

(1966) 04 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1543, 1880, 1881, 1927 of 1964 and 21 of 1965

S. China Khader Valli and Others

APPELLANT

Vs

The Regional Transport Authority, Guntur and Another

RESPONDENT

Date of Decision : 14-04-1966

Acts Referred:

Motor Vehicles Act, 1939 — Section 38(1), 38(3), 68, 69, 70

Citation : AIR 1967 AP 288 : (1967) 1 AnWR 1

Hon'ble Judges : Gopalrao Ekbote, J

Bench : Single Bench

Advocate : P. Babul Reddy, P. Chennakesava Reddy and K. Amareswari, for the Appellant; 3rd Govt. Pleader, for the Respondent

Judgement

Gopalrao Ekbote, J.

(1) These five Writ Petitions raise a common question of law and can, therefore, be conveniently disposed of by one common judgment.

(2) They arise in the following circumstances. The petitioners are the owners of contract carriages known as auto-rickshaws. They were granted permits with some conditions attached to the same. These conditions however did not include any condition to have a taxi-meter to the auto-rickshaw. At the time of issuing a fitness certificate, the Secretary to the Regional Transport Authority insisted that the petitioners should have taxi-meters fixed to their auto-rickshaws and stated that, without such taxi-meters, the fitness certificate will not be issued. Since this notice was given in pursuance of the resolution passed by the State Transport Authority through the Regional Transport Authority, the petitioners did not consider it worthwhile to carry the matter in appeal. The contention of the petitioners therefore, is that, under the provision of law and the rules, the Secretary to the Regional Transport Authority cannot insist on having a taxi-meter to an auto-rickshaw before issuing any fitness certificate and, since the Secretary is insisting upon it against the law, these petitions are filed seeking the issue of a Writ of Mandamus under Article 226 of the Constitution directing the

Secretary, Regional Transport Authority, Guntur not to insist upon the fixation of a taxi-meter to auto-rickshaws for the purpose of issuing a fitness certificate.

(3) The principal contentions of the learned Advocates for the petitioners are two-folds; firstly, it was contended that the Rule 429 of the A.P. Motor Vehicle Rules, 1964 (hereinafter called the Rules) is ultra vires of Section 70 of the Motor Vehicles Act, 1939 (hereinafter called the Act); and secondly, that the said rule being unreasonable is bad in law.

(4) Now, in regard to the first contention, Section 22 of the Act enjoins that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with Chapter III and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

(5) Section 38 of the Act, which is more relevant for the purpose of this enquiry relates to the certificate of fitness of transport vehicles. Omitting the portion which is not relevant, that Section is as follows:-

"(1). Subject to the provisions of Sec. 39, a transport vehicle shall not be deemed to be validly registered for the purposes of Sec. 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder. Where the prescribed authority refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal."

(2) xx xx xx xx

(3). The issuing authority or other prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness, at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter IV shall be deemed to be suspended until a new certificate of fitness has been obtained.

(4) xx xx xx xx

(6) What was argued in view of these two Sections was that, u/s 38 of the Act, a vehicle would not be deemed to be validly registered unless it carries a certificate of fitness to the effect that the vehicle complies with all the requirements of Chapter V and the rules made thereunder. The contention was that Chapter V relates to "construction, equipment and maintenance of motor vehicles." According to the two Sections of that Chapter, in order to effectively, control the motor vehicle, provision is made. These two sections do not indicate anything in regard to the fixation of the Taxi-meter. Since Chapter VII of the Rules contains

rules made under Chapter V relating to "construction, equipment and maintenance of Motor Vehicles" no rule relating to fixation of taxi meters could have been incorporated in Chapter VII as any such rule is not warranted by Chapter V. Consequently, it is contended that in framing Rule 429 the delegated authority has exceeded its powers conferred on it by Section 70 of Chapter V of the Act.

(7) In order to appreciate this contention I have to read Rule 429. According to that Rule, every motor cab, unless it is exempted, shall be fitted with a taxi-meter of a type approved by the State Transport Authority which shall be fixed to and operated from a non-driving wheel. There is another Rule 451 according to which every auto-rickshaw has to be provided with suitable type of milometer to record total mileage covered on the basis of which fare is paid and also a milometer of the type in which trip readings can be adjusted to zero of fare meter. It is no doubt true that the Rules incorporated in Chapter VII of the Rules can be said to have been framed in pursuance of the power conferred on the State Government u/s 70. It is also true that, u/s 68(q) of the Act, the State Government can make rules in regard to the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining, testing and sealing taxi meters. It must however be remembered that the entire set of Rules has been made at one time. The Motor Vehicles Act, unlike any other enactment, authorises the State Governments to frame rules under various Chapters and under various Sections. It may be that the State Government may frame rules under one such Section and prepare another set of rules which they are authorised to make under another Section. Instead of having two or more separate sets of rules prepared separately at different times, the State Government can also make Rules at one time under various sections under which they are empowered to frame the rules and bring them into force simultaneously. That is what the government has done in the present case. No fault can be found with such a process. It may also be that some Rules might fall both u/s 68 as well as u/s 70. But, on that account, it cannot be said that they have not been validly framed. It is not doubted that Rule 429, the validity of which is challenged, can easily be sustained under the power vested in the Government to frame Rules u/s 68(q). What was however contended was that such a rule cannot be made u/s 70 and included in Chapter VII of the Rules.

