act, 1955. That Act also made provisions for the establishment of State, Road Transport Services,, As u/s 68-C of the Motor Vehicles Act a scheme had to be prepared, and in Section 4(2), are enumerated the "matters for which provision could be made under the scheme, and of these Clause (i) was .

(i) The curtailment of the route covered by the existing permits or transfer of the

permits to any other route or routes."

specific provision is made in that Act for the transfer of existing, permits of displaced, operators to other routes: (Sections 4(2) and (5)). An essential difference between the two Acts is that the U. P. Act envisages the transfer of an existing permit to another route whereas the Motor vehicles Act provides for the offer of a fresh permit after the cancellation of the existing permit. The reference to "Transfer of permits" in Clause (j) of Rule 3 of the U. P. State Road Transport Services (Development) Rules would be appropriate to a scheme prepared under the U. P. Act; but in my opinion it is not appropriate to a scheme prepared u/s 68-C, of the Motor Vehicles Act. It is further to be observed that whereas under Chap. IVA of the latter Act the authority on whom devolves the duty of preparing a scheme is the State transport undertaking, the authority which is envisaged by Section 68-G (2) as making the offer of a new permit is the Regional Transport Authority. I, therefore, do not think that there is any statutory provision which requires reference to be made in a scheme prepared u/s 68-C (where such a course is intended) for the offer of alternative routes.

16. Then arises the question, and it is the crucial question in this part of the case, whether Section 68-G (2) confers an unfettered power (not of course to be exercised arbitrarily) on the Regional Transport Authority to offer a displaced operator a permit for an alternative route or Whether, as contended on behalf of the petitioner, this ,Sub-section provides only an opportunity for the exercise of a power which is to be found in Sections 47 and 48 of the (Act. I do not think it is possible to reconcile the provisions of Sections 47 and 48 with those of Section 68-G (2). The latter envisages an offer of a permit being made by the Regional Transport Authority to the displaced operator and the acceptance by him of the offer. The initiative rests with the Regional Transport Authority. Under Chap. IV, on the other hand, a stage carriage permit can be granted only after an application has been made for it. That application must contain the particulars prescribed by Section 46, it must thereafter be considered by the Regional transport Authority in accordance with the procedure laid down in Section 47 and Section 48 provides that it can be granted only in respect of the route or area specified in the application.

17. Reliance has been placed by the respondents on Section 43(1) of the Act which, so far as material, reads thus:

"43. Power to State. Government to control road transport.-

(1) A State Government, having regard to :

(a) the advantages offered to the public, trade and industry by the development of motor transport, and

(b) the desirability of co-ordinating road and rail transport, and .

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among motor, vehicles, may from time to time, by notification in the Official Gazette, issue directions to the State Transport Authority--

(i)

(ii)

(iii) regarding the grant of permits for alternative routes or areas, ,to. persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercise of the powers conferred by Clause (b) or (c) of, Sub-section (2) of Section 68-F;

(iv)"

It is argued that these provisions indicate that the grant of permits for alternative routes is to be made under Ch. IV and that such permits cannot therefore be issued unless the provisions of that Chapter are first complied with. This argument does not appear to be well founded. In my opinion, section 43 (1) empowers the State Government, if it thinks fit to do,-so, to issue directions of general application with regard to various matters, including the grant , of permits for alternative, routes. It assumed, I think, that it is within the powers of the State Transport Authority to ensure that such directions will be carried out by the Regional Transport Authorities, but it does not follow that the power of the Regional Transport Authority to grant a permit for an alternative route is to be found in Chapter IV in my opinion the power of the Regional Transport Authority to offer, and upon acceptance, to grant a permit for an alternative route to an operator whose permit has-been cancelled u/s 68-F is to be found only in Section 68-G (2); and the provisions of that Sub-section, and of any order made thereunder, must by virtue of section 68-B, have effect notwithstanding anything inconsistent therewith to be found in Chap. IV.

18. I am therefore) with great respect, unable to agree with the learned Judge that the fact that the schemes did not provide for the grant of permits for alternative routes deprived the Regional Transport Authority of power to grant such permits. Learned--counsel for the respondents has however sought to support the order of the learned Judge on other grounds, and those grounds; it is now necessary to consider.

19. Mr. Kacker''s contentions are, first that the notifications published on the 10th January and 6th June, 1959, under Sections 68-C and 68-F (2) respectively are Invalid; and, secondly, that in any event the grant of permits to the appellants in Appeal Mo. 11 was invalid because (a) upon such grant being made the limit on the number of stage carriages fixed for the Gorakhpur-Gola route u/s 47 (3) was exceeded and, (b) such permits being in respect of a route for which no application had been made the grant involved a contravention of Section 48 (1).

20. In my opinion there is no force in; the two latter! submissions which would

be valid, if at all, only on the basis that the permits in question were granted by the Regional Transport Authority in exercise of its powers under Ch. IV. In my view however, for reasons which I have stated earlier, the permits were granted by the Regional Transport Authority in exercise of its powers u/s 68-G (2); and by virtue of Section 68-B the grant was not invalid even if it were inconsistent with the provisions of Chapter IV.

21. Nor do I think that the submission that the notification u/s 68-F (2) is invalid can be sustained. That section, so far as is material, provides that

"(2) For the purpose of giving effect to the approved scheme in respect of a notified area or notified route the Regional Transport Authority may by Order (b) cancel any existing permit."

By the impugned notification the existing permits of the three appellants were cancelled but the notification was issued by the Regional Transport Officer. The argument is that power to cancel an existing-permit under this Sub-section is vested exclusively in the Regional Transport Authority, that the notification is therefore invalid, and the notification being invalid the appellants permits have not been cancelled and accordingly no question of the grant to them of permits for an alternative route arises. Now in the first place the cancellation of an existing permit for the purpose of giving effect to the approved schema appears to be in the present case to be merely a ministerial, act, and even if the Regional Transport Officer had not the requisite authority I should not on that ground be prepared to hold that the matter was one which would justify interference by the Court in the exercise of its powers under Article 226 of the Constitution. In the second place the Regional Transport Officer purported to act in the exercise of powers which had been delegated to him under Sub-section (5) of Section 44 of the Act by the Regional Transport Authority, and in my opinion, such delegation was valid. That sub-section provides that

"(5) The State Transport Authority and any Regional Transport, Authority, if authorised in this behalf by rules made u/s 68, may delegate such of its powers and functions to such authority or person and subject to such restrictions, (imitations, and conditions as may be prescribed by the said rules."

22. It is not in dispute that a rule has been made u/s 68 purporting to authorise the Regional Transport Authority to delegate its functions, duties and powers under Sub-sections (1) and (2) of Section 68-F to the Regional Transport Officer (see Rule 10 of the U. P. "State Road Transport Services (Development) Rules, 1955) but it is contended that as Section 68 only empowers a State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV the Regional Transport Authority had no authority to delegate to the Regional Transport Officer a power conferred upon it by Section 68-F which is to be found in Chapter IVA. I do not see sufficient reason why the power of delegation should be restricted to the delegation of powers and functions conferred upon the Regional Transport Authority by Chapter IV. Section 44 (5) imposes no such

restriction; the only condition is that there must exist a rule made u/s 68 authorising the Regional Transport Authority to delegate its powers. Such a rule has been made, and in my opinion it is a valid rule.

23. Finally, the validity of the Notification u/s 68-C dated the 23rd December, 1958, and published in the Official Gazette on the 10th January, 1959, is challenged primarily on the ground that the opinion expressed therein that it is necessary in the public interest that certain road transport services should be operated by the State transport undertaking must be the opinion of that undertaking and not the opinion of the State Government. The two opening paragraphs of the Notification to which exception is taken read as follows:

"Whereas the State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated Road Transport Service, it is necessary in the public interest that Road Transport Services on the routes mentioned at item Ho. 2 of the annexed schemes should be run and operated by the State Transport undertaking to the complete exclusion of other persons.

Now, therefore, in exercise of the powers conferred by Section 68-C of the Motor Vehicles Act, 1939, read with Rule 4 (1) of the Uttar Pradesh State Road Transport Services (Development) Rules, 1958, the Governor of Uttar Pradesh is pleased to publish the schemes hereto annexed in respect of State Road Transport Services framed in pursuance of Section 68-C of the said Act. Copies of each of the schemes will also be found pasted on the notice-boards of the offices of the State Transport Authority and the Regional Transport Authority concerned. Any person whose interests are affected by these schemes may, within 30 days of the date of publication of the schemes in the official Gazette, file objection, if any, before the Secretary to Government, Uttar Pradesh, in the Transport Department in accordance with the procedure laid down in Rule 5 of the abovementioned rules. A person affected by the scheme and agreeing to its provisions shall express his agreement in accordance with Rule 6 of the said rules in form No. 11 within the time specified above for filing objections."

Now Section 68-C reads thus:

"68-C. "Preparation and publication of scheme of road transport service of a State transport undertaking": where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State Transport undertaking, whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be

published in the official Gazette and also in such other manner as the State Government may direct."

Mr. Kacker's argument is that this section imposes upon the State transport undertaking the duty of forming an opinion whether it is necessary in the public interest that a road transport service should be run or operated by itself, and if it be of that opinion it is also the duty of the undertaking to prepare and cause to be published a scheme in accordance with the provisions of Section 68-C. The impugned notification, it is argued, shows that the decision as to the desirability of certain road transport services being operated by the State transport undertaking was formed by the State Government, that it was the Governor who prepared and caused the proposed scheme to be published, and that as this was contrary to the Act the notification and all subsequent orders and decisions based thereon are in valid.

