

(1967) 03 MAD CK 0046
In the Madras High Court

Sahib Transport Service

APPELLANT

Vs

R. Balasubramaniam, Proprietor K. Balasubramaniam Motor
Service and Others

RESPONDENT

Date of Decision : 23-03-1967

Acts Referred:

Motor Vehicles Act, 1939 — Section 58, 61

Citation : (1969) ILR (Mad) 207 : (1969) 2 MLJ 251

Hon'ble Judges : M. Natesan, J

Bench : Division Bench

Judgement

M. Natesan, J.—These appeals have been preferred against a common order of our learned brother Srinivasan, J., in Writ Petitions Nos. 1263 of 1964 and 3015 of 1965 discharging the rule nisi and dismissing the writ petitions filed under Article 226 of the Constitution. By the writs the appellants questioned the validity of the transfer and renewal in favour of the first respondent herein of six permits for stage carriages under Sections 58 and 61 of the Motor Vehicles Act, 1939, by the Regional Transport Authority, Tirunelveli.

2. The six permits whose period was to expire on 3rd January 1964 were held by one Ramaswamy Doss, and as provided u/s 58 of the Motor Vehicles Act, 1939, as amended under subsequent Act (hereinafter referred to as the Act) he duly applied for renewal of the said six permits on 9th October, 1963. The application for renewal was notified u/s 57 (3) of the Act, on 28th October, 1963. The appellant before us, a bus operator, preferred objections to the renewal of the six permits and also filed applications for grant to him of the six permits on the routes for his vehicles. The objection and the applications for fresh grant of permits to him were made by the appellant on 18th November, 1963. The applications for fresh grant were notified in accordance with the provisions of the Act. Ramaswamy Doss, as may be expected, duly filed his objections to the fresh grant of permits claimed by the appellant. As the permits were expiring on 3rd January, 1964, the Regional Transport Authority u/s 62 (d) of the Act on 27th

December, 1963 itself granted temporary permits to Ramaswamy Doss for his six vehicles to take effect from 4th January, 1964, pending decision on his application for renewal of the permits. Before the application for renewal came up for hearing and orders were passed, even on 7th January, 1964, Ramaswamy Doss died. The first respondent herein, son of Ramaswamy Doss, on 24th January, 1964, intimated the Regional Transport Authority u/s 61 (1) of his intention as the person who had succeeded to the possession of the vehicles covered by the permits to use the permits. He also requested the Regional Transport Authority to implead him in the renewal application as the successor of the deceased Ramaswamy Doss so that he may pursue the application for renewal. On 25th January, 1964 the Regional Transport Authority took up for enquiry the application that had been made by Ramaswamy Doss for renewal of the permits. He granted the request of the first respondent herein who claimed to have succeeded to the possession of the vehicles in question by virtue of an agreement entered into between all the heirs of the deceased permit holder to continue the proceedings and after due hearing and consideration of the matters involved, overruling the objections of the appellants, granted the application for renewal of the permits. He ordered that the permits would be renewed for the usual period of three years. As a consequence, the application of the appellant herein for fresh grant of permits to him for the six routes involved was rejected. The first respondent was directed to send up the necessary certificates along with B permits of the buses for due endorsement of the renewal. The first respondent submitted the existing permits for endorsement of renewal and on 10th February, 1964 applied also u/s 61 (2) of the Act for transfer of the permits. The Regional Transport Authority on 10th February, 1964 endorsed on the permits their renewal for three years from 31st January, 1964, noting that from 3rd January, 1964 to 31st January, 1964 they were covered by the temporary permits. The permits were also transferred to the name of the first respondent. The appellant preferred appeals to the State Transport Appellate Tribunal from the orders refusing the grant of fresh permits to him. He also filed a revision to the Tribunal against the order granting renewal. On the rejection by the Tribunal of his appeals the appellant came up to this Court with Writ Petition No. 1263 of 1964 from the orders of the Tribunal dismissing the appeals. As it has been held that there could be no direct revision to the State Transport Appellate Tribunal from an order of the Regional Transport Authority, Writ Petition No. 3015 of 1965 was filed by the appellant questioning the order of the Regional Transport Authority granting the renewal.

3. The question involved in both the writ petitions revolve round the validity of the renewals and the only questions argued by the appellant in the circumstances set out above were : whether the authorities were in law competent to renew the permits, the applicant having died after the period of the permits had expired and before they were renewed, and whether the renewal could be effected in the name of the first respondent as the successor in interest of the deceased. The questions have been answered against the applicants;

hence these appeals.

