
(1968) 01 GUJ CK 0002
In the Gujarat High Court

Adambhai Ranabhai

APPELLANT

Vs

The Regional Transport Authority and Another

RESPONDENT

Date of Decision : 30-01-1968

Acts Referred:

Bombay Motor Vehicles Taxation Rules, 1959 — Rule 67(5)
Motor Vehicles Act, 1939 — Section 44, 44(1), 44(2), 44(5), 68
Motor Vehicles Act, 1958 — Section 44

Citation : (1968) 9 GLR 674

Hon'ble Judges : J.B. Mehta, J

Bench : Single Bench

Judgement

J.B. Mehta, J.—This petition under Article 227 is directed against the order at Ex. 4 dated 27th April 1967 by respondent No 1, The Regional Transport Authority, Rajkot, hereinafter referred to as "the tribunal".

2. The short facts which have given rise to this petition are as under:

The petitioner Adambhai Ranabhai is a citizen of India carrying on business of operating Stage Carriages (buses) by operating his buses on the route Kunkavav to Bilkha under stage carriage permit issued by respondent No. 1 since 1958 in the name and style of M/s. New Bagasara Transport Company. By the order, dated 1st April 1964, respondent No. 1 had granted renewal of the said permit to the petitioner for a period of three years and the appeal against the said decision by respondent No, 2, The Gujarat State Road Transport Corporation, hereinafter referred to as "the Corporation" had been dismissed by the order, dated 6th April 1965. The said permit was due to expire and, therefore, the petitioner filed an application for renewal of the said permit on or about 24th October 1966 and respondent No. 2 Corporation also applied for a fresh permit along the said route. Both these applications came up for hearing at a meeting of respondent No. 1 held on 4th March 1967 when the Chairman of the tribunal and some of the other members were not present. In spite of the petitioner's objection that the tribunal was not properly constituted, the remaining members overruled the

objections of the petitioner and they heard these two applications. The respondent No. 1 by its final order, Ex. 4, dated 27th April 1967, rejected the application for renewal of the permit by the petitioner and granted the application of respondent No. 2, Corporation, for the fresh permit. It is this impugned order at Ex. 4 which is challenged in this petition. Even though the impugned order was challenged in the petition on various grounds, the said challenge at the time of hearing is confined only to one ground that the members of the tribunal, who heard these two applications on 4th March 1967 and who have disposed of these applications by the impugned order at Ex. 4, had been illegally constituted the Regional Transport Authority and, therefore, the said tribunal had no jurisdiction or competence to pass the impugned order. The petitioner also contended that the respondents have relied upon the quorum rule viz. Rule 67(5) which permitted the tribunal to become a fluctuating body against all principles of natural justice while acting as a quasi-judicial tribunal, and that the said rule did away with all the relevant safeguards which the Legislature had enacted in Section 44 for the constitution of the Regional Transport Authority as a quasi-judicial tribunal and, therefore, in any event, the said Rule 67(5) was ultra vires Section 44 and it should not have been relied upon by the members of the tribunal who disposed of these two applications. On behalf of respondent No. 1 tribunal the Secretary Shri R.N. Elavis has filed an affidavit In para 9 the relevant averments in the petitions are not controverted. It is in terms admitted that the Regional Transport Authority, Rajkot, consisted of seven members and, therefore, under the quorum Rule 67(5) the presence of two members was sufficient to constitute a valid tribunal. It is further contended that there was nothing in the Act or rules which required that the person presiding over the meeting of the Regional Transport Authority should necessarily be a person with judicial experience, and as per Rule 67 any member nominated from the panel of chairman could preside over the meeting. It is further contended that in view of the provisions of Section 44(5), such delegation does not amount to any excessive or unconstitutional delegation. There would be power to delegate the powers of the tribunal in favour of a smaller committee and it is, therefore, contended that the order passed by the members who heard the two proceedings was legal and competent.

3. At the outset Mr. Desai, for the Corporation, raised a preliminary objection. He argued that the tribunal being a creature of the statute, it could not go into the question of the vires of a statutory provision and as this Court was only exercising superintendence powers under Article 227 over the tribunal, it would not be open to this Court also to go into the question of the vires of the statutory provision. This argument seems to be based on the decision of the Supreme Court in *K.S. Venkataraman and Co. Vs. State of Madras*, where at page 1099, their Lordships held that the proposition that an authority constituted under the Act could not, unless expressly so authorized, question the validity of the Act or any provisions thereof, was sound and was also supported by authority. At page 1100 their Lordships considered certain observations in the earlier decision in

The Bengal Immunity Company Limited Vs. The State of Bihar and Others, where Venkataraman Ayyar J. had observed in the context of the maintainability of a writ of prohibition on page 726 as under:

Indeed, the contention that the Act is ultra vires is not one which the Tribunals constituted under the Act, whether original, appellate, or revisional, could entertain, their duty being merely to administer the Act.

It is, therefore, clear from this decision that it is only a question of the vires of the statutory enactment that cannot be entertained by the Tribunal constituted under the Act. Being creatures of the statute, it would not be open to them to decide whether the very statute of which they were creatures was a valid statute or not. The same principle could not be extended when vires of a rule is challenged on the ground that it is inconsistent with the Act and goes beyond the scope of the Act, because it is the duty of the Tribunal created under the Act to administer the Act. Even this Court in the exercise of its superintendence powers would keep the statutory tribunal within the limits created by the statute and if the tribunal seeks to exercise the jurisdiction which it does not possess as per the statutory provisions themselves by resorting to some rule which is ultra vires the Act itself, it would both be the duty and power of this Court to restrain such a tribunal from exercising its jurisdiction in a manner otherwise than in accordance with the Act. Besides, in the present case Mr. Hegde has only pointed out that Rule 67(5) which is a quorum rule would be inconsistent with the statute only in so far as it relates to the business of the tribunal as a quasi-judicial tribunal. He does not challenge the said rule as wholly ultra vires insofar as it operates in its proper field viz. the field of administrative business by the Regional Transport Authority exercising the various administrative functions under Chapter IV. He only argues that the said rule of quorum would be wholly inapplicable in the context of quasi-judicial business of the tribunal, where the tribunal would be under the duty to act judicially in consonance with the principles of natural justice. He, therefore, argued that as the other interpretation would make the rule ultra vires, the rule must be interpreted in a manner that it would be applicable only to administrative business, and if it is not possible to do so then only the rule should be struck down. Such a contention can be raised before this Court under Article 227 and, therefore, this preliminary objection of Mr. Desai must be rejected.

