

**(1965) 06 KL CK 0017**

**In the High Court Of Kerala**

**Case No : O.P. No's. 1325 and 1927 of 1964**

M. Bhaskara Menon

APPELLANT

Vs

The State of Kerala

RESPONDENT

**Date of Decision : 28-06-1965**

**Acts Referred:**

Kerala Motor Vehicles Rules, 1989 — Rule 251  
Motor Vehicles Act, 1939 — Section 68(2)

**Citation : AIR 1966 Ker 201**

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

**Bench : Division Bench**

**Advocate : K.C. Sankaran and K. Prabhakaran in O.P. No. 1927 of 1964 and S. Narayanan Potti, in O.P. No. 1325 of 1964, for the Appellant; Government Pleader, for the Respondent**

**Final Decision : Allowed**

## Judgement

1. 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 faros 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 identify card issued by the head of the institution in the following form (form omitted)

Provided further Dial Die 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 centres in the public and private sectors recognised in 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 MIC control of the University, and

(5) Technical institutions recognised by the Director of Technical Education "

2. u/s 43(1)(d)(i) of the Motor vehicles Act 1989. 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, 13th June 1963 and published in the Kerala Gazette dated 18th June 1963. The directions are silent as regards the concession embodied in rule 251

3. 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 13th June 1968. 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

4. Section 68 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 "

5. 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 Die 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).

6. 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 in the classes or returning therefrom.

7. 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 biggest constitutional importance, an importance which can be well stated in the words of Lord Shaw in *R v. Halliday Ex parte Zadig* 1917 AC 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 "

8. 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.