GUNARATNE

v.

KOTAKADENIYA , COMMISSIONER OF MOTOR TRAFFIC AND OTHERS

COURT OF APPEAL,
S.N. SILVA, J.,
C.A. APPLICATION No. 58/90
JUNE 12, AND 13, 1990.

Writs of certiorari and prohibition — Motor Traffic Act -Driving licence - Issue of card to replace driving licence.

Held :

In terms of section 126 (1) as it stood before Act, No. 21 of 1981 which came into force on 23.3.1981, every licence issued is effective without renewal during the lifetime of the holder unless it is cancelled or suspended under the provisions of the Act. After Act, No. 21 of 1981 came into force on 23.3.1981 every driving licence is valid for such period as may be prescribed (by the Minister) and may be renewed thereafter. As no period has been prescribed even licences issued on and after 23.3.1981 continue to be effective without any limitation as to time.

In order to be valid, any administrative act or order needs statutorty authorization. With regard to Sections 124(1) and 125(1), Regulations had been made by the Minister, prescribing the form of the application and of the licence. Therefore, the first respondent (Commissioner of Motor Traffic) had no power to lay down other forms contrary to what had been prescribed. Further, the driving licence card issued by the first respondent without the particulars contained in the existing form has also no validity whatever in law.

The Commissioner of Motor Traffic can lawfully require any member of the public to make a payment only if such payment was warranted by law. The sum of Rs. 75 which licence holders were required to pay the 1st respondent is not a fee prescribed under the Act. The

recovery of this fee by the 1st respondent is illegal and contrary to the provisions of Article 148 of the Constitution. The receipts issued for this payment bore the name of a private company and had been issued at the office of the 1st respondent.

Per S. N. Silva, J.—

" It appears that the 1st respondent permitted a private company to collect money from the members of the public who were made to believe that the payment was required by law. This act should in any view be condemned without reservation ".

The 1st respondent misused the power to issue a temporary licence to a bone fide visitor to Sri Lanka under s. 132 by issuing temporary licences to holders of valid licences effective for their life time or to other holders of licences effective without any limitation on time.

Further the new licence on a laminated card has no provision for a court to make endorsements (upon conviction of the holder) as required by section 136 and there would be no way to ascertain whether a licence holder has been convicted previously of any offences.

APPLICATION for writs of certiorari and prohibition.

Petitioner in person.

A. S. M. Perera , D. S. G. for respondents.

Cur. adv. vult.

July 13, 1990.

S. N. Silva, J.

The Petitioner, being an Attorney-at-Law appeared in person in support of this application. He submitted that although he is directly affected by the impugned acts of the 1st Respondent in respect of which relief is sought, that he filed the application in the greater interest of the public who have been put to unnecessary expenditure and hardship by these acts. He accordingly described the application as a suit in the public interest.

The Petitioner was issued with a driving licence in 1946 under the Motor Car Ordinance, No. 45 of 1938 declaring him competent to drive all motor cars. In terms of Section 242 (3) of the Motor Traffic Act this licence is deemed to be a licence under the Act. Later, his licence was expanded to cover other types of vehicles such as lorries, motor coaches and the like.

In August 1989 the Petitioner learnt from a newsletter of July 1989 of the Automobile Association of Ceylon (Marked "G ") that the Department of Motor Traffic was engaged in a phased out programme for the

replacement of driving licences issued in book form with new licences in the form of a card. The petitioner, being a member of the Association wrote letter dated 2.9.1989 (marked "A") to the secretary of the Association to ascertain the provision of law under which the said programme was being implemented. Pursuant to this letter the Secretary of the Association sent letter dated 20th September, 1989 (marked " B ") to the 2nd Respondent requesting his comments regarding the matter. The petitioner also wrote letter dated 21.10.1989 (marked " C ") to the 1st Respondent to ascertain the provisions of law under which the existing driving licences are being replaced. The letter specifically states that the 1st Respondent has no power in law to replace the licence issued in the Colombo District, of a given series, as a pilot project. That, subsequently, the " facility" to replace driving licences in book form with a card was extended to all licence holders in the Colombo District. As regards the legal basis of the scheme, the letter states as follows :

