
(1965) 11 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 139 of 1965

Karnakar Mangesh Desai

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 23-11-1965

Acts Referred:

Road Transport Corporations Act, 1950 — Section 14 (3), 45, 45 (2) (c)

Citation : AIR 1966 Kar 317 : AIR 1965 Kar 317 : (1965) ILR (Kar) 1167 : (1966) 1 MysLJ 72

Hon'ble Judges : K.R. Gopivallabha Iyengar, J;G.K. Govinda Bhat, J

Bench : Division Bench

Judgement

Govinda Bhat, J.

(1) This Writ Petition, preferred by an employee of the Mysore State Road Transport Corporation hereinafter called "the Corporation" is directed against Resolution No. 436 dated 19th October, 1964 passed by the said Corporation. The petitioner has challenged the said resolution, hereinafter referred to as the "impugned resolution" on the ground that it is the ultra vires of S. 45 of the Road Transport Corporation Act, 1950(Central Act 64 of 1950) hereinafter called the "Act". This is the main ground on which the impugned resolution is repugnant to the directions dated 1st August, 1961 given by the State Government to respondent No. 2 under S. 34. In order to appreciate the contentions raised by the parties, it is necessary to briefly narrate the relevant facts which are not in dispute. Petitioner was an employee in the Bombay State Road Transport Corporation and after formation of the new State as a Government employee on 1st January 1957. On 24th October 1959 the State Government prepared and published what is stated as a Provisional inter State Seniority List as on 1st January 1957 of the Junior Assistants of the Road Transport Department of the Government. In the said list, petitioner's name is found at Serial No. 36. In Writ Petition No. 418 of 1960, a similar list relating to another branch of the Road Transport Department was challenged and that list

was quashed by this Court by its judgment delivered on 15th March, 1961 on the ground that the Bombay Officials of the Road Transport Department allotted on 1st January 1957 cannot be included in the Inter State Seniority List of the Officials of that Department as on 1st November, 1956.

(2) In exercise of the powers conferred on the State Government by S. 3 of the Act a Road Transport Corporation called the "Mysore Transport Corporation" for the whole State of Mysore, except the area comprised in the limits of the City of Bangalore, was constituted on 1st August 1961. After the Constitution of the Road Transport Corporation, promotions, though temporary, were made on the basis of the Provisional Inter State Seniority List dated 24th October 1959 relating to the Junior Assistants. The last of such promotions was made on the 17th July 1962 and Serial No. 30 in the Provisional Inter State Seniority List was temporarily promoted to the cadre of Senior Assistants which is a State wide post. On 7th May, 1963 the Road Transport Corporation passed Resolution No. 267 which reads thus:

"Keeping in view the judgment of the High Court in Writ Petition No. 418 of 1960, the subject regarding preparation of Seniority List and given promotion to the employees of the M.S.R.T.C. was indicated below be prepared and the opinion of the Advocate-General, Mysore, be sought as to how these separate Seniority Lists could be amalgamated in the light of the judgment of the High Court in Writ Petition No.418, so as to have one common Seniority List for the employees.

I. A list of all the employees of the OLD MGRTD., (Bangalore Division) and B.T.S., as on 1-10-1956:

II. A list of the employees of the OLD MGRTD., B.T.S., and Ex-Hyderabad as on 1-11-1956."

By the above resolution it was decided to stop all further promotions and that only in-charge arrangements should be made pending the preparation and finalisation of the Inter State Seniority Lists. Thereafter, on 19th October 1964, the Road Transport Corporation passed Resolution No.436 which is the impugned resolution. That resolution reads thus:

"The subject was discussed in detail:

It was resolved that vacancies in the higher posts be filled up by making "in-charge arrangements" on Region wise till such time the Inter State Seniority Lists are finalised

The Board further decided that preparation of Provisional Inter-State Seniority List be expedited".