24. "State transport undertaking" means any undertaking providing a road transport service where such transport service is carried on inter alia by a State Government. The State transport undertaking is a statutory authority, and it is common ground in the present case that the Transport Department of the State Government functioned as that authority. It was therefore a necessary prerequisite for a valid scheme that the Transport Department should have formed the opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service the particular road transport services referred to in the impugned notification should be run and operated by the State transport undertaking. The real question which arises, in my opinion, is whether it did so or whether that opinion was formed by the State Government. This is a question of fact. It is true that the notification states that the opinion which Section 68-C requires to be formed was that of the State Government; but I do not think that to be conclusive. It is argued for the appellants that the requisite opinion was in fact formed by the Transport Department functioning as the State transport undertaking, but that as any action taken by the Transport Department is a part of the executive action of the State Government, Article 166(1) of the Constitution requires all such action to be expressed to be taken in the name of the Government. In reply to this argument it was contended that the State transport undertaking being a statutory authority invested by law with specific powers, duties and inabilities, the functions entrusted to it were not within the executive powers of the State Government and ought not therefore to be expressed to be taken in the name of the Government. On this question I think it unnecessary to express an opinion, for it is not argued that the appellants are debarred from showing that in fact the requisite opinion was formed and the scheme prepared by the Transport Department functioning as the State transport undertaking and not by the State Government.

25. The evidence is unsatisfactory. Sri Kashi Prasad Gupta relies on the statement in the impugned notification itself that the State Government had

formed the opinion that a properly co-ordinated road transport service was necessary in the public interest; and that he does so is made clear in paragraph 25 of his original affidavit. For some reason not immediately apparent the counter affidavit filed on behalf of the Regional Transport Authority is sworn by one Girja Prasad a stenographer in the office of the Regional Transport Authority, Gorakhpur, who has no personal knowledge of any of the facts to which he deposes other than that he is a stenographer and has read and understood the respondent's affidavit, His affidavit accordingly throws no light on the matter under consideration; and it appears that the importance of the question was not appreciated by the Regional Transport Authority or its advisers for in paragraph 11 of his affidavit Girja Prasad says:

"That with respect to the contents of paras 22 to 29 of the said affidavit it is stated that the same raise legal issues and it is not necessary to reply the same in this affidavit."

The question is Important: it concerns the validity of the entire scheme and the burden in this case lies on the appellants of showing that the provisions of Section 68-C were complied with. They have not done so. As however I am of opinion that the appeals must be allowed, on other grounds it is unnecessary to consider whether the appellants should now be afforded an opportunity of filing a supplementary counter-affidavit or affidavits for the purpose of clarifying the position.

26. I would allow the appeals with costs against Sri Kashi Prasad Gupta.

Dhavan, J.

27. These two connected appeals raise an important question concerning the jurisdiction of the High Court wider Article 226 which may be formulated thus: first, has the Court the power to consider the legality of an order at the instance of a petitioner whose sole grievance is that the order, by permitting other persons to carry on the same business in the same area, is likely to intensify competition against him and thereby cause a fall in his profits; and secondly, is the owner of a motor bus operating on a route under a valid permit entitled, under Article 226, to attack the legality of a permit issued to another person for the same route in lieu of compensation due to him u/s 68 (G) (2) of the Motor Vehicles Act, on the sole grievance that it is likely to expose him to competition and reduce his profits from his own bus, even though he cannot show that any right of his has been curtailed? These are two sides of the same question, and raise the further question who is an "aggrieved person" entitled to ask for the protection of the High Court under Article 226. They also involve to some extent an interpretation of the words "for any other purpose" at the end of Article 226(1).

28. The facts of this appeal have been detailed in the judgment of the learned Chief Justice (Which I have had the privilege to read), and may very briefly be summarised thus: The respondent (petitioner in the petition under Article 226)

Kashi Prasad Gupta is the owner of a passenger motor bus operating on a certain route in Gorakhpur district known as the Gorakhpur-Gola route. The right to ply buses is regulated by the Motor Vehicles Act which enjoins that no person can operate a bus without obtaining a permit from the Regional Transport Authority. Gupta obtained such a permit, and has the right to ply his buses on this route subject to such reasonable restrictions as may be imposed in the public interest. It is not Gupta's case that he has been subjected to any unreasonable restriction.

29. But recently the State "nationalised" a certain route (not Kashi Prasad Gupta's) under a scheme made under Chapter IV-A of the Motor Vehicles Act. Consequently the permits of all persons plying passengers buses on that route were cancelled and they became entitled to compensation u/s 68-G of the Act. Three of them, who are the appellants in appeal No. 11 and the respondents in appeal No. 8 filed by the State, supporting that appeal and opposing Gupta, were offered and accepted, in lieu of compensation, permits "transferring" them to the Gorakhpur-Gola route--that is to say, enabling them to ply their buses on the route on which Kashi Prasad Gupta is plying his bus, Gupta claims to be aggrieved by this arrangement and has come to this Court under Article 226 of the Constitution impugning the legality of the decision entitling the three displaced owners to ply on the route on which his bus is running. He alleges that the permits granted to these persons, not having been issued in accordance with law, are of no effect and give the displaced persons no right to ply the buses on the petitioner's route. He claims to be aggrieved by this decision on the ground that the operation of more buses is likely to intensify the competition on a route which, according to him, is already "uneconomic", and thus to reduce his profits. This is the sum total of the petitioner's grievance in this case.

30. The first question in this case is whether this Court, on the facts stated in Kashi Prasad Gupta's petition, has any jurisdiction to interfere. Gupta claims to be an "aggrieved person" and therefore entitled to ask for relief. He pleads that the entry with illegal permits of the three displaced operators on the same route is likely to intensify the competition which in turn is likely to cause a fall in the rate of profit from his own business. Several questions arise out of this, plea--first whether there is any basis for the apprehension that the entry of the three buses on this route will intensify competition; secondly, assuming that the competition will intensify, there is any basis for the further apprehension that the rate of profit in Gupta's business will fall; and thirdly, assuming that there is some basis for both these apprehensions, whether this entitles Gupta to claim that there has been an Infringement of his right and empowers this Court to interfere under Article 226.

31. I propose to take the last question first, for I am of the opinion that even if Gupta had proved that his profits are likely to be affected--which he has not--this Court has no jurisdiction to interfere in this case.

32. Mr. S.N. Kacker, who appeared for Kashi Prasad Gupta and argued his case with ability, relied on a few English decisions in support of his argument that the

power of this Court to Issue writ is governed by the broad principles of English law which regulate the exercise of jurisdiction by the Court of Queen's Bench to issue these writs, I shall refer to these cases presently. But at the outset I must state my opinion that English authorities cannot be any guide in determining the jurisdiction of the Indian High Courts under Article 226 of our constitution.

33. As is well known, there is a distinction between the jurisdiction of a court and its exercise. By way of illustration I may refer to the jurisdiction of the Supreme Court under Article 32. That Court has been invested with the power to issue directions or orders or writs for the enforcement of any fundamental rights. The writs mentioned in this Article are those which the Court of the Queen's Bench has issued for centuries in accordance with certain principles. But the principles of English law cannot determine the jurisdiction of the Supreme Court, for it can entertain a petition under Article 32 only for the enforcement of rights conferred in Part III of the Constitution. *Sahibzada Saiyed Muhammed Amirabbas Abbasi and Others Vs. The State of Madhya Bharat and Others*, . The petitioner must, therefore, show that he has a fundamental right which has been or is in imminent danger of being violated. If he cannot, the Supreme Court has no jurisdiction to interfere even if the English Courts could have interfered in similar circumstances. For example, in a petition for the Issue or certiorari, however gross the error committed by a tribunal, if it falls short of infringement of a fundamental right the Supreme Court has no power to entertain the petition. The very jurisdiction is lacking.

34. But if the petitioner proves that any of his fundamental rights has been infringed by the order of the tribunal, the jurisdiction of the Court will immediately arise and be exercised in accordance with the broad principles which govern the Issue of certiorari by the Court of the Queen's Bench. But these principles are not the foundation of its jurisdiction they only prescribe the manner and conditions of its exercise.

35. The Supreme Court observed in *T.C. Basappa Vs. T. Nagappa and Another*, .

"In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law; nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of "certiorari" in all appropriate cases and in appropriate manner, so long as we keep, to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law."

The meaning of this observation, as I understand it, is that the broad and fundamental principles of English law should regulate the "exercise" of jurisdiction under Article 32, not that they can "confer" jurisdiction on the Supreme Court, which flows from the Article itself and no other source.

36. I have referred to the power of the Supreme Court under Article 32 to illustrate the distinction between jurisdiction and its exercise. The power of the

High Court to issue certiorari and other writs or orders is conferred (by Article 226 and is wider than that of the Supreme Court (except territorially). It extends not only to the Enforcement of fundamental rights but "for any other purpose". But the last four words within quotation do not have the effect of conferring upon the High Courts unlimited powers of interference nor do they mean that these powers shall be co-extensive with that of the Court of the Queen's Bench in England. As I shall show presently, in spite of these Words; the powers of the High Courts are in some respects wider and in others more restricted than those of the Queen's Bench. At present I am concerned with the meaning of these words and to show that they do not give this Court any jurisdiction to interfere in a case like the one before us.

37. The meaning and scope of the words "for any other purpose" has been interpreted by the Supreme Court in the *The State of Orissa Vs. Madan Gopal Rungta*, where it was held :

"The language of the Article shows that the issue of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under part III of the Constitution (fundamental rights) has been infringed. It can also issue writs or give similar directions for ANY other purpose. The concluding words of Article 226, have to be read in the context of what precedes the same. Therefore, the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article."

37a. The words "foundation of the exercise of the jurisdiction of the Court under this Article" are crystal clear. They mean that if there is no right in need of protection, the High Court cannot interfere even if the English Court could under similar circumstances.

38. Only if the petitioner has proved the existence of any right which has been or is in danger of being infringed, the jurisdiction of the High Court is established. Then, but not before, the stage of the exercise of the jurisdiction will arise and the principles of English law may be consulted. For example, if the petitioner's right has been infringed by an order of any judicial Tribunal and he has prayed for a writ of certiorari to quash it, the High Court will follow the broad principles of English law in considering whether certiorari ought to go. It will inquire if the tribunal has acted without jurisdiction or in excess of it, or has been guilty of any error apparent on the face of the record or has violated any principles of natural justice; if so, it will issue the writ and quash the decision of the tribunal.

