

(1967) 03 MAD CK 0022

In the Madras High Court

Case No : Writ Appeal No's. 79 and 84 of 1966

Sahib Transport Service, Sankarankoil

APPELLANT

Vs

K. Balasubramaniam and Others

RESPONDENT

Date of Decision : 23-03-1967

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 184, 185
Motor Vehicles Act, 1939 — Section 58, 61, 62

Citation : AIR 1969 Mad 55

Hon'ble Judges : M. Anantanarayanan, C.J;Natesan, J

Bench : Division Bench

Advocate : K.K. Venugopal and V. Manivannan, for the Appellant; V.K. Thiruvengkatachari, Advocate-General, M.N. Rangachari, Govt. Pleader and K. Thirumalai, for the Respondent

Final Decision : Dismissed

Judgement

1. These appeals have been preferred against a common order of our learned brother Srinivasan, J., in W. P. 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 3-1-1964 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 9-10-1963.

The application for renewal was notified u/s 57 (3) of the Act, on 28-10-1963. 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 objections and the applications for fresh grant of permits to him were made by the appellant on 18-11-1963. 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 3-1-1964, the Regional Transport Authority u/s 62 (d) of the Act on 27-12-1963 itself granted temporary permits to Ramaswamy Doss for his six vehicles to take effect from 4-1-1964, 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 7-1-1964 Ramaswamy Doss died.

The first respondent herein, son of Ramaswamy Doss, on 24-1-1964, 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 that he may pursue the application for renewal. On 25-1-1964 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 10-2-1964 applied also u/s 61 (2) of the Act for transfer of the permits. The Regional Transport Authority on 10-2-1964 endorsed on the permits their renewal for three years from 31-1-1964, noting that from 3-1-1964 to 31-1-1964 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

W. P. 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. W. P. No. 3015 of 1965 was filed by the appellant

questioning the order of the Regional Transport Authority granting the renewal.

3. The questions 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 effect ed 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 to favour of the person succeeding to the possession of the vehicles covered by the permit on

the death of holder of the permit. It is argued by Mr. M. K, Nambiar, learned counsel for the appellant, that Ramaswamv Doss was not the holder

of the six permanent permits in question on 7-1-1964 when he died, as these permits had expired on 3-1-1964, 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. Nambiar 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 the Constitution, to acquire, hold and enjoy 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 vehicle, but controls the vehicle itself by providing that

it shall be used only in the manner authorised by the permit. In *C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another*, .

Venkatarama Awar, J., (as he then was of this Court) summed up the position of the transport operator thus:

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 may be requisite for protecting the rights of the public generally 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 with the above observed:

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 of 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 *K.M. Viswanathan Pillai Vs. K.M. Shanmugam Pillai*, 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 of the Motor Vehicles Act, and in the case-law; it has been the subject of partition by members of a joint

family and of divisions of the assets in a partnership. Thus, two complementary ideas have evolved side by side, the first dealing with a stage

carriage permit purely as a licence, all remedies 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 evolution is 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 matter 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 this

background 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 permit. 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 months, use the permit as if it has 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 would have ceased to be effective without renewal in the hands of the deceased holder,

(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 to the person succeeding to the possession of the vehicles 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 possessions 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 is 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 carrier's licence under the Road and Rail way Transport Act (Northern

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 that

personal privilege a privilege personal to the individual licensee sueta licence cannot be transferred by him to anyone else and it dies

with the person to whom it was given, Or a statute may authorize 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 relating to the sale of intoxicating

liquors. But it is well established that even in this connection the phrase, though convenient, is never theless quite inaccurate and misleading, What is

referred to as a 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 persons 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 S.R.

Kuppuswami Chettiar Vs. M. Ramachandran and Another, 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.

In K.M. Viswanathan Pillai Vs. K.M. Shanmugam Pillai, already referred to we observed:

It is true that a permit or licence does not end with the death of the licence-holder, and becomes 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 3-1-1964, 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 Ramaswami Doss cannot be considered to have died as the holder of a

permit?

7. 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.

(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 a 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 off-quoted observations of Lord Asquith in *East End*

Dwelling Co. Ltd. v. B. C. Finsbury, (1951) 2 All ER 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." 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 *In re, Coal Economising Gas*

Co., (1875) 1 Ch D 182 and 189 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.

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.

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 R.A. Natarajan and Another Vs. The Regional Transport Officer, Chingleput and Others, under the Act as it stood before

its amendment by Central Act 100 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 that 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 provision of the Act, the rules and the forms prescribed." 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.

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 *R.A. Natarajan and Another Vs. The Regional Transport Officer, Chingleput and Others*, 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 three months from the date of receipt of the application whichever is earlier. If orders on the application are not passed within three 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.

The permit was by this Rule kept effective once the application for renewal had been made, even without further order in stated situations. The

Rule in question only emphasised the effect of renewal. Its repeal cannot, in our view, affect the true character of a renewed 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 reanimated 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 at

least 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 its 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 3-1-1964, the date of expiry. Orders for renewal of the permits were passed on 25-1-1964 and endorsement of renewal on the

original permits effected on 10-2-1964. No doubt the endorsement states that renewal is to be for three years from 31-1-1964 noting that from 3-

1-1964 to 31-1-1964 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 it pending orders on renewal temporary permits were

issued, on renewal the original permit itself becomes effective for the renewed period. We may refer to certain other provisions which bring out

clearly that a renewed permit is 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 B 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 the day of subject to the following further conditions:--"" 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 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 there under 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.

8. 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.

9. 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 a 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 it 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 self explanatory and has obviously been placed *ex abundanti 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 provision in Section 61 (1), use the permit for a further period of three months.

10. 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 there under. 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 *persona* 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 develops 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 S.R. Kuppuswami Chettiar Vs. M. Ramachandran and

Another, 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. 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.

Reference was made for the appellant to the decision of Rajagopalan, J., in Ulaganathan v. State Transport Appellate Tribunal, W. P. No. 459 of

1957 (Mad.) 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 on 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 a 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 278 dissenting from Ulaganathan's case,

W. P. No. 459 of 1957 (Mad.) It is not necessary for us here to examine the correctness or otherwise of Ulaganathan's case, W. P. No. 459 of

1957 (Mad.)

Our attention was drawn by Mr. V. K. Thiruvengkatachari for the respondent to *Cooke v. Cooper*, (1912) 2 KB 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

M'Donald v. Hughes, (1902) 1 KB 94. 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*, (1957) 2 All ER 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 sessions 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.

11. 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 implicit 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 consequences 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 *Actus Dei Nemini Facit Injuri*um -- 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*,

(1832) 2 C, & J. 558 , Bayley. B. 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 are extinguished. The successor to the possession of the vehicles will therefore be entitled to a hearing on the renewal application.

12. 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 to 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 tunc* 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.

13. 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

61. No other point arises for consideration.

14. We are satisfied that the contentions of the appellant that the renewal ordered is opposed to that provisions of the Act and that the Tribunal

had no jurisdiction in the matter are without substance. Even otherwise we could 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. Counsel fee Rs. 150/- in each.