4. The arguments initially covered a wide ground; but on learned Counsel for the first respondent taking his stand firmly on Section 61 of the Act, the questions for consideration got narrowed down. The attack on the validity of the order is essentially rested on the language of Section 61 of the Act. Section 61 provides for transfer of the permit in favour of the person succeeding to the possession of the vehicles covered by the permit on the death of the holder of the permit. It is argued by Mr. M. K. Nambiyar, learned Counsel for the appellant, that Ramaswamy Doss was not the holder of the six permanent permits in question on 7th January 1964 when he died, as these permits had expired on 3rd January, 1964. Only a renewal application was pending. It is, therefore, urged that there were no permits to be transferred, and that the Regional Transport Authority had no jurisdiction to order any renewal of the permits at the instance of a person claiming to succeed to the possession of the vehicles. It is submitted that the right to a permit is personal in nature and does not survive the permit holder except to the extent in terms provided by the Act. It is pointed out that neither the Act nor the Rules provide for continuation of a renewal application by the person who has succeeded to the possession of the vehicles, and it is said that in the circumstances the application for renewal lapsed. Mr. M. K. Nambiyar urges that a permit is the creature of statute and therefore its grant renewal and transfer are governed by the statute which is a self-contained code. Learned Counsel contends that from outside the Motor Vehicles Code no procedure could be inducted for situations not provided for that may crop up.

5. It is needless to labour at any length on the contention that a stage carriage permit is purely personal in nature and no right therein can survive the death of the permit holder. The matter has to be considered no doubt as conceived in the Act, but in the background of the citizen's fundamental rights under Constitution, to acquire, hold and enjoy the property and to practice any profession, or carry on any occupation, trade or business subject to laws imposing reasonable restrictions. It is clear that to a limited extent at least, a permit does survive the permit holder. Section 61 is there. Though a stage carriage permit is in one sense a creature of statute, as it goes with a vehicle and forms the life of the business of carriage of passengers on road, considered with the vehicle, it is a species of property and very valuable property for that. Running of buses is a commercial enterprise and permit controls not only the owner of the vehicle in the use of the vehicles, but controls the vehicle itself by providing that it shall be used only in the manner authorised by the permit. In *In Re: V. Chakkarai Chettiar, Venkatarama Ayyar, J.*, (as he then was of this Court) summed up the position of the transport operator thus at page 330:

The true position then is that all public streets and roads vest in the State, but that the State holds them as trustees on behalf of the public. The members of public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the

pathways. The State, as trustees on behalf of the public, is entitled to impose all such limitations on the character and. extent of the user as maybe requisite for protecting the rights of the general public.... but, subject to such limitations, the right of a citizen to carry on business in. transport vehicles on public pathways cannot be denied to him on the ground that the State owns the highways.

In *Saghir Ahmad Vs. The State of U.P. and Others*, , The Supreme Court expressing entire agreement

Within the limits imposed by State regulations any member of the public can ply motor vehicle on a public road. To that extent he can also carry on the business of transporting passengers with the aid of the vehicles. It is to this carrying on for the trade or business that the guarantee in Article 19(1) (g) is attracted and a citizen can legitimately complain if any Legislation takes away or curtails that right any more than is permissible under Clause (6) of that Article.

In *Viswanathan v. Shanmugham* (1966) 1 M.L.J. 363 : I.L.R (1966) Mad. 477, we observed with reference to a stage carriage permit:

Under prevalent modern conditions, it is very valuable property That it is heritable and alienable, the latter characteristic with certain restrictions has been recognised by the provisions the Motor Vehicles Act, and in the case-law it has been the subject of partition by members of a joint family, and of division of the assets in a partnership. Thus complementary ideas have evolved side by side, the first dealing with a stage carriage permit purely as a licence, all remedied and procedures in respect of which are circumscribed by the self-sufficient Code of the Motor Vehicles Act and the Rules framed thereunder. The second Revolutions what may be termed the common law development of this permit together with the stage carriage to which it relates, and without which it practically has no value or validity, forming the subject-matter of contracts of sale inter vivos inheritance and succession, partition and division of assets among partners.

We have pointed out in that case that a permit or for that matte! in some cases even a licence does not end with the death of the licence holder and become void. We have also pointed out therein that the permit remains in existence for the purpose of Section 61 of the Act. It is in the back-ground as to the character of a permit that we shall now examine the relevant provisions.