4. In order to appreciate the rival contentions it would be proper to consider at the outset some of the relevant provisions of the Motor Vehicles Act, 1958, hereinafter referred to as "the Act" and the Bombay Motor Vehicles Rules, 1959, hereinafter referred to as "the rules". Chapter IV deals with the control of transport vehicles. Section 42 provides for the necessity for permits. Section 43 empowers the State Government to control road transport and it covers the administrative field. Section 44 is the material provision which deals with the constitution of the Regional Transport Authority. Section 44(1) provides that the State Government shall, by notification in the Official Gazette, constitute....

Regional Transport authorities to exercise and discharge throughout such areas (in this Chapter IV referred to as regions), as may be specified in the notification in respect of each Regional Transport Authority, the powers and functions conferred by or under this Chapter on such authorities.... Sub-section (2) provides that.... A Regional Transport Authority shall consist of a chairman who has had judicial experience and such other officials and nonofficial, not being less than two, as the State Government may think fit to appoint.... Thereafter Sub-section (5) provides that the State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made u/s 68, may delegate such of its powers and functions to such authority or persons and subject to such restrictions, limitations and conditions as may be prescribed by the said rules. The Rule 67 made by the State Government runs as under:

67. Regional Transport Authorities: (1) The Regional Transport Authority shall meet at such times and at such places as its chairman may appoint:

Provided that it shall meet not less than once in each month unless the State Transport Authority otherwise directs.

(2) Not less than 3 days" notice shall be given to every member of any meeting of the Regional Transport Authority.

(3) A member of the Regional Transport Authority shall attend at least six meetings in each financial year. The State Government may at any time remove any such member from office on his failure to attend the minimum number of meetings fixed under this rule. The State Government may also remove from office any member for any other cause.

(4) Subject to the provisions of Sub-rule (3), a non officials member of the Regional Transport Authority shall hold office for a period of three years and thereafter until a successor is appointed; provided that, when any such member dies or is removed or vacates office, his successor shall hold office for the remainder of the period of office of the member whose place he takes and thereafter until a successor is appointed.

(5) The number of members whose presence shall constitute a quorum shall be one-third of the total number of members, provided that where the number so obtained includes a fraction, the fraction shall be disregarded. If within half-an-hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned to such day and at such time and place as the chairman or the presiding officer nominated under Sub-rule (6) may appoint; and if at the adjourned meeting a quorum is not present, the members present shall be a quorum.

(6) At the beginning of each year, the chairman shall nominate a panel of not more than four members, any one of whom may preside at the meeting in the absence of the chairman (such person being referred to as the Presiding Officer) in the order of preference determined by the chairman.

(7) The chairman or the Presiding Officer shall have a second or casting vote.

The material part of this rule, relevant for our purpose, is Sub-clause (5), which is hereafter referred to as the rule of quorum. It is this clear from Section 44(1) and (2) that the Regional Transport Authority is to be constituted by the State Government by notification in the Official Gazette for various regions specified in the notification for exercising powers and functions coffered under Chapter IV on such Regional Transport Authority. Even though power to constitute such Regional Transport Authority is vested in the State Government, the Legislature itself has provided in Section 44(e) for the composition of such tribunal to be constituted u/s 44(1) by the State. The said Regional Transport Authority u/s 44(2) shall consist of a chairman who has had judicial experience and such other officials and non-officials whom the State Government may think fit to appoint, provided their number is not less than two. Thus, even though the number of persons who shall constitute such Regional Transport Authority is left to be determined by the State Government, the Legislature has provided that the nature of the experience of the chairman must be judicial experience, and that the members must be officials and nonofficial, so that such a tribunal would have both official and nonofficial approach for their consideration, aided by such chairman who had judicial experience. The powers and functions conferred on the Regional Transport Authority by or under Chapter IV are both of administrative and quasi-judicial nature. Applications of stage carriage permits and for renewal of such permits are to be made u/s 46 and the procedure for consideration of such applications by the Regional Transport Authority is laid down in Section 47. The Regional Transport Authority has to dispose of such applications having regard to the various factors mentioned in Section 47(1). It is well-settled that the Regional Transport Authority while disposing off such applications for permits after considering the opposition of the rival parties has to act judicially. There is no dispute that these are quasi-judicial functions. Even though at one stage Mr. Desai had urged that the entire Chapter IV relates only to quasi-judicial functions, when he was pointed out various sections in Chapter IV which deal with even administrative functions, he had no answer. It cannot, therefore, be disputed that the Regional Transport Authority under Chapter IV has to exercise both administrative and quasi-judicial functions as laid down in the various provisions of Chapter IV. The statute having provided for the necessity of permits, these provisions have an important bearing on the fundamental rights of the citizens to carry on their trade in the public transport business and these tribunals which are constituted to exercise then important quasi-judicial functions have, therefore, their composition determined by the Legislature itself. The Legislature was aware of the difficulties that would be experienced by the said tribunal which was bound to be constituted of a number of persons and which would be required to act as a whole, especially when the body exercises its quasi-judicial functions. With that end in view, the Legislature has in Section 44(5) provided an exception by providing for a lesser number than the number which constituted initially the tribunal u/s 44(2) to exercise the same

