

(2006) 03 CAL CK 0055

In the Calcutta High Court

Case No : Writ Petition No's. 1857, 17586 (W) , 18859 (W) and 18860 (W) of 2005

Bengal Bus Syndicate and Others, Swapan Das Chowdhury
and Another, Satpal Singh and Others and Ananda Mondal
and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-03-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 28, 38, 56, 59, 59(1)
West Bengal Motor Vehicles (Amendment) Rules, 2005 — Rule 2
West Bengal Motor Vehicles Rules, 1989 — Rule 88A

Citation : AIR 2006 Cal 232 : (2006) 2 CALLT 220 : (2007) 1 CHN 33

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Siwapan Dutta, Dipankar Das Gupta and Anindya Lahtri, W.P. No. 1857 of 2005, Dilip Kumar Samanta, Mala Dutta, A.K. Paul and Biswapria Samanta W.P. No. 17586W of 2005, Alope Ghosh, for R.T.A. in W.P. No. 17586 W of 2005 and Probhat Kr. Chattopadhyay and Tapan Kr. Mahapatra, for the Petitioners in W.P. Nos. 18859-60W of 2005, for the Appellant; Balai Chandra Roy, general, Debasish Kar Gupta and Krishnapada Pal, for Respondents in W.P. Nos. 1857 and 17586(W) of 2005 and N.I. Khan in W.P. Nos. 18859-60(W) of 2005, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—Since in all these writ petitions vires of a provision of the West Bengal Motor Vehicles Rules. 1989. Rule 88A, has been challenged, they have been heard together. In the three writ petitions moved on the appellate side validity of a notification dated May 24th, 2005 issued under that Rule 88A has also been questioned.

2. The rule was inserted by Rule 2 of the West Bengal Motor Vehicles (Amendment) Rules, 2005. It reads as follows:

88A. Powers of the State Government to impose special conditions on permit restricting plying of transport vehicles (Passenger as well its Goods) beyond a particular age and in any particular area of the State.--The State Government may, by issue of notification to be published in the Official Gazette, direct the State Transport Authority or the Regional Transport Authority, as the case may be, to impose such special conditions on issue of permits for transport vehicles as may deem fit restricting the plying of transport vehicles beyond particular age and in any particular areas of the State for safe movement of the vehicular traffic to avoid congestion and to reduce the level of automobile pollution and for safety of the passengers in public interest. The State Government may also impose such restrictions on the existing permit holders by giving prior notice of not less than sixty days.

3. The common case in all the writ petitions is that not only the state government lacks in legislative competence to make the impugned rule, but it is also ultra vires the provisions of the Motor Vehicles Act, 1988, Section 59, which is:

59. Power to fix the age limit of motor vehicle.--(1) The Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the rules made thereunder:

Provided that the Central Government may specify, different ages for different classes or different types of motor vehicles.

(2) Notwithstanding anything contained in Sub-section (1), the Central Government may, having regard to the purpose of a motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car rally, by notification in the Official Gazette, exempt, by a general or special order, subject to such conditions as may be specified in such notification, any class or type of motor vehicle from the operation of Sub-section (1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in Section 56, no prescribed authority testing station shall grant a certificate of fitness to a motor vehicle in contravention of the provisions of any notification issued under Sub-section (1).

Advocates for the petitioners read out to me relevant provisions of the Motor Vehicles Act, 1988, and concluded that they could not see which one of them conferred on the state government the power to make the rule through which it, in reality, encroached upon occupied filed. They added that the state government unauthorisedly usurped the power conferred by the statute on the central government to fix the age limit of a motor vehicle.

4. Advocate for the petitioners in W.P. No. 1857 of 2005 gave me the decisions Buxa Dooars Tea Company Ltd. and Others Vs. State of West Bengal and Others, (holding that a legislation pertaining to a covered field has to be treated as void for want of legislative competence); M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, (holding that power delegated by statute, is limited by its terms and subordinate to its objects; and that if the rule made by the delegate is unjust or oppressive or outrageous or directed to an unauthorized end or does not tend in some degree to the accomplishment of the objects of delegation, Court might well say that legislature never intended to give the authority to make such rule, and hence it is unreasonable and ultra vires); Bangalore Medical Trust Vs. B.S. Muddappa and others, (holding that an exercise of power which is ultra vires the provisions of the statute cannot be sustained on the basis of general powers reserved in a statute for its proper and effective implementation); and Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, (holding that in the absence of power given by provisions of the Advocates Act, 1961, the council was not empowered to make rule that a person above the age of 45 should not be enrolled).

5. Advocate for the petitioners in W.P. No. 17586(W) of 2005 cited to me the decisions in University of Kashmir and Others Vs. Dr. Mohd. Yasin and Others, (holding that appointment made by the vice-chancellor by administrative drift, when the statute vested the power for the purpose in the council of the university, being subversive of the statutory scheme, was not to be validated by applying the doctrine of implied engagement, or on the basis of any theory of factum valet); Municipal Corporation, Municipal Corporation of the City of Ahmedabad Vs. Ben Hiraben Manilal, (reiterating the law that exercise of a power, if there is indeed a power, will be referable to a jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or a wrong section of different provisions was mentioned); General Officer, General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, (holding that a rule can have the effect of a statutory provision, if it fulfils two conditions: (i) it conforms to the provisions of the statute under which it is framed; (ii) it comes within the scope and purview of the rule making power of the authority making it).