> " Driving licence forms are prescribed by Regulation made under section 124 of the Motor Traffic Act for the purpose of issuing these cards"

The Petitioner then sent letter dated 2.12.1989 by registered post, to the 1st Respondent specifically stating that his driving licence is valid for his life time and that there is no provision in law to issue a card to replace that driving licence. The Petitioner also stated that he would be resorting to action in Court if he did not hear from the respondent within two weeks. There was no reply to this letter. It is to be noted that the 2nd Respondent in his affidavit denied having received this letter although it was sent by registered post. Be that as it may, the Petitioner thereupon filed this application on 24.1.1990 seeking inter alia relief by way of Writs of Certiorari and Prohibition against the decision of the 1st Respondent to replace driving licences issued prior to 1991 with cards in the manner stated above.

The application was supported by the Petitioner in Court on 1.2.1990 and the Court directed the issue of notices on the Respondents returnable on 22.2.1990. On that day, State Counsel appeared for the Respondents and moved for time till 22.3.1990 to file objections. However, no objections were filed but motions dated 21.3.1990 and 23.4.1990 were filed on behalf of the Respondents seeking extension of time to file objections. These motions were not supported in Court. Finally, the case was

mentioned on 3.5.1990 on a motion filed by the Petitioner and it was fixed for hearing. The Respondents were granted time to file objections before the hearing

The 1st Respondent ceased to hold office after this application was filed and an affidavit has been filed by the 2nd Respondent objecting to the application. The 2nd Respondent has stated that no determination has been made declaring the existing driving licences invalid. He has further stated " that no holder of an old driving licence is being compelled to give up his old driving licence in exchange for a new licence ". He has further stated that action was taken to replace old driving licences in view of several instances of forgery that were detected and that the new licence in the form of a card was introduced as a security measure to prevent any tampering. That at the time a new licence in the form of a card is issued the licence in book form is invalidated by affixing a rubber stamp to that effect and returned to the holder.

In view of the position taken up by the 2nd Respondent in this affidavit, it is necessary to consider as a preliminary issue, whether the scheme to replace old driving licences in book form was introduced by the 1st Respondent as a voluntary measure in which a licence holder had a choice either to retain the old licence or to apply for a replacement in the new form.

The Petitioner strongly disputed the claim of the 2nd Respondent that this scheme was introduced as a voluntary measure. He produced the affidavit (marked "L ") of Mr. H. D. A. de Andrado, another Attorney-at-Law, who stated that he applied for a driving licence in the form of a card in response to a news item in the English News Papers. He made this application in the belief that he was compelled by law to do so. That, pursuant to the application being made he received a licence in the form of a card and also the licence in book form without any endorsement that it is cancelled. Both licences were produced in Court in order to contradict the position taken up by the 2nd Respondent that the old licence is cancelled before it is returned to the holder.

At a later stage, the Petitioner produced two News Paper Notifications published by the 1st Respondent in the Ceylon Daily News of 2.6.1989 (marked "P") and of 15.7.1989 (marked "Q") . It is stated in the notice marked " P " that applications will be received upto 30th June, 1989 from

licence holders of a given series for the purpose of issuing new licence cards. The notice also states as follows :—

> "Those who have so far not submitted applications to this office for driving licences issued since October, 1980 bearing numbers Co. 1 to 50,000 in response to my previous press notice should submit them without fail before 16.6.1989".

The learned Deputy Solicitor-General for the Respondents did not dispute that these notices were published by the 1st Respondent from time to time setting deadlines for different categories of licence holders to make applications for the new card. Therefore, it is clear that the claim of the 2nd Respondent in his affidavit filed in court (before said press notices were produced in Court) that the scheme was implemented purely on a voluntary basis, is incorrect. Indeed, if he perused the notices published by the 1st Respondent or as submitted by the Petitioner, took the trouble to find out why members of the public were waiting outside the office in long queues, he would have learnt that the scheme was implemented on a compulsory basis, and thereby he could have avoided making an incorrect statement in the affidavit filed before this court.

