
(1956) 01 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petns. No's. 398, 418 of 1954 and 305 of 1955

Amaravathi Motor Transport Co., Amaravathi, by its President
N. Hanumantharao

APPELLANT

Vs

State of Andhra and Another

RESPONDENT

Date of Decision : 25-01-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1988 — Section 3(1), 3(2), 44(5), 60, 60(1)

Citation : (1956) 01 AP CK 0024

Hon'ble Judges : Subba Rao, C.J; Satyanarayana Raju, J

Bench : Division Bench

Advocate : G. Suryanarayana, General, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Subba Rao, C.J.—These three connected Petitions are filed under Article 226 of the constitutions of India for quashing the orders of the Government of Andhra confirming those of the Central Road Traffic Board which in its turn, confirmed those of the Regional Transport Officer, Guntur, canceling the permits issued in respect of two motor vehicles MDG 910 and MDG 2000 owned by the Amravathi Motor Transport Co.

2. writ Petitions Nos. 398 of 1954 and 305 of 1955 are filed to quash the orders made in regarding to MDG 2000 and Writ Petition No. 418 of 1954 in respect of MDG 910.

3. The facts in the three Writ Petitions may be briefly stated.

4. W.P. No. 398 of 1954: The Regional Transport Officer, Guntur by order dated 30-10-1953, as pendent the permit of bus MDG 2000 for six vehicles for performing an unauthorised extra trip to nide ckula at 1-45 P.M. on 1-8-1953. On appeal, the Central Road Traffic Board confirmed the said Irder. The revision filed to the Government was Hissmised. The term fixed in the permit expired on

1-7-1954 and the Regional Transport Authority renewed the permit of the Petitioner.

5. W. P. No. 305 of 1955: On 18-10-1954, the Regional Transport Authority, Guntur, found on Inquiry that, on 15-1954 at 6-25 P.M., near 20/G Kile on the Guntur Amaravathi road, bus MDGI No. 2000 carried 36 passengers as against the seating capacity of 33. On that finding, the Regional Transport Officer, Guntur, suspended the renewed permit for a period of one month. The appeal [filed against that order was dismissed by the I Central Road Traffic Board and the revision gthercfrom to the Government was also rejected.

6. W. P. No. 418 of 1954: On 28-8-1953, the Ktegional Transport Officer, Guntur, suspended the permit of Bus MDG No. 910 for one month for the Iffences of over-loading by two persons, non-issue If tickets, non-maintenance of. trip sheet and for (performing an unauthorised trip on 1-8-1953. On [appeal, the Central Road Traffic Board confirmed be order. The Government also rejected the revijon filed against the order of the Central Road traffic Board. The permit expired on 31-7-1954 and i was subsequently renewed.

7. On the aforesaid facts, learned Counsel for lie petitioneaised various contentions question the validity the orders, which we would consider seriatim.

8. His first contention is that, under the Motor Vehicles Act, a judicial power to cancel permits Iwas conferred on the Regional Transport Authority and it has no power to delegate the same to its Secretary, the Regional Transport Officer.

I But in a recent judgment in W.P. Nos. 271 and 272 of 1952 (S) AIR 1956 AP 129) (A) a Division J Bencli of this Court of which one of us (the Chief was a member held that Rule 134-A of the Madras Motor Vehicles Rules empowering the to delegate to the Secretary its power under and 47 of the Act to grant or refuse a stage carriage lermi in cases where no objections or representations were received, was valid. There we had to insider the question now raised, namely, that the and could not delegate its judicial functions to Secretary. Nothing that has been said now gapes us to take a different view.

But it is contended that the said rule, particu Sub-rule (xi), is in excess of the rule-making far of the Provincial Government. To appreciate this argument, the relevant provisions may tread:

Section 44(5): The Provincial Transport Majority and any Regional Transport Authority, if forized in this behalf by rules made u/s 68, delegate such of its powers and functions to |h authority or person arid subject to such reaction; limitations and conditions as may be scribed by the said rules.

Section 60: (1) The Transport Authority which ted a permit may cancel the permit or may pend it for such period as it thinks fit.

