

(1960) 07 KAR CK 0008

In the Karnataka High Court

Case No : Civil Revision Petition No. 171 of 1960

K. Rama Rao Manay

APPELLANT

Vs

R.A. Mundkur and Another

RESPONDENT

Date of Decision : 22-07-1960

Acts Referred:

Mysore House Rent and Accommodation Control Act, 1951 — Section 25, 25 (1)
Mysore House Rent and Accommodation Control Rules, 1952 — Rule 4 (a), 4 (b)

Citation : AIR 1960 Kar 313

Hon'ble Judges : K.S. Hegde, J

Bench : Single Bench

Judgement

(1) Vires of Rule 4(a) of the Rules framed under Sec 25 of the Mysore House Rent and Accommodation Control Act, 1951(Mysore Act No. XXX of 1951)(which shall be hereinafter called the ""Act") comes up consideration in this revision petition.

(2) The relevant facts are as follows: The petitioner is the landlord in respect of House No. 3, Malton Road, Civil Station, Bangalore; the said premises fell vacant sometime in January 1960; the petitioner reported that vacancy to the Rent controller (who shall be hereinafter called "controller") on 16-1-1960; the Controller intimated that vacancy to the deputy Commissioner at Bangalore who wrote back to the Controller asking him to allot that house to respondent 1(who shall be hereinafter referred to as respondent) who belongs to the Indian Police Service and at present serving in the Department of Efficiency Audit, Bangalore; in compliance with this intimation, the controller allotted the premises in question to the respondent; the allotment in question was unsuccessfully challenged by the petitioner in H. R. C. Appeal No. 10 of 1060 in the Court of the District Judge, Civil Station, Bangalore. Aggrieved by the orders of the Tribunals below, the petitioner ahs come up in revision to this Court.

(3) Before proceeding to examine the contentions advanced in this Court, it is necessary to state one more fact. The respondent had also applied to the

Controller for the allotment of the premises in question to him. His application was not considered on its merits as the Controller thought that he was bound by the recommendation of the Deputy Commissioner.

(His Lordship disposed of a few subsidiary contentions raised at the Bar (Paras 4 to 7) and continued,)

(4) The only contention that has substance in it is the one relating to the validity of Rule 4(a) of the rules framed under the "Act". The said Rule reads :

"The Controller shall if he not the Deputy Commissioner immediately after the receipt of the intimation referred to in clause (a) or clause (c) of sub-section (2) of Section 3, send a copy of the District concerned. The Deputy Commissioner shall send a reply to the Controller within three days after the receipt by him of such intimation whether the house is required for the purpose of the State Government or of the Central Government or of the Government of any other State, or of any local authority or of any educational or other public institution or for the occupation of any officer of any Government, authority or institution aforesaid. If no reply is received or if the Deputy Commissioner does not require the premises for any of the purposes aforesaid the Controller shall proceed to orders. The Controller shall also have due regard to any general or special order of the State Government in this behalf."

It is well recognised that the Controller is exercising quasi-judicial powers. If the Rule in question is a valid rule, then the Controller has merely to carry out the orders of the Deputy Commissioner. Do the provisions contained in the "Act" permit such a contingency? Section 3(3)(A) of the "Act" says :

"On receipt of the intimation under sub-section (2), the Controller shall, taking into consideration any representation made by the landlord and after making such inquiry as he considers necessary, select the State Government or the Central Government or the Government of any State in India, or any local authority or any educational or other public institution or any officer of any Government, authority or institution, aforesaid, or any other person (hereinafter referred to as the "allottee"), to be inducted as a tenant in the house and direct the landlord by a written order (hereinafter referred to as the "allotment order") to let the house to such allottee at such rent as shall be specified in the allotment order and to deliver possession of the house to the allottee on such date as shall be specified in the said order:

Provided that before making an allotment order in favour of any authority or person, other than the State Government, the Central Government or the Government of any State in India or a local authority, the Controller, shall consider any representation of the landlord about the suitability of the proposed tenant and shall not allot the house to any person who, in the opinion of the Controller, is an unsuitable tenant".

As per this provision it is for the Controller to decide to whom the vacant

premises should be allotted. In fact in making the allotment to any persons "other than the State Government, the Central son "other than the Government of any state in India or a local authority" the Controller has to consider "any representation made by a landlord about the suitability of the proposed tenant". If Rule 4(a) is valid, then it completely overrides S. 3(3)(a). Rules are framed for carrying out the purpose of the "Act" and they cannot be allowed to override the provisions contained in the "Act" itself. The learned Advocate General invited my attention to the Rule making powers of the Government as provided in S. 25 of the "Act". The said section reads:

"(1) The State Government may make rules to carry out "the purposes of this Act".

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the procedure to be followed by Controllers, the Courts and the District Judge in the performance of their functions under this Act;

(aa) the order of priority to be observed by the Controller in selecting a tenant under clause (a) of sub-section (3) of Section 3;

(b) the manner in which intimation, notices and orders under this Act shall be given or served;

(c) setting aside ex parte orders passed under this Act and the time within which applications for setting aside such orders;

(d) applications for making legal representatives of deceased persons parties to proceedings under this Act and the time within which such applications shall be preferred;

(e) imposition of the levy of fees in respect of applications, petitions, memo of appeal and other processes under this Act.

