

(1953) 04 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No's. 102 and 103 of 1952

Labanya Chandra and Another

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 28-04-1953

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 84
Motor Vehicles Act, 1939 — Section 44, 60, 63, 68, 68(2)

Citation : AIR 1953 Guw 199

Hon'ble Judges : Sarjoo Prasad, C.J; Ram Labhaya, J

Bench : Division Bench

Advocate : P. Choudhuri, for the Appellant; D.N. Medhi, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ram Labhaya, J.—The petitioner in Civil Rule No. 102 of 1952 has applied for writs in the nature of Mandamus and/or Certiorari under Article 226 of the Constitution of India. The petition is directed against an order issued to him by the Secretary, Regional Transport Authority, Cachar on 13-5-1952.

2. The facts leading to that order as alleged are as follows: The petitioner is the owner of vehicle No. ASC. 848 and holds a Public Carrier Permit for it. On 18-3-1952 he was going on his vehicle to Silchar in order to have the truck repaired. On the way the District Transport Officer, Opposite Party 3 who is also the Secretary, Regional Transport Authority was seen going in the same direction. He signalled the petitioner to stop his vehicle. It was stopped forthwith. The petitioner came to the District Transport Officer who at once started calling him names and using abusive and filthy language in the presence of several persons. He then ordered one of his office assistants to seize the Motor Permit A and B, Insurance Certificate of the vehicle and also its Fitness and Registration Certificates. No receipt was given for the seizure of these documents which the petitioner has characterised as illegal. The petitioner further alleged that he

reported the matter to the competent authorities. He tried to get back these documents from O. P. No. 3 but did not succeed in his attempt. As a consequence, he could not obtain the fitness certificate from the Motor Vehicle Inspector and had to stop plying his vehicle for some time which caused him heavy loss. Immediately after the occurrence the petitioner telegraphically informed the Minister of Transport, Shillong, that he felt "seriously aggrieved at the insults and unmannerly dealing of the District Transport Officer, Silchar" when he was on his way to Silchar in his truck. He prayed for immediate redress. He was directed to approach the Deputy Commissioner which he did. On 27-3-1952, he sent a notice to O. P. No. 3 through a pleader claiming damages for his wrongful acts of seizure and the withholding of his documents as also for defaming him in the presence of witnesses.

On the next day (28-3-1952) he got a notice from O. P. No. 3 to show cause within seven days from the receipt of the notice as to why his permit be not suspended or cancelled u/s 60, Motor Vehicles Act, 1939, as he was found plying his vehicle with four persons in the rear and 3 in front including the driver against the conditions of his permit. The petitioner did show cause. He denied the allegations contained in the notice and averred that including himself and the driver there were only six persons in the vehicle and no condition of the permit was violated. Without giving the petitioner any opportunity to substantiate his allegations O. P. No. 3 informed the petitioner by order dated 13-5-1952 that the explanation had not been found satisfactory. He was further ordered to pay compensation fee of Rs. 300/- under Rule 84 (c), Assam Motor Vehicles Rules 1940 into the treasury within seven days from the receipt of the order and was warned that if he failed, to pay the fee demanded, his permit would be suspended for six months u/s 60, Motor Vehicles Act. It is averred that this act on the part of the District Transport Officer was mala fide. It was calculated to be a sort of a counter-blast to the legal proceeding which the petitioner had intended to institute as is indicated by his notice of 27-3-1952. It is also urged that the order which was passed by O. P. No. 3 as Secretary, Regional Transport Authority was without jurisdiction and illegal. He had no power to pass the order dated 13th May. It could have been passed only by the Regional Transport authority. The petitioner has further disclosed that he appealed to the prescribed appellate authority which modified the order of the Secretary to this extent that the composition fee was reduced to Rs. 50/-. The penalty for failure to pay the fee was allowed to stand. The petitioner has also challenged the original as well as the appellate order on the ground that they are opposed to the principles of natural justice. The petition is supported by an affidavit. In spite of the imputation of mala fides to O. P. No. 3, no affidavit in opposition has been put in.

3. In Civil Rule No. 103/52 also the Regional Transport Authority sent to the petitioner a notice intimating to him that "on 20-2-1952 at about 5-30 p.m. his Public Carrier No. ASC. 1391 was found plying near Matijuri with, 4 persons in the front seat including the Driver, 5 persons over the goods, over and above the Vehicle has got no back light, no near number plate, broken body, worn out rear

tyres and driven in a rash and negligent manner", and called upon him to show cause within 7 days from the receipt of the notice as to why the permit of the vehicle should not be suspended or cancelled u/s 60, Motor Vehicles Act, 1939.

4. The petitioner submitted his explanation. On 28-4-1952 the petitioner was informed that his explanation was not satisfactory. He was asked to pay composition fee of Rs. 100/- within 7 days and was further warned that on his failure to pay the composition fee within the time allowed, his license will be suspended for six months u/s 60, Motor Vehicles Act, 1939. The petitioner in this case also appealed, but his appeal was dismissed.

5. The question of law that arises in this case is exactly the same as the one that arises in Civil Rule No. 102/52. This order shall dispose of both the Rules.