Section 68: (1) A Provincial Government may |ie rules for the purpose of carrying into effect (.provisions of this chapter.

(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:

X X X X X (za) any other matter which is to be or may be prescribed.

Rule 134-A: The Board may for prompt and convenient dispatch of business by general or special resolution delegate to the Secretary the following functions (xi) power u/s 60 of the Act to suspend a permit.....

9. The argument, is that Section 68(1) does not apply as the rule is not only not necessary to carry into effect the provisions of that chapter but is also inconsistent with the express provisions of Section 60 (1) and that Cl. (Za) of Sub-section (2) has no bearing as no power is conferred on any authority to make rules for delegating its function. This, argument, if we may say so, is contrary to the express provisions of the Act.

Section 44 (5) confers a power of delegation, on the Regional Transport Authority subject to the conditions (i) the authority concerned must be authorised to do so under the rules made u/s 68 of the Act and (ii) the scope of the said power is subject to such restrictions, limitations and conditions as may be prescribed by the rules.

10. To carry into effect the provisions of Section 44 (5) rules have to be made by the Government u/s 68 and, indeed without such rules, the power of delegation cannot be exercised. Further, the matter, namely, the delegation of the Transport Authority's powers and functions will be subject to the limitations that may be prescribed by the Rules.

Section 68 (1) expressly enables the Provincial Government to carry into effect the provisions of that Chapter. One of the provisions of that Chapter enables the Regional Transport Authority to delegate its powers, if rules are made to that effect by the Provincial Government. The Provincial Government, therefore, may make rules under the Sub-section authorising the Transport Authority to delegate its function, for, without the said rules, the said provisions cannot be carried into effect.

Sub-section (2) enumerates other matters with respect to which the Government may make rules. It does not derogate from the general power conferred on the Government under Sub-section (1) but is without prejudice to the generality of that power. The specific matters enumerated in Sub-section (2) are only illustrations of the rule-making power of the Government and they do not exhaust that power. The only limitation on the rule-making power of the Government is that the rules made should only be for the purpose of carrying into effect the provisions of that Chapter.

Section 68 (2) (za) enables the Government to make rules with respect; to any other matter, which is to be or may be prescribed. One of such matters with regard to which rules may be prescribed by the Govt, is the matter of delegation u/s 44(5) of the Act. Therefore, the Government under Sub-section (2) (aa) can

make rules prescribing the scope of the powers to be delegated and the limitations, restrictions and conditions subject to which the said powers should be exercised.

Briefly stated, Section 68 (I) authorises the Provincial Government to make a Rule empowering the Regional Transport Authority to delegate its functions and Section 68 (2) (za) enables it to make a . rule laying down the conditions subject to which the said delegation can be made. So interpreted, in our view, R. 134-A (xi) is certainly within the scope of the rule-making power of the Government.

11. Some of the decisions cited at the Bar in this context may be noticed. A Division Bench of the Calcutta High Court in Barisal Co-operative Central Bank Ltd. Vs. Benoy Bhusan Gupta and Another, states the principle of interpretation o? statutes as follows at page 540:

It is a well recognised principle of interpretation of Statutes that if the rules framed under the Statute, or bye-laws framed under the rule, are in excess of the provisions of the Statute or are in contravention of or inconsistent wmi such provisions then those provisions must be regarded as ultra vires of the Statute and cannot be given effect to.

12. The proposition, so stated, is unexceptional and is not even questioned by the Advocate appearing for the Government.

13. Sinha J. of the Calcutta High Court in Huzratved Shah Mustarshid Ali v. Commissioner of Wakfs, AIR 1954 Cal 438 (C) lays down the following rule of construction:

But where rules are to be framed for carrying out the purpose of the Act, such rules cannot travel beyond the four corners of the Act itself.

