

(1957) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 556 of 1956

Banta Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-03-1957

Acts Referred:

Central Provinces and Berar Motor Vehicles Rules, 1940 — Rule 49A
Motor Vehicles Act, 1939 — Section 68(1)

Citation : (1957) JLJ 1057

Hon'ble Judges : Hidayatullah, C.J; Bhutt, J

Bench : Division Bench

Advocate : R.S. Dabir with A.D. Deoras, for the Appellant; M.N. Phadke for the Raipur Transport Co. Ltd., Raipur and H.L. Khaskalam for the State, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition under Art. 226 of the Constitution of India challenges the legality of Rule 49-A of the Central Provinces and Berar Motor Vehicles Rules, 1940.

2. The Petitioner, Sardar Bantasingh, is a transport operator and carries on business in partnership, mainly at Jabalpur and Raipur, in the name and style of Punjab Sikh Regular Motor Service and Jabalpur Development Transport Co., Jabalpur. The Raipur Transport Co., (Private), Ltd., Raipur, which also carries on the same business and had made an application to be joined as a respondent, was allowed to appear as an intervener and was heard. The respondents are (i) The State of Madhya Pradesh, (ii) The State Transport Authority, Madhya Pradesh at Jabalpur, and (iii) and (iv) the Regional Transport Authorities at Jabalpur and Raipur. The return has, however, been filed by the State Government alone, as it is mainly concerned with the dispute.

3. Rule 49-A of the C.P. and Berar Motor Vehicles Rules 1940, was made by the State Government in exercise of the powers conferred by sub-sec. (1) of Sec. 68 of the Motor Vehicles Act, 1939, hereinafter called the Act, and was published in

the official Gazette under Notification No. 879-1078-IV-MV, dated the 29th October 1956. It is in these terms:-

49-A. Where there are more than one applicant for a stage carriage permit over any route, routes or area, then other things being equal, a Regional Transport Authority or the State Transport Authority, as the case may be, shall in deciding whether to grant or refuse a stage carriage permit, give preference to a viable unit.

Explanation-For the purpose of this rule, a viable unit means an operator who is in possession of more than 20 public service vehicles.

The validity of this rule is challenged on two grounds, namely:-

(1) that it is in excess of the rulemaking power of the State Government under the Act and

(2) that it is discriminatory and monopolistic. We shall take these points serially.

4. Point No. (1) The law of the land, besides the common law and statute law, includes Orders in Council, rules, regulations or bye-laws, made under statutory powers, which are compendiously described by the term subordinate legislation. So far as bye laws conforming with prescribed form are concerned, their validity depends upon the question of their reasonableness, or of their consistency with the general law or with the statute under which they are made. Rules made under a rules-making power conferred by a statute are, on the other hand, part and parcel of the statute itself, and, therefore stand on a different footing: T.B. Ibrahim Vs. Regional Transport Authority, Tanjore, Dealing with subordinate legislation, apart from delegated legislation known as Administrative Law, Caries in his treatise on Statute Law, 5th Edition, on page 273 observes as below:-

The initial difference between subordinate legislation and statute law lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority, and that Courts of law, as a general rule, will not give effect to the rules, etc., thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled. The validity of statutes cannot be canvassed by the Courts, the validity of delegated legislation as a general rule can be. The Courts therefore (1) will require proof that the rules have been made and promulgated in accordance with the statutory authority, unless the statute directs them to be judicially noticed; (2) in the absence of express statutory provision to the contrary, may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created, either with respect to the procedure adopted, the form or substance of the regulation, or the sanction, if any, attached to the regulation; and it follows that the Court may reject it as invalid and ultra vires a regulation which fails to comply with the statutory essentials.

The impugned rule is questioned on the grounds that it is not warranted under the rule-making power conferred by the Act and that it changes the policy, of the

Act by providing for considerations in addition to those provided by Secs. 46 and 47 of the Act and is thus contrary to the policy there enacted.

