
(2002) 11 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20903 of 1997

Jami Appala Swamy and Another

APPELLANT

Vs

Regional Transport Authority and Another

RESPONDENT

Date of Decision : 29-11-2002

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 217
Motor Vehicles Act, 1988 — Section 86(5), 95, 96

Citation : AIR 2003 AP 265 : (2003) 2 ALD 324 : (2003) 2 ALT 270

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : V. Narasimha Reddy, I Gopal Reddy, B. Sivarama Krishnaiah and S. Arifulla, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—All these writ petitions are at the instance of the operators of motor vehicles, who seek to challenge the resolutions passed by the respective Regional Transport Authorities, revising the existing compounding fee and enhancing the same in purported exercise of power under Rule 217 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short "the Rules") as bad, illegal, arbitrary and without jurisdiction, apart from being contrary to the provisions of the Motor Vehicles Act, 1988 (for short "the Act") and the Rules made thereunder. Hence all these writ petitions are taken up together for the purpose of disposal.

2. For convenience sake, I would refer the facts in W.P.No. 20903 of 1997 for the purpose of disposal of all the writ petitions.

3. 1st respondent-The Regional Transport Authority, Srikakulam, represented by its Secretary, passed resolution dated 13-6-1997, under which, at Item No. 1, it was resolved to revise the existing sum of money to be recovered in lieu of cancellation or suspension of the different classes of permits u/s 86 of the Act read with Rule 217 of the Rules. Under the said resolution, the revision was

made in respect of the rates as fixed earlier in the resolution at Item No. 2 dated 30-8-1989. According to the petitioners, the provisions u/s 86 of the Act enables the authorities to accept certain sum of money in lieu of cancellation or suspension of the permit for any offence. Rule 217 of the Rules prescribes the minimum rates for collection as "compounding fee" for the offence committed. It has also been pointed out that an attempt to fix "compounding fee" by the Government in G.O. Ms. No. 54 dated 31-3-1994 was set at naught by this Court in regard to contract and stage carriages for offences u/s 192A of the Act as being contrary to Section 200 of the Act. Therefore, the authorities have resorted to invoke Rule 217 of the Rules and fixed the compounding fee, which is beyond the powers conferred under the provisions of the Act and the Rules made thereunder. It was pointed out that under the impugned resolution, varied rates are also fixed for the first offence, second offence, third offence, fourth offence, fifth offence and so on thereby increasing the compounding fee for every successive offence committed within twenty four months. Thus, the main contention is that the fixation of any rate of the compounding fee by the 1st respondent-The Regional Transport Authority is without any power, authority or jurisdiction and hence the writ petition.

4. In the counter-affidavit filed by the 1st respondent in W.P. No. 20903 of 1997, it is stated that u/s 86(1) of the Act, the authority has got power to cancel the permit or suspend the same for such period as it thinks fit for any irregularity. However, under Sub-section (5) of Section 86(1) of the Act, where a permit is liable to be cancelled or suspended under Clause (a) or (b) or (c) of Sub-section (1) of Section 86(1) of the Act and the authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient to do so and allows the permit holder to pay certain sum of money. Further under Rule 217 of the Rules, the minimum rate of amount has already been fixed in respect of each such offence and therefore, the authorities have got power to fix any such rate over and above the said rates and thus, to make the uniformity, the 1st respondent has passed the resolution fixing the rates to be recovered for various offences in lieu of suspension or cancellation of the permits. Further, it has been reiterated that such enhancement is only to deter and to avoid the incidents. It is also their case that the said rates were fixed earlier about eight years back and thus after long lapse of time, there is a revision. Therefore, there are no merits in the petitioners' contention. Hence the writ petition is liable to be dismissed.