39. The Supreme Court has held that the High Court shall interfere by certiorari on more or less the same grounds on which the Court of Kings Bench would. It was in this context that the Supreme Court made the observation in *Election Commission, India Vs. Saka Venkata Subba Rao* and,

"..... The makers of the Constitution.... conferred in the States sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcements of fundamental rights; the power to issue such directions

for any other purpose" being also included with a view apparently to place all the High Courts in this country, in somewhat the same position as the Court of the King's Bench in England."

40. Does this observation have the effect of modifying the considered decision in *The State of Orissa Vs. Madan Gopal Rungta*, , that the existence of a right is the foundation of the High Court's jurisdiction under Article 226? I think not. The words are not "in the same position" but "somewhat in the same position". Somewhat means in some degree or measure. The Supreme Court meant that the High Court's powers were, somewhat similar to those of the Queen's Bench, but they could not have meant that, the two powers are identical in scope and purpose. There is nothing in this observation: which qualifies in the slightest degree the considered view of the Court in *The State of Orissa Vs. Madan Gopal Rungta*, , that the existence of a right is the foundation of the jurisdiction of the High Court, The phrase "somewhat similar" describes the approximate factual position, for in the majority of English cases, too, in which certiorari is issued, there is usually an infringement of a legal right vested in the petitioner. But this does not alter the fundamental fact that the foundations of the jurisdiction of the two Courts are different--one originated in the prerogative of the English Crown and is now based on statute, and the other flows from Article 226, of the Indian Constitution.

41. As stated above, counsel for Kashi Prasad Gupta has relied on one or two English Cases in which a person was permitted to move the Court of King's Bench for a writ of certiorari to quash an order of a tribunal even though it did not directly infringe any legal right vested in him. I shall consider these cases presently. At the very outset however, I must point out that the principles of English law cannot lead us to the source of the jurisdiction of the High Court, for the origin of the prerogative writs in England was for a purpose fundamentally different from what the makers of our Constitution had in mind when conferring upon the Indian High Courts the power to issue writs, orders or directions under Article 226 of the Constitution.

42. To discover the purpose of the English prerogative writs it is necessary to refer to the history of English law. After 1066 the Norman Kings sought to establish a strong central authority operating from west minister. One of their instruments for achieving this purpose was the creation of central court which would displace the innumerable local Courts. The curia regis or the King's council, was the foundation of a centralised judicial system from the time of William the Conqueror. The King of England reserved to himself judicial powers, and in course of time, the Court of King's Bench became a separate court. For a long time it

"drew much of its authority from the fact that it was still held in the presence of the King

In fact, the Court of Kings Bench only gradually became a separate court of

common law as it lost, in the course of the fourteenth century, its formal close connections with the King himself and the King's Council"--A History of English Law by Sir William Holdsworth, Volume 1, The judicial System, pp. 208-207.

43. The establishment of the authority of the royal courts over the innumerable local courts of the feudal lords was a process which was spread over several centuries. One of the many weapons employed by the King was the issue of writs in the exercise of his royal prerogative, which clothed the King with extraordinary powers (hence the name of prerogative Writ).

"We may say that the prerogative was the power of the King to do things which no one else could do, and his power to do them in a way in which no one else could do." Constitutional History of England by G.B. Adams, 1949 Edition p. 78.

44. All the writs had a common characteristic: they enabled the King to exercise his power of superintendence over the local courts, officials and others. Even Habeas Corpus which today is a bulwork of personal freedom was

"originally a writ by which a court could bring before itself persons whose presence was necessary for some legal proceeding pending before it; and some forms of the writ never ceased to be merely procedural." Holdsworth, *ibid*; p. 227.

45. Quo Warrant was a writ

"in the nature of a writ of right for the King against persons who claimed or usurped any office, franchise, liberty, or privilege belonging to the crown to enquire by what authority they maintained their claim in order to have the right determined." -- [*ibid* p. 229.

The purpose of this writ was not to safeguard the rights of aggrieved persons but to curb the pretensions of the feudal lords and extend the authority of the King. Mandamus was a "command issuing in the King's name from the court of King's Bench, and directed to any person, corporation, or inferior court of judicature, within the King's dominions; requiring them to do some particular thing therein specified, which appertains to their office or duty". 229) Certiorari

"is an original writ which can be issued out of the Chancery or the King's Bench when the King desires to be certified of any record made by any court of record, or by certain officials, e.g. Sheriff or the Coroners. Thus..... indictments can be removed from the itinerant justices by this writ to the King's Bench."

Prohibition is a writ

"issuing properly only out of the court of King's Bench, being the King's prerogative writ..... directed to the judge and parties of a suit in any inferior court, commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein does not belong to that jurisdiction."

46. Thus all the high prerogative writs were preliminary legal devices by which

the Norman and Plantagenet Kings extended the power of the Royal Courts and curbed those of the local courts, and forged a judicial, system enforcing a common law over the entire realm.

47. The King did not confine himself to the writs above mentioned. By another writ called Praecipe

"which was addressed to the Sheriff, the king directed him to command the defendant in a particular dispute over land pending in the baronial court to return at once to the plaintiff the land in dispute or else to appear in the King's court and explain why he had not done so, that is why he had not obeyed the King's command". Adams, *ibid* p. 108. "The writ assumed the plaintiff's case to be just and was based on the duty of the King to secure justice for all. It passed over the feudal law and the rights of the feudal lord entirely and fell back on a higher conception of the royal office, not as lord paramount of the realm, but as representative of the divine government of the world, which the medieval theory assumed the King to be. In this way it was a direct attack upon the feudal government of the State and a long step towards recovering the rights of jurisdiction which had been allowed to fall into private possession." *ibid* p. 108.

48. But the establishment of the authority of the King over the barons and of his courts over the innumerable local courts of the feudal lords was not an easy process; it was achieved after a long struggle in which there were many setbacks. The barons often defied the authority of the King. Clause 34 of the Magna Carta was directed against the writ of praecipe and reveals the stiff opposition of the barons to the extension of the royal justice at the expense of their feudal courts, It forbade the king to issue the writ of praecipe in such a way as to remove a case from a private court into the king's.

49. The writ of Quo Warranto, which originated in the reign of Edward I also met with strong opposition from the barons.

"In another statute, that of Gloucester (1278), Edward tried to check the legal power of feudal lords. This statute instructed the King's justices when they went on their tours to inquire by what right (quo warrant) the feudal lords were holding courts. He meant to deprive persons who could not produce royal charters, of the right to hold such courts. But the barons resisted strongly. Earl Warrenne made the famous reply, as he unsheathed his sword. "Here is my warrant". Ultimately Edward compromised and allowed any baron who could prove that the right had been exercised since the days of Richard I to continue to exercise it".

50. Thus the prerogative writs were royal weapons in the struggle of the central government against the local lords. The King and his itinerant judges made use of them freely--*suo motu* as well as at the instance of persons who were Interested in the extension of the authority of the King's courts. With the King and his, courts in an expansionist mood, the words "aggrieved person" were given a liberal meaning, and it was not necessary for the purpose of persuading

the King or his Court to interfere with the jurisdiction of other Courts, to establish the infringement of legal rights. The existence of a legal right has never been the foundation of the writ jurisdiction of the King's Bench. That foundation, is the prerogative "which enabled the King to do what no one else could do."

51. Today the ancient probative writs have acquired new content. But their origin and the traditions which attached themselves, to these writs in the early stages of their development influence the conditions of their issue even today.

"English lawyers must know Something of the nature of the court in which these cases were decided, and some thing of their procedure and jurisdiction. Much more is this knowledge necessary to an understanding of the History of English law. Indeed, without it no profitable study of English legal history is possible. For the English judicial system is so to speak the skeleton round which the rules of English law have grown up; and the gradual evolution of the form of this skeleton has determined the large outstanding characteristics of the ever-growing body of English law."

Holdsworth, *ibid* p. 2. Even today the petitioner who moves the Queen's Bench for certiorari has to prove that he is an aggrieved person but not necessarily the infringement of a legal right vested in him.

52. It is against this historical background that I have to consider the argument of learned counsel for Gupta that a person who would be entitled to apply for an order in England is entitled to apply for a writ in India;

53. I agree that the High Court when exercising its power of issuing writs of certiorari or mandamus should ordinarily apply the principles regulating the issue of such writs in England, but would add the qualification that the exercise of the power under Article 226 being discretionary, the High Courts will take into account Indian Conditions when exercising their discretion.

54. But I am unable to agree that the foundation of the jurisdiction of the English and the Indian courts is the same or that the power of the High Courts in India to issue writs, orders or directions under Article 226 is coextensive with that of the English Courts. Learned, counsel has based his argument on the observation of Mukherjea, J. in *Election Commission, India Vs. Saka Venkata Subba Rao* and, (repeated in *T.C. Basappa Vs. T. Nagappa and Another*, to the effect that the words "any other purpose" in Article 226 have been included with a view apparently to place all the High Courts in this country in somewhat the same position as the King's Bench in England.