6. Now permit as defined in the Act is a document issued by the prescribed Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage or authorising the owner as a private carrier or public carrier to use such vehicle. Section 42 prohibits the user of a vehicle without a permit, and except in accordance with the conditions of the permits. With reference to "stage carriage business, a vehicle without a permit is practically of little value. Section 58 relates to duration and renewal of permits, Section 59 places restrictions on transfer of permits inter vivos, and Section 61, to transfer of permits on death of the holder. Section 61 reads:

(1) Where the holder of a permit dies, the person succeeding to the possession of the vehicles covered by the permit may, for a period of three month, use the permit as if it had been granted to himself:

provided that such person has, within thirty days of the death of the holder informed the Transport Authority which granted the permit of the death of the holder and of his own intention to use the permit:

Provided further that no permit shall be so used after the date on which it holder effective without renewal in the hands of the deceased

(2) The Transport Authority, may, on application made to it within three months of the death of the holder of a permit, transfer the permit the person succeeding to the possession of the vehicle covered by the permit...

This section may be in a restricted manner, recognises the heritable character of a permit, the beneficial interest which the person succeeding to the possession of the vehicles has in the permit. Having regard to modern concepts of property the right is certainly proprietary, and descends on the person who takes possession of the vehicles and the permit its attached to the vehicles. Subject to the limitations of the Act the permit goes with the possession of the vehicles Our attention has been drawn by learned Counsel for the appellant to Butterworth's Words and Phrases Judicially Defined, Vol. III, 1964 supplement, at page 58 where in relation to a local carriers' licence under the Road and Railway Transport Act (Nothorn Ireland), 1935, it was stated:

What...are the attributes of a local carrier's licence granted under the provisions of Section 16 of the Act?. The word licence has a well recognised signification in English Law. According to our law a licence properly so called is merely a permission granted to person to do some act which but for such permission it would be unlawful for him to do. Being in its nature a mere personal privilege and nothing more than a mere personal privilege a privilege personal to the individual licensee--such a licence cannot be transferred by him to anyone eke and it dies with the person to whom it was given....Or a statute may authorise the granting of a licence to carry on some trade or business which the statute does not allow to be carried on without such a licence. But whatever may be the type of licence, the presumption is that it is a purely personal privilege, that it is not capable of being assigned or transferred by the licensee to anyone else, and that it comes to an end on the death of the licensee. No doubt one frequently hears the phrase " transfer of a licence " especially in connection with the law relation to the sale of intoxicating liquors. But it is well established that even in this connection the phrase, though convenient, is nevertheless quite inaccurate and misleading. What is referred to as transfer of a publican's licence is not in strict law a transfer at all....And what the assignee of licensed premises gets is a new licence and not the old licence transferred.

The principles above enunciated cannot apply to the stage carriage permits under consideration by which road transport business is sought to be regulated

and restrictions imposed in public interest. May be, there is a presumption that a licence is personal to the grantee; but the presumption is rebutted as the Act itself provides for transfer inter vivos in certain circumstances and also provides for a person succeeding to the possession of the vehicles to secure the permit relating to the vehicles. u/s 61, till transfer is ordered for a period of three months the successor may use the permit as if it has been granted to himself and the section speaks of transfer of the permit to the person succeeding to the possession of the vehicles covered by the permit. When the Act provides for transfer of permit on death we cannot say that the permit dies with the holder. It has to be alive and effective for the transfer to operate on it. In *Kuppuswami v. Ramchandran* (1963) 2 M.L.J. 355 - ILR 1963 Mad. 627, a division Bench to which one of us was a party observed:

A permit once granted has to be considered as a species of property in the grantee and the death of the grantee would not take away the beneficial right of his legal representatives in the permit.

7. In *Viswanathan v. Shanmugham* (1966) 1 M.L.J. 363 : ILR (1966) Mad. 477, already referred to, we observed:

It is true that a permit or licence does not end with the death of the licence-holder and become void for instance, it may be said to remain in existence for the further purposes of Section 61 of the Act.

The argument now is that Section 61, the only provision in the Act for the survivorship of the permit applies only where the permit is a current permit and the holder of the permit dies during the currency of the permit. It is stated that a permit whose duration has expired is no permit at all and as in the present case the permit had expired even on 3rd January, 1964, on his death, Ramaswamy Doss was not the holder of a permit for any one succeeding to the possession of the concerned vehicle to become entitled to a transfer of the permit u/s 61. But Ramaswami Doss had, long before his death, in due time and according to the provisions of the Act, applied for renewal of the permits. The question is, does this keep the permit alive, may be in hibernation till renewal, or is the permit a dead one that Ramaswamy Doss cannot be considered to have died as the holder of a permit?

8. Section 58 which provides for duration and renewal of permits runs thus:

(1) (a) A stage carriage permit or a contract carriage permit other than a temporary permit issued u/s 62 shall be effective without renewal for such period not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit....

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(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit:

Provided that the application for the renewal of a permit shall be made,:

(a) in the case of a stage carriage permit or public carrier's permit, not less than sixty days before the date of its expiry; and

(b) in any other case, not less than thirty days before the date of its expiry:

Provided further that, other conditions being equal, an application for renewal shall be given preference over new applications for permits.