The effect of the impugned resolution has been explained by the petitioner in Para 12 of his affidavit annexed to the Writ Petition. That paragraph reads:

"What has now been done is that the three regions are stated to be:

(i) Former M.G.R.T.D Dept. including R.T.S. Employees. One region.

(ii) Hyderabad S.R.T. Dept. Employees 2nd Region S.R.T. Dept. Employees 2nd Region.

(iii) Bombay R.T. Corporation Employees 3rd Region.

For the purpose giving the further promotions what is being done is to take all the posts in former Mysore State area as one unit i.e., the post existing on 1-11-1956, and newly created between 1956 to 1965 as in this unit. Even though the employees from the 1st region may be working any where what is proposed to be done is to grant him promotion to the post in the post in the 1st unit, whether he is junior or senior on the basis of the Region wise seniority. That's why the following officials are proposed to be promoted by superseding and over-looking the claim of the petitioner:-

i. B. Chandrappa.

ii. M.V. Eraiah.

iii. Jadesh Mudaliar.

iv. Y.K. Sampat Kumarji.

v. M. Siddappa.

"Accordance to the list upto S. No. 30 have also been promoted S. No. 32 has been demoted, as a result of Departmental enquiry. The Serial No of the petitioner is 36, but, the persons S. Nos. 44, 55, 61, 65 are being promoted. Therefore, petitioner is seeking an order to quash the Resolution."

If the impugned resolution is given effect to, what happens is that where vacancies arise in filled up by making in-charge arrangements and the benefit of in-charge arrangement is given to an employee of that region as on 1st January, 1957 on the basis of the Inter-se Seniority of the allotted from that particular region. To give an example, if a vacancy in the region of the Bombay State Transport Corporation arises that vacancy is filled up by giving the benefit of in-charge arrangement to an allottee from the Bombay State Transport Corporation according to Seniority.

(3) The petitioner has alleged that the corporation was intending to promote Serial Nos. 44, 55, 56, 61 and 65 in the Provisional Inter State Seniority List though they are persons junior to the petitioner who is Serial Nos. 36, and thus his chances of promotion are impeded by the impugned resolution.

(4) This Writ Petition was filed on 20th January, 1965 and was admitted on 2nd February 1965 Respondent No. 2 took time for filing counter on 12th February 1965. It was submitted before us by the learned counsel for respondent No. 2 that certain in-charge arrangements were made of persons who are below the petitioner in the provisional inter State Seniority List. A preliminary objection was raised that the said persons not having been impleaded by the petitioner the

granting of any relief in this Writ Petition would adversely affect the persons so promoted and hence this petition is liable to be dismissed for non impleading of necessary parties. The relief sought for in this Writ Petition is to quash the impugned resolution on the ground that it is ultra vires. No relief is claimed by the petitioner for a direction to consider the petitioner's case for promotion or to quash the promotion of any other employee of the Corporation. Even according to respondent No. 2 only in-charge arrangements have been made and there are no promotions as such. Even those in charge arrangements were made during the pendency of the Writ Petition. Respondent No. 3 who was put in charge arrangement after the writ Petition was filed and before it was admitted has been impleaded by leave of the Court. Therefore, the preliminary objection in our opinion is untenable. Hence we proceed to consider the petition on its merits.

(5) The question for decision is whether the impugned resolution is ultra vires. The material provisions of the Act so far as they are necessary for the decision of this question are Sections 14, 19, 34 and 45. We shall set out the relevant portions of the said sections.

"Section 14: Officers and servants of the Corporation:

(1)..... (unnecessary)

(2)..... (unnecessary)

(3) The conditions of appointment and service and the scales of pay of the officers and servants of a Corporation shall--

(a) as respects the Chief Executive Officer or General Manager and the Chief Accounts Officer be such as may be prescribed, and

(b) as respect the other officers and servants be such as may subject to the provisions of Section 3, be determined by regulations made under this Act".