55. In my view, we cannot read into these words anything more than an approximate comparison. The words "for any other purpose" do not have the effect of giving the High Court the same powers as the Court of the Queen's Bench. In spite of them, the High Court's powers are in some respect much wider, and in others not so wide. The High Court can issue writs against the State which the Queen's Bench cannot. Secondly, the High Court's power is not

confined to the issue of the five prerogative writs mentioned in the Article; it can issue any orders or directions if, in a particular case, adequate justice cannot be done by the issue of the prerogative writs. Thirdly, the High Court can quash even executive or administrative orders which the Queen's Bench cannot. *Rashid Ahmed Vs. The Municipal Board, Kairana*, . This was a case under Article 32 but the principles stated therein will apply equally to Article 226 in *Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others*, , *Mootham, J.* (as he then was) held that the impugned order refusing to renew the petitioner's licence being an administrative act, the High Court had no power to interfere by certiorari but had the power under Article 226 to quash it. After reviewing the English principles regulating the issue of certiorari, he observed:

"I am therefore of the opinion that the act of the licensing Authority in refusing to renew the petitioner's license was an administrative act and that accordingly this Court cannot Interfere with such order by a writ In the nature of certiorari. I venture to think, however, that the question whether the licensing authority acted quasi-judicially or ministerially is one which is somewhat unreal, this Court has the power under Article 226 of the Constitution to issue directions, and orders, as well as writs, for any purpose, and in the exercise of that power it can direct that an administrative power be quashed." The fundamental difference between the power under the English law and under Article 226 could not have been recognised more clearly. Fourthly, where a fundamental right is in jeopardy, the existence of an adequate alternative remedy is no bar against the issue of a suitable writ) under Article 226 whereas the Queen's Bench will not issue mandamus or certiorari if an alternative remedy is available. In *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, , following an earlier decision in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, , the Supreme Court held that

"the principle that a court will not issue a prerogative writ when an adequate alternative remedy was available does not apply where a party has come to the Court with an allegation that his fundamental right had been infringed and sought relief under Article 226."

56. In some other respects the powers of the High Court are narrower than those of the Queen's Bench, being limited by the words of Article 226. First, the writs (or orders) issued by the Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be "within those territories". *AW 1953 SC 210* . Thirdly, the existence of some legal right "is the foundation of the exercise of jurisdiction of the (High) Court under this Article." *The State of Orissa Vs. Madan Gopal Rungta*, .

57. Thus in spite of the words "for any other purpose", the jurisdiction of the High Court under Article 226 is neither identical nor co-extensive with that of the Queen's Bench.

58. The meaning of the words "for any purpose" and the scope of the powers of the High Court under Article 226 had been settled by the Supreme Court by several decisions when the case of T.C. Basappa Vs. T. Nagappa and Another, was argued before it. It is thus obvious that by their observation in Election Commission, India Vs. Saka Venkata Subba Rao and, the Supreme Court could not have meant that the words "for any purpose" in Article 226 have the effect of making the power or jurisdiction of the High Court identical or co-extensive with those of the Queen's Bench. This observation was made an *passant* and could not have been made with the intention to over-rule the earlier and considered decisions of the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, , *Rashid Ahmed Vs. The Municipal Board, Kairana*, and *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, in my view, the word "somewhat" indicates that the Supreme Court did not intend the observation to be interpreted with mathematical precision or to lay down a principle so obviously at variance with the constitutional position and with their own earlier interpretations of Article 226.

59. I am therefore of the opinion that the principle laid down by the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, is still in full force and will govern the case before us. Unless this Court finds that a right of the petitioner has been infringed, it has no jurisdiction to entertain this petition.

60. Furthermore, the nature of the reliefs claimed by Kashi Prasad Gupta in the present case excludes the application of English principles governing the issue of *certiorari*. In the first place, he wants this Court to quash the resolution No. 32 passed by the Regional Transport Authority in its meeting on 26-9-1959, stating that the time displaced operators were offered the alternative route Gorakhpur-Gola in lieu of compensation u/s 68-G (2) Ch. IV-A of the Motor Vehicles Act and had accepted the offer. It is not clear whether this Resolution merely recorded the simple fact that an offer had been made and accepted before the meeting, or is a written memorandum of the acceptance of an offer made in the meeting itself. In either case, the resolution is merely the evidence of an agreement. There is hardly any point in quashing a document which is no more than evidence of a fact.

61. I have grave doubt whether the High Court can quash the agreement itself. Government can certainly quash any order of Government, but an agreement is created by a unilateral decision or order (*sic*). It is founded on consensus and arises when an offer made by one party is accepted by the offered. No order issued to the Transport Authorities can quash an agreement which has been made already and is enforceable at law at the instance of the other party. However, the Court should not take a technical view of any linguistic defect in the relief claimed by a petitioner under Article 226 and should try to understand the essence of his prayer and then frame the relief itself, if possible. I am, therefore, prepared to interpret the first relief as a prayer that the Government should not enforce the agreement embodied in Resolution No. 32. But even this relief

cannot be granted, for the agreement has been executed already and a permit issued. There is nothing further to be done by Government which it can be asked not to do. Thus it is not possible to grant the first relief.

62. The petitioner's second prayer is for a writ of mandamus commanding the Regional Transport Authority and its Secretary to forbear from placing the displaced operators on the Gorakhpur-Gola route otherwise than in accordance with law. Legally the relief as framed does not make sense. The Transport Authorities cannot "place" any operator on any route. They can only grant him a permit, after which he "places" himself on the route covered by the permit, in the present case, the Regional Transport Authority made an offer which was accepted by each of the three displaced operators, and the permits were granted. After this, that authority did nothing by way of "placing" these operators on the route. They started running their buses on this route. Now this Court can issue no orders under Article 226 to these operators. It can only quash the permits which have enabled them to operate on this route. The second relief, as framed, is meaningless and cannot be considered.

63. It may, however, be argued that a permit was issued in pursuance of the acceptance of the offer by the displaced operators, and that a mandamus should issue to prevent government from giving effect to the permit Issued u/s 68-G. This too cannot be granted as long as the permits are intact. To command the government not to enforce them is to ask it to commit breach of contract after its offer had been accepted by the displaced operators. They accepted the permits on the alternative route in lieu of compensation to which they are entitled. The agreement is enforceable under the law. This Court cannot in the exercise of its powers under Article 226 put any responsible authority in a dilemma either to obey the Court's order and break a contract or honour the agreement and disobey the Court's order. This Court cannot leave the permits intact but command the authorities not to recognize them. Nothing could be more inconsistent or unfair. The petitioner has made no prayer for the quashing of the permits. But here again I am prepared not to take a technical view of the defects in the framing of the relief and to treat the second prayer as for quashing the permits. The grant of a permit as the result of the acceptance of an offer u/s 68-G (2) is not a quasi-judicial but an administrative act. It is not amenable to certiorari and the English principles governing the issue of this writ will not apply in the present case.

64. As held by Mootham and Sapru, JJ. in *Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others*, the High Court's powers under Article 226 are wider and it can quash any administrative order or executive decision of the Government or any person in authority in a suitable case. Therefore, the power to quash the permits must be derived from this Article or not at all. If an executive or administrative decision cannot be quashed by certiorari, the English test of "aggrieved person" which is somewhat lax, does not apply to such a case, and the argument that Kashi Prasad Gupta must be recognised as an aggrieved

person in this case simply because he would be so regarded in a petition for certiorari in England falls to the ground. As this is a petition under Article 226, he must show that the impugned executive decision has infringed a right vested in him before this Court can exercise its powers under that Article.

65. I shall now consider whether any right of the petitioner has been infringed. He has come with something dressed up as grievance, but the question is whether this "grievance" has any legal substance. I do not think it has.

66. As stated previously, Kashi Prasad Gupta is the owner of a motor bus operating on a certain route. The right to ply motor buses for hire is regulated by the Motor Vehicles Act which enjoins that any person plying a passenger bus must first obtain a permit from the Regional Transport Authority. Gupta has obtained such a permit. Consequently, he has the right to use the highway for the purpose of plying his buses on this route subject to the right of all other persons to use it and subject to such reasonable restrictions as the State may impose in the public interest. He continues to enjoy, this right to the fullest degree. There is no suggestion that as a result of the grant of the three impugned permits Gupta's right to use the highway has been taken away or unreasonably restricted. But he claims the further right to keep out any other person who does not possess a valid permit. He complains that the entry, with illegal permits, of the three displaced operators on the same route is likely to intensify competition which in turn is likely to cause a fall in the rate of profit from his own business. Even assuming that there is some basis for his apprehensions, does this entitle him to challenge the legality of their permits on this grievance alone? I know of no law under which he can claim this right.

67. The Gorakhpur-Gola route is a public highway owned by the State. There is a dedication in favour of the public, every member of which has the right to pass and repass. But the ownership in the highway vests in the State, and it can close or destroy any particular highway at any time without consulting anybody, it can restrict or regulate even the right to pass over it. No one can question these rights of the State.

68. If the Motor Vehicles Act had given no power to the Transport Authorities to limit the number of motor vehicles plying on a route, Gupta could not have objected on the ground of uneconomic competition. Under the law, no businessman can prevent a hundred others from opening rival shops in his locality. The resulting competition may hit him, but the law provides no remedy against competition, however severe. All businessmen have to adjust themselves to the economic forces of supply and demand without interference from the law. No one can claim a monopoly or near-monopoly or shelter from competition in any business or enterprise. The Constitution guarantees the equal rights of every citizen to follow any trade or business subject to reasonable restrictions in the public interest. Any attempt to keep out others with the help of the State would be unconstitutional. Therefore, under the law, a bus operator cannot ask the Court to protect him from what he regards as uneconomic competition.

69. Does he acquire this right by virtue of the restrictions imposed under the Motor Vehicles Act? I think not. That Act does not confer upon any permit holder Immunity against competition, nor does it increase the legal content of the right to carry on the business of running motor buses; it only imposes restriction in the public interest. Its purpose is not to create a monopoly or near-monopoly or a sheltered business in favour of a few and to protect these few from uneconomic competition, but to safeguard the interests of the public by regulating a form of transport which is driven by power at high speed and potentially dangerous. The regulations under the Motor Vehicles Act are stringent but their purpose is to ensure the safety and convenience of the travelling public and not to guarantee a minimum rate of profit and immunity against open competition for those who obtain permits. It is necessary to emphasise this primary object of the restrictions imposed under the Act in order to remove the misunderstanding created by certain parts of the Act which enable certain classes of persons to oppose the grant of a permit or make representations against such grant.