5. Sub-sec. (1) of Sec. 68 of the Act, under which Rule 49-A is made empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV which deals with the control of transport vehicles. None of the matters specifically mentioned in sub-sec. (2) of Sec. 68 are applicable to the present case, and indeed the State Government did not purport to act under that sub-section. Sub-sec. (1) of Section 68 is in wide terms and is controlled only in one respect, namely, that the rules shall carry into effect the provisions of Chapter IV. Sec. 47 under this Chapter prescribes the procedure of the Regional Transport Authority and specifies the matters to which regard shall be had while considering an application for a stage carriage permit. It provides, inter alia, that the Regional Transport Authority shall take into consideration the interest of the public generally, the advantages to the public of the service to be provided and the benefit to any particular locality or localities likely to be afforded by the service. Sec. 46 specifies the particulars to be given in an application for stage carriage permit. This section has been amended by Act 100 of 1956 which came into effect from 16-2-1957, that is after the date on which the rule in question came into force. One of the points to be mentioned in the application is the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions; the other is the arrangement intended to be made for the housing and repairs of the vehicles, for the comfort and convenience of the passengers and for the storage and safe custody of luggage. These points have been newly added by the Amendment Act of 1956 as clauses (d) and (e) of Sec. 46. Sec. 58 deals with the duration and renewal of permits. Under the proviso to sub-sec. (2) of that section, the Regional Transport Authority is required to give preference to an application for renewal of a permit over new applications for permits if other considerations (?) Sec. 48 gives power to the Regional Transport Authority subject to the provisions of Sec. 47, to grant or to refuse a stage carriage permit.

6. It will thus appear that the Act does not contain any provision as to how to make a preference between new applications for permits when all other things are equal and there is no application for renewal. It was obviously to provide for a case of this type that the State Government made the impugned rule. It cannot, therefore, be contended that the rule is unconnected with the purpose for which the State Government is empowered to make rules under the statute. Since the necessity of the rule exists even after the amendment of the Act, it cannot be dismissed as redundant. It was however urged that the rule contravenes the intendment of the Act which is to provide equal opportunity to all the persons having the prescribed qualifications, and therefore, by the impugned rule, the State Government has in effect introduced a change in policy which is beyond its rule-making powers. Reliance is placed upon *Rajnarin Singh vs. The Chairman Patna Administration Committee*. Patna (1955) I S.C.R. 290 in which Bose, J., on an entire review of the law laid down in *re The Delhi Laws Act*,

1912 (1951) A.C.R. 747 has summarised the position as below.-

In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above: it cannot include a change of policy.

7. The business of transport cannot by its very nature be carried on effectively by all individuals regardless of their capability to provide adequate service. Even before the amendment of the Act, the paramount consideration for acceptance of an application for permit was the comparative convenience that would be afforded to the public or the locality to be effected by the service.

The Act cannot, therefore, be said to have as its object provision of equal business to all the citizens. Even before the enactment of clauses (d) and (e) of Sec. 16 by Act 100 of 1956 the State Government could have enacted a rule requiring particulars of vehicles proposed to be kept as reserve and arrangement for housing and repairs of vehicles. This could be done under the residuary clause "Such other matters as may be prescribed" in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, it was observed by their Lordships of the Supreme Court that no one is entitled to a permit as of right even if he satisfied all the prescribed conditions and that the grant of a permit was entirely within the discretion of the transport authorities depending on several circumstances which must be taken into account. Therefore even where persons qualify themselves equally as regards the prescribed conditions, the Regional Transport Authority has still the power to make a selection. This may be done by giving preference to an application for renewal when it competes with a new application for permit as laid down in the proviso to sub-sec. (2) of Sec. 58. But that did not cover all the cases. It was, therefore, accessory to prescribe a limit to enable the transport authorities to make a suitable choice when all other things were equal. This cannot be said to effect a change in the policy in the sense understood in the case of *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, The rule thus has reference to the purpose for which the Motor Vehicles Act has been enacted and is not by that reason alone in excess of the rulemaking power of the State Government.

8. Point No. (2), This question has been debated under two heads; namely that the explanation to the rule is (1) discriminatory and (2) monopolistic. The first part falls under Art. 14 and the latter under Art. 19(1)(g) of the Constitution. So far as Art. 14 is concerned, it is well settled that it does not forbid reasonable classification. The matter was first dealt with in, *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, On a consideration of that case, *Fazil Ali J., in The State of Bombay and another vs. F.N. Balsera* 1951 1 S.C.R. 632 summarised the principles as below-

(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature under, stands and correctly appreciates the needs of its own people that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often required separate treatment.

(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality and mere production of inequality is not enough.

(6) If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained and the classification cannot be made arbitrarily and without any substantial basis.