functions by a process of delegation. While providing for such delegation to such a smaller body or committee or to a Bench, the Legislature provided various safeguards in Section 44(5). Such delegation is permitted u/s 44(5) only if there is authority in this behalf by the rules made u/s 68 by the Government providing for such delegation of such of the powers and functions to such authority or persons. Once such authority is conferred under the rules made by the Government, the question of delegation is thereafter left to the choice of this statutory tribunal, viz. the State Transport Authority and the Regional Transport Authority which can refuse to make such delegation if they so choose. It is only when both these requirements are complied with viz. the authority for delegation is conferred by relevant rule made u/s 68 by the Government and there is factual delegation made by the tribunal itself of its powers and functions to any other authority or persons, that such delegation is permitted by the Statute subject to the restrictions, limitations and conditions which are prescribed in the relevant rules in that behalf. This is the interpretation of Section 44(5) by the Division Bench of the Assam High Court, consisting of Sarjoo Prasad C.J. and Ram Labhaya J., in *Labanya Chandra v. State of Assam* AIR 1953 Assam 199 (200), with which I am in complete agreement. In view of these two safeguards, it would not be open to any outside body, including even the State Government to delegate directly powers and functions of such tribunal to any other authority or persons. It is only after the concurrence of the tribunal is obtained by the factual delegation by this tribunal that delegation would be effective. Section 44(2) thus contemplates initial constitution of the tribunal as per the composition indicated by the Legislature, whose number is left to be fixed by the State Government, subject to the minimum of the members, being not less than two and the chairman being man with judicial experience. Thereafter when such a tribunal delegates its functions to the smaller number, it can be only in the manner laid down in Section 44(5), where because of the second ingredient, the whole body of this authority would have a voice at the time of making the factual delegation, even if the power is obtained by the relevant rule permitting such delegation having been enacted u/s 68 by the Government. Mr. Desai and Mr. Vidyarthi vehemently relied upon the decision of the Division Bench, consisting of S.T. Desai, C.J. and Bakshi J., in *Rajkot Motor Transport Co. Ltd. v. Appellate Committee of State Transport Authority* 2 GLR 211. Their Lordships held on a proper reading of Section 44(2), along with the relevant provisions of Section 44(5) and the rules, that the requirement that the chairman of the State Transport Authority should be a person who has had judicial experience applied only in the case of chairman to be appointed by the State Government when initially the State Government constituted such Transport Authority. Their Lordships observed that it was obvious that in a big State like the erstwhile State of Bombay or like the present State of Gujarat, it would not be possible for the entire body constituting the State Transport Authority to hear appeals arising out of orders of different Regional Transport Authorities. And, therefore, it stood to reason that the State Transport Authority should have the power of delegating its authority to smaller committees and it was with that object in view that Sub-

section (5) found place on the statute book. It is argued by Mr. Desai and Mr. Vidyarthi that that decision concludes the present question. That decision only interpreted the scheme of Sections 44(2) and 44(5) by holding that Section 44(2) applies when the tribunal was initially constituted while u/s 44(5) it was open to the tribunal to delegate its authority to the smaller committee like the appellate committee by complying with the said two requirements laid down in Section 44(5). In that case actually there was Rule 70 made u/s 68 which provided that the State Transport Authority could delegate its power of hearing appeals to an appellate Committee by general or special resolution of the State Transport Authority and actually, such a resolution was brought on the record of the case. In fact Mr. Hegde relies on the ratio of this decision for the proposition that in absence of such delegation, in the present case the smaller body could not function. His only contention is that the "Legislature having provided only one exception in Section 44(5) for the statutory tribunal to function with lesser number, it was not open to the rule making authority to empower by a rule of quorum, like the present Rule 67(5) a smaller body to exercise the functions of this statutory tribunal. In such an event, the rule making authority would be adding a further exception and would not be exercising ancillary power of making a procedural rule, but would be extending the scope of the Act by adding another substantive provision which the Legislature in its wisdom refused to incorporate in Section 44. I cannot, therefore, accept the contention of the respondents that this matter was concluded by the aforesaid decision of the Division Bench, as in the present case there is no such delegation u/s 44(5) and, in fact, both Mr. Desai and Mr. Vidyarthi rightly urged that the quorum rule on which they rely upon is not a rule of delegation at all. They rightly say so, because the rule has not complied with the two relevant conditions which are conditions precedent for delegation u/s 44(5) and particularly, the second condition which would require a factual delegation by the State Transport Authority itself either by general or special resolution. The body as a whole could then apply its mind and consider the question whether similar delegation to the smaller body should be made or not and as to what powers and functions and to whom and to consider even the number to whom such, delegation ought to be made. The said decision would, therefore, only be an authority for the proposition that when such delegation is made u/s 44(5) permitting a smaller body or committee or Bench to act, there is no provision in the Act or the rules which requires such a smaller body to fulfil the requirements for the initial constitution of this body u/s 44(2) viz. the chairman having had judicial experience and other officials and non-officials members not being less than two, as the Government may think fit to appoint. Their Lordships had in that case only rejected this contention that the appellate committee chairman could not be from the penal of chairman but must be a chairman with judicial experience alone. Their Lordships had not considered the question of any quorum rule and, therefore, the said decision could not help us to resolve the present conflict, except for indicating the relevant scheme underlying Section 44(2) and 44(5) that there can be delegation to a smaller body, provided conditions in Section 44(5) are complied with. Except for this

exception in Section 44(5), there is no provision in Section 44 which would enable a smaller body to exercise the powers of this statutory tribunal.

