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**(1955) 09 MAD CK 0012**  
**In the Madras High Court**

M.K. Padmanabhan

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

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**Date of Decision :** 01-09-1955

**Acts Referred:**

**Citation :** AIR 1956 Mad 349 : (1956) ILR (Mad) 1272 : (1956) 69 LW 1051 : (1956) 1 MLJ 179

**Hon'ble Judges :** Rajagopalan, J

**Bench :** Division Bench

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**Judgement**

Rajagopalan, J.—The only question that arises for determination in this application under Article 226 of the Constitution for the issue of a writ of Certiorari is, whether Rule 160-B of the Rules framed under the Motor Vehicles Act is intra vires.

2. The petitioner held a stage carriage permit issued by the Regional Transport Authority, Malabar, for plying his bus from Olavakote to Palghat. He transported postal mails for a time by contract direct with the postal authorities. On 2nd December, 1953, he informed the Regional Transport Authority, Malabar, that he would not be able to carry the mails any further. The Regional Transport Authority enforced the condition of the permit prescribed by Rule 160-B and directed the Petitioner, by its order, dated 12th April, 1954, to carry mails in return for a monthly subsidy of Rs. 150. The petitioner moved the Government without success u/s 64-A of the Act to set aside that order. It is the validity of that order which has been challenged in the application for the issue of a writ of Certiorari.

Rule 160-B runs:

It shall be a condition of every stage carriage permit that the holder of the permit shall, if so required by the transport authority which granted the permit, carry mails at such rates and on such terms as the transport authority may fix after consultation with the holder of the permit and the postal authorities

concerned.

3. The petitioner knew when he applied for a permit and when he obtained it that the condition imposed by Rule 160-B was one of the conditions of the permit. Having had the advantage of that permit all this time and still retaining the advantage, it is not open to him to challenge the validity of that condition of the permit at this stage in proceedings under Article 226 of the Constitution. The learned Counsel for the Petitioner urged that Rule 160-B was really a dead Rule, and that the Petitioner could have an opportunity to complain against the validity of the Rule only when the Regional Transport Authority sought to enforce that Rule. I am unable to see any difference in principle on the basis put forward by the learned Counsel for the Petitioner, when what the Petitioner seeks under Article 226 of the Constitution is a discretionary relief. I am not, however, resting my decision in this case on this aspect of it.

4. Section 48(d) is as follows:

A Regional Transport Authority may, after consideration of the matters set forth in Sub-section (1) of Section 47....

\* \* \* \* \* (d) attach to a stage carriage permit any prescribed condition or any one of the following conditions....

(Six items were enumerated u/s 47(d) but it may not be necessary to refer to these in detail).

The Regional Transport Authority could thus include amongst the conditions of the permit any "prescribed" conditions. "Prescribed" has been defined by Section 2(21) of the Act to mean prescribed by Rules made under the Act. Section 68 of the Act conferred authority on the State Government to make Rules, under the Act. Section 68 runs:

(1) A State Government may make Rules for the purpose of carrying into effect the provisions of this chapter (that is Chapter IV).

(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....

5. Then follows a list of items numbered (a) to (Z-a).

6. Rule 160-B is a rule made under the provisions of Section 68 of the Act. Therefore the condition imposed by Rule 160-B is a "prescribed condition" within the meaning of Section 48(d).

7. The learned Counsel for the petitioner contended that Rule 160-B was ultra vires, and that it fell outside the scope of the power vested in the State Government by Section 68 of the Act. He pointed out that carriage of mails was not one of the enumerated items in Section 68(2) of the Act with reference to which the State Government was specifically authorised to make Rules. As the

