

(1957) 04 MAD CK 0003
In the Madras High Court

S. Krishnaswami Mudaliar and Another	APPELLANT
Vs	
P.S. Palani Pillai and Another	RESPONDENT

Date of Decision : 12-04-1957

Acts Referred:

Motor Vehicles Act, 1988 — Section 133A

Citation : (1957) ILR (Mad) 957 : (1957) 70 LW 577 : (1957) 2 MLJ 243

Hon'ble Judges : Basheer Ahmed Sayeed, J;Balakrishna Ayyar, J;Balakrishna Aiyar, J

Bench : Full Bench

Judgement

Balakrishna Ayyar, J.—Krishnaswamy Mudaliar the appellant in W.A. No. 56 of 1956 had a permit which authorised him to run a bus

M.D.J. 971 between Vellore and Tiruvannamalai. On 1st December, 1953 the Regional Transport Officer, Vellore, varied the conditions of the

permit which Krishnaswamy Mudaliar held so as to enable him to run the bus up to Thanipedi. In effect this gave him an extended route of 20

miles. Similarly Kumaraswami the appellant in W.A. No. 57 of 1956 held a permit which enabled him to operate bus No. M.D.J. 1012 between

Vellore and Tiruvannamalai. On 15th January, 1954 the Regional Transport Officer, Vellore extended the scope of the permit so as to enable the

bus to be plied along a further stretch of eleven miles to Thandrampet. Being aggrieved by the extensions which the Regional Transport Officer had

granted to these two individuals one Pachia Pillai moved the State Government to revise the orders of the Regional Transport Officer. The

Government dismissed the revision petitions. Thereupon Pachia Pillai filed two Writ petitions, Nos. 350 and 351 of 1954 in this Court to quash the

orders of the Regional Transport Officer and the Government.

2. Both the petitions were heard by Rajagopala Ayyangar, J. Following the decision of a Bench of this Court in W.A. No. 107 of 1955 he held

that the Regional Transport Officer had no jurisdiction to extend the scope of the permits in the manner he had done. He therefore set aside the

orders of the Regional Transport Officer and the Government. Krishnaswamy Mudaliar and Kumaraswamy Mudaliar then filed two separate

appeals. These came on for hearing before Krishnaswamy Nayudu, and Ramaswami, JJ., and they took the view that the decision in W.A. No.

107 of 1955 required reconsideration and so referred the appeals to a Full Bench. This is how the matter comes before us.

3. The Motor Vehicles Act of 1939 is a Central Act, Act IV of 1939. It has been amended in important respects by the legislature of this State

and to these reference will presently be made. The principal Act set up three authorities to deal with privately owned transport vehicles and stage

carriages, terms which include the buses which the public habitually use. These are the Regional Transport Authority, the Provincial or as it is now

called the State Transport Authority and the Appellate authority. Each one of them has various powers. Section 48(d)(ii)(a) empowers the

Regional Transport Authority to direct that a stage carriage shall be used only on specified routes or in a specified area. u/s 44(3) the State

Transport Authority is given power to perform the duties of a Regional Transport Authority where there is no such authority and also to co-

ordinate and regulate the activities and policies of the Regional Transport Authorities in the State. Section 64 empowers the setting up of an

authority to hear appeals from the decisions of State Transport Authorities and Regional Transport Authorities. In 1942 Section 133-A was added

to the principal Act. The first Sub-section thereof empowers State Governments to establish a Motor Vehicles department. The third Sub-section,

among other things, empowers the State Governments to make rules "" to regulate the discharge by officers of the Motor Vehicles department of

their functions...the authorities to which they shall be subordinate, the duties to be performed by them "" and other matters.

4. In 1948 the Legislature of Madras made some important changes in the Act. It introduced Section 44-A which runs as follows:

The Provincial Government may appoint a Provincial Transport Commissioner; and notwithstanding anything contained in this Act, may, by

notification in the Fort St. George Gazette, authorise such Commissioner or any officer subordinate to him, to exercise and discharge, in lieu of any

other authority prescribed by or under this Act, such powers and functions as may be specified in the notification.

It also introduced Section 48-A which empowers the State Transport Authority to vary, cancel or add to the conditions attached to a stage

carriage permit in pursuance of Clause (d) of Section 48. Similarly it also introduced Section 51-A which confers similar powers on the State

Transport Authority in relation to contract carriages. It also introduced Section 64-A which confers a revisional power on Government in respect

of all authorities and officers subordinate to it under the Act.

