
(1959) 07 AP CK 0018
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 85 of 1958

Movva Veerayya

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 15-07-1959

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 144, 147
Motor Vehicles Act, 1939 — Section 44, 64, 68

Citation : AIR 1960 AP 268

Hon'ble Judges : P. Chandra Reddy, C.J.; Jaganmohan Reddy, J

Bench : Division Bench

Advocate : Alladi Kuppuswami, for the Appellant; M.V. Srinivasa Rao, for P. Ramachandra Reddy, 3rd Govt. Pleader and B. Punyakotichetty, for P. Babul Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—This Letters Patent Appeal is directed against the judgment of our learned brother Mr. Justice Bhimasankaram refusing to quash an order of the Government confirming that of the Central Road Traffic Board, Andhra State.

2. The material facts on which the decision in this appeal has to be based may be set out. The petitioner was one of the ninety-one applicants before the Regional Transport Authority, Guntur, for the grant of a Stage-carriage permit on the route Guntur to Bepalle. He was successful in obtaining the permit from the Regional Transport Authority. The 4th respondent along with some other unsuccessful applicants appealed against that order to the Central Road Traffic Board, Andhra State. The Chairman of the Board alone heard the appeal as the other members thereof did not turn up in time to attend the meeting. After hearing all the parties, he set aside the order in favour of the appellant and directed the grant of the permit to the 4th respondent. The appellant carried a revision to the Government invoking its jurisdiction u/s 64 of the Motor Vehicles Act. The Government, taking into consideration the relevant facts, dismissed the revision

petition. It was to remove that order on certiorari that the appellant filed the writ petition giving rise to the appeal.

3. The main contention raised before the learned Judge was that the order of the Central Road Traffic Board, which was passed by the Chairman alone, should be deemed to be honest and as such void as he had no jurisdiction to hear the appeal singly. That argument was repelled by the learned Judge for the reasons given by him in his judgment. That argument is repeated before us.

3. What is urged by Sri Kuppuswami, the learned counsel for the appellant, is that the Central Road Traffic Board was constituted by the State Government, that by virtue of the powers conferred on it u/s 44 of the Motor Vehicles Act, the powers and functions exercisable by that Board could be discharged only by the whole body as constituted and it was incompetent for a single member to purport to discharge any of its functions, and in this view the rule which enabled the Chairman alone to conduct the meeting, in certain contingencies is ultra vires the rule-making power of the Government as it is repugnant to the main provisions of the Motor Vehicles Act.

5. To appreciate this contention it is necessary to extract the relevant statutory provisions. Section 44 of the Act, in so far as it is relevant for the present purposes, recites:

"(1) The State Government shall, by notification in the Official Gazette, constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification in respect of each Regional Transport Authority, the powers and functions conferred by or under this chapter on such authorities:

x x x x (2) A State Transport Authority or a Regional Transport Authority shall consist of such number of officials and non-officials as the State Government may think fit to appoint; but no person who has any financial interest whether as Proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a State or Regional Transport Authority and, if any person being a member of any such authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office: Provided that if the State Government thinks fit, the State Transport Authority or a Regional Transport Authority may consist of a single official....."

6. The duties to be performed by the State Transport Authority are enumerated in Sub-section (3), such as -

"(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or it so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and

(d) to discharge such other functions as may be prescribed."

7. Pursuant to the authority conferred by Section 44, the Government by the original notification fixed the number of members of the State Transport Authority at five, which was later on reduced to I three by a subsequent notification. It will be seen I that Section 44 does not constitute the State Transport Authority or the Central Road Traffic Board as an appellate authority to hear appeals from orders of the Regional Transport Authorities. It is Section 64 that confers on an aggrieved party the right of preferring an appeal to the prescribed Tribunal.

8. Section 64 says:

"Any person-(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit or by any condition attached to a permit granted to him.

X X X X may within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the Regional Authority an opportunity of being heard. "Prescribed" means "prescribed by the rules to be framed under this Act.""

9. Section 68 vests power in the Government to make rules to give effect to (he provisions of the Act. That Section is in the following words:

"(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:--

x x x x

(b) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees;

x x x x

(j) the authorities to whom, the time within which and the manner in which appeals may be made. ..."

10. It is in exercise of the powers derived under this section that the concerned

Government framed rules including Rules 144 and 147. It is Rule 147 that makes the Central Road Traffic Board as the appellate authority competent to hear appeals from orders of the Regional Transport Authority.

11. Rule 144 says:

"The quorum for a meeting of the Central Board shall be two:

Provided that if within fifteen minutes after the time scheduled for the commencement of the meeting no member turns up, the Chairman may proceed to conduct the meeting without the quorum."

