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**(1964) 03 MP CK 0008**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 421 of 1963**

Abdul Mohi Siddiqui

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 19-03-1964**

**Acts Referred:**

Central Motor Vehicles Rules, 1989 — Rule 67

Motor Vehicles Act, 1939 — Section 64, 68, 68(1), 68(2)

**Citation : AIR 1964 MP 255 : (1965) ILR (MP) 862 : (1965) JLJ 738**

**Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J**

**Bench : Division Bench**

**Advocate : R.K. Tankha and P.C. Pathak, for the Appellant; M. Adhikari, General and R.J. Bhawe, Government Advocate for Nos. 1 to 3; Y.S. Dharmadhikari, for No. 5 and A.R. Choubey, for No. 7, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Dixit, C.J.—This order will also govern the disposal of M. P. Nos. 18 and 32, both of 1964.

2. The identical question raised in these three petitions is as regards the validity of the rules made by the Government u/s 68 of the Motor Vehicles Act, 1939, (hereinafter called the Act) for the constitution of State Transport Appellate Authorities for the various regions of the State of Madhya Pradesh and, in particular of the rule authorising the Chairman of the State Transport Appellate Authority to constitute Benches "consisting of a single member or two or more members" for performing or discharging the powers and functions of the Appellate Authority.

3. The petitioner in each case obtained from the Regional Transport Authority, Bhopal, permits for the running of stage carriages on certain routes. The unsuccessful applicants, being dissatisfied with the grants made by the Regional Transport Authority, have preferred appeals before the State Transport Appellate Authority. The petitioners are respondents in those appeals. Their prayer in these

petitions is that Rules 67-A (1) (a-2) and (a-4) of the Kawaid Motor Gadiyan Riyasat Bhopal, 1941, be declared ultra vires, and the State of Madhya Pradesh and the Appellate Authority be restrained by the issue of a suitably direction from giving effect to those rules. The petitioners also pray that a writ of Mandamus be issued to the Appellate Authority for the hearing of the appeate in which they are respondents by the Appellate Authority composed of all the members constituting the Appellate Authority and not by any one member thereof.

4. The material provisions of the Act, which require consideration, are Sections 64 and 68 of the Act. Section 64 says that any person aggrieved by any of the orders enumerated in that provision

"may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard".

Section 68 runs as under--

"68. (1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter (i. e. Chapter IV)

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:-

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Then follows a list of items numbered as (a) to (za). Item No. (b) deals with "the cotduct and hearing of appeals that may be preferred tinder this Chapter, the fees to be paid in respect of such appeals and the refund of such fees". Item (za) relates to "any other matter which is to be or may be prescribed". In the various regions of Madhya Pradesh different set of rules framed u/s 68 of the Act are still in force.

In the Bhopal region, with which we are concerned, the rules framed u/s 68 are instituted "Kawaid Motor Gadiyan Riyasat Bhopal, 1941". In the Mahakostial region, the C. P. and Berar Motor Vehicles Rules, 1940, are operative. The C. P. and Berar Motor Vehicles Rules, as applied to Vindhya Pradesh region, are in force in that region. In the Madhya Bharat region, the prevalent rules bear the title of "Madhya Bharat Motor Vehicles Rules, 1949". In the area, which came to the State of Madhya Pradesh from the Rajasthan State, the operative rules are the Rajasthan Motor Vehicles Rules, 1951. On 25th July 1963 the Government issued notifications amending each of the above set of rules by incorporating in the relevant rule of those rules the following clauses--

"(a) The authority to decide appeals against the orders of a Regional Transport Authority in respect of matters dealt with in Section 64 of the Act shall be the appellate authority as constituted in the manner laid down hereinafter.

(a-1) The State Government shall constitute an appellate authority consisting of such number of members not exceeding five as it may deem fit to appoint and

appoint one of the members to the Chairman thereof.

(a-2) The Chairman may constitute Benches consisting of a single member or two or more members and the Bench so constituted shall exercise the powers and functions of the appellate authority.

(a-3) Where in an appeal before a Bench consisting of more than one member, there is difference of opinion among its members, the views of the majority shall prevail and where the Bench consists of an even number of members and an equal number of members consisting of such Bench differ on a point, then--

(i) if the Chairman is a member of such a Bench, his views shall prevail.

(ii) if the Chairman is not a member of such a Bench, the point on which the members differ shall be stated and placed before the Chairman who may either decide the point himself or may nominate another member to deal with the matter.

(a-4) Any person preferring an appeal against the orders of a Regional Transport Authority in respect of such matter shall, within thirty days of the receipt of such order, do so in writing to the Secretary of the State Transport Authority in the form of a memorandum, in duplicate, setting forth concisely the grounds of objection to the order of the Regional Transport Authority accompanied by a certified copy of that order.

Provided that in computing the period of thirty days, the time required for obtaining copies of the order, shall be excluded."