5. Presumably in exercise of the powers conferred on them by Section 133-A of the principal Act the Government of Madras set up a Transport

Department of which the Transport Commissioner is the head. Below him are placed, as the half-yearly list of gazetted officers issued by the

Government of Madras shows, the State Transport Authority and Deputy Transport Commissioner, Madras, the Secretary, State Transport

Authority, Madras and the Regional Transport Officers. These Regional Transport Officers are the Secretaries of the Regional Transport

Authorities.

6. In W.P. No. 806 of 1951 Subba Rao, J., expressed the view that a combined reading of Sections 48 and 48-A made it clear that the

conditions attached to a permit can be varied only by the Provincial Transport Authority. He observed:

When the statute expressly states that a Regional Transport Authority can impose a condition, and in the very next section says that such a

condition can be varied by a particular authority, it is impossible to hold that the condition can be varied by another authority.

7. This decision appears to have produced a certain amount of inconvenience to bus operators and so on 14th February, 1953 Government issued

G.O. Ms. No. 527, Home Department, by which inter alia, they empowered the Regional Transport Officers and the Secretary, Road Traffic

Board, Madras,

to exercise the powers and discharge the function of the State Transport Authority under Sections 48-A, 51-A and 56-A of the said Act.

8. In paragraph 3 of that order they issued certain directions as to the manner in which this power was to be exercised. Section 44-A has already been quoted, and, it will have been noticed that it empowers the State Government notwithstanding anything in the Act to authorise the Transport Commissioner or any officer subordinate to him to exercise and discharge the powers and functions of any authority set up under the Act. It is in exercise of the power conferred by an order issued under this section that the Regional Transport Officer, Vellore extended the routes on which the buses of the appellants Krishnaswamy Mudaliar and Kumaraswami were authorised to ply.

9. The view taken by Subba Rao, J., was not accepted by the Bench which heard the appeal from his decision. They considered that the Regional Transport Authority had power to vary the conditions of a permit it had granted and if we may say so with respect that view is clearly right. But somehow or other the notification which Government had issued on 14th February, 1953 in consequence of the decision of Subba Rao, J., was not withdrawn. That is why in the present case the Regional Transport Officer extended the permits of the appellants in the manner he did.

10. In Writ Appeal No. 107 of 1955 a Bench of this Court observed:

Now Section 44-A of the Act refers to a Provincial Transport Commissioner and to officers subordinate to him. It was not disputed that the Regional Transport Officer as an officer created by the Statute was not subordinate to the Provincial Transport Commissioner as such. In our opinion, Section 44-A contemplates officers subordinate to the Provincial Transport Commissioner. The present appeal can be disposed of on a simpler issue i.e., that the purported delegation u/s 44-A to the Regional Transport Officer was bad because the Regional Transport Officer is not an officer subordinate to the Provincial Transport Commissioner. The delegation made to the Regional Transport Officer was therefore ultra vires.

11. Rajagopala Ayyangar, J., felt himself bound by this decision from which it followed that the Regional Transport Officer had no power to effect the variation he did.

12. On Appeal Krishnaswami Nayudu and Ramaswami, JJ., observed:

It is pointed out that no rules have been framed by the Government on which reliance could be placed to show as to whether the Regional

Transport Officers, who are officers of the Motor Vehicles Department, are subordinate to any other authority and in the absence of such rules,

there is nothing to show that the Regional Transport Officers are subordinate to the Commissioner. There are, no doubt, no rules framed by the

Government in this regard. But in the constitution of the Motor Vehicles Department with the prescribed gradation of officers, such department

being a department of the Government, it is not difficult to find as to whether a particular officer is subordinate or superior to another officer in the

department. On this aspect, the learned Counsel for the appellant referred to the Madras Financial Code, Volume I, Chapter II and to Appendix I

to Volume II to show that the Transport Commissioner is constituted head of the department of Transport, which is the Motor Vehicles

Department directed to be constituted u/s 133-A of the Motor Vehicles Act. The head of the department is defined as any authority specially

declared by the Government to be the head of the department. Such a declaration is found in Appendix I in the list of Heads of Departments of the

Madras State, and the Transport Commissioner is constituted the head of the department of transport. That the Madras Transport Service is one

of the State Services is evident from the Madras Civil Services (Classification, Control and Appeal) Rules framed under the proviso to Section

309 of the Constitution of India and one of such services is Madras Transport Services shown as Item 30 to Schedule I of the Rules. In Volume II

of the Madras Services Manual, the category of officers is shown at pages 165, where the Regional Transport Officers come within the second

category and certain qualifications are prescribed for these officers. From the Financial Code, the Madras Services Manual and the Madras Civil

List, it will be seen that the Motor Vehicles Department required to be established u/s 133-A of the Act has been so established by the

Government of Madras by constituting the Transport Department of which the Commissioner is the Head of Department and other Officers

including the Regional Transport Officers constituted a different category of officers.