learned Advocate-General rightly pointed out, Section 68(2) does not exhaust the scope of Section 68(1). Section 68(2) itself specifically provides that the enumeration in that sub-clause is without prejudice to the generality of the power conferred on the State Government by Section 68(1). The items enumerated in Section 68(2), all fall within the scope of Section 68(1) as well. The effect of Section 68(2) is that with reference to the items included in Sub-clause (2), it is not necessary for the Court to examine further whether any of these items come within the scope of the general provision in Clause (1) of Section 68. The statute itself, that is Section 68(2), virtually declares that all the items enumerated therein came within the scope of Clause (1) of Section 68. This contention of the learned Advocate-General, which I accept is supported by the rule of construction laid down by the House of Lords in *Earl Fitzwilliams Wentworth Estate Co. v. Minister of Housing and Local Government* L.R. (1952) A.C. 362. Commenting upon Section 43(1) of the Town and County Planning Act of 1947, which provided that land could be acquired for any purpose connected with the performance of functions of the Board and then particularised the acquisition of land for purposes of disposing of it for development, Lord Macdermott observed:

In the course of the argument three views were advanced as to the meaning of this enactment. These, in my opinion, exhaust the relevant possibilities. They may be stated thus:

(1) The second limb of the sub-section confers a power separate and distinct from, and wholly independent of, that contained in the first limb, the words "and in particular" which introduce the second limb being used as words of emphasis only, and not as indicating an example of the power conferred by the first;

(2) The second limb but particularizes something already within the general terms of the first, and accordingly, the expression "for any purpose connected with the performance of their functions" must be satisfied before power arises under either limb. In other words, the Board will have no power of acquisition in a case falling within the language of the second limb, if the purpose of the acquisition was not also in fact in connection with the performance of their functions under the subsequent provisions of the Act; and

(3) The second limb gives an instance of the power conferred by the first, but in terms which amount to a statutory recognition of the purpose described in the second limb as being within the scope of the first. Accordingly, if the case comes within the wording of the second limb... there is no need, in order to perfect the power it purports to confer, to trace a connection between the purpose therein mentioned and the performance of some function of the Board.

Lord Macdermott observed that of these alternatives, view one was most easily discarded. After limiting the choice between views 2 and 3, Lord Macdermott observed:

This choice I am content to make on what appears to me to be the natural

meaning of the wording of Sub-section (1), for, I have not found elsewhere in the Act anything to indicate that the language of the sub-section is used otherwise than in its ordinary everyday sense. Reading the enactment in this way I am in favour of view (2).

8. The use of the expression "without prejudice to the generality of the foregoing power" in Section 68(2) makes it even clearer that the items enumerated in Section 68(2) do not exhaust or otherwise control the power conferred by Section 68(1) and the enumeration in Section 68(2) only amounts to a statutory recognition that all those items are within the scope of the generality of the power conferred by Section 68(1) of the Act.

9. The question therefore arises, does Rule 160-B come within the scope of Section 68(1) of the Act, that is, is the purpose of Rule 160-B to carry into effect any of the provisions of Chapter IV of the Act.

10. I referred earlier to Section 48(d) of the Act, which empowered the Regional Transport Authority to embody in the permit any prescribed condition. The definition of the word "prescribed" gave the Government a right to make a rule in this case, to carry into effect any of the provisions of Chapter IV and it also made it a duty of the Government to make such Rules, if conditions had to be imposed other than the six enumerated by the statute itself in Section 48(d) of the Act. Of course, the conditions to be prescribed by the Government under the rule-making power had to be relevant. That was really what Section 68(1) prescribed by the requirement, that the Rules must be for the purpose of carrying into effect the provisions of Chapter IV.