In the circumstances referred to above, I have to agree with the submission of the Petitioner that the scheme to replace the driving licences issued in book form with a new licence in the form of a card was implemented by the 1st Respondent on a compulsory basis and that licence holders were made to believe that they were required by law to submit applications in the manner stated in the said notices to obtain a licence in the new form.

As regards the relief sought, the main submission of the Petitioner is that every driving licence issued or deemed to be issued under the Motor Traffic Act prior to 1981 is valid without renewal for the lifetime of the holder and that the 1st Respondent had no power to replace these licences with a document in the form of a card. The Petitioner also submitted the following :—

(i) that the form C. M. T. 78 in which an application had to be made according to the said notices was not one prescribed by Regulation;

(ii) that the fee of Rs. 75 to be paid was also not prescribed by Regulation and that it was in fact collected by certain persons of

a Private Company who were permitted by the 1st Respondent to be in the office for this purpose ;

(iii) that up to the date this application was filed, a driving licence in the form of a card had not been prescribed by Regulation made under the Act and as such the new licence was *ipso facto* invalid.

The learned Deputy Solicitor-General appearing for the Respondents conceded that there was no specific provision in the Motor Traffic Act to replace existing driving licence with driving licence in the form of a card. However, he submitted that the action of the 1st Respondent, in this regard, is justified by the provisions of section 239 (1) of the Act.

It was submitted that a distinction should be drawn between a licence and the document which constitutes the evidence of a licence and that there is no provision in the Act which prohibits the 1st Respondent from changing the evidence of a licence. It was further submitted that the Commissioner of Motor Traffic could prescribe administratively the form in which an application is to be made for a driving licence and the form in which a licence is issued in terms of sections 124 (1) and 125 (1) respectively of the Act. The submission is that the word " prescribed " appearing in these sections should be understood as prescribed " in a purely administrative capacity " by the Commissioner of Motor Traffic or his officers. That the provision in the interpretation section, section 240 which stated that the word " prescribed " means prescribed under the Act or by Regulation made under the Act should not be used in interpreting the provisions of sections 124 (1) and 125 (1). As regards the fee of Rs. 75 learned Deputy Solicitor-General conceded that this fee has not been prescribed by Regulation but submitted that it was recovered to meet the cost of a Private company that supplied the cards in which the new licences were issued. It was submitted that since this recovery was not a revenue measure it need not be based upon a Regulation.

In the course of the submissions the learned Deputy Solicitor-General produced certain Regulations made by the Minister and published in the Government Gazette number 605/6 dated 11.4.1990. It is to be noted that these Regulations had been made and published after notice was issued in this case and after the Respondents obtained time to to file objections. By these Regulations the Minister has prescribed a driving licence in the form of a card that is shown in the schedule to the Regulations. There is

also a provision which states that upon an order being made by a Minister the existing forms prescribed will cease to be operative in respect of the specified "categories of serial numbers." It is now clear that the new licence in card form was prescribed by Regulation almost 10 months after the scheme to replace the existing licences was implemented by the 1st Respondent and after the validity of the scheme itself was challenged in Court. Furthermore, it has to be noted that the assertion of the 2nd Respondent in letter dated 8.11.1989 sent to the Petitioner and referred above is incorrect.

The Petitioner challenged the validity of the form prescribed in the Regulations on the basis that the form was not in conformity with the provisions of the Act. He also challenged the other provision referred above on the basis that the power sought to be vested in the Minister is not referrable to any substantive provision of the Act.

I will now examine the relevant provisions of the Motor Traffic Act in the light of the submissions made by Counsel.