On 26th July 1963 the Government issued separate notifications constituting Appellate Authorities for the various Regions of Madhya Pradesh. The notifications were issued under Clause (a-1) of the relevant rule of the rules operative in the region concerned. According to these notifications, the Appellate Authority of each region consists of two members, namely, Shri R. C. Roy Poddar and Shri Mitra, Shri Roy Poddar being the Chairman of the Authority. It appears that the Chairman has issued orders in the exercise of his power under Clause (a-2) of the relevant rule of the "rules prevalent in the various regions with regard to the distribution and hearing of appeals u/s 64 of the Act by members of the Appellate Authority sitting singly.

5. It was contended by the learned counsel for the petitioners that Section 68 of the Act did not confer on the Government the power of making a rule for the constitution of an appellate tribunal for the purposes of hearing and disposal of appeals u/s 64 of the Act and for regulating its procedure; that the new Clause (a-2) inserted in Rule 67-A(1) of the Kawaid Motor Gadiyan Riyasat Bhopal, 1941, was bad as it conferred on the Chairman the power to constitute appellate authorities consisting of a single member or two members and this amounted to delegation of the Government's power to constitute an Appellate Authority; that the Government could not delegate this power and, therefore, the rule was ultra vires; and that Clause (a-4) of the Bhopal Kawaid was also bad inasmuch as it

provided for preferring of appeals against orders of the Regional Transport Authority to the Secretary of the State Transport Authority and not to the Appellate Authority constituted under Clause (a) of Rule 67-A(1).

6. All these contentions are unsubstantial. On a plain reading of Section 68 of the Act, it is obvious that under Sub-section (1) the Government had full power to make rules for the purpose of carrying into effect the provisions of Chapter-IV, and under Sub-section (2), without prejudice to this power, the Government has also the power to frame rules with respect to matters set out in Clauses (1) to (za) of Sub-section 2. The purpose of Chapter-IV is, as described by the heading of that Chapter, "Control of transport Vehicles". That Chapter contains provisions dealing, inter alia, with the power of the Regional Transport Authority to grant permits for the running of stage-carriage and contract carriages, and the procedure that Authority is required to follow in considering the applications for contract carriage and stage carriage permits or other permits, such as public-carrier permit, temporary permit, private-carrier permit etc. Bearing in mind this purpose underlying Chapter-IV, it cannot be held that the constitution of an Appellate Authority for the hearing of appeals u/s 64 against orders of the Regional Transport Authority, enumerated in Section 68, is foreign or extraneous to that purpose. The constitution of an Appellate Authority for the purpose of hearing and disposing of appeals u/s 64 clearly falls under Clause (za) of Sub-section (2) of Section 68 which authorizes the Government to make rules with regard to "any other matter which is to be or may be prescribed". Now, Section 64 specifically says that appeals under that provision shall lie to the prescribed authority. If the constitution of an Appellate Authority is a matter which u/s 54 is one to be prescribed, then Clause (za) of Section 68 clearly empowers the Government to frame a rule for the constitution of the Appellate Authority. The matter of the constitution of the Appellate Authority and its procedure would also fall under Clause (b) of Sub-section (2) of Section 68 which enables the Government to frame rules for the conduct and hearing of appeals that may be preferred under Chapter IV.

In any case, even if it be assumed that the constitution of the Appellate Authority and its procedure does not fall under any of the matters enumerated in Sub-section (2), still the Government would have the power to frame rules with regard to the constitution of the Appellate Authority and for regulating its procedure under Sub-section 1. Section 68 (2) does not exhaust the scope of Section 68(1). Section 68(2) itself specifically lays down that the enumeration in that sub-section is without prejudice to the generality of the power conferred on the State Government by Section 68(1). The items enumerated in Section 68(2) fall within the scope of Section 68(1) as well. The effect of Section 68 (2) is that with reference to the items included therein it is not necessary to examine whether any of those items comes within the scope of the general provision contained in Section 68 (1). As the Supreme Court has pointed out in T.B. Ibrahim Vs. Regional Transport Authority, Tanjore, u/s 081. the Government is invested with the plenary power to make rules for carrying into effect the provisions of

Chapter IV and that Clause (za) of Sub-section (2) of Section 68 shows the existence of residuary power vested in the rule making authority. In our opinion, "the incorporation of the clauses reproduced above in the relevant rule of the various rules, under the Act, operative in Madhya Pradesh, was within the scope of the powers conferred on the Government u/s 68 of the Act.