5. Both Mr. Vidyarthi and Mr. Desai vehemently argued that there was nothing in the scheme of Section 44 which requires the tribunal to sit as a whole and there was indication to the contrary, as found from the provisions of Section 44(5) itself and the rule making power vested in the State Government u/s 68. So far as the first ground is concerned, Section 44(5), as we have already considered, is only an exception to the general rule as to the composition of the tribunal laid down u/s 44(2) and beyond that the Legislature has not provided any further exception by enacting a quorum rule. When the Legislature set up a tribunal for exercising quasi-judicial functions in such important matters affecting fundamental rights of the citizens, it is implicit in the very constitution of such tribunal that the tribunal shall act as a whole and its members cannot be a fluctuating body. Their number would get fixed once the State Government exercises its discretion to fix up initially the number of the persons who are to compose this statutory tribunal u/s 44(2), and issues notification u/s 44(1) constituting such a tribunal. A smaller number than the number initially fixed can act only when such exception is made by the Legislature as in the case of delegation u/s 44(5). The other section which is relied upon by the respondents is Section 68, empowering the State Government to make procedural rules. Section 68(1) provides that the State Government may make rules for the purpose of carrying into effect the provisions of this Chapter (Chapter IV). Sub-section (2) then provides that without prejudice to the generality of the foregoing power, rules may be made with respect to all or any of the following matters, namely:

(a) the period of appointment and the terms of appointment of and the conduct of business by Regional and State Transport Authorities and the reports to be furnished by them;

(b) the conduct and hearing of appeals that may be preferred under this Chapter....

It is clear from Section 68 that rules can be framed by the State Government u/s 68(2)(a) only for the conduct of business by the Regional and State Transport Authorities. Sub-clause (2) of Section 68 is only illustrative and is without prejudice to the generality of the power u/s 68 under which the State Government can make rules for the purpose of carrying into effect the provisions of Chapter IV. Therefore, even though the rule may not fall under this specific item of conduct of business, such a rule can be covered under the general power u/s 68(1), provided it is for the purpose of carrying into effect the provisions of Chapter IV. This Section 68 only confers on the State the rule making power. It is well settled that such rule making power is only an ancillary power and the rule making authority cannot frame a rule which is inconsistent with the Act or which goes beyond the scope of the Act in the guise of a procedural rule. Therefore, if the Legislature has provided in Section 44 the constitution of such a statutory

tribunal in Section 44(1) and (2) and has also provided an exception for delegation to a smaller number, if the conditions precedent laid down in Section 44(5) are complied with, it would not be open to the rule making authority to extend the scope of Section 44 by adding a substantive provision in the guise of a procedural rule which would extend the scope of exception in Section 44(5) or which would provide delegation to another smaller body of the powers of the statutory tribunal in a manner inconsistent with Section 44(5).

6. Mr. Hegde in this connection rightly urged that it is a settled position of law that such a statutory tribunal exercising quasi-judicial functions must act as a whole and, therefore, powers can be exercised by a smaller body only when exception is created by a statutory provision as the one in Section 44(5) and it is not open to the rule making authority in the exercise of the power of making procedural rules to modify those substantive provision made by the Legislature itself. In *The United Commercial Bank Ltd. Vs. Their Workmen*, their Lordships of the Supreme Court had to consider this question in connection with the constitution of an Industrial Tribunal under the Industrial Disputes Act, 1947. Under Sections 5(4) and 6(3) of the said Act while providing for the establishment of the Conciliation Board, or a Court of Inquiry, the Legislature had provided that a Board or a Court of Inquiry having prescribed quorum might act, notwithstanding absence of the chairman or any of its members or any vacancy in its number. No similar provision was made in case of constitution of an Industrial Tribunal u/s 7. Section 7(1) provided that that the appropriate Government may constitute one or more Industrial Tribunals for the adjudication of the industrial disputes in accordance with the provisions of the Act. Sub-clause (2) provided that the tribunal shall consist of such number of members as the appropriate Government thinks fit. Thus, the language of Section 7(1) and (2) was identical with our present Sections 44(1) and (2). The only exception which was created in the Industrial Disputes Act by the Legislature for a body with a smaller number to function as an Industrial Tribunal was one in Section 8. Section 8(1) provides that if the service of the chairman or a Board or of the chairman or other member of a Court or tribunal cease to be available at any time the appropriate Government, shall in the case of a chairman, and may in the case of any other member, appoint another independent person to fill the vacancy and the proceedings shall be continued before the Board, Court or Tribunal so reconstituted. At page 233 His Lordship Kania, C.J., on behalf of himself, and Mahajan, Das and Bose JJ., representing the majority view, observed that in view of absence of any provision similar to Sections 5(4) and 6(3) for a quorum in Section 7 for the constitution of an Industrial Tribunal, it was not disputed that the tribunal as a body should sit together and the award had to be the result of the joint deliberations of all members of the tribunal acting in a joint capacity. Their Lordships, no doubt also, relied upon Section 16 which again emphasised a that the function of the tribunal was joint and it was not open to any member to refrain from signing the award. That was, however, relied upon as a further indication.... At page 235 the learned Chief Justice

pointed out that proceeding with the adjudication, in the absence of one, undermines the basic principle of the joint work and responsibility of the Tribunal and of all its members to make the award. Finally, at page 237 the learned Chief Justice, speaking for the majority, observed as under:

On the admitted principle that the work of the Tribunal, which is of a quasi-judicial nature, is one of joint responsibility of all its members, Section 8 provides exceptions. The Legislature having thus fixed in that section the limits of the exceptions, the limits have to be strictly observed and it is not within the competence either of the Tribunal or the Government to extend the limits of those exceptions.

Mukherjee J. Concurred with some of the observations of the learned Chief Justice as he only differed on the question of the subsequent reconstitution of the Industrial Tribunal, when Chandrashekher Aiyer resumed his duties and the Industrial Tribunal became reconstituted as per its initial re-constitution. At page 243 he also observe that it was clear from the provisions of Section 7 of the Industrial Disputes Act and this position has not been disputed that if a Tribunal has been constituted as consisting of three members as in the present case, then subject to any exception that may be created by any other provision of the Act, all the three members of the Tribunal must sit together. At page 245, he further pointed out that an Industrial Tribunal can be constituted only in accordance with the provisions of Section 7, Industrial Disputes Act, and unless a Tribunal is properly constituted, it cannot be invested with jurisdiction to adjudicate on industrial disputes. Under Sub-section (2) of Section 7 the number of members constituting the Tribunal has got to be determined by appropriate Government and that is an integral part of the Tribunal itself. A change in the number of members of a Tribunal could be made, therefore, only in pursuance of the provision contained in Sub-section (2) of Section 7. Further proceeding His Lordship observed:

I am not impressed by the argument of Mr. De. tha a Tribunal is to be conceived of as an entity different from the members of which it is composed and whatever changes might occur in the composition of the Tribunal, the identity of the Tribunal remains intact. A distinction undoubtedly exists between the Court and the Judge who presides over it, but if the constitution of the Court requires that it is to be composed of a certain number of Judges, obviously a lesser number could not perform the function of the Court.