70. There is a fundamental objection to Gupta's petition. The Motor Vehicles Act creates no vested right in him. Like any other law regulating a peculiar kind of business by means of a permit or licensing system, this Act is in the nature of a restriction on the right to carry on the business of transporting passengers by motor bus, and does not add to the legal content of this right. The incidental result of the permit system may be to confine the business for the time being to a few permit holders and thus benefit them indirectly. But the permits do not confer any exclusive franchise on their holders. Benefits which flow incidentally from a system of restrictions create no vested right in those who enjoy them for the time being. For example under the excise laws, The number of licenses for setting alcoholic liquors is limited in the public interest, with the result that those who succeed in obtaining permits may benefit indirectly from the permit system. In fact, in certain areas a license to sell foreign liquor may be veritable gold mine--as in Delhi today. Again, in a controlled economy under which the number of licenses for selling essential commodities like cloth or sugar may be limited, all those who obtain licenses may derive great benefit indirectly from the restrictions. But they acquire no vested right in these benefits, and cannot acquire the right to challenge the legality of any other person's license on the ground that the illegal license will expose them to greater competition. If a person is found carrying on business without a license or permit, he incurs the penalties of the law and the remedy is to lay information for the prosecution of the offender for breach of the control regulations. Similarly, under the Motor Vehicles Act, all those who succeed to obtaining permits benefit incidentally from the permit system and enjoy for the time being a comparative immunity from open competition. But they acquire no vested, right in this immunity and do not acquire the right to challenge the legality of a rival's permit on the ground of apprehension of increased competition. If any person plies a motor bus without a valid permit this is a matter between him and the State and the proper remedy is to lay information against him. But to hold that in a business subject to the

restrictions of a permit or licensing system, a permit holder has the right to challenge the legality, of another's permit on the ground that it will intensify competition is to create a vested right in the benefits which are merely incidental to the restrictions.

71. The permit or license under the Motor Vehicles Act merely removes a restriction on a right which is inherent and guaranteed by the Constitution. But & restriction cannot be an addition: and the removal of a restriction cannot increase the original content of the right. It by amending the Motor Vehicles Act, the State were to remove the limit on the number of buses on all routes (while preserving all the other restrictions) no bus owner could object to competition from new comers in the business. I do not understand how he can object simply because there is a permit system. He cannot say, "The permit system may have been made in the public interest but it benefits me incidentally; therefore, I have acquired a vested right in the immunity from competition." If this argument is accepted it will lead to the paradox that the restrictions on a right can increase the legal content of that right.

72. To sum up my opinion on this point, any immunity from open competition enjoyed by the holder of a permit under the Motor Vehicles Act is an incidental and indirect benefit resulting from the restrictions imposed on the motor transport business and creates no vested right in him. It cannot be used as a legal weapon for Keeping out others from the business or to challenge the legality of another person's permit.

73. There is no provision in the Motor Vehicles Act which entitles the holder of a permit to raise an objection against the grant of permit to another person on the, grievance that competition from the new-comer may reduce his profits. The State has been given the power, in the interest of public safety and convenience, to limit the number of buses plying on any route. One obvious result of such a limit must be that every one cannot ply a motor bus on a route of his own choice. The Act ensures that every citizen shall have an equal opportunity to apply for a permit and have his claim considered, it prescribes an elaborate procedure for receiving applications, objections, the matters to be considered before granting a permit, and for appeal against the selection of a particular applicant among many. There is a further provision for considering representations from persons who have not applied for a permit but are opposed to the grant of a particular permit Those include 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 local authority or police authority within whose jurisdiction any part of the proposed route or area lies. This is provided u/s 47 of the Act, which extends the privilege of making representations to several classes of persons whose rights are not affected--as for example, the police and the local Authorities. The matters which the Regional Transport Authority must consider before granting a

permit include those specified in Section 47, Clauses (a) to (f). They all relate to matters of public interest and have little to do with the mercenary interests of bus operators already plying on the route.

74. There does not appear to be any provision in the Motor Vehicles Act which confers upon a bus operator the right to object to a grant of permit to another person on the ground that it will result in loss of profit to him. He can object that the existing facilities are adequate but this objection must be in the interest of the travelling public, not his private interest in maintaining a certain rate of profit for himself. His real motive may be to preserve his own profits, but he must show the transport authority why it is not in the public interest to grant a fresh permit on that route. He may be able to give convincing reasons. If a hundred buses are permitted on a route where one would be adequate, the remaining ninety-nine would be a nuisance to the travelling public. Any one who has been pestered by tongas or rikshaws outside a railway station will agree that it is in the interest of the public that the supply of vehicles should not be very much in excess of the demand. Here the interests of the public and the bus owners already operating on the route will coincide. But the vital point to note is that the purpose of hearing representations u/s 47 is to safeguard the interest of the public and not any private person's rate of profit.

75. If Section 47 were interpreted to mean that the State can take private interests into consideration and refuse a permit on the ground that the addition of another operator will reduce the profits of those already in the business, the result would be to confer upon persons in the motor bus trade an immunity against competition a guarantee of minimum rate of profit which is denied to persons engaged in other trades and industries. It could not have been the intention of the legislature to pass the Motor Vehicles Act to place persons engaged in the motor bus trade in a more favourable position, as regards the right to profits, than those in other trades. The purpose of hearing representations u/s 47 (1) is to safeguard the interests of the public, though the indirect result may be to limit the number of bus operators on a particular route. But no operator can acquire a vested interest in this limit or to demand that the limit should not be exceeded lest his rate of profit may fall. The Act confers no power on any authority to consider an objection that the rate of profit of an existing operator will fall as a result of the grant of a particular permit. This would be an extraneous or irrelevant consideration. This being the sole grievance of Kashi Prasad Gupta against the grant of permits to the three displaced operators, the Act gives him no right to object.

76. Learned counsel for Gupta contended that his client does not object to lawful competition, but government, by granting the displaced operators illegal permits, have subjected him to an illegal competition. He claims the right to move this court under Article 226 of the Constitution of India for relief against an illegal act which subjects him to competition by rivals who have no right to run buses on that route.

77. Under the law this claim has no substance. If there were no Article 226, Gupta would have no right enforceable against the government or the displaced operators in a court of law. He could not obtain any injunction restraining the rival competitors from carrying on their business without a permit. He could not file a suit for damages against them or government, for any loss of income suffered by him as a result of competition from the competitor, for there is no injury to any right vested in him.

78. Even assuming that the competition between Gupta and the displaced operators is likely to result in some reduction of the profits earned by him, this would give him no right of action, it would be a case of *damnum absque injuria*. Even assuming that they operated their buses on this route without a valid permit, the displaced operators have invaded no legal right of Gupta nor violated any duty owed by them to him. The duty to obtain permits is to the State and not to the other operators on the same route. The breach of this duty may expose the offenders to penalties of the law but not to any action for damages by a rival operator. For example, if a person sells illicit liquor or smuggled gold, he can be prosecuted under the appropriate law, but is not liable in damages to any person holding a valid license to sell liquor or gold on the ground that his illegal sales have resulted in loss of profits to the plaintiff.

79. The loss of profits apprehended by Kashi Prasad Gupta be the result of competition. But by competing against him the displaced operators commit no wrongful act against him. If their permit is illegal through no fault of theirs, they are not guilty of any tortious act against Gupta, for they owed no duty to him to obtain a permit before plying their buses on this route. A person who has obtained a permit and is running his own bus can have no cause of action against another for obtaining a permit to which he was not entitled.

80. It was argued on behalf of Gupta that if the holders of valid permits are not protected against competition from persons holding no permits or illegal permits, the State may dump any number of persons on a particular route by issuing bogus or patently illegal permits. In that case, it is contended, there would be no protection against discrimination or abuse of power by the authorities. I am not impressed by arguments of this sort, which presume that we are all living in a State governed by rogues or madmen under conditions of *Andher Nagari* or *Goverganda Raja*. It is much nearer the truth to presume that the State is run by reasonable persons who may however err sometimes. If in a particular case the action of the State in exempting a person from permit regulations is *mala fide* or discriminatory or unconstitutional it can be challenged under Article 14 of the Constitution--that is to say, on the ground that, the guarantee of equality before law and the equal protection of the laws has been violated. The Constitution provides a remedy against abuse of power. It is not Kashi Prasad Gupta's case that in offering permits to the displaced operators on this route in lieu of compensation, the State has acted *mala fide* or arbitrarily.

81. But if there has been an Irregularity or even illegality In the grant of a

permit, no rival in trade can claim the right to challenge the legality of such grant on the ground that his profits in trade are likely to be reduced as a result of competition from the holder of the illegal permit, any more than he can maintain a cause of action against the State for failure to prosecute a rival offender under the Motor Vehicles Act or any other breach of the criminal law.

82. To sum up my conclusions on this point, Kashi Prasad Gupta can show no injury or wrong to his rights. The damage, if any, is non-tortious indirect and too remote. If the law will refuse relief against such loss or damage in an ordinary action, I do not think that the High Court, under Article 226 can enlarge his rights or create a new right by modifying the principle of *damnum absque injuria* or altering the law of torts and damages.

82a. This view is supported by judicial authority. In *Tennessee Electric Power Co. v. Tennessee Valley Authority* (1938) 306 U. S. 118 : 83 Law Ed 543, all the questions which are in issue in the present case were considered and decided by the U. S. Supreme Court. It was held that a person threatened with injury by an act of an agent of the government done under statutory authority cannot challenge the validity of the statute in a suit against the agent unless the right invaded is a legal right, one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege. It was further held that

"a franchise to exist as a corporation and to function as a public utility, in the absence of a specific contract on the subject, creates no right to be free of competition and affords the corporation no legal cause of complaint by reason of the state's subsequently authorising another to enter and operate in the same field."

It was also held:

"A local franchise to operate a public utility while having elements of property, confers no contractual or property right to be free of competition either from individuals, other public utility corporations, or the state or municipality granting the franchise, in the absence of a contract precluding the grant or from initiating or permitting such competition."