6. At the hearing the main contention urged on behalf of the petitioners was that the original orders of the Secretary, Regional Transport Authority were without jurisdiction. This contention is apparently well founded. Clause (5) of Section 44, Motor Vehicles Act provides that the Provincial Transport Authority or the Regional Transport Authority if authorised in this behalf by rules made u/s 68, may delegate such of its powers and functions to such authority or person and subject to such restrictions, limitations and conditions as may be prescribed by the said rules. Section 68 authorises the Provincial Government to make rules for the purposes of carrying into effect the provisions of Chap. IV. The Provincial Government could by rules u/s 68 authorise both the Provincial Authority and the Regional Authority to delegate their powers and functions as laid down in Clause (5) of Section 44. Mr. Choudhuri, the learned counsel for the petitioners contends that rules framed u/s 68 have not authorised the Regional Transport Authority to delegate its functions nor has any such delegation taken place in point of fact. Mr. Medhi the learned Government Advocate has drawn our attention to a note which was added to Clause (c) of Rule 84 of the Rules framed u/s 68, Motor Vehicles Act. The note is as follows:

"The Secretary of the Authority may dispose of cases falling under this rule (Rule 84); provided that in respect of cancellation of permit, the sanction of the authority shall be obtained,"

7. It is argued that by virtue of the above amendment of Rule 84 by notification No. TIMV. 179/47/4 dated 9-1-48, the Secretary, Regional Transport Authority had the power to suspend the permit. Rule 84 provides procedure on cancellation, suspension or expiry of a permit. Clause (b) of Rule 84 provides that

"every permit shall be subject to all the provisions prescribed in the Act and these rules and to any other condition that may be specified in the permit itself, and if the permit holder or any of his agents or servants violate any of them he shall, in addition to any other liability that he may incur, be liable to have his permit suspended or cancelled by the Authority granting the permit under the provisions of Section 60 of the Act, and shall not in that event be entitled to any compensation or to the refund of any portion of the permit fee."

Clause (c) permits the authority granting the permit to allow the permit holder the option of retaining permit on payment of such sum as the authority may think fit to fix in cases where the permit has become liable to suspension or cancellation under Clause (b) above. The note purports to authorise the Secretary to dispose of cases under Rule 84 though for cancellation of a permit, the sanction of the authority is necessary. The effect of the note if validly added to Rule 84 would be to confer on the Secretary the powers of the Regional Authority to the extent indicated. Its validity however is questioned and on good grounds. Section 44 merely authorises the Provincial Government when framing rules u/s 68 to authorise the Provincial Transport Authority and the Regional Transport Authority to delegate their functions. The Provincial Government is not given the power to delegate these functions. If authority is conferred on the Provincial Transport Authority and the Regional authority to delegate their functions, they may exercise that authority and delegate the functions to such person or authority as may be prescribed. The note, if it is interpreted as authorising the Secretary of the Transport Authority to dispose of all cases under Rule 84, is in excess of the authority conferred on the Provincial Government by Section 44, Clause (5) read with Section 68. In adding this note the Governor of Assam was not framing any rule for giving effect to any provisions of the Act. His act was inconsistent with an express provision contained in Section 44. The rule therefore has no legal force or validity. The Governor had no power to make it.

Mr. Medhi has tried to show that the rule could be made under Clauses (2) (a) and (2) (za) of Section 68. Clause (2) (a) does not at all deal with delegation of the powers of the Regional Authority. Rules for the conduct of the business of the Regional and Provincial Transport Authorities may be made under this clause but there is nothing in this clause to suggest even remotely that contrary to the provisions contained in Section 44 (5) this clause authorises the Provincial Government to directly delegate functions of transport Authorities to other bodies or persons. If any such intention is read into this clause it will conflict with the provisions contained in Section 44 (5). It is quite clear however that no such direct delegation of the powers of the Transport Authorities is authorised by this clause. Clause (2) (za) authorises the making of rules on any matter which is to be or may be prescribed. It is a general clause. This also cannot be utilised for the purpose of investing the Provincial Government with powers to confer the powers of Transport Authorities on other bodies or individuals. Under this clause rules can be made on prescribed matters. Section 44 (5) prescribes that the rules u/s 68 may authorise the Transport Authorities to delegate their functions. The limit on the rule-making power imposed by Section 44 (5) cannot be exceeded even under this clause. There is no force in the contention that the Provincial Government had authority to confer the powers of the Regional Transport Authorities on the Secretary by virtue of provisions contained in Section 68 Clause (2) (a) or Clause (2) (za).

8. It is next urged that this note may be interpreted as permitting the Regional Transport Authority to delegate its functions to its Secretary. Its language does

not bear this interpretation but even if interpreted this way, actual delegation of authority to the Secretary would be necessary. Mr. Medhi has not been able to show that there has been any delegation of authority by the Regional Authority to the Secretary after the addition of this note. Without such a delegation the Secretary shall not have the authority to dispose of cases under Rule 84 merely by virtue of the note appended to it as that would be in contravention of the express provisions contained in Section 60, which require that it is the authority granting the permit that can suspend or cancel it. Delegation of authority is rendered possible if the Provincial Government authorises the delegation and the delegation takes place in point of fact. Here the Regional Authority has not been shown to have been validly authorised as required by Section 44 to delegate its powers u/s 60, nor has the Regional Transport Authority actually delegated its authority to the Secretary after 9-1-1948. Mr. Medhi has drawn our attention to a resolution of 1945 by which the Regional Transport Authority purported to delegate its powers to the Secretary, but the Regional Authority had at no time before that been authorised to delegate its powers by any rules framed by the Provincial Government u/s 68 of the Act. In fact no such authority was ever conferred on the Regional Authority. This resolution is therefore of no avail to the Opposite Parties. The impugned orders in these circumstances are without jurisdiction. The Secretary had no authority to pass the orders in question which being without jurisdiction, would be nullities in law. The partial modification in appeal of one order and its confirmation in the other would not invest them with validity that they initially lacked. The orders even in their final form remain orders which are without jurisdiction. They have no legal effect. They therefore must be set aside so that effect may not be given to them and we order accordingly. The petitions are allowed with costs and the Rules are made absolute.

9. Consolidated hearing fee Rs. 50/- to be shared equally by the two petitioners.

Sarjoo Prosad, C.J.

10. I agree.