
(1965) 06 KL CK 0028
In the High Court Of Kerala
Case No : O. P. No. 1325 of 1964

Joseph

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-06-1965

Acts Referred:

Motor Vehicles Act, 1988 — Section 43(1)(d)(i), 63, 68, 68(2), 68(2)(za)

Citation : (1966) KLJ 446

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

Bench : Division Bench

Advocate : S. Narayanan Potti, for the Appellant;

Judgement

M.S. Menon, C.J.—This petition challenges the validity of rule 251 of the Kerala Motor Vehicles Rules, 1961. Counsel for the petitioner while making his submissions, however, confined the attack to a portion of the rule. That portion reads as follows: In relation to the number of persons that may be carried in a public service vehicle and the fares chargeable for carrying them in the vehicle--

(c) a student of any recognised educational institution travelling in stage carriages for the purpose of attending class shall be reckoned as one-half:

Provided that such students shall be entitled to the concession only for travels to and fro for attending classes and only if they show an identity card issued by the head of the institution in the following form (form omitted):

Provided further that the concession shall be given in the form of monthly season tickets at half the daily fares.

Explanation:--For the purpose of this rule "recognised educational institution" includes:--

(1) Industrial training centers in the public and private sectors recognised by Government;

- (2) Colleges, High Schools, Primary Schools and Special Schools and Training Schools under the control of the Education Department ;
- (3) Other recognised institutions under the control of the Education Department;
- (4) Colleges under the control of the University; and
- (5) Technical institutions recognised by the Director of Technical Education.

Under section 43 (1) (d) (i) of the Motor Vehicles Act, 1939, the State Government is empowered, by notification in the official gazette, to issue directions to the State Transport Authority regarding the fixing of fares and freights for stage carriages, contract carriages and public carriers. The current directions issued in pursuance of that power, we are assured, are embodied in S. R. O. No. 565/63 dated 13-6-1963 and published in the Kerala Gazette dated 18-6-1963. The directions are silent as regards the concession embodied in rule 251.

2. What the impugned portion of rule 251 does is to provide that the operators of stage carriages shall be entitled to collect from a student of any recognised educational institution travelling in stage carriages for the purpose of attending the classes or returning therefrom only one-half of the fare otherwise payable under the directions dated 13-6-1963. The only section of the Motor Vehicles Act, 1939, on which the learned Government Pleader relied for the power to frame the portion of rule 251 impugned before us was section 68 (2) (za) of the Act.

3. Section 63 deals with the power to make rules for the purposes of chapter IV of the Act. That chapter deals with the control of transport vehicles. The relevant portion of section 68 reads as follows:

- (1) A State Government may make rules for the purpose of carrying into effect the provisions of this chapter.
- (2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely--
 - (za) any other matter which is to be or may be prescribed.

4. There was no emphasis on sub-section (1) of section 68 by the learned Government Pleader, even though that sub-section also was mentioned in the affidavit filed on behalf of the State as a support for the rule. Only sub-section (2) was invoked by him, and, as already stated, the fate of the rule, according to him, depended solely on the scope and ambit of clause (za) of sub-section (2).

5. We must say that we are unable to see how the power to make rules in respect of "any other matter which is to be or may be prescribed" will authorise the making of that portion of rule 251 which is impugned before us. "Any other matter which is to be prescribed" must mean any other matter which has to be prescribed under the Act; and "any other matter which may be prescribed" must mean any other matter regarding which there is a discretion to prescribe or not

to prescribe under the Act. The learned Government Pleader was unable to draw our attention to any provision of the Act which either directed or permitted the prescription of a rule which compelled the stage carriage operators from charging not more than one-half of what they could otherwise charge, simply because the passenger was a student of a recognised educational institution proceeding to the classes or returning therefrom.

6. We are conscious of the fact that our decision in this case is of considerable importance to the educational activities in the State. But we have also to remember that judicial control operating through the doctrine of ultra vires is of the highest constitutional importance, an importance which can be well stated in the words of Lord Shaw in *R. v. Halliday, Ex. n. Kadig* (1917 A. C. 260): The author of the power is Parliament; the wielder of it is the Government. Whether the Government has exceeded its statutory mandate is a question of ultra or intra vires. In so far as the mandate has been exceeded, there lurk the elements of a transition to arbitrary government and therein of grave constitutional and public danger. The increasing crush of legislative efforts and the convenience to the Executive of a refuge to the device of Orders in Council would increase that danger tenfold were the judiciary to approach any such action of the Government in a spirit of compliance rather than of independent scrutiny.

We are quite satisfied that the impugned portion of rule 251 cannot be sustained on the basis of the power embodied in section 68 (2) (za) of the Motor Vehicles Act, 1939--the only provision invoked before us--and that the said portion of rule 251 should be struck down as ultra vires of that power. We do so; but without any order as to costs.