It was further held that

"a public utility corporation has no standing to challenge the constitutionality of a statutory grant of power merely because the exercise thereof results in competition".

It was also held by the U. S. Supreme Court that

"State statutes requiring a public utility to obtain a certificate of convenience and necessity as a condition of doing business and subjecting it to public supervision and regulation does not give any established utility corporation a standing to maintain a suit to restrain the Tennessee Valley Authority from competing with it,

at least where the Authority's activities have been specifically authorised by state law."

In this case, eighteen corporations challenged the validity of the Tennessee Valley Authority Act which erected a Corporation as an instrument of the U. S. Government to develop by a series of dams on the Tennessee River and its tributaries a system of navigation and flood control and to sell the power created by the dams. All the plaintiff companies had local franchises, licenses, or easements granted by municipalities or governmental sub-divisions but none of these franchises conferred any exclusive privilege. They contended before the Supreme Court that the Tennessee Vally Authority by competing with them in the sale of electric energy was destroying their property and rights without warrant, since the claimed authorization of Its transactions was an unconstitutional statute. Rejecting this argument the Supreme Court observed:

"The pith of the complaint is the Authority's competition. But the appellants realize that competition between natural persons is lawful. They seek to stigmatise the Authority's present and proposed competition as "illegal" by reliance on their franchises which they say are properly protected from injury or destruction by competition. They classify the franchise in question as of two sorts,--those Involved in the state's grant of incorporation or of domestication and those arising from the grant by the state or its sub-divisions of the privilege to use and occupy public property and public places for the service of the public."

The following further quotations from the Judgment are relevant:

"The appellants say that the franchise to be a public utility corporation and to function as such with incidental powers, is a species of property which is directly taken or injured by the Authority's competition. They further urge that, though non-exclusive, the local franchises or easements, which grant them the privilege to serve within given municipal sub-divisions, and to occupy streets and public places, are also property which the Authority is "destroying by its competition."

"The vice of the position is that neither their charters nor their local franchises involve the grant of a monopoly or render competition illegal. The franchise to exist as a corporation, and to function as a public utility, in the absence of a specific charter contract on the subject, creates no right to be free of competition, and affords the corporation no legal cause of complaint by reason of the state's subsequently authorizing another to enter and operate in the same field. The local franchises, while having elements of property, confer no contractual or property right to be free of competition either from individuals, other public utility corporations, or the state or municipality granting the franchise. The grantor may preclude it self by contract from initiating or permitting such competition, but no such contractual obligation is here asserted. The appellants further argue that even if invasion of their franchise rights does not give them standing, they may, by suit, challenge the constitutionality of the statutory grant of power the exercise of which results in competition. This is but

to say that if the commodity used by a competitor was not lawfully obtained by it the corporation with which it competes may render it liable in damages or enjoin it from further competition because of the illegal derivation of that which it sells. If the thesis were sound, appellants could enjoin a competing corporation or agency on the ground that its injurious competition is ultra vires, that there is a defect in the grant of powers to it, or that the means of competition were acquired by some violation of the Constitution. The contention is foreclosed by prior decisions that the damage consequent on competition, otherwise lawful, is in such circumstances *damnum absque Injuria*, and will not support a cause of action or a right to sue."

83. The plaintiff companies raised the same argument which has been raised before us--namely, that any new entrant must obtain a valid permit and if he did not, businessmen already in the field could prevent him from competing with them. Rejecting this argument, the Supreme Court observed :

"..... They claim that, in any event, these laws afford them protection from the Authority's competition since any utility now seeking to serve in their territory must obtain a certificate, and hence they have standing to maintain this suit against the Authority which has none. The position cannot be maintained. Whether competition between utilities shall be prohibited, regulated or forbidden is a matter of state policy. That policy is subject to alteration at the will of the legislature. The declaration of a specific policy creates no vested right to its maintenance in utilities then engaged in the business or thereafter embarking in it."

84. In *Perkins v. Lukens Steel Co.* (1939) 310 US113 : 84 Law Ed 1108, it was held by the U. S. Supreme Court that

"Neither damage nor loss of income in consequence of the action of government, which is not an invasion of recognized legal rights, is in itself a source of legal rights in the absence of constitution legislation recognizing it as such."

85. In this case certain producers of Steel challenged the legality of orders passed by Government under the Public Contractors Act under which purchases of Government supplies were made subject to the condition that the seller must agree to pay employees engaged in producing goods so purchased not less than the minimum wages as determined by the Secretary of Labour to be the prevailing minimum wages. The producers who filed the suit for injunction restraining the Government from enforcing these orders, alleged that they "had been selling their products to agents of the United States for many years; they wished to continue to bid on Government contracts; their minimum wages had ranged from 53 cents to 56 cents per hour; if required to pay the 62 1/2 cents per hour minimum rate determined by the Secretary there was grave danger that they would be unable successfully to compete with others for Government contracts; they had a legal right to bid for Government contracts free from any obligation to abide by the minimum wage determination because of alleged

illegal administrative decision of government," and if denied the right to bid without paying their employees this minimum wage they would suffer "irreparable and irrecoverable damages" for which the law provided no "plain, adequate or complete remedy".

86. The Supreme Court held that the plaintiffs had no locus standi and observed, "We are of opinion that no legal rights of respondents were shown to have been invaded or threatened in the complaint upon which the injunction "of the Court of Appeals was based. It is by now clear that neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights in the absence of constitutional legislation recognizing it as such." The court further held that these producers "to have a standing in Court must show an injury or threat to a particular right of their own", but that in this case the contested action of the officials "did not invade private rights in a manner amounting to a tortious violation".

87. In *Massachusetts v. Andrew Mellon* (1922) 262 US 447 : 67 Law Ed 1078, the U. S. Supreme Court held:

"We have no power per se to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented, the Court enjoins in effect, not the execution of the statute but the acts of the official, the statute notwithstanding."

In *Corporation Commission of the State of Oklahoma v. Lowe* (1929) 281 US 431 : 74 Law Ed 945, a suit was brought by William Lowe to restrain the Corporation Commission of Oklahoma from issuing a licence to the Farmers Union Co-operative Gin Company to construct and operate a cotton gin at Packingtown, Oklahoma. The plaintiff operated a cotton gin at Capitol Hill, Oklahoma City, under a licence issued by the Corporation Commission, and the ground of the suit was that the issuing of a license to the Farmers Union Co-operative Gin Company, in view of the privileges with which that company would be able to operate under the applicable statute of Oklahoma would constitute an injurious invasion of the plaintiff's business and an unreasonable discrimination against him, thus depriving him of his property without due process of law and denying him the equal protection of the laws in violation of the 14th Amendment of the Federal Constitution. The contention of the plaintiff was that under the impugned statute if a license was given to the defendant company, it would be able to carry on its business on more favourable terms that were available to him. The suit was dismissed on the ground that the plaintiff had suffered no

injury which would entitle him to an injunction.

88. A somewhat contrary view had been taken by the U. S. Supreme Court in the earlier case of *Frost v. Corporation Commission* (1928) 73 Law Ed 483, decided in 1928, in which it was held that

"a franchise to operate a public cotton gin is exclusive against one who attempts to do so without obtaining a permit, or under a void permit."

Even assuming that this decision is correct--an assumption which I am not prepared to concede--the facts of that case were different. The report indicates that it was conceded by counsel for Frost in his argument that

"The nature of the right possessed by appellant under its license to operate a cotton gin is clearly distinguishable from the right possessed by the holders of a franchise to occupy streets and public places granted by the sovereignty."

The Supreme Court held, by majority, that:

"Appellant having complied with all the provisions of the statute, acquired a right to operate a gin in the tity of Durant by valid grant from the state acting through the corporation commission. While the right thus acquired does not preclude the state from making similar valid grants to others, it is, nevertheless, exclusive against any person attempting to operate a gin without obtaining a permit or, what amounts to the same thing, against one who attempts to do so under a void permit; in either of which events the owner may resort to a court of equity to restrain the illegal operation upon the ground that such operation is an injurious invasion of his property rights."

89. It is noteworthy that three Judges, including two who rank as the greatest among the U. S. Supreme Court Judges, dissented from this view. Mr. Justice Brandeis in a considered opinion held (Holmes and Stone, JJ. concurring) that no property right of Frost had been invaded and his suit must fail. Mr. Justice Stone held (Brandies and Holmes, JJ. concurring) that the grant made in favour of Frost was not an exclusive privilege.

90. Frost's case was decided in 1938 in the heyday of "normalcy before the Great Depression had brought home the lesson to the American Supreme Court that the right to make profit is not unlimited in content but is subject to the public interest in any case, the decision in Frost's case (1928) 73 Law Ed 483, does not apply to the present case, as it was conceded by Frost's counsel that his license to operate a cotton gin was different from the right of the holders of a franchise to occupy streets and public places. Kashi Prasad Gupta's permit entitled him to use the public highway for running his motor bus, but does not confer upon him the right of exclusive use. I have already indicated that any immunity from competition enjoyed by him is the incidental result of the permit system. It is not a franchise. His case, is, therefore, governed by the principle laid down in *Tennessee Electric Power Company's case* (1938) 306 US 118 : 83 Law Ed 543.

91. These cases were not cited at the bar but brought to the notice of the counsel during the hearing of the appeal. No argument was addressed on them and learned counsel for Gupta rested his case on one or two English decisions. His main argument, however, was that the right to do business is co-related to the right to make profits out of that business and a person whose profits are jeopardised by competition from the holder of an illegal permit is entitled to complain that his right guaranteed under Article 19(1)(g) has been infringed. I have indicated above that this claim has no substance.