6. He then gave me Supreme Court Employees Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, (to show that a delegated or subordinate legislation must conform exactly to the power granted); and M/s. Real Food Products Ltd. and others, etc. etc., Vs. Andhra Pradesh State Electricity Board and others, (holding that if the view expressed by the state government in its direction exceeds the area of policy, the body directed is not bound by it unless it is also of the same view on merits); Kunj Behari Lal Butail and Others Vs. State of H.P. and Others, (holding that when statute confers general rule making power to carry out its purpose, it may be permissible to find out the object of the enactment, while examining: if. rules

framed, would fall within the scope of the general power); and State of Andhra Pradesh and Others etc. Vs. B. Noorulla Khan and Another etc., (holding that Section 96 of the Motor Vehicles Act, 1988 did not empower the state government to make rules applicable to all India tourist permit, the power for the purpose having been exclusively vested in the central government).

7. Lastly he cited to me the decision of the queen's bench division in Bugg and Anr. v. Director of Public Prosecutions (1993) 2 AH ER 815, wherein Woolf, LJ. said (at p.822 of the report), "These developments are, in our Judgment, of importance when considering the proper role of a Criminal Court where a defendant who is charged with breaching a byelaw seeks to challenge the validity of that byelaw. It is possible to identify at least two different situations in which this will arise. The first is where the byelaw is on its face invalid because either it is outwith the power pursuant to which it was made because, for example, it seeks to deal with matters outside the scope of the enabling legislation, or it is patently unreasonable. This can be described as substantive invalidity. The second situation is where there is what can be described as procedural invalidity because there has been non-compliance with a procedural requirement with regard to the making of that byelaw. This can be due to the manner in which the byelaw was made, for example. if there was a failure to consult."

8. Advocate for the petitioners in W.P. Nos. 18859-60(W) of 2005 referred me to the decision in K.I. Shephard and Others Vs. Union of India (UOI) and Others, ; and said that when the law required prior publication of the draft rules inviting objections, the state government could not have made the rule without following that procedure. He then cited to me the ones in Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., (holding that if publication of a notification there it was a central excise notification) through a gazette is required, then mere printing of it in the gazette will not be enough for making it effective unless the gazette is made available to the public); and Garware Nylons Ltd. Vs. Collector of Customs and Central Excise, Pune, (holding that the notification concerned, dated September 30, 1985, would be treated as effective from November 1, 1985, since at that date the gazette containing it was made available for public sale).

9. Mr Advocate General appeared for the state. He made it clear that the rule in question was made by the state government in exercise of its rule making power conferred on it by Section 96 of the Motor Vehicles Act, 1988. He clarified that other provisions of the statute (Sections 28, 38, 65, 107, 111, 138, 159 and 176) were unnecessarily mentioned in the notification concerned as the several other sources of the requisite power of the state government to make the rule. His contention is that the state government did not encroach upon any occupied or covered field, since by the rule it did not fix any date of birth or death of a motor vehicle. His argument is that the pith and substance of the rule is to be seen, and that any impression of little overlapping given by any expression used in the rule or in the following notification cannot be the basis to reach a

conclusion that the state government encroached upon the area covered by Section 59 of the Motor Vehicles Act, 1988. He pointed out the elements of automobile pollution, passengers' convenience, and safety of citizens as the reasons giving rise to the imperative need of the rule. He referred me to the decision in *A.S. Krishna and Ors. v. State of Madras* AIR 1959 SC 297. His arguments were adopted by advocate for the other contesting respondents.

10. Section 59 of the Motor Vehicles Act, 1988 clearly and unambiguously empowered the central government to specify the life of a motor vehicle. Once the life is fixed, on its expiration the motor vehicle will be considered dead; it will lose the right to be driven on road, irrespective of its health. The same power was not made available to the state government. Hence it cannot specify life or fix the age limit of a motor vehicle. Chapter V of the Motor Vehicles Act, 1988 consists of thirty-one sections (Sections 66-96), It is titled "control of transport vehicles." Section 96 empowers the state government to make rules for the purpose of carrying into effect the provisions of that chapter. It was argued that the impugned Rule 88A was made by the state government in exercise of powers conferred by that Sections 96. It is therefore to be seen if that section can be used as the source of the power in question.

11. I think a brief discussion of the scheme of the chapter will be useful. It begins with Section 66, which says that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place save in accordance with the conditions of a permit. Section 67 conferred power on the state government to control road transport (not transport vehicles) by issuing directions for the specific purposes mentioned therein. Section 68 empowered the state government to constitute the transport authorities. Provisions in Sections 69-88 dealt with various aspects of grant of permits by the transport authorities. Sections 89 and 90 dealt with provisions for appeals and revision. Sections 91, 92, 93 and 94 dealt with restrictions of hours of work of drivers, voidance of contracts restrictive of liability, requirement of obtaining licence by agent or canvasser, and bar on jurisdiction of Civil Courts respectively. Hence all those sections have nothing to do with the question of conferring any power on any one to make rules for controlling road transport or transport vehicles.