(3) In making a rule under this section, the State Government may provide that a person who contravenes any of the provisions thereof shall be punishable with fine which may extend to two thousand rupees.

(4) All rules made under this section shall be published in the Mysore Gazette, and upon such publication shall have effect as if enacted in this Act". (Underlining (here in " " marks--Ed) is mine).

The learned Advocate-General contends that the rules made under the "Act" stand on the same footing as provisions contained in the "Act" itself. In other words his contention is that once the Government makes the rules and publishes it as provided in sub-section (4) of S. 25, these rules get incorporated into the body of the "Act" and thereafter they have the same legislative force as the provisions contained in the "Act".

I am afraid this is an over-statement of the law. As seen from S. 25(1), the State

Government has to make rules only "to carry out the purpose of this Act". The rules made cannot amend or override the provisions contained in the "Act". If they transgress the limits laid down in S. 25(1) they lose their validity. The powers of the State Government are those that are delegated to it by the Legislature. The Government has no legislative powers of its own. It must act strictly within the scope of the powers delegated to it. I have no hesitation in holding that the impugned rule does not comply with the requirements laid down in S. 25(1).

Further, if Rule 4(a) is deemed to be a provision contained in the "Act:" and is placed alongside with S. 3(3)(A) of the "Act", there is bound to be conflict between these two provisions. It is something revolting to our jurisprudence to imagine that the command of the Legislature could be overridden by the fiat of the Government. On an analysis of the powers conferred on the Controller it is clear that he is a quasi-judicial officer, particularly in the matter of allotment of premises. That character is completely negated by Rule 4(a) which converts him into a ministerial officer requiring him to carry out the behest of the Deputy Commissioner.

Further, it would be a grave departure from well recognised legislative practice and it would be a mockery of the legislature if the existence or efficacy of the provisions of a statute is left to the kind mercies of the Rule making powers of the Government. No interpretation favouring such a construction could commend itself to Courts. Delegated legislations undoubtedly are on the increase and that phenomenon has given rise to concern in informed quarters. Be that as it may the impugned provision is clearly far in excess of the powers conferred. In that view it is unnecessary to consider the validity of the powers conferred i.e. whether in the guise of conferring rule making powers, the Legislature had abdicated its legislative functions.

(5) Rule 4(a) is in conflict with Rule 4(b) which was evidently framed under S. 25(2)(aa) read with S. 3(3) of the "Act". The said rule reads as follows:

"The order of priority to be observed by the Controller in selecting a tenant under clause (a) of sub-section (3) of S. 3 shall be as follows:

1. The Government of Mysore.
2. The Central Government.
3. Government of any State.
4. Any local Authority.
5. Any Officer of the Government of Mysore.
6. Any Officer of the Local Authority.
7. Any Officer of the Central Government.
8. Any Officer of any State.

9. Any educational institution.
10. Any other public institution.
11. Any other person".

Let us now visualise the situation where the Deputy Commissioner recommends to the Controller to allot any particular premises to an Officer of some other State, while at the same time there is an application for allotment of that premises from an Officer of the Central Government. Under Rule 4(b) the Controller is required to give priority to the claim of the Officer of the Central Government. But under Rule 4(a) he is required to comply with the recommendation made by the Deputy Commissioner. The question then arises which one of these Rules ought to prevail. Again take the case of an Officer who directly applies to the Controller and another who moves the Deputy Commissioner for recommending his case.

The Deputy Commissioner may not be aware of the application made by the other officer and as such might not have had the opportunity to assess his needs. In such a case the Officer who applied directly to the Controller, though permitted by the Rules, suffers. Difficulties of these nature can be multiplied. The learned Advocate-General realising these incongruities suggested that the penultimate portion of Rule 4(a) i.e. the sentence beginning with "If no reply is * * * of the State Government in this behalf", may be struck down and the remaining portion of the rule may be retained. I find it difficult to accept his suggestion.

I fail to see why the Deputy Commissioner should take upon himself the responsibility of recommending cases of individual officers. Either all the application of the Public Servants should go through him alone, so that he may assess their comparative needs and give his recommendations or none should go through him, preferably the latter; similarly in the case of educational or other public institutions. The learned Advocate-General says that the Deputy Commissioner's recommendation, in the manner suggested by him, is harmless. I am not so sure about it. The Controller is generally an Officer of the rank of an Assistant Commissioner.

The possibility of mistaking recommendations of the Deputy Commissioner as directions cannot be overlooked. If the recommendation of the Deputy Commissioner is purposeless it is superfluous. If it has a purpose, it is mischievous. The Government should do nothing which may directly or indirectly have the effect of subverting the provision of the "Act". The Controller is within the power of super intendancy of this Court and it is the duty of this Court to see that his powers are not undermined and his duties interfered with. For these reasons Rule 4(a) is struck down as ultra vires of the powers of the rule making authority.

(6) In view of my above finding, the order of allotment made in favour of the

respondent cannot be sustained. Hence the order in question is set aside. But as mentioned earlier, the Controller has not applied his mind to the application made by the respondent. The said application has to be considered on its own merit. Hence this case is remanded to the Controller for disposal according to law in the light of the observations made hereinbefore. The parties will bear their own costs up till this stage, in all the Courts.

(7) Order set aside.