5. Sri V. Narasimha Reddy and other learned Counsel appearing for the respective petitioners in all these matters strenuously contended that u/s 86(1) of the Act, discretion is given to the authorities to impose proper compounding fee; and under Rule 217 of the said Rules having fixed the minimum, the authority cannot fix any such uniform rates applicable to the offences in every situations. It is also contended that there is no power conferred on the Regional Transport Authority to fix the rate of compounding fee under the provisions of the Act or the Rules made thereunder and, therefore, the entire exercise is wholly without jurisdiction.

6. Learned Government Pleader for Transport, appearing on behalf of the respondents, sought to sustain the impugned resolutions on the ground that in exercise of power under Rule 217 of the Rules read with Sub-section (5) of Section 86 of the Act, the authorities are amply empowered to determine the rate of compounding fee and the object being to bring uniform applicability in the State hence the impugned resolutions are well within the powers as conferred thereunder.

7. Having considered the submissions made on either side and also on perusal of the record, the main point which arises in these cases is whether such fixation of uniform rates towards compounding fee for the offences is permissible under the provisions of the Motor Vehicles Act and the Rules made thereunder.

8. In all these cases, the respondents, the Regional Transport Authorities of Srikakulam, Cuddapah, Krishna, Prakasham etc., have passed the resolutions determining the compounding fee in respect of various offences for the purposes of levy on such offenders in lieu of cancellation or suspension of the permits. Rule 217 of the Rules reads as follows:

"217. Compounding offences - Procedure :--The Transport Authority shall in determining the sum of money to be recovered in lieu of cancellation or suspension to different classes of permits have regard to the following namely :--

- (a) nature, gravity and frequency of the offence committed;
- (b) the quantum of punishment that would otherwise have been imposed; and
- (c) earning capacity with reference to the traffic potential of the route and passenger capacity in the case of stage carriages and average daily mileage of the vehicle and hire charges, if any, in respect of other classes of transport vehicles:

Provided that the amount so recoverable in lieu of suspension or cancellation shall in no case be less than the minimum specified in the Table below:

Whereas the impugned resolutions, the rates fixed are as follows:

- (1) Stage Carriages:- (i) Rs.101- for city and town services.
 - (a) Overload for each excess passenger (ii) Rs.25/- for fair weather and other routes;
 - (b) Non-adherence to the schedule of timings including late running Rs. 100 per hour proportionally.
 - (c) Non-performance of the Scheduled trips Rs.100/-
 - (d) Playing on a route not authorised by the Permit. Rs.1000/-
 - (e) Plying without payment of tax Rs.1000/-
 - (f) Other offences Rs.10/- per item of offence.

(g) Non-maintenance of spare buses as provided in Rule 188 or as provided in the schemes of the STUs. Rs. 600/-per vehicle per Month or part thereof.

(h) Long Stoppage of motor vehicles covered by stage carriage permits referred to in Rule 187(2) of the said rules. Rs.500/- per month or part thereof.

(2) Goods Vehicles :?

(a) Overload for every 100 Kgs. Rs.10/-

(b) Carrying excess persons than the number permitted Rs.60/-Per passenger

(c) Plying on a route not authorised by the permit Rs.500/-

(d) Plying without payment of tax Rs.100/-

(e) Other offences Rs.10/- per item of offences/-.

(2-A) Tractor- Trailers:-

(a) Overloaded for every 100 Kgs. Rs. 5/-

(b) Carrying excess persons than the number permitted Rs. 15- per passenger

(c) Plying on a route not authorised by the permit Rs.125/-

(d) Plying without payment of tax Rs.50/-

(e) Other offences Rs.5/- per item of offence.

(3) Contract carriages including all kinds of taxies and autorickshaws anil private service vehicles:-

(a) Overloads (i) Omnibuses Rs.20/- per passenger.

(ii)Taxi cabs and Autorickshaws Rs.10/- per passenger

(b) Plying on route or area not authorised by the permits. Rs.500/-

(c) Plying without payment of tax (i) Omnibuses Rs.200/-

(ii) Taxi Cabs and Autorickshaws Rs. 10/-

(d) Other offences. Rs. 10/- per item of offence.