(3) Notwithstanding anything contained in the proviso to Sub-section (2), the Regional Transport Authority may entertain an application for the renewal of a permit after the last date specified in the said first proviso for the making of such an application, if the application is made not more than fifteen days after the said last date and is accompanied by the prescribed fee.

From the very language of this section, learned Counsel for the contesting respondent, Mr. V. K. Thiruvengkatachari, contends that a permit does not become extinct and cease to be a permit for all purposes on the expiry of the period specified thereon. Learned Counsel contends that the mere fact that an application for renewal of a permit has to be made and disposed of as if it were an application for a permit does not make the renewed permit a fresh permit. While Mr. M.K. Nambiar for the appellant relied on the quoted observations of Lord Asquith in *East End Dwellings Co., Ltd. v. Finsbury B.C.* L.R. (1952) AC. 109 : (1951) T.L.R. 485 : (1951) 2 All E.R. 587, that:

If one is bidden to treat an imaginary state of affairs as real one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it and that if a statute says that one must imagine a certain state of affairs it does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs

9. Mr. V. K. Thiruvengkatachari referred to cases where a limitation has been engrafted on this principle, and drew our attention to the decision of the Supreme Court in *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, . He also emphasised the caution which James, L.J. uttered in *Gover's Case (In re : Coal Economising Gas Company)* L.R. (1875) 1 Ch. D. 182 : 45 L.J. Ch. 83 : 24 W.R. 125, to the following effect:

Where the Legislature provides that something is to be deemed other than it is, we must be careful to see within what bounds and for what purpose it is to be so deemed.

10. Learned Counsel urged that while a fiction is to be adopted for a particular purpose, the fiction must not be extended beyond its purpose, and its operation should be limited to the purpose specified. He points out that Section 58 (2) itself specifies the purpose for which a renewal application is to be deemed to be

an application for permit. It is stated that it is in the matter of procedure as regards making of the application and disposal of it that it has to be treated as an application for a permit. While prescribing the procedure in *Bundelkhand Motor Transport Company, Nowgaon Vs. Behari Lal Chaurasia and Another*, the Supreme Court points out that by Section 58 (2) (d):

the precedence for obtaining renewal is assimilated to the procedure prescribed for the application for a fresh permit.

11. Section 58 further provides that other conditions being equal, an application for renewal shall be given preference over new applications for permit. One thing is clear that even though an application for renewal of a permit may be treated as a fresh application for permit, the renewal that is ordered is of the old permit. There is no grant of any fresh permit. A permit is after all a document authorising the use of a transport vehicle as a stage carriage and Section 58 (1) (a) states that it shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit that means, if renewed the permit originally granted becomes effective for the extended period. So long as there is a possibility of its being renewed it has life, though till renewal it may not be used to put the vehicle on the road. It may be considered extinct, only if there is no application for renewal or the renewal is refused. This question has been considered at length by this Court in *Natarajan v. R.T.O., Chingleput* (1957) 1 M.L.J. 233 : (1957) M.L.J. 95 : ILR (1957) Mad. 675, under the Act as it stood before its amendment by Central Act C of 1956, The question arose in that case whether for breach of the conditions of the original permit, a penalty could be enforced during the further period for which the permit continued in force after renewal. Answering the question in the affirmative, this Court observed:

In certain respects, the renewed permit may resemble a fresh permit, e.g., in the procedure which has to be followed before a renewal is made and the right of the Transport Authorities to impose new conditions. But the question is whether, after renewal, the original permit does not continue in force, for a further period. In our opinion, it certainly does according to the provisions of the Act, the Rules and the Forms prescribed.

12. The matter may be said to be finally set at rest by the Supreme Court in *V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore*, where the Supreme Court observed:

Therefore, when there is a renewal, the effective period is not the original period specified, but the period up to which the renewal is granted. That indicates that the life of a renewed permit is one and continuous.

13. Learned Counsel for the appellant sought to make out that there is a radical amendment in the Rules under the Act after 1956, and that would make all the difference. It is contended that their Lordships have in the course of the discussion referred to and relied on Rule 185 which was there before the

amendment even as this Court had done in *Natarajan v. R. T. O., Chingleput* (1957) 1 M.L.J. 233 : (1957) M.L.J.95 : ILR (1957) Mad. 675, for their conclusion, and that Rule 185 has since been repealed. Emphasis was laid for the appellant on the alternative provision in Section 62 (d) of the new Act. Rule 185 no doubt specifically provided:

If an application for the renewal of a permit has been made in accordance with these Rules and the prescribed fee paid by the prescribed date, the permit, shall continue to be effective until orders are passed on the application or until the expiry of four months from the date of receipt of the application whichever is earlier. If orders on the application are not passed within four months from the date of receipt of the application, the permit-holder shall be entitled to have the permit renewed by the Transport Authority for the period specified in the application or for one year whichever is less....