12. The argument pressed upon us by Sri Kuppuswami is that reading Section 44 in the light of the notification under Rule 147, it was the full Board that could hear the appeal and the Chairman alone by himself had no jurisdiction to perform such a function. In support of this contention he relied upon *Wicks v. Director of Public Prosecutions* 1947 AC 362 which laid down the proposition that a regulation which was validly made should be regarded as though it were itself an enactment. This position cannot be contested and it is not necessary for us to go into that matter in this inquiry.

13. To substantiate his argument that Rule 144 is in conflict with the main provision of the Act, reliance is placed by the learned Counsel on *The United Commercial Bank Ltd. Vs. Their Workmen*, and also on a judgment of the Division Bench of the Madras High Court in *Kama Umi Isa Ammal Vs. Rama Kudumban and Others*, . Neither of the rulings lends any support to the theory adumbrated by Sri Kuppuswami. In the first case the majority of the Judges expressed the opinion that when a Tribunal consists of three members and the service of one member, other than the Chairman, was not available, the other two members could not act as a Tribunal without the Government reconstituting the Tribunal. This decision was based on the provisions of the Industrial Disputes Act, one of which was Section 8(1) which specially provided that

"if the services of the Chairman of a Board or of the Chairman or other member of a Court or Tribunal ceased to be available at any time, the appropriate Government shall, in the case of a chairman, and may in the case of any other member, appoint another independent person to fill the vacancy, and the proceedings shall be continued before the Board, Court, or Tribunal so reconstituted."

From these provisions the intention of the Legislature could be gathered that the Industrial Tribunal should act as a body and it was not within the powers of some of the members thereof to function as a Tribunal. That pronouncement of the Supreme Court turns upon the provisions of that Act and does not govern the case like the present one. In the second of the cases also it was decided that the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act did not permit the framing of a rule fixing the quorum for a meeting of the Board at two.

But the situation under the Motor Vehicles Act is quite dissimilar to that in the two cited cases. His Lordship Chief Justice Rajamannar, who was a party to Kama Umi Isa Ammal Vs. Rama Kudumban and Others, distinguished it in W.A. Nos. 30 and 43 of 1956 on the ground that in the earlier case it was not open for the Government to provide by a rule that a Tribunal could consist of less than three members, while under the Motor Vehicles Act it was entirely left to the Government to prescribe the appellate forum and the details of the constitution of such forum and to make rules for the conduct of the business by that body. We express our respectful accord with the remarks of the learned Chief Justice in WA Nos. 30 and 43 of 1956.

14. Apart from this authority, on the language of the relevant statutory provisions and also the rules it is futile to contend that Rule 144 is violative of Section 44 of the Act, It is to be noted that that section does not enjoin upon the Central Road Traffic Board to entertain appeals from orders of the Regional Transport Authority, nor is there any substantive provision in that direction for the constitution of the Tribunal to hear and dispose of appeals. The power of the Central Road Traffic Board or the State Transport Authority is traceable only to Rule 147. It is by virtue of this rule that appeals lie to the Tribunal against certain orders mentioned therein. A perusal of the relevant provisions makes it abundantly clear that the legislature left it to the Government to prescribe the appellate authority and the manner in which that authority should be constituted and to make rules for the conduct of the business of such body. Clauses (b) and (j) specifically vest such power in the Government. That being the position, it is well within the rule-making power of the Government to make a rule fixing the quorum and also authorising the Chairman to conduct the meeting without the quorum.

15. In this connection we may refer to a judgment of the Supreme Court in Atherton West and Co. Ltd. Vs. Suti Mill Mazdoor Union and Others, where a provision similar to Rule 144, regarding the constitution of Regional Conciliation Boards under the U. P. Industrial Disputes Act, was upheld by the Supreme Court. There the Board consisted of three members to whom the industrial dispute was referred. On the last day of the hearing, one of the members of the Board could not be present and the award was signed only by two of the members. The question arose whether the award was valid and operative in spite of its having been signed only by two members. This was answered in the affirmative in view of the following provisions:

"(I) Notice of every meeting of the Board shall be given to the members, by the Chairman in advance.

(2) If apart from the Chairman either or both the other members fail to attend any meeting of the Board of which notice has been given to them, the Chairman may transact the business of the Board without the presence of the absent member or members; and no such business or proceedings of the Board shall be held invalid merely by reason of the fact that either one or both of the members

were not present at the meeting.

"Where no amicable settlement can be reached on one or more issues, if all the members present agree the Board or if they do not so agree the majority of the members agreeing or if no two members present agree or if only the Chairman is present, he alone, shall record an award and the reasons for such award on the issues on which the parties were unable to reach an amicable settlement."

16. Thus, on authority and on the language of the relevant statutory provisions and the rules made thereunder, we think that Rule 144 is valid and its constitutionality cannot be questioned. That being the position, the order in question is properly passed and cannot be assailed.

17. In the result, the judgment of our learned brother Mr. J. Bhimasankaram is affirmed and this appeal dismissed with costs of the fourth respondent, Advocate's fee Rs. 100/-.