9. These principles have formed the bed rock of subsequent decisions of the Supreme Court. Thus, the rule was laid down in *Kathi Raning Rawat Vs. The State of Saurashtra*, by Patanjali Sastri, C.J. in these terms:-

Equal protection claims under that Article (Article 14) are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies.

S.R. Das, J. (as he then was) expressed the same principle in *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, thus:-

It is now well settled that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out from the group and (ii) that the differentia must have a rational relation

to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act.

In *Kedar Nath Bajoria Vs. The State of West Bengal*, Patanjali Sastri, C.J. again stated the principle thus:-

Now it is well settled that the equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation. To put it simply, all that is required is that the legislative classification must not be arbitrary but should be based on an intelligible principle having a reasonable relation to the object that the legislature seeks to attain.

It will thus appear that a classification which is based on an intelligible principle, having a reasonable nexus with the object of legislation does not offend Art. 14.

10. As regards Art. 19(1)(g), the controlling clause is (6). The State is under it, free to impose, in the interest of the general public, reasonable restrictions on the exercise of the right to carry on any trade, occupation or business. Thus in *T.B. Ibrahim vs. Regional Transport Authority* (supra), restrictions placed upon the use of the bus-stand were held to be valid as being reasonable and in the interest of public convenience. Also in *Shah Transport Co. vs. The State*, ILR (1953) Nag. 110, permit system for plying motor buses on highways was held to be saved by clause (6). The restrictions may even "be prohibitory in character. Thus in *Mugler vs. Kansas* (1881) 123 U.S. 623, it was held that Government does not interfere with, nor impair anyone's constitutional rights of liberty or of property, when it determines that the manufacture and sale of intoxicating drinks for general or individual use as a beverage are or may become hurtful to society and constitute, therefore, a business in which no one may lawfully engage : See also *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, and *Sheoshankar vs. The State*, ILR (1951) Nag. 646.

11. The rule in question, as already discussed, subserve the purpose that the Act has in view. It has also been observed that the transport business, by its very nature, is not of a kind which can be carried on by all persons alike. In this connection, the following observations of Venkataram Aiyar J., who delivered the judgment in *C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another*, are pertinent:-

Elimination and exclusion are inherent in the nature of this business (business of transport) and it would hardly be proper to apply to such a business principles applicable to trades which all could carry. Nor can the provisions of the Act (Motor Vehicles Act) be attacked on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. Such, however, is not the case with the business

of motor transport. Even with reference to trades in which it could properly be said that there is a monopoly, the following observations of Lord Porter in *Commonwealth of Australia vs. Bank of New South Wales* (1950) A.C. 235 may be quoted:-

Yet about this as about every other proposition in this field a reservation must be made. For their Lordships do not intend to lay it down that in no circumstances would the exclusion of competition so as to create a monopoly either in a State or Commonwealth agency or in some other body be justified. Every case must be judged on its own facts and in its own setting of time and circumstances and it may be that in regard to economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation and that inter-State trade commerce and intercourse thus prohibited and thus monopolized remained absolutely free.

These observations of Venkatarama Aiyar J., which are made with reference to the provisions of the Act, are equally apposite to the rule in question which has the same purpose in view.

12. The rule under consideration does no more than lay down a minimum degree of necessary equipment that an applicant must possess when there are, several competitors otherwise equally qualified. The limit of 20 vehicles is not arbitrary or discriminatory. It must be based on the experience gained in the working of the Act. It cannot also be described as erecting a monopoly. It is open to Government or legislature to create standards of efficiency with a view to achieving reasonable public comfort and convenience in matters connected with public utilities. This is all that the rule does. Indeed every prescription of a limit is always open to the argument that something a little less is equally good but the line must be drawn somewhere, This was indeed a matter primarily for the State Government to determine and is not open to scrutiny by Courts of law unless unreasonable or unrelated to public purpose. With a bias in favour of the constitutionality of the provision, however, it does not appear that the prescribed limit is in excess of the requirements of the business or is arbitrary. The classification, therefore, does not infringe either Art. 14 or Art. 19(1)(g) of the Constitution.

13. The result is that the petition fails and is dismissed with costs. Hearing fee Rs. 100 for respondent No. 1, which shall be paid out of the security amount. The balance of the security amount shall be refunded to the petitioner.