14. The permit was by this rule kept effective once the application for renewal had been made even without further orders in stated situations. The rule in question only emphasised the effect of renewal. It's repeal cannot in our view affect the true character of a renewal permit brought about by the section providing for renewal and the other rules which remain substantially unaltered. Instead of Rule 185 has been introduced Section 62, Sub-clause (d) whereunder a Regional Transport Authority may, without following the procedure laid down in Section 57, grant permits, to be effective for a limited period not in any case to exceed four months, authorising the use of a transport vehicle temporarily pending decision on an application for the renewal of a permit. We see no discord between this provision, probably intended to speed up disposal of renewal applications and the inference of the continuity of the permit on renewal suggested by the governing section interpreted having regard to the overall scheme of the Act. Under the terms of Section 58, till renewal the permit ceases to be effective after the period originally specified; on renewal the original permit becomes current and re-animated for the extended period. It is as if the permit, when it was issued originally, had. been issued for the full term as extended. As the vehicle could not be plied without a current permit, when it is under suspended animation, a temporary permit is provided u/s 62 for the period the renewal proceedings are pending. To avoid if possible any hiatus between the expiry of the period of the permit and its renewal the Legislature has provided for an application for renewal to be made in advance, not less than 60 days before the date of its expiry. But it could be filed even within 30 days before the date of its expiry and there is also provision for entertaining the application even later, if made atleast 15 days before its expiry. As the procedure for obtaining renewal is the same as in the case of an application for fresh permit, the Authority will have to publish the application, allow for the necessary time to elapse for representations, hear objections, etc. It may not be possible in all cases to go through the entire gamut of the procedure before the expiry of the permit, particularly when there are fresh applicants for the permit, as it has happened in the present case. Again no period has been specifically fixed within which a

renewal application must be disposed of. We cannot conceive of any rational principle on which it could be said that the character of the renewal is altered by reason of the duration of the proceeding for renewal over which the permit holder has no control. The system of covering the interval between the expiry of the period covered by the permit and renewal with temporary permits, instead of permitting the operator to run on the original permit itself, though it's duration has expired, cannot affect the true position that if a renewal is secured for the permit, it is the original permit that is made effective. In the instant case well in advance of the period of expiry, the original holder of the permit had applied for renewal of the permits for a period of five years from 3rd January, 1964 the date of expiry. Orders for renewal of the permits were passed on 25th January, 1964 and endorsement of renewal on the original permits effected on 10th February, 1964. No doubt the endorsement states that renewal is to be for three years from 31st January, 1964 noting that from 3rd to 31st January, 1964 there were temporary permits. That there were temporary permits for a period, is only a statement of fact. It is a necessary note, as during the same period in respect of the same vehicles and over the same route two permits cannot be effective. There need be either a permanent or a temporary permit for the use of the vehicle. In the interregnum the permanent permit was not effective in the language of Section 58, and the endorsement records the fact and points out that the duration was covered by temporary permits. The applicant had asked for renewal for a period of five years and the renewal had been granted for a shorter period. Take for instance a case where a permit has been suspended for a period. During that period, the permit is not effective and will not authorise the permit holder to put the vehicle on the road. The effect of such suspension is not to make the permit a new one after the period of suspension is over. The same permit exists. Only it could not and was not used for the period. Similarly if pending orders on renewal temporary permits; were issued on renewal the original permit itself becomes effective for the renewal period. We may refer to certain other provisions which bring out clearly that a renewed permits the original permit continued and not a fresh permit. Some of these aspects have been emphasised by this Court and the Supreme Court in the cases above cited. Under Rule 183 an application for renewal has to be in Form PRA. The application speaks of renewal of the permit described in the application. The number of the original permit, the date of its issue, the date of its expiry, the period for which renewal is desired and other particulars have to be specified in the application. Rule 184 provides that the Transport Authority sanctioning an application for renewal of a permit shall call upon the permit holder to produce the registration certificate or certificates of the vehicle or vehicles and Part A or Parts A and B of the permit as the case may be and endorse the renewal in Parts A and B of the permit and return them to the holder. The form of renewal of Part A of a permit runs:

This permit is hereby renewed up to...day of...subject to the following further conditions :--?