92. Learned counsel for Gupta cited two English decisions in support of his opinion that Kashi Prasad Gupta has the status of an aggrieved person entitled to ask for a writ of certiorari from this Court. These are *Rex v. Richmond* Confirming Authority; *Ex-Parte, Howitt* (1921) 1 KB 248 and *Rex v. Groom*; *Ex-Parte, Cobbold* (1901) 2 KB 157. But I have already indicated that in the case before us the decision which Gupta has challenged is quasi-judicial and not amenable to a writ of certiorari. Neither resolution No. 32 nor the permit granted to the displaced operators are judicial orders. The principles governing the issue of certiorari under the English law do not therefore apply. Gupta must invoke the special power of this Court under Article 226 of the Constitution to quash an administrative decision and before he can do this he must prove that a right vested in him has been infringed. The jurisdiction under Article 226 is founded upon the existence of a right. In my opinion, therefore, these decisions cannot prevail over the interpretation of the words "for any other purpose" by our own Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, , which is binding on this Court under Article 141 of the Constitution. Even under the English law there has been no decision--at least I have not come across any--in which the status of an aggrieved person was conceded to a person merely on the grievance of apprehension of a fall in profits resulting from competition from another who had acquired the right to do business under the impugned permit or license.

93. One English decision needs consideration, though it was not cited at the bar. In *Rex v. Manchester Legal Aid Committee* (1952) 2 QB 413, a person challenged the legality of a certificate for legal aid granted to a trustee in bankruptcy and prayed for a writ of certiorari to quash it. It was held that he was a person aggrieved as "persons who had incurred the risks inherent in having to defend an action brought by a person who had been granted legal aid," had a right to question the decision. The decision, even if it is correct, does not apply in Gupta's case before us. It was held in that case that the Legal Aid Committee which had to decide whether a person was entitled to certificate for legal aid had a duty to act judicially. There is no such duty as regards resolution No. 32 and the grant of permits to the displaced operators in the present case. Moreover, there is a difference between a litigant attacking the legality of an order which puts his opponent in the suit in a stronger position to fight him and a businessman to which he is not entitled under any law but which is merely the incidental result of the imposition of the permit system in his business. I must state that I would prefer to keep open the question of the correctness of the

principle laid down in this judgment. For example, I would be reluctant to hold that the defendant in a suit is entitled to challenge, in the absence of any statutory provision, the correctness of a decision exempting the plaintiff from payment of court-fee. I am inclined to think that in such cases the matter is between the State and the litigant receiving any financial benefit either by way of exemption of court-fee or grant of legal aid.

94. In India all the High Courts have accepted the principle that a petitioner under Article 226 must prove that he has a legal right which has been infringed. In *Nirmal Chakravarti and Others Vs. The Land Acquisition Collector, Alipur and Others*, , it was held that it was not open to the beneficiaries under a trust to challenge compensation award after the trust property had been acquired. In *Sisir Kumar Laha Vs. J.N. Majumdar and Others*, , it was held that an employee who had taken the place of a dismissed employee was not entitled to challenge the setting aside of the dismissal. It was observed that the reinstatement of the dismissed employee need not necessarily affect his interests, as the Bank might not terminate his services. (Similarly, in the present case it cannot be argued that the entry of the displaced persons must necessarily result in reduced profits for the petitioner). In *Isher Singh Grover Vs. Union of India (UOI) and Another*, it was held that a displaced person has no right to challenge the validity of a certificate u/s 16 of the Administration of Evacuee Property Act restoring property to the evacuee. The contention of the displaced persons that they were interested in the size of the evacuee property pool from which compensation would be paid to them was not accepted.

95. The only case I have been able to discover in which it was held that a businessman can challenge the legality of an order permitting another to establish a rival business in his locality is *P.K.N. Abdul Mazid Vs. The State of Madras and Others*, . The learned single Judge who allowed the petition purported to follow the principle laid down in the decision reported in (1921) 1 KB 248. But he conceded that in the English case the petitioner had a statutory right to be heard in the proceedings whereas in the case before him there was no such right. The learned Judge did not specify the precise nature of the legal right or interest which entitled the petitioner to ask for the quashing of the decision entitling another businessman to establish a mill in his locality. With profound respect, it is difficult to understand how such a person could claim any legal right or interest.

96. After examining a fairly large number of Indian decisions (which it is not necessary to discuss in detail) I think I can state correctly that, on the whole, there is universal acceptance of the principle that a petitioner under Article 225 must prove the existence of a specific and not a vague right before he can invoke the jurisdiction of the Court. This principle is also accepted in the 14th volume of *Corpus Juris Secundum*.

97. There is another aspect of this case. Kashi Ram Gupta's attack is not limited to the permits issued to the displaced operators u/s 68-G of the Act, but extends

to the entire scheme under which they were "transferred" to the Gorakhpur-Gola route. This scheme feliad the effect of "nationalising" an altogether different route with which Gupta has no concern and in which he has not even a remote or indirect interest. No bus was being run by him on that route. But because, under the scheme, three displaced persons accepted, in lieu of compensation, permits to operate their buses on the route on which Gupta's bus is running, he claims the right to get the entire scheme declared illegal by this Court. The Court must, if his petition succeeds, invalidate a scheme merely to preserve the immunity from competition which Gupta is enjoying on another route as an incidental result of the permit system. The destruction of this scheme will upset economic plans which have been drawn up in the national interest. A large part of the scheme must nave been carried out already--parts which do not affect the petitioner at all, not even his profits. This is an additional reason against the exercise of discretion by this Court.

98. The High Court should hesitate long before passing orders under Article 226 which will upset any scheme which is a part of economic planning in the public interest, merely because a single businessman will obtain a smaller share in the increased business than he would have done but for the scheme.

99. What does this grievance amount to, after Gupta's vague allegations which he has completely failed to substantiate have been eliminated? Simply that he is not content with his right to make profit out of his bus but like Oliver, asks for more and wants to keep this route as a close preserve for himself and the other eleven operators.

100. I do not think this a fit case for interference under Article 226 even if the Court had the power to interfere. In *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, , the Supreme Court observed:

"Such writs as are referred to in Article 223 are obviously intended to enable the High Court to issue them in grave cases 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 refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of the record and such act, omission or excess has resulted in manifest injustice" (my underline (here in " marks--Ed.)).

In an earlier case, a Full Bench of our own Court also took the view that the power under Article 225 should be used "only in those clear cases where the rights of a person have been seriously infringed." *Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others*, . I see little injustice, not to speak of manifest injustice, to Gupta nor any infringement of his rights. He has asked for a Mandamus which cannot be granted with out invalidating a State Scheme concerning other routes With which he has no concern. The Court must weigh the effect of any order safeguarding Gupta's great expectations of higher profits against the detriment to the public interest in

upsetting this scheme. Mandamus "may be refused where the result would be injurious and unreasonable or detrimental to the public"--The Law of Extraordinary Legal Remedies by Ferris p. 232.

101. In considering the meaning and scope of the Words "for any other purpose" in Article 226 this Court cannot ignore the social and economic problems which face our Republic. In times of grave emergency, the English Courts have not hesitated to bend the law in the national interest. "A good example is *Daimler Co. Ltd. v. Continental Tyre Co. Ltd.* (1916) AC 307, where the House of Lords severely strained the law of corporate personality in Order to circumvent the control by alien enemy personal of companies registered in England"--Law and Orders by C.K. Alien, 4th Impression, page 38, Footnote. Prof. Aden has cited many other cases as "examples of the preservation of the true functions of our (the English) Courts in times of great emergency."

102. India today faces an economic crisis no less grave. The very future of our Constitution, which we are bound in oath to preserve, is threatened by the pressure, of economic forces. An American Journal has thus described the grave constitutional crisis which faces India today.

"And as the Fifties give way to the Sixties the question that India faces is: Can these poor people, multiplying at the rate of 9 million a year be kept alive under a system of free parliamentary Government? Or will India be forced, in a desperate attempt to keep its masses from starving to throw aside its democratic institutions (as much of Asia already has) and adopt in their place the ruthless methods of Communist China?"--(Newsweek Dec. 14, 1959).

102a. In this case, there is no need to "strain the law" in interpreting the scope of the words "for any other purpose". But if necessary, our Courts should not hesitate to follow the English example and should not interpret the law regardless of the economic emergency facing the nation. I am not suggesting that the Court should deliberately misinterpret the law even where only one interpretation is possible. But I cannot subscribe to the view that considerations of national emergency may weigh with the House of Lords but, in India, must wait outside the gates of the High Courts. The Directive Principles of State policy which are enshrined in our Constitution and have been termed as "fundamental" enjoin that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Whatever the words "for any other purpose" in Article 225 mean, they do not entitle any individual to hold any scheme of national development to ransom, nor empower the High Court to hold up any scheme to preserve that individual's claim to immunity from competition--an immunity in which he has no vested interest but is incidental to a system of controls.

103. So far I have considered Gupta's right to ask for the protection of Article

226, on the assumption that there is some basis for his apprehension that the entry of three more buses on this route is likely to intensify competition as a result of which his rate of profit will fall. In view of my decision, it is not strictly necessary to inquire whether his apprehension is well founded. But, as his claim has been disputed, it is desirable that it should be decided.

104. Now, Kashi Prasad Gupta has placed no material before the Court to support his allegation that the route is "uneconomic", or to show that his apprehension of a fall in the rate of his profit has any basis. He could have filed his account books and a profit and loss returns but did not. It would have been easy for him to prove that his bus was running empty or semi-empty or never full, by giving statistics showing the average number of passengers per trip carried by his bus during the material period, both before and after the issue of permits to the three displaced operators. He has not done so--not even in his rejoinder affidavit after a challenge by the State and the displaced operators to substantiate his allegations. His one concrete allegation that four of the twelve buses operating on this route have to stand idle every day has been denied by the other side, and it was contended during the appeal that all the buses were running. The rest of the allegations consist mainly of vague adjectives and phrases such as "uneconomic", "three were thrust in", "impossible to make any respectable margin of profit", "would suffer grave and irreparable loss", "deprivation of his only source of livelihood" and so on. There is nothing in it beyond the usual complaint of a business man who would like nothing better than being the only trader in his locality and, whenever a rival business is opened in the area, cries murder before even being hit by competition. The Court is asked to presume that the mere addition of three buses on this route will lead to intensification of competition and a consequent fall in the rate of profits. In my view, the Court cannot and should not make any such presumption without some evidence.