It is quite true that a quasi-judicial Tribunal enjoys greater flexibility and freedom from the strict rules of law and procedure than an ordinary Court of law, but however much informality and celerity might be considered to be desirable in regard to the proceedings of an Industrial Tribunal, it is absolutely necessary that the Tribunal must be properly constituted in accordance with requirements of law before it is allowed to function at all.

His Lordship Mukherjee J. did not express an opinion as to whether Rule 12,

made u/s 38, which empowered the remaining members to function was ultra vires or not. The minority view is represented in the judgment of Fazl Ali J. with whom His Lordship Patanjali Sastri J. had concurred. Mr. Desai pointed out observations of His Lordship Fazl Ali J. at page 240. His Lordship considered that as the Legislature had conferred very large powers on the Government and the entire constitution" of the Tribunal as well as the appointment of its members have been left to its discretion and as u/s 38 of that Act rules could be made by the State Government for giving effect to the provisions of the Act, there was nothing to prevent the Government from making a rule fixing the strength of the tribunal and, therefore, the Government was empowered to constitute as well as reconstitute the Tribunal. This is, however, the minority view which is not accepted by the Court. The majority has not treated this matter as one of mere technicalities to be governed by the procedural rules. The ratio of this decision is that such tribunals even though constituted by the State Government, when they exercise functions of a quasi-judicial nature with a joint responsibility, they have to decide these matters as one whole body, unless the Legislature enacts an exception. Their Lordships have, in terms, held that the Legislature having created in Section 8 an exception, the limits of the exception must be strictly observed and it would not be within the competence either of the Tribunal or the Government to extend the limits of that exception. Applying the ratio of this decision to the facts of the present case, the only exception provided by the Legislature being one in Section 44(5), those two conditions precedent must be strictly complied with. If otherwise than as provided in Section 44(5), any other smaller body is to be delegated with powers of the tribunal as constituted u/s 44(2) of the Act, it would not be within the competence of the tribunal viz. the Regional Transport Authority or even the Government to extend the limits of the said exception. That can be done only by a substantive provision as the one in Section 44(5) and not by a procedural rule. The ratio of this decision has been applied by the Division Bench of the Madras High Court, consisting of Rajamannar C.J. and Venkataram Ayyar J. (as he then was), in Kama Umi Isa Ammal Vs. Rama Kudumban and Others, , where the tribunal was to be constituted u/s 8(1) of the Madras Estates (Abolition and conversion into Ryotwari) Act (26 of 1948). u/s 2 of that Act it was expressly provided that each tribunal shall consist of three members. By a procedural rule the Government had provided that not less than 2 members shall be necessary to constitute a tribunal. Applying the ratio of the aforesaid United Commercial Bank's case, their Lordships held that when the substantive provision of the Act clearly lays down that the tribunal shall consist of three members, it was not open to the Government to provide by a rule that the tribunal might consist of less than three members. Their Lordships in terms relied up on the observations of His Lordship Mukherjea J. in the aforesaid decision in United Commercial Bank's case at page 245 where His Lordship Mukherjea J. had observed that it was absolutely necessary that the tribunal must be properly constituted in accordance with the requirements of law before it was allowed to function at all. The said rule was, therefore, held to be ultra vires following the ratio of the aforesaid

decision in the United Commercial Bank's case. Full Bench of the Andhra Pradesh High Court consisting of Satyanarayan Raju, Gopala Krishnan Nair and Narsinham JJ. in Sheik Hussain and Sons Vs. State of Andhra Pradesh and Others, , has applied the said ratio while considering the effect of a similar rule of quorum in the context of Section 44 of the present Act itself. Rule 145 of the Madras Motor Vehicles Rules, 1940, provided as under:

The quorum for a meeting of the State Transport Authority shall be two:

Provided that if within fifteen minutes after the time scheduled for the commencement of the meeting no member turns up, the chairman may proceed to conduct the meeting without the quorum.

At page 40 their Lordships held that the statutory responsibility of hearing and disposing of appeals is specifically vested in the State Transport Authority which shall consist of a chairman and not less than two members and so, the conclusion was irresistible that no valid order could be made by the State Transport Authority, except when the matter brought before it was heard and disposed of by all the three members composing it. At page 42 their Lordships held that the State Transport Authority is a statutory tribunal created by the Motor Vehicles Act for certain purposes. Its constitution and composition is provided for by Section 44(2) of the Motor Vehicles Act. The jurisdiction of the tribunal is limited by the stipulations contained in the statute. By jurisdiction is meant the authority which the tribunal has to decide matters that are litigated before it. The limitations to the exercise of jurisdiction by a tribunal may be either as to the kind and nature of the action and matters of which the particular tribunal can take cognizance or as to the area to which its jurisdiction extends; or it may be with regard to its constitution and composition. In the case before their Lordships they were concerned with the limitation with regard to the composition of the tribunal. Their Lordships held that by reason of the limitation imposed by the statute, the tribunal can exercise its jurisdiction only when its composition is in conformity with the requirements of the statute. Therefore, if the statute requires that the tribunal should be composed of certain number of members, obviously a lesser number cannot perform the functions of the tribunal. It was sought to be argued by the respondents that this decision is inconsistent with the decision of our Division Bench in Rajkot Transport Co. 2 G.L.R. 211. There is no inconsistency whatever for the simple reason that in view of the exception in Section 44(5), which provided for a statutory delegation to a smaller number, our Division Bench had upheld the constitution of that appellate committee. No such delegation was relied upon before the Full Bench of the Andhra Pradesh High Court in the said decision. Therefore, the exception created by the legislature in Section 44(5) being not applicable, their Lordships were faced with only the quorum Rule 144, which sought to create a further exception which the Legislature in its wisdom failed to provide. Thus, the Full Bench was not concerned with any question of delegation and, therefore, in spite of the quorum rule it was held that the tribunal as a whole should have decided the

matter, as there was no valid delegation shown enabling the smaller number to exercise the same functions.