14. This proposition also is incontestable and is not contested.

15. The Supreme Court in Santosh Kumar Jain Vs. The State Union Of India (Intervener), defines the scope of enumerated matters in regard to which the Government is empowered to make rules as contrasted with the general power conferred on it, at page 203:

It is manifest that Sub-section (2) of Section 3 confers no further or other powers on the Central Government than what are conferred under Sub-section (1) for it is "an order made there under" that may provide for one or the other of the matters specifically enumerated in Sub-section (2) which are only illustrative as such enumeration is "without prejudice to the generality of the powers conferred by Sub-section (1)

16. These authorities only re-state the well-established principles viz., that the enumerated matters do not exhaust the general power, for they are made only without prejudice to the generality of the power conferred on the Government, that a rule made should not be inconsistent with or in contravention of the provisions of the Act, and where a rule is to be framed for carrying into effect the

purposes of the Act, the rule so made cannot travel beyond the four corners of the Act itself.

In interpreting the scope of the rule-making power in the instant case, we have borne in mind the, said well-settled principles and, tested by the said principles, we have no hesitation to hold that JR. 134-A (xi) is within the rule-making power of the Government, and, is, therefore valid.

17. Even so, it is argued that, even if R. 134-A (xi) is valid, it would not be so read as to contravene the express provisions of the Act, namely, S. 60(1) of the Act, on the principle that a general provision must yield to a special provision. To appreciate this argument it may be convenient to place the two provisions in juxta-position:

Rule 134-A:- The Board may for prompt and convenient despatch of business by general or special resolution delegate to the Secretary the following functions:

(xi) the power under S. 60 of the Act to suspend a permit.....

Section 60:- (1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit."

18. The rule framed under the Act has statutory force. It confers on the Regional Transport Authority the power to delegate its power to suspend a permit to its Secretary. Section 60 enables only the Authority, which granted a permit, to suspend it. Rule 134-A (xi) is a general provision whereas S. 60 is a special provision.

19. The rule of construction to be adopted in such cases is recorded in well known text books and is also accepted and followed in various decisions. In *Beal* on the Cardinal Rules of Legal Interpretation, Edn. 3, Part VII, Section ix - Page 516, the rule is stated thus:

A particular enactment is not repealed by a general enactment in the same Statute.

20. In *Maxwell on the Interpretation of Statutes*, Edn. 10 at page 176, the same principle is expressed, much to the same effect, as follows:

A general later law does not abrogate an earlier special one by mere implication. *Generalla specialibus non derogant*, or in other words, where there are general words in a late Act which are capable of reasonable and sensible application without extending them to subjects specially dealt with, by earlier legislation you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such, general words, without any indication of a particular intention to do so.

21. So too, *Quair J.* in - "*Dryden v. Putney Overseers* (1876) 1 E D 223 (E) at page 232 re-marked:

It may be laid down as a rule for the construction of statutes that where a special

provision and a general provision are inserted which cover j?| the same subject-matter, a case falling within the words of the special provision must be governed, thereby and not by the terms of the general provision.

22. This rule was applied to the interpretation of statutes by a Division Bench of the Madras High Court in VITHALJI MADHAVJI Vs. COMMISSIONER OF Income Tax, MADRAS., and by the Supreme Court in The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, .

Applying the said principle in construing the aforesaid two provisions, it is clear that Rule 134-A is a general provision and Section 60(1) is a special provision, overlapping each other to some extent in respect of the same subject-matter. Both provide for suspending a permit already issued. While Rule 134-A (xi) says that the Secretary can suspend a permit under certain circumstances, Section 60 enacts that the Secretary can suspend a permit only if he has granted it.

Section 60, being a special provision governing suspension of a permit by an authority who issued it, overrides the general rule empowering the authority to cancel a permit issued even by a superior officer. By so construing, we must hold that the order of the Secretary suspending the permit granted by the Regional Transport Authority is illegal.

23. The next contention of the learned counsel for the Petitioner is that the constitution of Regional Transport Authority is illegal, inasmuch it consists only of officials in contravention of the express provisions of Section 44(2) of the Act, which reads:

A Provincial Transport Authority or a Regional Transport Authority shall consist of such number of officials and non-officials as the Provincial Government may think fit to appoint.....