15. What is renewed, is the old permit which is submitted for endorsement of the renewal thereon. The original document which authorises the user of the vehicle, is made effective for a further period. A similar endorsement is made on Part B of the permit, Part B being the summary of Part A of the permit. Again, under Rule 167 while the fee for the grant of a fresh permit is Rs. 25 the fee for renewal is only Rs. 12. Under Rule 195 within fourteen days of the expiry of the permit by efflux of time the permit has to be surrendered, while under Rule 184 the permit has to be surrendered for endorsement of the renewal and taken back. It is manifest from the provisions of the Act and the Rules made thereunder and the forms followed in relation to renewal, that once a renewal is ordered, the permit document originally issued is made to serve for the extended period. Its life is extended. The provision relating to appeals in Section 64 of the Act again emphasises and brings out clearly that an order for renewal is not the same as an order granting a fresh permit. Section 64 (1) (a) provides for appeal by any person aggrieved by the refusal to grant a permit and Section 64 (1) (e) separately and specifically provides for an appeal by a person aggrieved by the refusal of renewal of a permit. In our view once an application for renewal has been duly made, the pre-emptive or preferential right to secure the route by the renewal of the permit is a substantial right as such rights go and the permit should be deemed to be alive for the purpose of the renewal. That being so there is nothing incongruous or anachronistic in regarding the person in whose name the permit stands, as the holder of a permit, even though the period of the permit has expired provided he has in accordance with law in time applied for renewal.

16. Clearly therefore, when Ramaswamy Doss died having applied for renewal of the six permits in question and had been granted temporary permits pending orders on the renewal application, in perfect accord with the intendment of the Act it could be said that he was holder of the permits when he died. The permits were not dead then for all purposes.

17. Section 61 (1) entitles the person succeeding to the possession of the vehicles on the death of the holder of a permit to use the permit as if it has been granted to himself. The effect of this fiction, is to make him holder of the permit for all purposes of the Act. During the period of three months he would be subject to all the obligations and has all the rights of a permit holder. We may envisage as case where the holder of a permit dies after duly applying for renewal but before the expiry of the permit. Without doubt the person succeeding to the possession of the vehicles would be entitled to use the permit during the remaining period as the grantee of the permit. To our mind it follows that he could secure temporary permits if before the expiry of the period, renewal is not ordered and he would also be entitled to pursue the renewal application. Of course he must have, within 30 days of the death of the permit holder, informed the Transport Authority of his intention to use the permit. The Second Proviso to Section 61 (1) is itself explanatory and has obviously been placed *ex abundante cautela*. The proviso points out that in the absence of

renewal the permit cannot be used after the period specified. It emphasises the fact that a permit which is not effective is still a permit for the purpose of Section 61, though it cannot be used. If the period of permit has expired and ceased to be effective, the person succeeding to the possession of the vehicles cannot, by virtue only of the Proviso in Section 61 (1), use the permit for a further period of three months.

18. We see no substance in the argument that it would not be open to the successor to pursue the application for renewal made by the deceased holder of the permit, in the absence of any provision in the Act or Rules made thereunder. Section 58 speaks only about the renewal of permits and the application for renewal. No special emphasis is laid on the person of the permit holder. It may come in for consideration under the Proviso to Section 58 (2) (a). If under the provisions of the Act the successor may claim and assert his right to renewal, in our view, the absence of any specific provision in the Act for continuance of the application cannot stand in the way of the concerned Authority recognising his rights and permitting him to continue the application for renewal. There is no provision in the Act providing for abatement of such an application. We have held that the right in a permit is not purely personal to the holder of the permit but that it can pass on to his successor. No doubt the grant of renewal is not automatic. But the applicant for renewal has been given a preference over new applicants for permit. The effect of this pre-emptive right to the route is on its recognition to continue the original permit in the successor of the vehicles covered by the permit. Now what is the position of the application for renewal filed by the deceased? There is an authority seized of a quasi-judicial proceeding in relation to a valuable right. There are no provisions in the Act authorising the Authority to terminate the proceeding on the death of the person who commenced it. The right, the subject of consideration in the proceeding, is one that does not come to an end with the death of the applicant. Under the law as we interpret it, it devolves on the successor to the possession of the vehicles. In such circumstances, in our view, it would be the duty of authority, in the absence of any prescribed procedure or express or implied prohibition to mould its proceeding in accordance with the principles of natural justice and permit the continuance of the proceeding commenced by the deceased. In *Kuppuswami v Ramachandran* (1963) 2 M.L.J. 355 : 1.L.R. (1963) Mad. 627, already referred to where pending a revision petition u/s 64-A of the Act against an order of the Regional Transport Authority refusing to grant variation of the permit the applicant died, it was held that the legal representatives of the applicant can pursue the revision petition. It was observed:

...In the case before us the proceedings initiated by Lakshmi were in relation to an existing right of property in the permits held by her. Such a right would, therefore, survive to her legal representatives. The benefit of the proceedings initiated by her would also survive to them.