The head of a department of Government is a person who is the superior officer having the control of the administration of the department under

whom a number of other officers of different categories work, who in the ordinary course of business administration could only be subordinate to

the head of the department, unless there is anything to show that any officer of the department is under the direct control of any other departmental

head or any other authority constituted by the Government. In the present case, the Commissioner being the head of the Department of Transport,

the officers who are constituted and form part of the different categories specified in the Civil Services Manual, of which the Regional Transport

Officers are officers coming under the second category, must be considered to be under the supervisory control of the head of the department and

therefore subordinate to him.

13. The question we have to decide is what does the word " subordinate " in Section 44-A mean ? Three views were pressed before us. One is

that which found favour with Krishnaswami Nayudu and Ramaswami, JJ., and which was compendiously described as administrative

subordination. Mr. Mohan Kumaramangalam strongly urged that this view is right. He remarked that the Act itself does not define the word

subordinate "" anywhere. Admittedly, we have to deal with a department of Government. Now, where specific rules exist defining the relative

superiority or subordination of various officers there is no difficulty. We can then look into the rules and find out who is subordinate to whom. But

here, there are no explicit rules, and where there are no such rules we must look into the set-up of the department, or, in other words, the manner

in which the official hierarchy is arranged to discover who is subordinate to whom. It is incontrovertible that the head of a department is superior to

everyone else in that department. In the Madras Half-Yearly Civil List--see for example the one dated 1st January, 1956 the Transport

Commissioner is shown as the head of the department and the Regional Transport Officers several steps below him. That the Transport

Commissioner is the head of that department is made clear by the entries on page I of the Second Volume of the Madras financial Code. See Item

28 in that list. Read also Entry 30 on page 33 of Volume I of the Madras Services Manual, where the Madras Transport Service is shown as a

State service. That a Regional Transport Officer is subordinate to the Transport Commissioner is further made clear by the entries on page 165 of

Volume II of the Madras Services Manual. There, the Regional Transport Officers are shown as officers, in category 2.

14. In criticism of this reasoning, it was pointed out that if it were correct, a clerk or a person in the Transport Service would be subordinate to the

Transport Commissioner, and, that, therefore, it would be open to the State Government to delegate the powers referred to in that section to a

clerk or a peon. Answering this criticism, Mr. Mohan Kumaramangalam pointed out that we are not entitled to assume that Government would

misuse their powers. The Supreme Court observed in *Dr. N.B. Khare Vs. The State of Delhi*, .

Moreover, this whole argument is based on the assumption that the Provincial Government when making the order will not perform its duty and

may abuse the provisions of the section. In my opinion, it is improper to start with such an assumption and decide the legality of an Act on that

basis. Abuse of the powers given by a law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension.

15. Mr. Mohan Kumaramangalam further pointed out that in the very Government Order which they issued empowering the Regional Transport

Officers to vary the conditions of a permit, they gave directions intended to ensure a proper exercise of the delegated power. Now, the

circumstance that Government did issue such instructions was at once seized upon by the other side to argue that the Legislature could not have

intended and, therefore, would not have authorised Government to delegate powers to a subordinate to whom such instructions had to be issued.

It was also pointed out that if the contention of Mr. Mohan Kumaramangalam were light, it would be open to Government to delegate to an officer

subordinate to the one who granted the original permit the power to vary its conditions and it was further stated that such a situation was reached

when the power to vary the conditions of the permit issued by the Regional Transport Authority was conferred on the Regional Transport Officer,

who is its Secretary.

16. The learned Advocate-General pressed another view which he described as functional subordination. His reasoning was this. Section 44-A

was inserted by persons familiar with the working of Government departments. The Collector of a district for example has various powers and

duties. Normally he cannot possibly discharge every one of them himself. What happens, therefore, is that other officers, gazetted subordinates of

his, act for him. The order that goes out is in law the order of the Collector, but it is actually made by a subordinate of his. Similar arrangements

exist not merely in the office of a District Collector but in the offices of various Heads of Departments. The subordinate of the State Transport

Commissioner referred to in Section 44-A is only such a subordinate of his as can claim to act for him and in his name. The subordinate exercises

no powers of his own. He exercises only the powers of the Transport Commissioner. He derives his powers from and through the Transport

Commissioner who is metaphorically speaking, a conduit pipe. To put it in another way the "subordinate" referred to in Section 44-A must be a

Deputy of the Commissioner. "Subordinate" includes only an officer appointed to assist the Transport Commissioner in the discharge of his duties,

some one over whom the Transport Commissioner can exercise direct control.