In terms of section 124 (1) an application for a driving licence has to be in the prescribed form and be accompanied by the prescribed fee. The application form, M.T.A. 30 was prescribed for this purpose by Regulation in 1951 itself being the year the Act came into operation. The form is comprehensive, in that it has 24 cages specifying a variety of particulars to be filled in by an applicant. It has also certain columns to be filled by the Examiner who makes the report after testing the applicant. It is not disputed that the requisite fee has been prescribed by Regulation from time to time. Section 125 (1) provides that every driving licence shall be in the prescribed form. Form M.T.A. 32 has been prescribed by Regulation for the purpose. The particulars have at all times been put down in the form of a book. It is to be noted that this form has provision for the extension of the validity of the licence to cover other classes of motor vehicles, than the class for which it is originally issued and a separate part for the endersement of any offences that are committed by the holder of the licence.

In terms of section 126 (1) as it originally stood in the Act, every driving licence that is issued is "effective without renewal during the lifetime of the holder" unless it is cancelled or suspended under the provisions of the Act. This section was repealed by Act No. 21 of 1981 which came into

force on 23.3.1981 and the new section that was introduced provides that every driving licence "shall be valid for such period as may be prescribed" and be renewed thereafter. The Petitioner contended that the licences issued prior to 23.3.1981 continue to be valid without renewal during the lifetime of the holder. I note that there is no provision in the repealing statute that relates back to the licence issued under the former section. These licence holders had acquired a right subject to the limitations that were specified to have an effective licence without renewal during their lifetime. Therefore, in my view section 6 (3) (*b*) of the Interpretation Ordinance will apply and that right will subsist in the absence of any statutory provision to the contrary in the repealing statute. The period of validity of licences has so far not been prescribed under section 126 (1) enacted in 1981. Therefore even the licence issued on and after 23.3.1981 continue to be effective without any limitation as to time.

Section 128 provides for the extension of the validity of a licence that has already been issued to other classes of motor vehicles. An application for this purpose has to be made in the prescribed form (M.T.A.34 prescribed by the same Regulation) and submitted with the prescribed fee.

Section 132 empowers the Commissioner to issuse a temporary licence to any bona fide visitor to Sri Lanka which shall be effective for a period not exceeding three months. The application for such a licence and the licence that will be issued have been prescribed by Regulation (M.T.A. 35 and 36 respectively).

Section 135 requires every driver of a motor vehicle to carry his driving licence on his person or in the motor vehicle and to produce it on a demand made by a Police Officer. Section 135 (4) empowers a Police Officer to take charge of a licence that is produced, for investigation and to issue in place of the licence, a permit to the holder of the licence. The permit to be so issued by a Police Officer has been prescribed. (M.T. A. 37).

Section 231 empowers the Commissioner to issue inter alia a duplicate of a driving licence, if he is satisfied that the original is lost, destroyed, defaced or damaged. The application to be submitted for the purpose of obtaining such a duplicate licence and the form of the duplicate licence itself have been prescribed by Regulation (M.T.A. 42 and M.T.A. 32 A respectively.).

The foregoing survey of some of the provisions of the Motor Traffic Act relevant to the issue shows that the Act contains a carefully laid out scheme with regard to the issue of driving licences and connected matters.

The Commissioner of Motor Traffic is not given a general power or an absolute discretion in this regard. The powers conferred on the Commissioner are specific and directed to meet given situations. According to several provisions forms have to be "prescribed". The word "prescribed" is interpreted in section 240 as follows:-

> "Prescribed means prescribed by the Act or any Regulation made thereunder"

Section 237 (1) is also relevant to this aspect and it reads thus-

> "The Minister may make regulations for all matters for which regulations are required or authorized to be made under this Act, all matters stated or required by this Act to be prescribed, and all other matters incidental to or connected with such matters."

It is clear from the provisions of this section that the Minister is empowered to make Regulations in respect of all matters stated or required by the Act to be prescribed.