7. Both Mr. Desai and Mr. Vidyarthi have vehemently argued that all the aspects have not been properly considered in the said decision and that the position has materially changed in the present case because of the rule of quorum. They argued that such rule by a rule making authority should be read as part of the statute. Mr. Vidyarthi even went to the extent of saying that this rule can be said to have been enacted u/s 44(1) of the Act as it seeks to supplement the power of the State Government for a valid constitution of the tribunal. Both of them also argued that these applications are to be disposed of expeditiously and it would be well-nigh impossible if all the members of the Regional Transport Authority were to sit together. The quorum rule was, therefore, advancing the purpose of the Act by carrying out effectively the purposes mentioned in Chapter IV. The rule was really one relating to the conduct of the business of the statutory tribunal. Both of them further argued that as seen from specific illustrative cases, provided in Section 68(2)(a) and (b), the rule making power extended even to quasi-judicial matters, as for example, the conduct and hearing of the appeals. It was, therefore, argued that there was no reason to cut down the scope of the powers of the rule making authority to supplement the constitution of the tribunal, because ultimately it was the State Government, which alone was invested by the statute to constitute a tribunal and even to fix a number according to its own discretion. In this connection both of them strongly relied upon the decision of their Lordships of the Supreme Court in *Birum Chemicals Ltd. v. Company Law Board* AIR 1967 S.C. 235, where the question of delegation was considered in the judgment of His Lordship Mudholkar J., for himself and the learned Chief Justice Sarkar, C.J., with whom His Lordship Bachawat J. concurred in a separate judgment of this question. His Lordship Hidayatullah J. has concurred with his Lordship Shelat J., who represented the minority view, in the aforesaid decision on this material question. Taking up first the majority view, the question before their Lordships was as found at page 315, regarding the effect of Rule 3 of distribution of business, under which the chairman, with the previous approval of the Central Government, by order in writing could distribute the business of the Board among himself and the other number or members, and specify the cases or case which should be considered jointly by the Board. The power in question was one u/s 237 which was delegated by the Central Government to the Company Law Board. The question had, therefore, arisen whether under the said rule of distribution of business, the chairman could allocate the power of the Board u/s 237 to himself or whether such sub-delegation of the power to himself would be illegal. His Lordship Mudholkar J. at page 305 observed that bearing in mind the fact that the power conferred by Section 237 was merely administrative, it was difficult to appreciate how the allocation of business of the Board relating to the exercise of such power could be anything other than a matter of procedure. Further proceeding, His Lordship observed that what was sub-delegated was the administrative power and the

control over its exercise was retained by the nominee of the Parliament viz. the Central Government. The power to make delegation could, therefore, be necessarily implied. In the concurring judgment His Lordship Bachawat J. at page 311 observed, "As a general rule, if the statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited." (See Crawford on Statutory Construction, 1940 Edn. Article 195, p. 335). Normally, a discretion entrusted by Parliament to an administrative organ must be exercised by that organ itself. If a statute entrusts an administrative function involving the exercise of a discretion to a Board consisting of two or more persons, it is to be presumed that each member of the Board should exercise his individual judgment on the matter and all the members of the Board should act together and arrive at a joint decision. Prima facie, the Board must act as a whole and cannot delegate its function to one of its members. "His Lordship relied upon the observations of Lord Coleridge, C.J. in *Cook v. Ward* (1877) 2 CPD 255, to the effect that it was not competent for the Committee to delegate powers, which required the united action of all the three members, to be exercised according to the unaided judgment of one of them. His Lordship also referred to the decision of the House of Lords in *Vine v. National Dock Labour Board* 1957 A.C. 488, holding that a local board set up under the scheme embodied in the schedule to the Dock Workers (Regulation of Employment) Order, 1947, had no power to assign its disciplinary function under Clauses 15(4) and 16(2) of the scheme to a committee and the purported dismissal of a worker by the committee was a nullity. His Lordship further observed that the distribution of business among the members of the Board was a delegation of its authority, but the maximum "delegatus non potest delegare" should not be pushed too far as it was only a rule of construction of a statute. Prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negatived by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted. Applying these principles to the case before their Lordships, His Lordship Bachawat J. observed at page 312 that His Lordship was inclined to construe this rule making power liberally. As rules can be made to regulate procedure of the Board and generally to carry out the purposes of the Act, the Government had power to constitute the Company Law Board, to delegate its functions to the Board and to control the Board in the exercise of its delegated functions. In this background, by conferring on the Central Government the additional power of framing rules regulating the procedure of the Board and generally to carry out the purposes of Section 10E, the Parliament must have intended that the internal organisation of the Board and the mode and manner of transacting its business should be regulated entirely by rules framed by the Government. In that view of the matter, His Lordship upheld the validity of the said procedural rule, which provided further delegation of power conferred u/s 237(b), which was merely administrative. Thus, it was in context of such an