The rates as fixed subsequently by them are more than the rates as fixed under Rule 217 of the Rules. The relevant provisions under Sub-sections (5) and (6) of Section 86 of the Act, read as follows:

"(5) Where a permit is liable to be cancelled or suspended under Clause (a) or Clause (b) or Clause (e) of Sub-section (1) and the Transport Authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit, if the holder of the permit agrees to pay a certain sum of money, then notwithstanding anything contained in Sub-section (1), the Transport Authority may, instead of cancelling

or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.

(6) The powers exercisable by the Transport Authority under Sub-action (5) may, where an appeal has been preferred u/s 89, be exercised also by the appellate authority".

9. On a reading of the aforesaid provision under Sub-section (5) of Section 86 of the Act, it is evident that the Transport Authority, having regard to the circumstances of the case, can impose a certain sum of money in lieu of cancellation or suspension of permit. Further, it also says that it is only if the holder of permit agrees to pay certain sum of money, then the authority can recover from the holder of the permit of the sum agreed upon. Thus necessarily the authority has to take into consideration the circumstances of the case and should deem expedient for the imposition of such amount in lieu of the cancellation or suspension of the permit. Even in regard to the amount to be collected, the expression used is "certain" and the permit holder should agree to pay such certain sum of money, whereupon the sum could be recovered from the holder of the permit. The said imposition of money certain can also be made by the appellate authority, in appeals against that orders of cancellation or suspension. Therefore, the conditions as imposed under Sub-section (5) of Section 86 of the Act are necessarily preceded before the authority comes to any conclusion on imposition of any money.

10. On a reading, the aforesaid Rule further makes it clear that the authority, while determining the sum of money to be recovered in lieu of cancellation or suspension to different classes of permits, necessarily various circumstances as contemplated under Sub-clauses (a) to (c) of Rule 217 of the Rules which include as to the nature, gravity and frequency of the offences committed; the quantum of punishment that would otherwise have been imposed; earning capacity with reference to the traffic potential of the route and passenger capacity in the case of stage carriages and average daily mileage of the vehicle and hire charges, if any, in respect of other classes of transport vehicles, have to be considered. Under the said Rule, the rates shown are the minimum and the authorities are at liberty and left with discretion to impose any amount over and above the rates so fixed. Therefore, it amply makes clear that the authority had been given the sufficient discretion in individual cases to take into consideration various factors as mentioned above and then come to a conclusion as to the quantum of money to be imposed subject to the sum being agreed upon by the permit holder. The Rule making power under Sections 95 and 96 of the Act do not in any way vest or confer any such exercise of power for determination or fixing any rates by the Transport Authority. Once the delegated authority under Sections 95 and 96 of the Act already exercised the powers of framing the Rules and fixed the quantum, though as a minimum under the Rules vide G.O. Ms. No. 216 Transport, Roads and Buildings-II Department dated 7-8-1999, it is not open for any authority conferred to re-fix or re-determine the amounts either as a

maximum or otherwise. Even on a reading of Section 86(5) of the Act and Rule 217 of the Rules, the discretion is left with the authority to consider all the aspects in individual cases and then to arrive at a certain sum of money, but not to fix a sweeping uniform rates as sought to be done in the impugned resolutions. Therefore, the entire exercise of powers by the authorities in trying to fix the uniform rates, though in respect of various such offences and also at different stages, is totally beyond the powers conferred under the provisions of the Act and the Rules made thereunder.

11. Further, where law specifically contemplates" a discretion to be used in individual cases, as evident from Section 86(5) of the Act and Rule 217 of the Rules, the same cannot be curtailed or eroded in any such manner as sought to be done under the impugned resolutions, which fetters the discretion vested in the individual Authority to come to a conclusion in a situation in regard to the different permit holders depending upon the facts of each case. Therefore, it has to be held that the impugned resolutions are totally without any power; authority and jurisdiction and are liable to be set aside. The impugned orders are, accordingly, set aside.

12. The Writ Petitions, are, accordingly allowed. No costs.