Considering the provisions of sections 240 and 237 referred to above I am of the view that where any section requires any form of a matter to be prescribed, it is the Minister who has the power to make a Regulation relevant to this matter. As section 237 originally stood, any Regulation made by the Minister becomes effective only upon that Regulation being approved by Parliament and such approval being published in the Gazette. The several M.T.A. forms referred to in the preceding section of this judgment have been so approved by Parliament and published in the Gazette.

In the light of the foregoing statutory provisions it is somewhat surprising that the learned Deputy Solicitor-General thought it fit to submit that the word "Prescribed" appearing in section 124 (1) with regard to the application for driving licences and in section 125 (1) with regard to the form of the licence itself, should be interpreted to mean as prescribed by

the Commissioner of Motor Traffic, administratively. In this way the action of the 1st Respondent in requiring licence holders to submit applications in form C. M. T. 78 and the issuing of licences in the form of a card without the particulars as found in M. T. A. 32 was sought to be justified. The written submissions of the learned Deputy Solicitor-General deal with only the provisions of section 240. The submission does not touch upon section 237 (1) referred to above. As noted by me section 237 (1) has a clear provision that where a matter has to be prescribed, it is the Minister who has the power to make Regulations regarding that matter. Any claim that in such circumstances, the Commissioner of Motor Traffic has the power to prescribe the same matter administratively, is derogatory of the delegated legislative power of the Minister and the legislative power of Parliament as set out in section 237 of the Act.

As regards the two provisions concerned, namely sections 124 (1) and 125 (1), as noted above Regulations had been made by the Minister and approved by Parliament and published in the Gazette, prescribing the form of the application and of the licence. In these circumstances, in my view the Commissioner of Motor Traffic had no power whatever to lay down other forms contrary to what has been prescribed. Therefore, the form dubiously numbered C. M. T. 78 (marked "I") which the 1st respondent required licence holders to submit, according to the notices marked "P" and "Q" has no basis whatever in law. Further, the driving licence cards that were issued by the 1st Respondent without the particulars contained in the existing form M. T. A. 32 have also no validity whatever in law. Quite apart from these documents having no legal validity, I am of the view that the 1st Respondent perpetrated an illegality by issuing documents that were not valid in law, as licences from about 1989 up to 11.4.1990 (being the date of the Regulation referred to above).

The fee of Rs. 75/- which licence holders were required to pay by the 1st Respondent according to the notices that were published, is not a prescribed fee under the Act. The learned Deputy Solicitor-General sought to justify the recovery of this fee on the basis that it was not a revenue measure but a payment for something that was done. This contention, in my view is untenable. It is correct, that there may be situations where a statutory authority or a public officer lawfully enters into some form of contract with a member of the public, which involves the payment of a fee for services rendered, work done, or goods supplied. These are voluntary payments made by members of the public pursuant

to a contract or other arrangement entered into at arms length. The payment of Rs. 75 was not made on such a basis. The notices marked "P" and "Q" issued by the 1st Respondent require driving licence holders to make that payment. It could by no means be considered a voluntary payment. It has to be considered as a levy that was made. In this regard I wish to refer to Article 148 of the Constitution which reads as follows:—

> "Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of law passed by Parliament or of any existing law."

It is clear from this salutary provision of the Constitution that a public authority is prohibited from charging any tax, rate or any other levy except under the authority of a law passed by Parliament. Therefore, in my view the Commissioner of Motor Traffic could lawfully require any member of the public to make a payment only if such payment was warranted by law. As noted above the sum of Rs. 75 is not a prescribed fee under the Act. In these circumstances I am of the view that the recovery of this fee by the 1st Respondent was illegal and contrary to the provisions of Article 148 of the Constitution. The receipt issued for such a payment has been produced marked "J". This receipt bears the name of a Private Company and it has been issued at the office of the 1st Respondent. It appears that the 1st Respondent permitted a Private Company to collect money from the members of the public who were made to believe that the payment was required by law. This act should in my view be condemned without reservation.