7. The argument that by Clause (a-2) of Rule 67A(1) of the Bhopal Kawait the Chairman of the Appellate Authority constituted by the Government has been given the power to constitute "appellate tribunals" consisting of one or two or more members and this amounts to un-warranted delegation of power on the part of the Government is based on a total misconception of the effect of Clauses (a), (a1) and (a-2) of Rule 67-A 1. The rules framed under the Act are parts of the Act and have the effect as if enacted under the Act. These clauses and the notifications issued by the Government on 26th July 1963 constituting an Appellate Authority consisting of Sarvashri Roy Poddar and Mitra, with Shri Poddar as Chairman, have to be read together. So read their effect is that for the purposes of Section 64 the prescribed Appellate Authority is a body consisting of members, not exceeding five, appointed by the Government and who according to the directions of the Chairman, are entitled to sit singly or in Division Benches for exercising the powers and functions of the Appellate Authority constituted by the Government, and an order passed by a Single Bench or a Division Bench of the Appellate Authority is an order of the Appellate Authority itself as constituted under the above clauses.

When Clause (a-2) of Rule 67-A (1) gives to the Chairman the power to constitute Benches "consisting of a single member or two or more members", there is no delegation by the Government to the Chairman of the Appellate Authority, of its power u/s 68 of constituting an appellate tribunal and of regulating its procedure. All that Clause (a-2) does is to empower the members of the Appellate Authority to exercise the powers and functions of that Authority sitting singly or in Division Benches and to give to the Chairman the power to constitute Benches and to distribute the work of the hearing and disposal of the appeals accordingly.

8. Learned counsel for the petitioners referred us to some decisions dealing with excessive delegation of legislative power. Those decisions are not in point here. For, it is not the contention of the petitioners that u/s 68 the Government had no power at all to make a rule constituting an Appellate Authority or regulating its procedure as Section 68 could not be so construed as to confer essential legislative power on the State Government amounting to excessive delegation of legislative power. It may, however, be pointed out in passing that even if such contention had been advanced, that would not have been tenable in view of the decision of the Supreme Court in *The State of Assam Vs. A.N. Kidwai, Commissioner of Hills Division and Appeals, Shillong*, . In that case the validity of Section. 3 (3) of the Assam Revenue Tribunal (Transfer of Powers) Act, 1948, was attacked inter alia on the ground that it conferred essential legislative power

on the Provincial Government and amounted to excessive delegation of legislative powers. The Assam Legislature had enacted the said Act under the legislative power conferred upon it by Section 296 read with Entry 2 of List 11 of the Government of India Act, 1935. Section 3 of the Assam Act runs as follows--

"3. 1. ....

2. ....

(3} Without prejudice to the foregoing provisions the authority appointed by general or special order of the Provincial Government shall exercise such jurisdiction to entertain appeals and revise decisions in matters arising under the provisions of the enactments specified in Schedule B as is exercised now by the Revenue Tribunal and was vested in the Provincial Government before the 1st day of April 1937, and

It was contended before the Supreme Court that the Assam Legislature had failed to exercise its legislative function by omitting to satisfy itself as to how the Tribunal under Sub-section (3) of Section 3 should be constituted and left the constitution of the tribunal entirely with the discretion of the Provincial Government without any guide. The Supreme Court rejected this contention and held that there was no particular form of expression for constituting a tribunal and by Sub-section (3) of Section 3 the Legislature had in fact constituted the Tribunal to consist of such persons as the Provincial Government may appoint, and that only the power to select and appoint persons to man the authority constituted by the Legislature was delegated to the Government. It was observed by the Supreme Court (at p. 317) that Sub-section (3) was inartistically and inaptly drafted, but the intention, of the framers of the sub-section, however, appears to be quite clear that the Legislature itself applied its mind and constituted an appellate authority". On the same reasoning it can be held that when Section 64 of the Motor Vehicles Act says that appeals thereunder shall lie to the prescribed authority and Section 68 enables the Government to prescribe the Appellate Authority by framing an appropriate rule, there is no delegation of any essential legislative power.

9. The contention that Clause (a-4) of Rule 67-A(1) is bad as it provides for the filing of an appeal before the Secretary of the State Transport Authority and not before the Appellate Authority constituted by the earlier clauses is altogether untenable. That rule only points the authority before whom an appeal is to be presented formally so that it may be laid before the Appellate Authority for consideration and disposal. It in effect says that the memorandum of appeal setting forth concisely the grounds of objection to the order of the Regional Transport Authority accompanied by a certified copy of that order should be presented, within thirty days of the receipt of the order of the Regional Transport Authority, to the Secretary of the State Transport Authority. There is no justification whatsoever for reading the rule as meaning that the appeal is to be heard or disposed of by the Secretary of the State Transport Authority and not by

the Appellate Authority constituted by Clauses. (a) and (a-1).

10. For all these reasons, our conclusion is that Rule 67-A(I) (a-2) and (a-4) of the Kawaid Motor Gadiyan Riyasat Bhopal, 1941, is valid and the Chairman of the State Transport Appellate; Authority validly acted within his power in directing that the appeals preferred before the Appellate Authority in which the petitioners are res pendants shall be heard by a single Member of the Appellate Authority. The result is that all these petitions are dismissed. In the circumstances of the case, we make no order as to costs. The outstanding amount of security deposit shall be refunded to the petitioners.