17. There are two objections to this theory. One is that it requires the importation into the statute of words which are not there. The reasoning of

the learned Advocate-General requires that the expression "any officer subordinate to him" occurring in Section 44-A should be qualified in

certain ways. But no qualifying words whatever are to be found in the Act. No doubt, Collectors of districts delegate their powers to their gazetted

subordinates and assistants. But that is by virtue of the express provisions contained in, among other things, Regulation VII of 1858.

18. Mr. Mohan Kumaramangalam suggested another objection to the view put forward by the learned Advocate-General. If we exclude the State

Government for the time being, the Transport Authorities set up by the Act are in two tiers; a lower level which might consist of a district or part of

a district or of more than one district and a higher level or the State level. There may be necessity to delegate powers at both these levels. If the

view pressed by the learned Advocate-General were accepted, it would not be possible to effect any delegation at the lower level.

19. The third view was pressed by Mr. M.K. Nambiar, and, for want of a better label it may be called "Statutory subordination". Section 133-A

was introduced by the Central Legislature in 1942. That section empowers State Governments to set up a Motor Vehicles Department and also to

frame rules to determine the subordination of the various officers in that department. Section 44-A was introduced by Madras Act XX of 1948,

that is to say, the provisions made in Section 133-A were already there when Section 44-A was added to the Act. The Act does not contain any separate definition of the word "subordinate". Naturally, no definition was necessary in view of the provision already made in Section 133-A. It mudstones assumed that the Madras Legislature was aware of the existence of Section 133-A when it introduced Section 44-A, and, when it used the word "subordinate" in that section, it must have intended that the word "subordinate" should be understood only in the manner to determine which provision had already been made in the Act.

20. It is no objection to this view to say that even so it leaves the Government to determine who is subordinate to whom and that since Government have already done this when they set up the Transport Service the point raised by Mr. Nambiar is only technical and without substance. "Subordination" can be determined only by rules framed under the Act and before rules can be framed under the Act a particular procedure has to be followed and that procedure affords an opportunity for public criticism. But the procedure by which the Transport "Service" was set up and the question of subordination determined there is different from that laid down for the making of rules under the Act.

21. Of the three views placed before us we are inclined to prefer the third. It appears to us to be the most rational and the most free from objections. It is in accord with all well established rules of interpretation of Statutes. It does not require as the theory of "functional subordination" seems to require, the introduction of new words into the section. It has the merit of being more flexible and practical since it permits of the transfer or delegation of powers not merely at the state level but at the regional level also. It ensures that there will be no transfer or delegation of powers except to officers whose subordination has been determined by rules properly framed under the Act. It also ought to avoid the anomaly that has now occurred of a person in the position of a Secretary of a body being empowered to vary the conditions of a permit granted by that body. We therefore adopt this view.

22. It was admitted before us that no rules have been framed under the Act making the Regional Transport Officer subordinate to the Transport Commissioner. It follows that under the statute he has not yet become a

subordinate of the Transport Commissioner. The delegation of powers made to him by the G.O. Ms. No. 527, dated 14th February, 1953 is bad. It means the appeals fail and they are dismissed with costs. Advocate fees, Rs. 250. One set in W.A. No. 56 of 1956.

Basheer Ahmed Sayeed, J.

23. I agree. I only wish to add that at one stage I was inclined to agree with the view taken by the Bench which has referred this appeal.

But on further consideration I have come to the view that the opinion of the Referring Bench could at best be only one that meets with

administrative convenience and exigencies and cannot be said to be one that accords with the requirements of the provisions of the Statute. It has

missed the essential point that the subordinate authority to whom power is delegated should be a subordinate to the Transport Commissioner under

the Statute or Rules made thereunder.

24. Mr. Mohan Kumaramangalam was not able to point out any proceedings to show that the Regional Transport Authority was made subordinate

to the Transport Commissioner under any provisions of the Motor Vehicles Act in order to validate the Government Order delegating power to the

Regional Transport Authority as such a statutory subordinate. Further in my opinion there was no more justification for continuation in force of the

Government Order after the decision of the Bench of this Court in L.P.A. No. " 200 of 1952. It is also noteworthy that even the Advocate-

General who appeared for the State argued only against the validity of the Government Order far from supporting the same to any extent.

Therefore in the view we have taken on this reference it only remains for the Government to withdraw the Government Order and frame rules in

the manner prescribed determining the Subordinate Officers u/s 133-A and thereby resolve the difficulties that have arisen.