

(1957) 05 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 159 of 1957

Calicut Wynad Motor Service (Private) Ltd.	APPELLANT
Vs	
State Transport Appellate Tribunal, Trichur and Another	RESPONDENT

Date of Decision : 07-05-1957

Acts Referred:

Constitution of India, 1950 — Article 254
Motor Vehicles Act, 1939 — Section 62, 64, 64(1), 64(2), 64A

Citation : AIR 1958 Ker 19

Hon'ble Judges : Raman Nayar, J

Bench : Single Bench

Advocate : K. Achutha Menon and T. Chandrasekhara Menon, for the Appellant; Govt. Pleader (for No. 1), V.K. Menon and C.S. Padmanabha Iyer, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar, J.—This petition under Article 226 of the Constitution for the issue of a writ of certiorari raises the question whether Sub-section (2) of Section 64 of the Motor Vehicles Act, 1939, as in force in the area formerly known as the District of Malabar, namely, as amended by Madras Act XXXIX of 1954, has become void by reason of the enactment of the new Section 64-A by Central Act 100 of 1956. The petitioner is a bus operator, and in August 1955 he obtained a permit from the Regional Transport Authority, Kozhikode, for running a bus from Kozhikode, to Sultan's Battery.

The second respondent herein was a rival applicant, and he and the other unsuccessful applicants took the matter in appeal and eventually the State Transport Tribunal, Madras, (the appellate authority constituted u/s 64 of the Act), after declaring the petitioner ineligible, remanded the matter to the Regional Transport Authority for fresh disposal after considering the claims of the remaining applicants. The matter is still pending with the Regional Transport Authority, and pending its disposal the Authority, after granting two successive

temporary permits to the second respondent u/s 62 of the Act, granted the third temporary permit to the petitioner on 2-3-1957 "for a period of four months from 4-3-1957 or till a pucca permit is issued for the route whichever is earlier."

Meanwhile after the formation of the Kerala State, the Government of Kerala had, by its order S. R. O. No. 5 dated 7-1-1957, appointed the District Judge, Trichur, as the State Transport Appellate Tribunal to hear and dispose of appeals u/s 64 of the Act. Against the order of the Regional Transport Authority granting a temporary permit to the petitioner the second respondent filed a revision petition u/s 64(2) of the Act before this Tribunal, and the Tribunal after hearing the parties passed an order setting aside the grant of the permit to the petitioner on the ground that the grant was prohibited by the first proviso to Section 62 of the Act as amended by Central Act 100 of 1956.

It is to quash this order that the present petition has been brought, and the main objection taken is that after the enactment of the new Section 64-A providing for revision of the orders of a Regional Transport Authority, Section 64 (2) introduced by Madras Act XXXIX of 1954 has become void under Article 254 of the Constitution at least in so far as revision of the orders of Regional Transport Authorities is concerned.

2. Section 64 of the principal Act provided for an appeal to the prescribed authority from certain orders of the State or Regional Authorities. There was no provision in the principal Act for revision, and, by Madras Act XXXIX of 1954, Section 64 of the principal Act was renumbered as Sub-section (1) thereof and the following introduced as Sub-section (2):

"The authority prescribed under Sub-section (1) for the purpose of hearing appeals may, either of its own motion or on application made to it, call for the records of any Regional Transport Authority or the State Transport Authority, as the case may be, for the purpose of satisfying itself as to the legality, regularity or propriety of any order made by such Transport Authority against which no appeal is provided for under Sub-section (1) and after examining such records pass such orders in reference thereto as it thinks fit."

The new Section 64-A introduced by the Central Act 100 of 1956 reads thus (omitting the two provisos which are not relevant for the present purpose);

"The State Transport Authority may either on its own motion or on application made to it call for the record of any case in which an order has been made by a Regional Transport Authority and in which no appeal lies, and if it appears to the State Transport Authority that the order made by the Regional Transport Authority is improper or illegal, the State Transport Authority may pass such order in relation to the case as it deems fit."

The argument is that Sub-section (2) of Section 64 introduced by Madras Act XXXIX of 1954 is repugnant to this provision and is therefore void under Article 254(1) of the Constitution. It is conceded that there has been no express repeal

of Section 64 (2).

3. It will be noticed that there is no inconsistency, express or implicit, between the two provisions. There is nothing impossible or even difficult or unusual in there being two authorities exercising concurrent powers of revision -- the concurrent power of revision conferred on the High Court, the Sessions Judge and the District Magistrate by the Code of Criminal Procedure is an instance in point. It is quite possible for the Tribunal appointed u/s 64 and the State Transport Authority to function concurrently as revisional authorities under Sections 64 (2) and 64-A respectively, the former over both the Regional and the State Transport Authorities and the latter over the Regional Transport Authorities, and hence the test of harmonious co-existence and simultaneous obedience is satisfied.

But this is not an exhaustive test of repugnancy. There remains the question whether the Union law, namely the new Section 64-A, is intended to be complete and exhaustive so far as revision from the orders of Regional Transport Authorities is concerned. The exact connotation of the term "repugnancy" in Article 254 is explained in paras. 26 to 33 of the Supreme Court judgment in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, , where the following observation of Isaacs, J., in *Clyde Engineering Co. Ltd. v. Cowburn* (1926) 37 CLR 466 at p. 489 (B), is cited with approval:

"If, however, a competent Legislature expressly or implicitly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field."