19. We agree with Srinivasan, J., that it was competent for the second

respondent to continue the revision petition filed by Lakshmi u/s 64-A of the Motor Vehicles Act.

20. Reference was made for the appellant to the decision of Rajagopalan, J., in *Ulaganathan v. The State Transport Appellate Tribunal* Writ Petition No. 459 of 1957 where before the actual issue of the permit but after the order granting him the permit, the grantee of the permit died. The question arose whether the son of the grantee could apply u/s 61 for the transfer of the permit and whether he could defend the appeal from the order of the Regional Transport Authority directed against the grant of the permit to the deceased. No decision was given on the question whether the successor could defend the appeal. But it was held on the merits that the deceased was not the holder of the permit within the meaning of Section 61 when he died, the deceased having obtained only the right to obtain a permit. It was observed that the deceased was only entitled to obtain a permit the permit having been sanctioned to him, and that he did not obtain it. The case proceeded in the view that no interest survived to the legal representative. This case in the circumstances is not of much avail to the appellant. In similar circumstances or contrary view has been taken by a Division Bench of the Mysore High Court in *Meenakshi v. Mysore S. T. A.* Tribunal AIR 1963 Mys. 271, dissenting from *Ulaganathan's* case Writ Petition No. 459 of 1957. It is not necessary for us here to examine the correctness or otherwise of *Ulaganathan's* case Writ Petition No. 459 of 1957. Our attention was drawn by Mr. V. K. Thiruvengkatachari for the respondent to *Cooke v. Cooper* L.R. (1912) K.B. 248, In that case under the Licensing Act, Justices at a general annual licensing meeting refused to renew a licence to sell intoxicating liquors at a certain house on the ground that the house had not been well conducted and that the fitness of the licence holder was unsatisfactory. The licence holder appealed to the Quarter Sessions, and the owners of the house also appealed as the persons aggrieved. Before the hearing of the appeal the licence holder died and the widow who had obtained letters of administration sought to maintain the appeal. There was objection to her continuing the appeal on the ground that the licence had become extinct. Lord Alverstone, C.J., observed:

There is no reason why this case should not go back to the Justices to be dealt with. The case is governed by the principle of the decision in *McDonald v. Hughes* L.R. (1902) 1 K. B. 94 : 71 L.J.. K.B. 43 : 18 T.L.R.79, On the death of a licence holder, the licence is not absolutely void. It remains in existence for the purposes of the representatives of a deceased licensee getting a renewal in his place, and being held liable if they carry on the business in breach of the Licensing Acts. In my opinion this licence remains in existence for the purpose of enabling the representatives to maintain this appeal.

The above decision and the decision cited therein were applied recently in *R. v. Derby Borough Justices* L.R. (1958) 1 Q.B. 36 : (1957) 3 W.L.R. 591 : (1957) 2 All E.R. 823, another decision under the Licensing Act in England. A reference to the related law and the facts of the case will be useful and instructive showing

how situations like the one in the instant case have been dealt with. Mrs. Short, the holder of an off licence at one premises applied to the licensing Justices for an ordinary removal of the licence to a different premises. The application was granted subject to confirmation; but before the Confirming Authority met, Mrs. Short died, and when her executrix appearing before the Confirming Authority applied for the confirmation, the Justices were of the view that they had no jurisdiction to grant it in the circumstances. There was no objection from any quarter to removal. The licensing Justices had the same power to grant ordinary removal applied for as they had to grant a new Justices' licence. Under the Licensing Act, 1953, Section 22 (1) provided that where the holder of Justices' licence died, Section 120 of the Act shall not prohibit the sale or exposure for sale of intoxicating liquor by the personal representatives during a period ending with the next transfer session or if the next transfer sessions were held within fourteen days after the death, the next transfer sessions but one. Lord Goddard, C.J., after pointing out that it had been held that the executor cannot apply for confirmation of a licence where the application is for a new licence and the applicant died before the confirmation, posed the question whether that principle would apply to a case of application for removal of the existing licence and answered it in the following words:

The Court were not saying that the licence only existed for the purpose of enabling the representatives to get a transfer, but also that it enabled them to maintain an appeal, because it was for the protection of the licence and the licence was still in existence....the licence being still in existence and an order having been made by the licensing Justices that it should be removed, the Confirming Authority can consider, on the application of the executrix, the application for confirmation.