Provided that if the Provincial Government thinks fit, the Provincial Transport Authority or Regional Transport Authority may consist of single Official.

24. Learned Counsel for the Petitioner upon the words "shall consist of such number of officials and non-officials as the Provincial Government may think fit to appoint" and argues the Provincial Government cannot appoint The Legislature obviously intended and, indeed expected the Government to give an opportunity to non-officials also to take part in the administration of these Boards. But, the question is whether it is obligatory on the Government to select from both the groups. The words "officials and non-officials" are taken as one unit and it is made the field of election, discretion being given to the Government to appoint out of the group. The learned Counsel suggests that, in the context, the conjunction "and" should be read as "or".

But if the conjunction "and" is substituted by the conjunction "or" the selection by the Government would be confined only to one or other of the two categories. It would not be empowered to select from both the categories at the same time. Therefore, in our view, the Legislature rightly used the conjunction "and" instead

of the word or.

25. But it is said that, if the contrary construction is accepted, it would lead to another absurdity viz., that the Government may exclude, the non-officials or officials altogether and confine their selection to one of the two groups which could not and been the intention of the Legislature. Though ordinarily it is expected of the Government to pick from the two groups, there may be extraordinary circumstances compelling the Government to limit their selection to only one of the two groups.

So, the Legislature gave a wide discretion to the Government, enabling them to select from both the groups or only from one and, to achieve that the object of the conjunction "and" was used instead of "or". That was the intention of the law-makers is also clear from the proviso, which authorises them to appoint a single official to the regional authority.

If a single official can be appointed if the Government thinks fit, it would be anomalous to hold that the Government cannot appoint more than one official to the Transport Authority. If it is true that if the provisions of the main section are clear and unambiguous, they must be given effect to but, where there is ambiguity, the following rule laid down by Maxwell on Interpretation of statutes Edn. 10 at page 132 may usefully be invoked:

The true principle undoubtedly is, that the true interpretation and meaning of the statute, in a view of the enacting clause, saving clause, and proviso, taken and construed together is to pre-,¹¹.

26. If the entire section along with the proviso is read together, any ambiguity that might otherwise appear in the section is dispelled. Briefly, the conclusion may be stated thus: The field of selection for appointment to the Provincial Transport Authority is "officials and non-officials" treated as one lot. The Government may appoint from both the lot or exclusively from either of the two groups may, if it chooses, appoint only a single official. construed, in the present case, the Regional Transport Authority consisting of three officials was validly constituted.

27. The last argument is that the order of the Regional Transport Authority suspending the permit cannot operate on the renewed permit now in force. From the facts stated earlier, it is apparent that this argument would avail the Petitioner in writ Petitions Nos. 398 of 1954 and 418 of 1954 and in Writ Petition No. 305 of 1955, for in the last writ petition, the renewed permit only was sought.

This argument is supported by the decision of a Division Bench of this Court of which one of us (The Chief Justice) was a member, in - "Ch. Anjiah v. Regional Transport officer, Guntur", Writ Petn. No. 295 of 1954 (Andhra) (H). The Division Bench held that a renewed permit was substantially a new permit and, therefore, the order suspending the earlier permit could not operate on the new permit. But, the learned Advocate-General contends that that question would not arise in the present petitions as the Government did not purport to suspend the

renewed permit and the Petitioner could have a grievance only if the Regional Transport Authority purported to do so.

There is no reason to assume that the Regional Authority would ignore the decision of a Division Bench of this Court and make an order contrary to what was decided in that case. If it purported to do so, the Petitioner would have his re-. medy.

28. As we held that the Secretary had no power to cancel the permit issued by the Regional Transport Authority, the order of the Secretary is without jurisdiction and the orders of the Central Road Traffic Board on appeal and of the Government in revision are also illegal.

29. In the result, we quash the said orders. The Petitioner will have his costs, one set in W. P. Nos. 398/54 and 305/55 and another set in W. P. No. 418/54. Advocate's fee Rs. 100/- in W. Ps. Nos. 398/54 and 305/55 and Rs. 100/- in W.P. No. 418/54.