administrative function when such administrative power was sought to be further delegated that their Lordships in the majority judgment had taken the view that the allocation of business of the Board, relating to the exercise of such power, could not be anything other than the matter of procedure. The minority view was based, however, on the recognised distinction between the two different concepts of power and procedure and it was held by His Lordship Shelat J. at page 329 that the statute having permitted delegation of the powers to the Board only as a statutory authority, the powers so delegated have to be exercised by the Board and not by its components. To authorise its chairman to hand over those functions and powers is not procedure but sub-delegation which is not authorised by the Act. The only procedure which the Government could prescribe was the procedure in relation to the Board, the manner in which it should discharge and exercise the functions and powers delegated to it, but it could not make a provision which under the cloak of procedure authorised sub-delegation. That decision is, therefore, based on the fact that the power sought to be delegated was the administrative power and, therefore, it was taken as a procedural aspect which could be regulated by a procedural rule. The said decision could have no application to the facts of the present case where the power sought to be delegated in contravention of Section 44(5) is a quasi judicial power of a tribunal. When once a statutory tribunal is set up by the State Government for adjudicating the dispute between two contesting parties as a third independent party, the tribunal has the duty to act judicially in deciding the dispute or the his before it. It acts completely independently of the State Government and the State Government has no power or authority to interfere with the independence of such a statutory tribunal by issuing any direction or by interfering with its constitution. The matter being one of quasi-judicial function or quasi-judicial power, once an independent tribunal is set up under a statute, the question of composition of the tribunal would no longer be part of the procedural rules. The question of conduct of business would arise when the tribunal starts functioning after it is properly constituted as required by the statute. Therefore, this decision could not be pressed in aid by the respondents.

8. The more fundamental objection which comes in the way of the respondents is the essential difference in the two concepts, one of a provision for a quorum and the other provision for delegation. In case where the Legislature provides for a delegation what happens is that the powers of the statutory tribunal, consisting of a certain fixed number of members, gets delegated to a committee or a Bench of a smaller number but even then the said tribunal remains a fixed tribunal. Right from the very beginning of the hearing till the end, its constitution is not a fluctuating one. In case of a rule of quorum, however, the position is materially different, because even though the member of the tribunal may come and go at their sweet will, the effect of the quorum rule would be that the validity of the composition of the tribunal would remain unaffected. Therefore, even though some members who were present at the commencement of the hearing go out and some others come in, the composition of the tribunal would remain wholly

intact. This would be against all principles of natural justice. It is an essential condition of any statutory tribunal exercising quasi-judicial functions and powers that whatever may be the number comprising the tribunal, the number must remain constant and that tribunal sitting as a whole should decide the matter. The quorum rule would be completely destructive of this fundamental principle of natural justice and it would be destructive of the very constitution of statutory tribunal exercising judicial or quasi-judicial functions. In *Bharat Bank Ltd v. Employees of the Bharat Bank Ltd.* 1950 S.C. 459 at 502 in the dissenting judgment Mahajan J. had pointed out that the idea of three persons hearing a case and two of them deciding it was repugnant to all notions of fairness. His Lordship further held that in such a case when a body legally constituted under the statute as an industrial tribunal did not function according to the statute, the Court ought to exercise its exceptional powers by interfering with the award in an appeal under Article 136 of the Constitution. It is this view which ultimately became the majority view as seen in the aforesaid *United Commercial Bank* case in AIR 1957 S.C. 230 , when this point about the Constitution of the Tribunal was decided on merits by their Lordships of the Supreme Court. Mr. Vidyarthi and Mr. Desai, however, argued that there was nothing in the Act laying down any such principle of natural justice that the constitution of the tribunal should not be a fluctuating constitution and that the identity of the tribunal would remain intact, irrespective of the fact that the persons who were the members of the tribunal might change. This was the very argument which was in terms repelled by his Lordship Mukherjea J. in the aforesaid decision in *The United Commercial Bank Ltd. Vs. Their Workmen*, , by holding that a distinction undoubtedly existed between the Court and the Judge who presided over it, but if the constitution of the Court required that it was to be composed of a certain number of judges, obviously a lesser number could not perform the function of the Court. His Lordship had observed that it was absolutely necessary that the tribunal must be properly constituted in accordance with requirements of law before it was allowed to function at all. Therefore, in the absence of requisite delegation as provided in the exception in Section 44(5), the entire statutory tribunal was bound to sit and unless it was so properly constituted, it could not function at all. Mr. Vidyarthi argued that there was no provision in the Act for the members remaining constant at all stages and he pointed out that Section 44(2), as interpreted by the Division Bench, only provided for the initial constitution and, therefore, the Act was silent in so far as functioning of the tribunal or the stage of reaching decision was concerned. Mr. Desai had also argued that question by stating that the field occupied by the rule was a totally different field. It did not impeach upon Section 44(2), and it also did not impeach upon the field of delegation, which was dealt with in Section 44(5). It was only in the field in which the Legislature was silent that the rule operated and, therefore, there was no inconsistency whatever between the rule and the constitution of the tribunal at the stage of the conduct of the business of the statutory tribunal. This argument of both the respondents ignores the nature of this statutory tribunal as a quasi-judicial tribunal. Once the Legislature sets up such quasi-judicial tribunal,

as a third party to decide the Us between the two contesting parties, the duty to act judicially at all stages in accordance with the principles of natural justice inheres in its constitution as such, and it need not be laid down by any specific provision. It is, however, the settled position in England that Parliament is supreme and it can sanction departure even from the principles of natural justice. His Lordship Subba Rao J. (as he then was), speaking for the Bench, had referred to this question in *Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others*, . His Lordship referred to the decision of the House of Lords in *Frome Breweries Co. Ltd. v. Bath Justices* 1926 A.C. 586, as an authority for the proposition that unless the Legislature clearly and expressly ordained to the contrary, the principles of natural justice cannot be violated. Further proceeding His Lordship observed that the decisions referred to by them showed that in England the Parliament was supreme and, therefore, a statutory law, however, repugnant to the principles of natural justice, was valid, whereas in India the law made by Parliament or a State Legislature should stand the test of fundamental rights declared in Part III of the Constitution. His Lordship interpreted the scheme of the present Act and held that the Act did not sanction any dereliction of the principles of natural justice. Therefore, even if the statutory provision itself enacted by the Legislature provided a rule of quorum in case of such tribunals exercising such important quasi-judicial functions, such a statute would have to be tested in the light of reasonable restrictions by reason of its having sanctioned departure from the basic principles of natural justice. Such a position, however, fortunately does not arise in the present case for the Legislature has not sanctioned any departure from the basic principles of natural justice by providing for a rule of quorum in Section 44 itself. When the Legislature is silent on this material question, we must interpret the statutory provision in conformity with the principles of natural justice and not de hors the principles of natural justice. If, therefore, the rule making authority seeks to sanction the breach of the principles of natural justice by permitting such a fluctuating body to function in case of such a quasi-judicial tribunal, the rule would be clearly inconsistent with the section itself, which did not sanction such a breach and in which the principles of natural justice were clearly implicit when a quasi-judicial tribunal was set up to deal with substantial rights about permits, affecting the fundamental rights of the citizens to carry on their trade. Therefore, the quorum rule must be held to be inconsistent with the scheme of a quasi-judicial tribunal set up u/s 44(1) and (2) of the Act, in so far as the requisite quorum would make the composition of lesser number of statutory tribunal a valid composition and would not affect the validity of its constitution.