Another quotation is from the judgment of B.N. Rau, J., in *G.P. Stewart Vs. Brojendra Kishore Roy Chaudhury*,

"The principle deducible from the English cases, as from the Canadian cases seems therefore to be the same as that enunciated by Isaacs, J., in the Australian 44 hour case 37 CLR 466 (B), if the dominant law has expressly or impliedly evinced its intention to cover the whole, field, then a subordinate law in the same field is repugnant and therefore inoperative. Whether and to what extent in a given case, the dominant law evinces such an intention must necessarily depend on the language of the particular law."

And in para. 33 it is said that the questions that arise are:

"Whether Parliament and the State Legislature sought to exercise their powers over the same subject-matter or whether the laws enacted by Parliament were intended to be a complete exhaustive code or, in other words, expressly or impliedly evinced an intention to Cover the whole field."

4. Turning now to the language of the new Section 64-A, it seems clear that, as pointed out by the Tribunal, there is nothing in it that either expressly or impliedly discloses an intention to be a complete, exhaustive or exclusive provision for revision against the orders of a Regional Transport Authority. The

Act does not say that the revisional jurisdiction is to be exercised only by the State Transport Authority or give any indication that no other remedy than an appeal u/s 64 or a revision u/s 64-A is open to an aggrieved party.

When Parliament enacted Section 64-A it is to be presumed that it must have been aware of the existence of Sub-section (2) of Section 64 introduced by Madras Act XXXIX of 1954, and if the new section was designed to replace that provision nothing would have been simpler than to say so either by an express repeal, or by some indication that the new section was an exhaustive provision for revision of the orders of a Regional Transport Authority. It would appear that Parliament was content that the two provisions should exist side by side.

5. It is argued that the existence of concurrent powers of revision in two different authorities might lead to conflicts and difficulties. I see no reason why it should, for it is quite apparent that the Tribunal constituted u/s 64 which has powers of revision over both the State and the Regional Transport Authorities is the superior authority. That apart, administrative difficulties in the actual working of the two provisions is no ground for holding that they are mutually repugnant and if such difficulties do actually exist it is for the appropriate Legislature to resolve them by repealing one or the other of the provisions.

6. The main ground urged in support of the position, namely, that Section 64 (2) has ceased to exist, and that therefore the Tribunal exercised a jurisdiction which it did not possess, fails. I shall now proceed to deal briefly with the remaining objections taken on behalf of the petitioner. The first is also one of jurisdiction, and it is founded on the terms of the notification, S. R. O. 5 dated 7-Z-1957, appointing the District Judge, Trichur, as the State Transport Appellate Tribunal to hear and dispose of appeals u/s 64 of the Motor Vehicles Act.

It is said that neither this notification nor the rule (Rule 3 (kk) defining "State Transport Appellate Tribunal" refers to any revisional power and that therefore the intention must have been that the Tribunal should only hear appeals, leaving revisions to be disposed of by the State Transport Authority (constituted for this State by the notification No. 14-9371/56 PWC dated 1-11-1956) under the new Section 64-A. There is no substance whatsoever in this argument. In the first place, the appointment of the Tribunal, the framing of the rule, and the constitution of the State Transport Authority, were before Section 64-A came into force on 16-2-1957.

More than that, it is only necessary to read Section 64 (2) to see that it is not for the State Government to confer the power of revision on the Authority appointed to hear appeals under Sub-section (1), or to withhold it. The moment the Authority is appointed the power of revision automatically vests in it by reason of Sub-section (2).

7. The next argument is that grant of temporary permit to the petitioner is not prohibited by the first proviso to Section 62 of the Act and that the Tribunal committed an error apparent on the face of the record in thinking that it was.

This argument also is equally without substance. From the facts that have already been stated it is quite clear that although the application by the present petitioner may be considered to have been finally disposed of by the order of the Appellate Tribunal of Madras, the applications of the second respondent and the other claimants are still pending before the Regional Transport Authority. Therefore the grant of a temporary permit for the same route is prohibited by the proviso which runs as follows:

"Provided that a temporary permit under this section shall in no case be granted in respect of any route or area specified in an application for the grant of a new permit u/s 46 or Section 54 during the pendency of the application."

The applications by the second respondent and the others are for a new permit u/s 46, and they are still pending. It is true that the proviso has no retrospective effect. But the grant of the temporary permit in this case was on 2-3-1957 after the proviso came into force on 16-2-1957. And there is nothing in the wording of the proviso to warrant the construction sought to be placed upon it, namely that the pending application must be by the very person to whom the grant is made before the prohibition is attracted, or the construction that the pending application must be one made after the proviso came into force,

8. It is next said that the second respondent has a right of appeal under Sub-section (1) of Section 64 and that therefore no revision would lie under Sub-section (2). Here again, I think that the Tribunal was right in holding that no appeal could lie against the grant of temporary permit. It is to be noted that the revision petition before the Tribunal was against the grant of the temporary permit to the petitioner and not against the refusal of a permit to the second respondent who was also an applicant, and, therefore it does not come within Clause (a) of Section 64(1). A temporary permit is granted without notice and without hearing objections, and hence no appeal would lie under Clause (f) the only other possible clause, since the second respondent is not a person who opposed, or could have opposed, the grant of the permit.

9. I dismiss the petition with costs. Advocate's fee Rs. 100.