12. Section 95 conferred power on the state government to make rules to regulate stage and contract carriages, and also the conduct of passengers in such vehicles. Section 96 empowered the state government, conferring general as well as matter specific powers, to make rules for the purpose of carrying into effect the provisions of the chapter. Its Sub-section 2 enumerated the matters regarding which the state government would enjoy power to make rules. Among the specifically mentioned matters- nothing was said about conferment of power on the state government to make rule restricting grant or renewal of permit for any motor vehicle. However, Clause (xxxiii) thereof conferred power on the state government to make rule with respect to "any other matter which is to be or may be prescribed," This is the provision pressed into service in the face of the

petitioners" challenge to the legislative competence of the state government to make the impugned rule.

13. The principal object of the chapter is to ensure that no motor vehicle is used as a transport vehicle in any public place without a permit. For this purpose necessary provisions have been made for grant of permits. The transport authorities are to issue them attaching one or more of the conditions mentioned in the relevant provisions, viz. Sections 72, 74 and 79. The authorities are not empowered to issue permits attaching the condition that the motor vehicle must not ply within their jurisdiction. If the vehicle is not to be permitted to ply for any reason, the authority concerned would not possess the power to grant a useless permit. It is to be noted that applications for permits are to be made to the authority of the region in which the vehicles are proposed to be used (Section 69). As a result of the impugned rule, followed by the notification (also impugned) now the transport authorities within the area mentioned in the notification will be granting or renewing permits for transport vehicles, as it were, in an utterly anomalous manner. In a given case an applicant may get the permit attaching a condition that he shall not be entitled to use his transport vehicle within the jurisdiction of the permit issuing authority, and this is so due to the age of the motor vehicle concerned. I venture to say that the petitioners were not unjustified in expressing their bewilderment, strenuously highlighted by their advocates.

14. In my reading and understanding, by making the impugned rule the state government conferred power on itself to issue notification directing the transport authorities to impose special conditions in permits restricting use of transport vehicles beyond a particular age and in any particular area of the state. In my view, provisions in Section 96 of the Motor Vehicles Act, 1988 did not empower the state government to confer any power on itself by making rule in exercise of power conferred by that section. Such a power could have been conferred on the state government only by the legislature. It therefore seems to me that the delegate state government, in reality, delegated power to itself in exercise of its power to make the delegated legislation. To my mind, it cannot, however, be said that the state government in the process encroached upon the power of the central government conferred on that government by Section 59 of the Motor Vehicles Act, 1988. I do not think that by, the impugned rule, read with following notification, the state government actually fixed the age limit of any particular type of motor vehicles.

15. But then, I do not see any power of the state government to make it for the purpose of conferring on itself the power to issue notification with respect to the matters mentioned therein. The long list of the matters with respect to which the state government would enjoy the power to make rules for carrying into effect the provisions of the chapter concerned was given by the legislature in Section 96(2) of the Motor Vehicles Act, 1988. The purpose of the chapter is "control of transport vehicles;" and they are to be controlled by issuing permits entitling one

to use them following the conditions attached to the permits. There is no scope to attach a condition that will, in reality, amount to refusal of a permit. It cannot, however, be said that the authorities have no power to refuse permit. Issuing a permit attaching an absolute restraint clause is different from refusing a permit.

16. In my view, in exercise of power conferred by section 96(2)(xxxiii) of the Motor Vehicles Act, 1988 the state government can make rules only for any matter analogous to the matters enumerated in the other clauses of the Sub-section. In exercise of that power it cannot confer a new power on itself to issue a notification of the nature mentioned in the impugned rule. The cases in which it would enjoy the power to issue notifications were specifically mentioned by the legislature, inter alia, in sections 67, 68, 71 and 74: such a power cannot be acquired by it, by making a rule in exercise of its rule making power. The single bench unreported decision of this Court in W.P. No. 13908(W) of 2004 (Sudir Rumor Chakmborty v. State of West Bengal and Ors.) dated November 11th, 2004, brought to my notice, in my view, is of no assistance. That decision was given in a different context. Here the question for consideration is whether the state government possessed the power to make the impugned rule and I am unable to see which provision of the chapter was carried into effect or further effect by making the impugned rule.

17. For these reasons I hold that the state government did not possess the requisite legislative power to make the impugned rule. Hence it is hereby struck down. As a result, the impugned notification issued on the strength thereof shall also be deemed to be struck down. The writ petitions are allowed to this extent. There shall be no order for costs in them.

Copy of this Judgment and order duly authenticated by A.R.(C.) or A.C.O. shall be supplied to advocates for the parties on the usual undertakings.

Urgent certified xerox copy of this Judgment and order shall also be supplied to the parties, if applied for.