

(1998) 08 MAD CK 0140
In the Madras High Court
Case No : Writ Petition No. 15521 of 1989

S. Lalitha

APPELLANT

Vs

The State of Tamil Nadu and others

RESPONDENT

Date of Decision : 28-08-1998

Acts Referred:

Motor Vehicles Act, 1939 — Section 60(1), 60(2)
Tamil Nadu Motor Vehicles Rules, 1989 — Rule 143, 149

Citation : (1998) 3 CTC 710

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mrs. Radha Gopalan, for the Appellant; Mr. K.V. Venkatapathi, Advocate General assisted by Mr. Thirugnanasambandam, for the Respondent

Final Decision : Dismissed

Judgement

1. The prayer in the writ petition is to issue a Writ of Declaration declaring Rule 149 of the Tamil Nadu Motor Vehicles Rules, 1989 insofar as it relates to the delegation of power to suspend the permit u/s 86(4) of The Motor Vehicles Act, 1988 read with Section 68(5) of the said Act as ultra vires Constitution of India insofar as the petitioner is concerned.

2. The case of the petitioner is briefly stated hereunder:- The petitioner is a stage carriage operator, contract carriage operator and public carrier operator in Tamil Nadu State operating among others a contract carriage TSA. 3979 since replaced by TAS 3033 which is covered by an All India Tourist Permit issued by the 2nd respondent herein u/s 63(7) of the Motor Vehicles Act, 1939. The said vehicle was checked by the Motor Vehicles Inspector, Red Hills at 5.45 p.m. on 10.8.88 and four irregularities were reported. A charge Memo dated 21.12.88 was issued to the petitioner to show cause as to why the permit should not be cancelled or suspended and the petitioner submitted her explanation dated 22.12.1988 denying the charges. After hearing the petitioner, the 2nd respondent cancelled the permit in the exercise of the powers vested in him u/s

60(1) of the Motor Vehicles Act, 1939 with immediate effect. The petitioner thereupon filed appeal No. 140 of 1989 before the third respondent and secured an order of stay of the proceedings of the second respondent cancelling the permit. The said appeal is still pending. In the Memo of grounds of appeal, the petitioner has taken a specific ground that the exercise of power of cancellation by the 2nd respondent herein of the petitioner's permit, after delegating the power of suspension to his Secretary, without any categorisation in the rules of the irregularities for which the lesser punishment of suspension could be inflicted by the Secretary, has resulted in a violation of the petitioner's fundamental right as guaranteed under Article 14 of the Constitution of India. Since the argument of this nature involving the vires of the statutory provisions and the rules framed thereunder, cannot be canvassed before the third respondent herein in the appeal, the petitioner has approached this Court by way of the present writ petition. It is stated that the action of the second respondent in reserving some cases to be disposed of by himself and at the same time directing his Secretary to dispose of cases of similar nature or cases involving grave offences under delegated powers when the Secretary can only suspend the permit, has resulted in serious discrimination, violating the petitioner's fundamental right under Article 14 of the Constitution of India. As regards the Tamil Nadu Motor Vehicles Rules framed under the Act, the rule 143(ix) which gives power to the Regional Transport Authority to delegate u/s 86 to suspend a permit specifically excludes the stage carriages from its purview. Therefore, the validity of the said rule cannot be questioned at least insofar as stage carriages are concerned; but on the other hand, when it comes to the power of the State Transport Authority, Rule 149 authorises to delegate his powers to the Secretary to the Transport Commissioner, Secretaries to State Transport Authority and Assistant Secretaries without any restriction. The failure to prescribe the categories of irregularities for which lesser punishment could be inflicted by the Secretary to the second respondent herein under the delegated powers, has resulted in such arbitrariness. With those averments, she prayed for declaration of Rule 149 of the said Rules as ultra vires the Constitution of India insofar as he is concerned.

3. Even though all the 3 respondents have been duly served with notices from this court even in the year 1990, none of them have chosen to file counter affidavit informing their defence to this Court.

4. In the light of the above factual position, I have heard the learned counsel for the petitioner as well as respondents.

5. Mrs. Radha Gopalan, learned counsel appearing for the petitioner, after taking me through the relevant provisions of the Motor Vehicles Act as well as Motor Vehicles Rules, more particularly Section 86(4), 68(5) of the 1988 Act and Rule 149 of the said Rules, she has raised the following contentions:

(i) The action of the second respondent in reserving some cases to be disposed of by himself and at the same time directing his Secretary to dispose of cases of similar nature or cases involving grave offences under delegated powers when

the Secretary can only suspend the permit, has resulted in serious discrimination, violating the petitioner's fundamental right under Article 14 of the Constitution of India;

(ii) The failure to prescribe the categories of irregularities for which lesser punishment could be inflicted by the Secretary to the 2nd respondent herein under the delegated powers, has resulted in such arbitrariness;

(iii) Rule 149 which deals with powers of the State Transport Authority to delegate as such, has not prescribed any restrictions, limitations and conditions thus resulting in arbitrariness; and

(iv) In view of decision of the Division Bench of this Court reported in B. Batcha Saheb Vs. Secretary, Regional Transport Authority North Arcot at Vellore and Another, , striking down the then Rule 134-A of the Motor Vehicles Rules on the ground that the categories of default for which lesser punishment could be inflicted has not been prescribed the same is applicable to the present case.