The notices marked "P" and "Q" also provide that the licence holders should submit an application in form C. M. T. 78 together with the driving licence and other documents and obtain a temporary licence. It is clear from the provisions referred to above that a temporary licence could be issued by the Commissioner only to a bona fide visitor to Sri Lanka. (section 132). Therefore, I am of the view that the 1st Respondent misused this power in issuing temporary licences to persons who already had valid licences effective for their lifetime or in other cases effective without any limitation on time.

I have in the preceding sections dealt with the specific aspects of the scheme as implemented by the 1st Respondent. I will now consider the general question whether the 1st Respondent had the power to take a

decision to replace existing driving licences with a form that was prescribed by the 1st Respondent.

The preceding survey of the provisions of the Act reveals very clearly that the 1st Respondent had no specific power to replace driving licences that had already been issued, with another form deviced by the 1st Respondent. The learned Deputy Solicitor-General submitted that this action was taken in view of several instances that were reported in which licences in book form had been forged. In this connection the 2nd Respondent produced several letters written by our diplomatic missions abroad.

Licences that are issued under Motor Traffic Act are valid only within this country. It appears from the correspondence produced that persons who have left this country have utilized driving licences and other documents to establish their identity in the countries they have entered. It is in this connection that forgeries have been discovered. It is significant that the 2nd Respondent has not referred to a single instance of a person being prosecuted or convicted in this country of an offence involving the forgery of a driving licence. A driving licence is a document that has to be carried by any person driving a motor vehicle as provided in section 135. It is a matter of common knowledge that every day a large number of driving licences are inspected by Police Officers who stop vehicles in the course of their duty. If forgery of driving licences is a problem of that degree of seriousness, it would certainly have been discovered by the Police and reported to the Commissioner of Motor Traffic. There is no evidence of any such representations being received by the Commissioner from the Police. Therefore, I do not see much merit in the factual basis adduced by the 2nd Respondent in support of the scheme to replace existing driving licences.

As regards the legal basis learned Deputy Solicitor-General relied on section 239 (1) of the Act. This section declares that nothing in the Act should be treated as conferring on the holder of a permit or a licence a right to the continuance of any benefits arising from the Act or from any such permit or licence or from any conditions attached to it. The provision, as the marginal note indicates has been introduced in the public interest. This provision does not even remotely authorise the 1st Respondent to invalidate driving licences that are valid for the lifetime of the holder of the licence or for a period in respect of which no limit has been placed. Even

if any restriction is to be introduced in terms of section 239 (1) that has to be done by or under the authority of a law and not administratively as sought to be done by the 1st Respondent, because such action would have the effect of taking away an existing right of a person granted to him by law. Therefore, I am of the view that section 239(1) could not be availed of to justify the action of the 1st Respondent.

The only other matter to be considered relates to the Regulations made by the Minister and published in the Government Gazette of 11.4.1990. As noted above these Regulations have been made at the time the application was pending in Court. However, in view of the relief sought it is necessary to consider some aspects of the submission made by the petitioner with regard to the validity of the Regulations. It appears that by the said Regulations the Minister has prescribed two forms as M.T.A. 32 'B' and 'C' respectively. M.T.A. 32 'B' is a form of a driving licence to be issued in the first instance. M.T.A. 32"C" is a form of the duplicate licence to be issued. It is significant that both forms, that now constitute a Regulation, have even the signature of the 1st Respondent, probably signifying the extent to which the 1st Respondent has identified herself with the form. The Petitioner submitted that these forms are bad in law and contrary to the provisions of the Act. It was submitted that the forms do not contain any provision for the making of endorsements by a criminal Court after the conviction of a licence holder of an offence under the Act or under the Penal Code. The Petitioner specifically drew the attention of Court to the provisions of section 136 in this regard. This section confers a court convicting the licence holder of offences to make endorsements on the licence. In terms of section 136(5) the endorsements have to be made by the Judge or the Magistrate or in the case of the High Court by the Registrar. In terms of section 136(2) a licence could be cancelled on the basis of previous endorsements of convictions. The Petitioner submitted that the new licence in a laminated card has no provision for a Court to make endorsements as required by section 136. It was also submitted that, in the result there would be no way to ascertain whether a licence holder has been convicted previously of any offences. That, it is in the public interest that licence holders who have been convicted of offences should be prevented from driving by the cancellation of their licences.