"Section 19:Powers of Corporation:--

(1) Subject to the provisions of this Act, a Corporation shall have power--

(a) to operate road transport services in the State and in any extended area;

(b) to provide for any ancillary service;

(c) to provide for its employees suitable conditions of service including fair wages, establishment of provident fund, living accommodation places for rest and recreation and other amenities

(2)..... (Unnecessary)."

"Section 34 : Directions by the State Government:--

(1) The State Government may after consultation with a Corporation established by such Government give to the Corporation general instructions to be followed by the Corporation and such instructions may include directions relating to the

recruitment conditions of service and training of its employees wages to be paid to the employees reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under sub-section (1) except with the previous permission of the State Government."

"Section 45: Power to make regulations:

(1) A Corporation may, with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder for the administration of the affairs of the Corporation.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters namely:--

(a)..... (Unnecessary)

(b)..... (Unnecessary)

(c) the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer or General Manager and the Chief Accounts Officer."

(6) When the Corporation was formed the State Government issued certain direction in exercise of the powers conferred by Sub-section (1) of Section 34 of the Act. That direction states:--

"1. The employees of the "Mysore Government Road Transport Department who have opted to serve under the Corporation in pursuance of the notices issued to them by the Government shall be employed by the Corporation subject to such regulations as may be made by if u/s 15(2)(c) of the Road Transport Corporation Act 1950 and also subject to the following conditions namely:--

(a)..... (Unnecessary)

(b)..... (Unnecessary)

(c)..... (Unnecessary)

(d)..... (Unnecessary)

(e) Change in the conditions of service of the transferred employees shall not be effected in their disadvantage without the prior approval of the Government."

The argument of Smt. H.B. Datar the learned counsel for the petitioner was that the impugned resolution purports to regulate the conditions of service of the employees of the Corporation by providing by Section 45(2)(c) of the Act, it is ultra vires and therefore null and void. Shri M. Sadananda Swamy, the learned counsel for the Corporation (Respondent No. 2) contended that independent of power u/s 45(2)(c), the Corporation has power u/s 19 to make provisions to

govern the conditions of service of its employees it was not contended by Shri M. Sadananda Swamy that the impugned resolution is a regulation made in exercise of the power u/s 45(2)(c). In view of the submission made by Shri M. Sadananda Swamy the controversy in this Writ Petition is narrowed down to the only point whether the Corporation has power to make provisions for regulation of the conditions of service of its employees independent of Section 45(2)(c) Section 19 which we have set out earlier opens with the words "Subject" to the provisions of this Act" Section 19, in our opinion, enumerates the powers of the Corporation. It does not provide for the manner in which the powers enumerated in the Section are to be exercised. The manner of the exercise of the power to make provision laying down conditions of service of the employees of the corporation is provided for by Section 14(3). That Sub-section says that the conditions of appointment and service and scales of pay of the servants of the Corporation shall be such as may be subject to the provisions of section 34, be determined by regulations made under the Act. Section 45 says that the Corporation may, with the previous sanction of the Government, make regulation for the purposes of the Act. The essential pre-requisite condition for making a regulation is the previous sanction of the State Government which has not been obtained. When power has to be exercised in our opinion, the power had to be exercised only in the manner empowered by the statute and in no other way. Therefore, we are clear in our mind that on a construction of the relevant provisions of the Act, the conditions of service of the employees of the Corporation could be governed only by regulations made by the Corporation in the manner provided by Section 45(2)(c). The impugned resolution purports to regulate the conditions of service of the employees of the Corporation which could be done only by a regulation made u/s 45(2)(c) and it is clearly ultra vires and is liable to be quashed.

(7) In view of our conclusion that the impugned resolution is ultra vires, it is unnecessary to deal with the second ground urged by the learned counsel for the petitioner.

(8) For the above reasons, the impugned resolution No. 436 dated 19th October, 1964 is quashed. In the circumstances, there will be no order as to costs.

(9) Petition allowed.