11. Section 48 itself specifically refers to the consideration of the matters set forth in Section 47(1) of the Act. It is well settled now that even the enumeration in clauses (a) to (f) of Section 47(1) is not exhaustive, but it may not be necessary to stress this feature, of Section 47(1). One of the relevant matters specifically enumerated in Section 47(1) is what has been set out in Sub-clause (a) "interest of the public generally". The learned Advocate-General was right in his contention, that carriage of postal mails in a bus for which the Regional Transport Authority is empowered to grant a permit, is well within the scope of Section 47(1)(a) "interest of the public generally". The learned Advocate-General referred to Section 40 of the Post Offices Act (VI of 1948) as an instance of a statutory provision for the carriage of mails by sea in the interests of the public. The two cases cited by the learned Advocate-General *Western Air Lines v. Civil Aeronautics Board* 98 L.Ed. 508, and *Delta Air Lines v. Summerfield* 98 L.Ed. 513, were decided with reference to a statutory provision in America for carriage of mails by air. That "public interest generally" is a concrete and definite standard on which the statutory authorities could act, was what was laid down in *National Broadcasting Co. v. United States* 87 L.Ed. 1344 *Frankfurter, J.*, observed:

The touchstone provided by Congress was the "public interest, convenience or necessity", a criterion which "is as concrete as the complicated factors for

judgment in such a field of delegated authority permit.

The learned Judge observed further:

This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power.... The requirement is to be interpreted by its context....

In that case it was the nature of radio transmission and reception. Therefore the scope of the statutory requirement "interest of public generally" in Section 47(1) (a) of the Act has to be gathered from the context of the Act, the scope and the purpose of the Act, to regulate among other things public motor transport.

12. The learned Counsel for the petitioner urged that the expression "interest of the public generally" in Section 47(1)(a) must be limited to the interest of the public travelling by public motor transport and it should not be extended to any section of the public outside the travelling public. The learned Counsel referred to *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, . At page 263, Malik C.J., observed:

Under Section 47(1)(a), the Regional Transport Authority has to take into consideration the interest of the public generally. As the Regional Transport Authority is mainly concerned with the interest of the travelling public, it must mean primarily the interest of the travelling public.

I am unable to construe this as authority for the proposition advanced by the learned Counsel for the petitioner that "the interest of the public generally" Section 47(1)(a) prescribes is the interest solely of the travelling public to the exclusion of every other section of the public. Malik, C.J., was not called upon in that case to consider the contingency of any possible conflict between the interests of the travelling public and the interest of the public other than the travelling public. The learned Judge used the expression "primarily" and not "solely" in referring to the scope of Section 47(1)(a). It must be remembered that a public transport concern is a common carrier. No doubt the bus which the petitioner plies is primarily intended for the use of the travelling public. But the Act nowhere says that it is the only purpose for which a bus could be used, and that regulation of any need of the public other than the travelling public would not be germane to an Act, the purpose of which is to regulate public motor transport. The interest of the public generally as used in Section 47(1)(a) of the Act is comprehensive enough to cover the interest of the public generally besides the interests of the travelling public. Would a specific provision in the Act itself for the carriage of mails, on the analogy of Section 40 of the Post Offices Act, be outside the policy of the Act to regulate public motor transport? I should think not. Such a provision would have been quite consistent with the purpose of an Act to regulate public motor transport in the interests of the public the larger public including the travelling public. The learned Advocate-General referred to *Hewitt on Control of Delegated Legislation*, page 65, where the learned author referred to *Rex v. Transport Regulation Board*; *Ex parte Ansett* 1946 V.L.R. 166,

and observed:

Such regulation should be read in the light of the Transport Regulation Acts, whose object and purpose was the regulation and co-ordination of transport, so that the interests of the public generally might be reconciled with those of persons requiring, as well as those providing, facilities for the transport of passengers and goods by road....

13. The interpretation placed upon Section 47(1)(a) by the learned Counsel for the petitioner is too narrow, and I have no hesitation in rejecting it.