21. The case may not be exactly in point; but the principle of the decision is clear. To us it appears that the power of the Regional Transport Authority to recognise the successor in interest is implicitly under the law which it administers. The preferential right to renewal is not a mere expectation. Should the accident of the death of a permit holder before the order for renewal deprive the successor to the possession of vehicles, the permit attached to them? The consequence of such a view of the Act could be disastrous and may affect the public also. It is a business in which the public are interested. There may be delay in the disposal of the application for reasons beyond the control of the permit holder. No doubt the Act has provided for the application being made, well in advance. But it does envisage the possibility of the renewal getting delayed and has provided for temporary permits in the interregnum. If the permit holder dies before the expiry of the permit, to our mind, there can be no doubt about the successor's right to press the renewal application, as he is then deemed to be the permit holder himself. Suppose instead of dying on the last day of the period of the permit the permit holder dies the next day, is the successor to be denied the right to press the renewal application? Should the mischance of the death coming a few hours later extinguish the heritable right which the statute

recognises in the permit? That is what follows from the appellant's contentions before us. But *aclus dei nemini facit injurium* the act of God is prejudicial to no one. Once we take the view that there is no abatement of the proceeding and the right to secure renewal does not lapse with the death of the permit holder, the objection to the recognition of the successor in possession of the vehicles as the applicant for renewal falls to the ground. We hold him to be in the same identical position as the deceased permit holder. To view otherwise will be to nullify the provisions of the Act which do recognise substantial rights in the permit in the person succeeding to the possession of the vehicles. To deny the successor audience at the hearing of the renewal application, will be to extinguish rights without a hearing. The cardinal rule of natural justice, *audi alteram partem* will require the Authority to hear him on the application. As we hold that the successor if otherwise equal to fresh applicants for permits will be entitled to renewal under the provisions of the statute, the Authority administering the Act in the absence of statutory provisions or rules in that regard would be under an implied obligation to adopt its procedure to meet the requirements of natural justice. Unless expressly ruled out, the rule of *audi alteram partem* could supplant gaps in statutory provisions governing Tribunals adjudging rights of parties. The omission of the Legislature will be supplied by the fundamental principles governing all adjudications whether judicial or quasi-judicial affecting the interests of individuals or their property. In our view, if the endeavour is to administer the Act so as to avoid injustice and work the Act, reading the language of the enactment and the Rules thereunder when it can be done so without violence, there can be no insurmountable difficulty. While the authorities have to proceed under the Act and in terms of the provisions, they cannot ignore the related laws. They may have no inherent jurisdiction like a Court. But in the proceedings before them when they have to abide by the law and formulated rules, in the absence of specific provisions, while not exceeding their powers they have to act as demanded by natural justice for the purpose of discharging the duties imposed on them by the Act. In *Capel v. Child* 149 E.R. 235, Bayley J., said:

....is it not a common principle in every case which has in itself the character of a judicial proceeding, that the party against whom the judgment is to operate should have an opportunity of being heard?

The order on the renewal application will vitally affect the successor to the possession of the vehicles. If the renewal is refused, the permits of the vehicles get extinguished. The successor to the possession of the vehicles will, therefore, be entitled to a hearing on the renewal application.

22. No doubt in the present case two kinds of right in respect of the permit which the deceased operator held, have to be considered. One is the right of renewal u/s 58. The other is the right u/s 61 to transfer of permit to the successor of the possession of the vehicles. Reading the two provisions, it is clear that the person who has succeeded to the possession of the vehicles, if otherwise qualified,

secures the transfer of the permit and if the requisites of Section 58 are complied with he gets the permit renewed and effective for a further period. If necessary to effectuate the object of the Act, the common law power to enter judgment nunc pro tune exercised to prevent prejudice to a suitor from the, delay occasioned by the act of Court may be indented upon. It is a power not statutorily conferred on anybody but recognised as a necessary power to prevent injustice. Here further no one else has acquired any rights meanwhile.

23. The other objection that had been raised before our learned brother Srinivasan, J., that Balasubramaniam by himself cannot prosecute the application for renewal of the permits as there are other heirs, is without substance and has rightly been rejected. It may be, that there were a body of persons who became entitled to the assets of the deceased. But by mutual arrangement they had left the possession of the vehicles with Balasubramaniam. So even strictly speaking, he can be regarded in the circumstances as the person succeeding to the possession of the vehicles. He is certainly one of the heirs of the deceased and his co-heirs have given up their rights in his favour. We are not here concerned with the mutual rights inter se between the heirs and how they have adjusted their claims. Clearly the possession by Balasubramaniam is one that is provided for u/s 51. No other point arises for consideration.

24. We are satisfied that the contentions of the appellant that the renewal ordered is opposed to the provisions of the Act and that the Tribunal had no jurisdiction in the matter are without substance. Even otherwise we would hesitate to interfere in the matter under the special jurisdiction, as the order of the Tribunal below is in perfect accord with justice. In the result the appeals fail and are dismissed with costs.