(8) Section 70 as stated earlier, falls in Chapter V and authorises the State Government to make Rules regulating the construction, equipment and maintenance of motor vehicles and trailers. After conferring these general powers to frame rules, Sub-section (2) states "Without prejudice to the generality of the foregoing power, rules may be made under this section governing any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances." Sub-section (2) thus empowers the State Government to make rules in respect of the matters specifically mentioned in sub-section (2), it does not deprive the Government to make a rule as the State

Government has very wide powers under sub-section (1) of that Section. The State Government, under that sub-section, can therefore makes rules regulating the construction, equipment and maintenance of motor vehicles and trailers. If Rule 429 can be related to the regulation of construction, equipment and maintenance of a motor vehicle, its validity cannot be doubted. Such a rule may not relate to construction and maintenance of motor vehicles but I fail to see why it does not fall within the meaning of "equipment". If the various purposes for which sub-section (2) authorises the State Government to make rules is kept in view, it presents no difficulty in bringing the fixation of a taxi-meter to an auto-rickshaw within the meaning of regulating the "equipment" of a motor vehicle. It would not be correct to view Section 70 as enabling the Government to make Rules only for the purpose of effective control of the person driving the vehicle. While Section 69 of the Act speaks only of construction and maintenance of motor vehicles, Section 70 relates to all the three matters for which Chapter V is provided. In other words while S. 69 does not refer to "equipment", Section 70 takes in "equipment" also along with construction and maintenance of motor vehicles. Thus, the power of the State Government to make rules is spread over not only construction and maintenance of motor vehicles but also of regulating equipment. Under this power, the State Government can certainly make a rule directing the taxi-cabs to have a taxi-meter. I do not, therefore, agree with the contention that Rule 429 oversteps that limit which section 70 sets on the power of the State Government to make the rule u/s 70 of the Act.

(9) The real difficulty arises because of a loose drafting of Section 38 of the Act. Whereas sub-section (1) of section 38 refers to the fitness certificate complying "with all the requirements of Chapter V and the rules made thereunder", sub-section (3) refers to "all the requirements of this Act and rules made thereunder." The argument arose because of the two different expressions used in sub-section (1) and sub-section (3) of section 38 of the Act. If the language employed in sub-section (1), there could not have been any difficulty. But, the sub-section (1) puts it that the vehicle must comply with the requirements of Chapter V since Rule 429, according to the learned Advocate's argument could not fall under Chapter V, its validity was questioned. A combined reading of sub-section (1) and sub-section (3) would however make it clear that the fitness certificate is always issued to the effect that the vehicle complies for the time being with all the requirements in Chapter V and the rules made under the Act and not only the rules made under Chapter V. The words "made thereunder" have to be understood in the light of sub-section (3) of that Act. Sub-section (3), as is evident, authorises the issuing authority to cancel the certificate of fitness at any time if it is satisfied that the vehicle to which it relates no longer complies with all the requirements of the Act and the rules made thereunder. The words "no longer" clearly indicate that, t the time of the issue of that certificate, the requirements of the Act and the rules made thereunder were satisfied but, at the time of the cancellation, these requirements are not satisfied. Thus, both at the time of the issue of the fitness certificate and t the time of its cancellation, what

has to be seen is whether the motor vehicle is complying with the requirements of Chapter V and the rules made under the Act; otherwise, a curious result would follow. While a fitness certificate can be issued without insisting upon a taxi-meter to an auto-rickshaw it can be cancelled under sub-section (3) as it clearly violates Rules 429 which, even according to the argument of the learned Advocate for the petitioner, is valid u/s 68 of the Act. Although the sub-section (1) of Section 38 is thus unhappily worded, it has to be understood in the light of sub-section (3) and if understood that way it would be clear that there is no inconsistency between sub-section (1) and sub-section (3) of section 38.. From this point of view also, therefore, vires of Rule 429 cannot be doubted.

(10) I am, therefore, satisfied that Rule 429 is not ultra vires of section 70 and that, u/s 38, the Secretary, Regional Transport Authority, can validly insist upon fixation of taxi-meter to an auto-rickshaw before he issues the fitness certificate.

(11) It was then contended that the said Rule is unreasonable. The argument was that Auto-rickshaws collect only four annas per mile by way of charges whereas each meter costs about Rs. 2,000/-. I do not think that these two factors make out the complete economy of this business. Assuming that the test of reasonableness, which is usually applied to rules and bye-laws made by the statutory bodies, is also applicable to the rules made by the State Government, under the powers delegated to it by an Act, but in order that a rule must be unreasonable it must be partial and include in its operation as between different classes, if it was manifestly unjust, if it disclosed bad faith, if it involved such oppressive or gratuitous interference with the rights of those subject to it as could find no justification in the minds of reasonable men, the Court might well say that the Legislature never intended to give authority to make such rules. It is unreasonable and ultra vires. But, it is only in this sense and in this sense only that the question of unreasonableness can properly be regarded. A rule or a bye-law cannot be unreasonable merely because the Court thinks that it goes further than is prudent or necessary or convenient or because it is not accompanied by a qualification or an exception which some Courts may think ought to be there. Viewed in this light, I do not think that the rule can be said to be satisfying this test. Merely because, they charge four annas and the cost of the meter is Rupees 2,000, it does not make Rule 429 as unreasonable.

(12) For the aforesaid reasons, these Writ Petitions fail and are dismissed with costs. Advocate's fee Rs. 50/- (fifty) in each Writ Petition.

(13) Petitions dismissed.