I am inclined to agree with the submission of the Petitioner in this regard. It is to be noted that the existing form M.T.A. 32 has a separate section for endorsements. For some reason, this aspect has been ignored in prescribing the new form. However, since the relief sought in the case relates only to the replacement of driving licences issued prior to the amending Act of 1981 with new licences, it would not be necessary for me to pronounce on the validity of the new form itself.

The Petitioner also submitted that Regulation 3 which seeks to empower the Minister to make an order requiring that certain licences be replaced with the new form, is *ultra vires* the Regulation making power of the Minister. Regulation 3 reads as follows :-

> "The Minister may from time to time by Order published in the Gazette specify the categories of serial numbers to which Forms M.T.A. 32B and M.T.A. 32C shall apply under these regulations and upon publication of such order, Forms M.T.A. 32 and M.T.A. 32A shall cease to apply to such categories of serial numbers."

There appear to be certain omissions in this Regulation. It is not clear whether the reference to serial numbers, relate to serial numbers of driving licences. Therefore in my view the Regulation itself is vague and incapable of being implemented. Furthermore, no Order has been made by the Minister under this Regulation. In these circumstances it would not be necessary to consider whether the Regulation itself is *ultra vires* the power vested in the Minister by the Act.

For the reasons stated above I hold that the 1st Respondent had no power or authority under the Motor Traffic Act or the Regulations made thereunder to require driving licence holders who have been validly issued with driving licences to make applications for the replacement of their driving licences. The decision made by the 1st Respondent in this regard as evidenced by the notices such as "P" and "Q" is *ultra vires* the power of the 1st Respondent. To cite a passage from Professor H.W.R. Wade on Administrative Law 5 th Ed. (p. 39)

> "any administrative act or order which is *ultra vires* or outside jurisdiction is void in law, i.e. deprived of legal effect. This is because in order to be valid it needs statutory authorisation, and if it is not within

the powers given by the Act, it has no leg to stand on. The Court will then quash it or declare it to be unlawful or prohibit any action to enforce it".

The foregoing analysis shows that the action of the 1st Respondent with regard to all aspects of the decision is tainted with illegality, and the action itself has, to use the words of Professor Wade, no legal leg to stand on. The Petitioner would be in the circumstances entitled to the relief by way of a Writ of Certiorari and Prohibition as prayed for in paragraphs (*b*) and (*d*) of the prayer to the petition.

It was submitted by learned Deputy Solicitor-General that over 100,000 licences had been issued upto 31.5.1990, in the new form. A large percentage of these new licences had been issued to persons who already have licences in form M.T.A. 32. The learned Deputy Solicitor-General submitted that if the relief is granted it would affect this category of persons. In this regard, I note that according to the affidavit of the 2nd Respondent, when a licence in new form is issued the old licence is returned to the licence holder after invalidating it by applying a rubber stamp. This practice of invalidating does not appear to have been followed consistently since Mr. Andrado produced his licence without any stamp of invalidation. As regards this category of persons it is clear they have licences valid for their lifetime or valid for a period in respect of which no limit has been placed by law. If any stamp has been applied invalidating those licences solely on the ground that a new licence has been issued in the form of a card, that invalidation itself would be of no force or avail in law. Therefore those licence holders would continue to have licences in the form M.T.A. 32 without any invalidity in them. In the circumstances I am of the view that the matter urged by learned Deputy Solicitor-General should not in any way deter this Court from granting the relief sought by the Petitioner. I accordingly direct the issue of Writs of Certiorari and Prohibition as prayed for in paragraphs (*b*) and (*d*) of the prayer to the petition dated 24.1.1990 of the Petitioner. The 1st, 2nd and 3rd Respondents will pay the Petitioner a sum of Rs. 2,500 as costs. The Application is allowed.

Application allowed.