105. Assuming, however, that competition will increase, it does not follow that this in itself will cause a fall in Gupta's rate of profit from his bus. It is not necessarily against the interests of a businessman to be exposed to competition. Competition increases efficiency, spurs the competing rivals to discover improved techniques and may stimulate demand. Transport concerns, under the stimulus of competition, are known to have made common efforts to make the public more travel-minded by such devices as advertisements popularising places of public interest and beauty spots, and otherwise promoting the cult of travel. But if competition stimulates efficiency, lack of it encourages the tendency to continue in the old ruts. Why improve when I have a guaranteed income? All I have to do is to keep out other competitors. Fear of legitimate competition worries the indolent and the lazy but not the efficient who have confidence in their own resourcefulness. The stimulus of competition awakens new public demands which previously slumbered. Competition is the midwife of progress in business and industry, and therefore in the public interest.

106. It is true that beyond a certain stage, competition becomes uneconomic.

But there is no evidence that the competition facing Kashi Prasad Gupta by the entry of the displaced operators has passed that stage. He was challenged to prove his allegation but has not cared to do so.

107. The State and the displaced operators challenged Gupta's allegations and denied that the route is uneconomic, or that he has suffered or is likely to suffer any fall in profits. Ram Avadh Misra states in his counter-affidavit that "there is enough scope of traffic on the route" otherwise he would not have agreed to take permits on it. He also asserts "that there is always public demand and therefore all the stage carriages are being plied daily. (Paragraph 4 of the Ram Avadh Misra's counter-affidavit). He has also given reason why he regards this route as "profitable." Under the five year plan new developments are taking place in the district including the places covered by this route and as such traffic on the route in question has considerably increased. The mode of living of public has also changed and there is ever increasing percentage of travelling public and those therefore assume that Gupta is unable to substantiate his allegation that he has suffered or is likely to suffer any loss or fall in the rate of his profits as a result of the addition of three new vehicles on this route, it was argued that prima facie, an increase in the number of buses is likely to result in a fall in Kashi Prasad Gupta's earnings. In my view no such presumption can be made where the economy of the country is expanding, its population increasing, the standard of life rising, education among the masses spreading, and the habit of travel by bus becoming quite common among the common people, Prima facie, there is no reason to doubt the statement of the transport authorities that the number of buses has increased to meet the heavy increase in passenger traffic, there are ten other buses running on this route and it cannot be said with certainty how each of them will be affected, and if so to what extent, by the addition of three buses. The onus was on Gupta to disprove the State's case which he could have done easily by producing his account books or the figures of passengers transported by him during the relevant period. He has kept back this information and the Court must presume that had the information been produced, it would have been unfavourable to him. *Armory V. Delamirie*(1721) 1 Str. 505.

108. It was argued that even if it be the case that there has been an increase in the number of the travelling public then, prima facie, Gupta will obtain a smaller share in the increased business than he would have done had the respondent's buses not been on the road. I do not agree. Even in a rapidly expanding market the profits of a businessman will depend upon his capacity to meet the increasing demand. In the motor transport business there is limit to this capacity. Kashi Prasad Gupta's permit entitled him to run only one motor bus on this route. A bus can accommodate a limited number of passengers on a trip and make a limited number of trips in a day. It must also comply with any regulations regarding servicing or repairs. Therefore, the earnings from a single bus cannot exceed a maximum limit whatever be the increase in the size of the travelling public. Now Kashi Prasad Gupta has kept back from this Court information which would have revealed whether his vehicle is already running to capacity and

yielding the maximum profits. This information was within his exclusive knowledge and was withheld by him even after he had been challenged to produce it. Therefore, under the law, the Court will make the maximum presumption against him and conclude that his vehicle is already running to maximum capacity and yielding him maximum profits. (1721) 1 Str. 505. In any case, the Court cannot presume that Gupta's vehicle would have fetched a greater share of the profits if the displaced persons' buses had not been on the road.

109. It was further argued that the fact that Gupta has thought "it worth his while at some expenses to file a petition in this Court and to contest these appeals is prima facie proof that he is likely to suffer loss. I am afraid I am unable to place such a favourable interpretation on his conduct. The motive for contesting these proceedings is just likely to be that he considers this route to be lucrative and wants to keep this route as a close preserve so that he can apply for some permits in the future. If he had suffered a loss he would not have kept tack his account books.

110. I therefore hold that Kashi Prasad Gupta has failed to show any basis for his alleged apprehension that the entry of the three displaced operators on the same route will intensify competition against him or that his profits are likely to fall.

111. On merits, I agree with the learned Chief Justice that Section 68-G(2) gives the Regional, Transport Authority the power to issue a permit in lieu of compensation to a displaced operator whose existing permit has been cancelled u/s 68(F). I would however like to add a few reasons of my own. The Motor Vehicles Act regulates the business of carrying passengers in motor buses by the imposition of a permit system. Persons wanting to enter this business are entitled to apply for a permit u/s 45 of the Act. The succeeding Sections prescribe the manner of disposal of these applications and the procedure for granting permits. But the point to note is that the procedure prescribed in Section 47 applies to a person who has no permit or whose permit has expired. In such cases, before granting a permit, the Regional Transport Authority must follow the procedure laid down in Section 47, consider any representations made fly classes of persons specified in that section and pay regard to several matters connected with the interest of the public generally. But the procedure under that section cannot apply to a person who is to be given a permit in lieu of a cancelled permit and can claim it by right. The Regional Transport Authority is bound to grant him a permit and there is nothing to "consider".

112. It is always open to the Legislature to change the procedure for granting permits or provide a special procedure for grant of permit to special categories of persons, provided the safeguards in the Constitution against discrimination are observed. In the case of displaced operators whose permits are cancelled on the "nationalisation" of their route, the elaborate procedure u/s 47 is not to be followed. By the amending Act No. 100 of 1956, Parliament provided in effect that a displaced operator may be offered a permit of an alternative route and if

he accepts the offer, he shall not be entitled to compensation--Section 68 (G) (2). No elaborate procedure is prescribed for the issue of a permit to such a person. He has to be offered a permit and if he accepts the offer the permit must be issued. I see nothing wrong or discriminatory in this.

113. Learned counsel for Kashi Prasad Gupta contended that if displaced operators are offered permits in this way while other persons have to go through the elaborate procedure prescribed in Ch. IV, this would be discrimination. I do not agree. There is a vital difference between a person who has no permit and applied for one and another whose permit has been cancelled and who accepts an alternative permit in lieu of compensation to which he is entitled. The former has no vested rights whereas the latter is being deprived of a property right for which he must be compensated under the Constitution. There is no discrimination in providing for a different procedure in the two cases.

114. Section 68-G (2) enjoins that no compensation shall be payable in respect of any existing permit when a permit for an alternative route or area in lieu thereof has been offered to the holder of the permit and accepted by him. The provision clearly excludes the application of the elaborate procedure under Ch. IV for the grant of a permit u/s 68-G (2). The grant of a permit u/s 47 is discretionary, whereas the Regional Transport Authority is legally bound to grant a permit u/s 68-G (2) after the offer of an alternative route has been accepted by the displaced operator, and there is no discretion left with the Authority in the matter. The obligation to grant a permit is enforceable under the law as the displaced operator has surrendered his right to compensation in consideration of an alternative permit. Any consideration of such displaced operator's application for permit u/s 47 must be a farce as it would be impossible for the authority to perform its duty under that section under the burden of obligation to grant a permit u/s 68-G (2). It is thus clear that the duty to "consider" an application u/s 47 cannot be reconciled with the obligation u/s 68-G (2) to grant a permit after the offer has been accepted. The two sections apply to entirely different cases.

115. I also agree respectfully with the view of the learned Chief Justice that the notification of 10th of January and 6th of January, 1959, under Sections 68-C and 68-F(2) are not invalid and further that the grant of permits in appeal No. 11 are not invalid.

116. As already indicated by me, Kashi Prasad Gupta has challenged the validity of the very scheme under which the permits of the displaced operators on the nationalised route were cancelled and they were offered permits on the Gorakhpur-Gola route. The challenge is on the ground that the opinion expressed in the notification that it was necessary in the public interest that certain road transport Services should be operated by the State Transport Undertaking was not the opinion of the State Government. The learned Chief Justice, after examining the relevant provisions, has come to the conclusion that there is not enough evidence to show whether the requisite opinion was formed by the State Government itself or by the Transport Department functioning as the State

Transport Undertaking.

117. Now, agree that the statute requires that the opinion u/s 68-C should be that of the State Transport Undertaking and that the State Government should u/s 68-D, decide whether the scheme should be approved, with or without modifications. Where the Transport Department of the State Government is the State Transport Undertaking, the distinction between the two is somewhat fine, but it is there. The various sections are not happily worded, but the object appears to be, as the Supreme Court has held, that the person or authority which prepares the scheme u/s 68-C should not sit in judgment on the merits of his or its own scheme.

118. But I am of the opinion that the petitioner in these two writ petitions is not entitled to impugn the legality of the scheme. All the reasons which disentitle him to challenge the legality of the permits issued to the displaced operators on the Gorakhpur-Gola route apply a fortiori, against his claim to challenge the legality of the scheme. I have held that no legally recognisable right or interest of Gupta will be injured by the issue of these permits. The scheme which he seeks to invalidate is even more remote from his interests, as it covers a route in which he has no interest whatsoever. In my opinion, he is not entitled to challenge it.

119. For the reasons detailed in this judgment, I would hold that this Court has no jurisdiction to interfere in these two writ petitions and that Kashi Prasad Gupta is not entitled to ask for any relief. I allow both the appeals with costs against the respondent Kashi Prasad Gupta.

By The Court: This appeal is allowed with costs against Sri Kashi Prasad Gupta.