9. There is also a further reason in the present case on which it can be held that the quorum rule would be inconsistent with Section 44. As I have already considered, Section 44(5) is the only exception provided by the Legislature to permit delegation and such delegation even has to be done with the prescribed safeguards. All these safeguards would be done away with and there would be an effective delegation to a smaller body if such quorum rule were to be upheld,

whereby two members and at the adjourned meeting only one member present even would form a sufficient quorum and be able to exercise all the powers of this Regional Transport Authority. As pointed out by His Lordship Bachawat J. in *Barium Chemicals Ltd. v. Company Law Board* AIR 1967 S.C. 295, at page 311, "if the statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited," In view of this settled rule of construction when the Legislature created only one exception in Section 44(5) by delegation in the manner laid down in Section 44(5) by complying with the two requisite conditions, such delegation de hors that condition would be empowering the Government to create a further exception which the Legislature in its wisdom has failed to provide. Such a rule cannot be said to advance purposes of the Act but in the guise of a procedural rule, it would destroy the very constitution of the statutory tribunal as a quasi-judicial body and would permit delegation in breach of the provisions of Section 44(5) of the Act. It would take away whatever safeguards the Legislature in its wisdom provided in Section 44(5) by leaving it at least to the statutory tribunal itself to decide whether to delegate its powers at all, even if the power to make such delegation was conferred under the relevant rule made u/s 68. The tribunal would have no voice at all in the matter when such a quorum rule is enacted by the State Government. Therefore, such a procedural rule would obviously undermine the very constitution of quasi-judicial tribunal which can be done it at all only by a substantive provision enacting a further exception by the Legislature Itself. Mr. Desai argued that unlike Rule 70, which permitted the State Transport Authority to delegate its power to hear appeals by a resolution to the Appellate Committee, there was no such rule for Constitution of a smaller Bench of the Regional Transport Authority and, therefore, no delegation u/s 44(5) was possible and such an unworkable construction of the rules should not be adopted. The absence of such a rule would only make the exception in Section 44(5) inapplicable, but would not support the validity of such an inconsistent quorum rule. In fact the recognition of this special exception in Section 44(5) as permitting a valid delegation of the powers of the tribunal to a smaller committee or Bench makes the whole scheme of the Act completely workable and it is at the same time not destructive of the quasi-judicial character of this tribunal.

10. It is, however, important to bear in mind that though the rule of quorum in Rule 67(5) is inconsistent with Section 44(1)(2) and (5), in so far as it relates to the quasi-judicial functions of the statutory tribunal, the rule would not suffer from any such infirmity in so far as it deals with the administrative functions. When the rule made by the rule-making authority would be rendered ultra vires as being inconsistent with the Act, I should adopt such a construction which would harmonise it with the Act and make it consistent with the Act by confining the rule in its operation to its proper field viz. in the present case, in so far as the administrative functions of the Regional Transport Authority are concerned. I, therefore, hold that the quorum Rule 67(5) is applicable only when the Regional

Transport Authority exercises its administrative functions and it is inapplicable when the said Authority acts as the tribunal exercising judicial or quasi-judicial functions.

11. Finally, Mr. Vidyarthi has argued that, in any event, in the present case it was not shown that the tribunal which heard these two applications was not composed of at least three members, which was the bare minimum as required u/s 44(2). This argument is completely misconceived for the simple reason that Section 44(2) invests the Government with the power to fix the number of the statutory tribunal, which must not be less than two official and non-official members. It is open to the Government to fix a larger number and once that larger number is fixed, it is that number alone which can constitute a valid tribunal, unless the exception in Section 44(5) is attracted to the facts of any case, where a smaller number can be properly delegated with the powers of the tribunal. In all other cases where such exception is not attracted, the smaller number cannot constitute the tribunal as laid down in Section 44(2) viz. of the requisite number of officials and non-officials as constituted by the State Government, along with the chairman having judicial experience and therefore, all of them as a whole have to sit together to dispose of the matter.

11.1 This question is not at all a technical question. The point regarding jurisdiction was raised right from the very beginning and it relates to the very constitution of the tribunal and it makes the trial coram-non-judice and the tribunal's decision would be a nullity and, therefore, even though the decision is not challenged on merits, there is no question of substantial justice being done as the tribunal was not the tribunal at all which could dispose of these cases. Therefore, this petition must be allowed and the decision and the order of respondent No. 1 at Ex. A must be quashed.

12. In the result, a writ of certiorari is issued quashing the impugned order at Ex. A by respondent No. 1 and the matter shall go back to the respondent No. 1, the Regional Transport Authority, for disposing of these two applications in accordance with law as expeditiously as possible. Rule accordingly made absolute with costs. Respondent No. 2 Corporation shall pay the costs of the petitioner. There will be a stay of this order for a period of fortnight from the date when the certified copies are ready for delivery to the respondents, but in the meanwhile the stay order granted by this Court shall continue.