14. The learned Counsel for the petitioner pointed out that Rule 160-B provides for two things: (1) carriage of mails and (2) the rates at which the bus operator had to carry these mails. The learned Counsel for the petitioner contended that, even if the carriage of mails came within the scope of public interest within the meaning of Section 47(1)(a), that portion of the Rule 160-B which authorised the Regional Transport Authority to fix the rates at which the mails should be carried would not be one conceived in the interests of the public generally within the meaning of Section 47(1) of the Act. I am unable to accept this contention. The power to prescribe rates at which mails should be carried is really ancillary to the power to require of a bus operator that he should carry mails. It should be remembered that Rule 160-B itself requires that the rates should be fixed by the Regional Transport Authority in consultation with the bus operator required to carry the mails and with the postal department. The scope of the power conferred by Section 68(1) of the Act has to be considered in this case with reference to the limit prescribed by Section 47(1)(a) of the Act. As the learned Advocate-General pointed out, the statutory power can be express or implied. In *V.G. Rao v. State of Madras* (1951) 1 M.L.J. 628, Viswanatha Sastri, J., pointed out that the power may be conferred expressly as well as by necessary implication. The provision in a Rule made in Section 68(1) of the Act for the carriage of mails by a bus is a provision to carry into effect the provisions of Chapter IV of the Act which includes Section 47(1)(a) of the Act. The further provision in Rule 160-B authorising the Regional Transport Authority to fix the rate at which such mails should be carried is also within the ambit of the power conferred by Section 68(1). In any case, it would be a power which arises by necessary implication. The provision for fixing rates is, as I said, at least ancillary to the provision for the carriage of mails themselves.

15. I have already pointed out that the Rule itself prescribes a standard for fixing the rates. The rates have to be fixed by the Regional Transport Authority in consultation with the postal department and the bus operator concerned. The failure to prescribe further relevant consideration for the exercise of the power would not make a statutory provision for that exercise of that power ultra vires, that is, beyond the scope of Section 68(1) of the Act. The Rule would be intra vires, but individual cases of application of that Rule would still be subject to judicial review under Article 226 of the Constitution, if that power is exercised on irrelevant considerations or is otherwise erroneously exercised: see *The Globe*

Theatres, Ltd. v. State of Madras (1954) 2 M.L.J. 110.

16. The scheme of the Act is to provide among other things for the regulation of public motor transport. An element of selection of the operator who should be permitted to ply the public motor transport on a given route becomes inevitable. In such a selection carriage of mails would be a relevant factor since it is a factor that affects the interests of the public generally within the meaning of Section 47(1)(a) of the Act. The learned Advocate-General referred to *Satyanathan v. Subramaniam* (1955) S.C.J. 455 the learned Judge pointed out:

The fact that he had agreed to carry postal articles and mail bags was possibly an additional qualification for him to obtain a renewal of his permit and this gave him an advantage over his competitors.

Had a provision for the carriage of mails been embodied as a special condition in the permit granted to the selected applicant, neither the choice of the applicant nor the validity of the condition could have been assailed. That it was a general condition made applicable by Rule 160-B to all permit-holders does not make any real difference in principle in deciding whether such a condition was one to give effect to the provisions of the Act, and therefore within the scope of Section 68(1) of the Act.

17. The learned Advocate-General also referred to the unreported decision of *Rajagopala Ayyangar, J.*, in W.P. No. 749 of 1952. But there the question did not specifically arise for determination, whether the carriage of mails by itself was a relevant consideration in the interests of the public generally within the meaning of Section 47(1)(a) of the Act. It was apparently assumed that it was a valid consideration.

18. As I said, the only question that arose for determination in this case was whether Rule 160-B was *intra vires*. I have no hesitation in upholding the validity of Rule 160-B. It is well within the scope of the rule-making power conferred upon the Government by Section 68(1) of the Act. The Regional Transport Authority had therefore jurisdiction to enforce the condition of the permit and call upon the petitioner to carry the mails at the rates fixed by the Regional Transport Authority. Nothing was urged to show that the exercise of that jurisdiction was in any way vitiated; nor even was it suggested that in fixing the rate at Rs. 150 a month the Regional Transport Authority ever exceeded its jurisdiction, or misapplied its statutory power.

19. This petition fails and is dismissed with costs. Counsel's fee Rs. 100.