

(1962) 03 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 47 of 1960

Assanar Pillai Mohammed Kassim Pillai	APPELLANT
Vs	
Secretary, State Transport Authority, Trivandrum	RESPONDENT

Date of Decision : 06-03-1962

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 133
Motor Vehicles Act, 1939 — Section 44(5), 60(1)

Citation : AIR 1962 Ker 331

Hon'ble Judges : M.S. Menon, C.J; P. Govindan Nair, J

Bench : Division Bench

Advocate : T.S. Krishnamoorthy Iyer and G. Rajasekhara Menon, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Govindan Nair, J.—The short question that arises for determination in this application under Article 226 is about the legality of the order Ext. P-1 passed by the sole respondent, the Secretary of the State Transport Authority, suspending the permits of two vehicles owned by the petitioner, for a period of one month each.

2. The ground on which the permits were suspended is that the vehicles concerned have been used on a route not mentioned in the permit and the order was passed u/s 60(1)(b) of the Motor Vehicles Act. Section 60(1)(b) reads as follows:

"60 Cancellation and suspension of permits (1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit--

(a)

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or... A contention was raised before us

that even if the vehicles have been used on a route for which there was no permit granted, it will not be a user by the holder of a permit in a manner not authorised by the permit to fall within Clause (b) of subsection (1) of Section 60. We are unable to agree. The user of a vehicle on a route for which there is no permit, will be a user in a manner not authorised by the permit

3. The main point urged is that the respondent is not competent to pass such an order. The argument is that Sec. 60 (1) specified the authority empowered to suspend as the authority which granted the permit; that power cannot be delegated to any other authority and that Rule 133 providing for such delegation is illegal.

4. Section 44(5) of the Motor Vehicles Act provides that any Regional Transport Authority, it authorised in this behalf by rules made u/s 68, may delegate such of its powers and functions to such authority or person and subject to such restrictions, limitations and conditions as may be prescribed by the said rules. The Government have made rules u/s 68 envisaged in Section 44(5) and Rule 133 provides that the Board may for the prompt and convenient despatch of business by general or special resolution delegate to the Chairman or the Secretary the following, functions:

.....(xi) Power u/s 60 of the Act to suspend a permit.

5. It is admitted that there has been a proper resolution by the Board delegating the power u/s 60 of the Act to suspend a permit; but the contention is that the delegation of the power of suspension to the Secretary authorised by Rule 133 (xi) is against the terms of Section 60(1) and hence the authorisation of such delegation is bad. It is urged that though Section 44(5) provides that any Regional Transport Authority may, if authorised by the Rules made in this behalf, delegate such of its powers, such delegation cannot go against the express terms of Section 60(1) which, according to the petitioner, enjoins that a permit can be suspended only by the authority which granted it. The delegation, it is said, must therefore be to an authority which at least could have granted the permit. Under Rule 133, the power to grant a regular permit has not been delegated to the Secretary of the Transport Authority. So it is urged that the delegation is to an authority who has not only granted the permit, but who has no power at all of granting a regular permit. This, according to the learned counsel for the petitioner, is against the terms of Section 60(1) and hence Rule 133 is ultra vires the powers of the rule-making authority.

6. It appears to us that Section 60(1) must be read with Section 44(5) and so read It is clear that the power of suspension conferred on the authority granting the permit by Section 60(1) can be exercised either by the granting authority or by the authority to which that power has been delegated by the granting authority. In view of the specific provision in Section 44(5) that any of the powers of the Regional Transport Authority may be delegated if so authorised by rules it necessarily follows that even the power of suspension u/s 60(1) can be

delegated. It is not contended before us that Section 44(5) itself is bad as amounting to abdication of legislative functions nor is it urged that by Section 60(1) judicial powers have been conferred on a special person and therefore he cannot delegate such functions. Rule 133, therefore, has to be given its full scope and power and we are unable to accept the contention that the rule is ultra vires the powers of Government. Such a contention has been raised and negatived in *Krishnan v. Secretary, Regional Transport Authority, Chittoor* AIR 1956 A.P 129, *Amaravathi Motor Transport Co. v. State of Andhra* AIR 1956 A.P 232 and *Pagammal (died) and Others Vs. Kasi Goundan and Others*, and we respectfully agree with the view expressed in these decisions.

7. We do not think that Section 60(1) intended to confer any power on any authority which should be exercised only by that authority as if the grant of the power is personal to the grantee. On the other hand, the interpretation that should be placed on Section 60(1) must be that power can be exercised either by the authority that granted the permit or by the authority to whom such power is delegated by the Regional Transport Authority who granted the permit. This has to be so if effect is to be given to Section 44(5) and the rule validly framed under that section.

8. But the Full Bench decision of the Andhra Pradesh High Court in *Satyanarayana v. State of Madras* AIR 1957 A.P 1027 has been pressed before us and reliance has been placed also on an earlier decision of the Andhra Pradesh High Court in AIR 1956 A.P 232 and it is urged that Rule 133 is illegal and that in any event S 60(1) must be held to override the provision in Rule 133(xi). With the utmost respect to the learned Judges who decided those cases, we are unable to agree with the views expressed therein.

9. The decision in AIR 1957 A.P 1027 is rested on the ground that the power of suspension has been linked by the statute with the earlier exercise of the power of granting the permit. In the leading Judgment expressing the majority view, the learned Judge said:

"If the Act insists, and I have come to the conclusion that it does, on linking the power of revocation or suspension with that of having granted the permit, the rule-framing authority cannot disregard the link."

If we read Section 60(1) with Section 44(5), and we have already said that they should be so read, we are unable to discern any insistence by the statute that the suspension of a permit must be by the granting authority. Neither are we able to accept the view that Rule 133 is a general provision and that there is a specific provision in Section 60(1) which would override the general provision as has been held in AIR 1956 Andhra 232. We do not think there is any conflict between the provisions. In the view we have taken that Section 60(1) must be read with Section 44(5) and Rule 133 framed by Government, the conclusion seems to be inescapable that the power of suspension conferred on the authority which granted the permit by Section 60(1) can be exercised either by that

authority or by the authority to whom it is delegated. The Madras High Court has taken the view that the Secretary of the Regional Transport Authority to whom the power of suspension has been delegated may validly exercise that power in V. Dhanmull Sowcar Vs. Secretary, Regional Transport Authority at Vellore, North Arcot and Others, . We respectfully follow the view expressed in the above decisions.

10. In the light of the above conclusions, we dismiss this writ application, but make no order as to costs.