On the other hand, learned Advocate General has raised the following contentions:

(i) Inasmuch as the occurrence took place on 10.8.88 when the old Act was in force and the new Motor Vehicles Act, 1988 came into force with effect from 1.7.89 the relief sought for by the petitioner challenging the validity of Rule 149 of the Tamil Nadu Motor Vehicles Rules, 1989 is only an academic and if that is so, this court need not consider on mere academic matters; and

(ii) In view of Section 60(2-A) inserted on 2.3.70 the reliance of the petitioner regarding the decision of the Division Bench judgment reported B. Batcha Saheb Vs. Secretary, Regional Transport Authority North Arcot at Vellore and Another, , may not be much helpful to the petitioner's case.

6. I have carefully considered the rival submissions.

7. We are concerned with the constitutionality of Rule 149 of the Tamil Nadu Motor Vehicles Rules, 1989. Rule 149 runs as follows:

" 149. Powers of State Transport Authority- delegation of-

The State Transport Authority may for the prompt and convenient despatch of its business by a general or special resolution delegate to the Secretary to the Transport Commissioner, Secretaries to State Transport Authority and Assistant Secretaries all or any of the power vested in it under the Act and under these rules:

Provided that no delegation shall be made in respect of the following:

(i) Powers u/s 68(3) to co-ordinate and regulate the activities of the Regional Transport Authority;

(ii) Power u/s 68(3) to settle all disputes or difference of opinion between the

Regional Transport Authorities:

Provided further that in delegating its powers and functions, the State Transport Authority may impose any restrictions, limitations and conditions as it deems fit."

Some more provisions of the 1989 Act have been referred to by the learned counsel for the petitioner. Section 86(4) of the Motor Vehicles Act runs as follows:-

"(4) The powers ... under sub section (1) (other than the power to cancel a permit) by the transport authority which granted the permit may be exercised by any authority or person to whom such powers have been delegated under sub section (5) of Section 68."

Section 68(5) of the Motor Vehicles Act, 1988 runs as follows:

" (5) The State Transport Authority and any Regional Transport Authority if authorised in this behalf by rules made u/s 96 may delegate such of its powers and functions to such authority or person subject by such restrictions, limitations and conditions as may be prescribed by the said Rules."

It is very much pressed that even though for the convenience, it is open to the State Transport Authority to delegate powers to the Secretary to the Transport Commissioner, Secretaries to State Transport Authority and Assistant Secretaries in the absence of prescribed categories of irregularities for which lesser punishment could be inflicted by the Secretary to the second respondent under the delegated powers has resulted in such arbitrariness. It is true that the guidelines or categories of irregularities have not been prescribed while the same are exercised by Secretaries and Assistant Secretaries. In this regard, straightaway I shall consider the Division Bench decision of this court referred to by the learned counsel for the petitioner, which is reported in B. Batcha Saheb Vs. Secretary, Regional Transport Authority North Arcot at Vellore and Another, . No doubt, while construing Rule 134-A of the Madras Motor Vehicles Rules (1940) delegating the power u/s 60(1) of the Motor Vehicles Act, 1939, the following conclusion of the Division Bench is very much relied on:-

"15. There can be no doubt whatever, that, so long as the delegation can result in such a situation, the Rule itself directly offends Article 14 of the Constitution. This is very clear from the Dicta to The State of West Bengal Vs. Anwar Ali Sarkar, . I do not think that this point need really be laboured. Where there are two possible procedures, one of which may be far graver in its consequences than the other, for the same categories of default, this is a situation to which Article 14 could strictly apply. There must be some reasonable classification, of the categories to which the graver punishment could be attracted, and these to which the punishment of suspension alone would be appropriate. Actually, it would not even be adequate if some broad division is made, such as, that the Regional Transport Authority selects cases, at his discretion, either for being dealt with by his Secretary, or being retained for his own disposal.

To cite the observations of their Lordships:

"The mere fact of classification is not sufficient to relieve a statute from the reach of the quality clause of Article 14. To get out of its reach it must appear that not only a classification has been made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection." (Page 86, paragraph 37). Indeed, as the Rule stands, there is not even a semblance of a classification, and it is entirely a matter of arbitrariness and chance, whether the Regional Transport Authority would retain his own power to deal with some of the cases, or forward others, or direct them, to be forwarded, to the Secretary for being dealt with, by exercise of the power of suspension. It may even be that for the very same default, some cases are dealt with in one way. some in the other.

16. Such a Rule cannot be possibly maintained, since it patently violates Article 14 of the Constitution that is the vice of this particular instance of delegation. Accordingly, these proceedings are allowed and Rule itself must be struck down. It is needless to point out that it is always open to the State Government, now, to frame an appropriate Rule or Rules, making reasonable classification in respect of the categories of default in Section 60(1) and relating the delegation of the lesser power, which is the object of the Rule, to this classification. The Writ Appeals and petitions are accordingly allowed and the Rule Nisi made absolute."

According to the learned counsel for the petitioner, in view of the Division Bench decision and in the absence of any guidelines or categories of irregularities prescribed for the enforcement by the delegated authorities, Rule 149 of the said Rules is liable to be struck down.

8. Though learned Advocate General has contended that since the incident, namely, the vehicle was checked by the Motor Vehicles Inspector on 10.8.88, a new Motor Vehicles Act came into force only on 1.7.89, the relief sought for is only an academic, I am unable to accept his argument in the light of Section 217 of the Motor Vehicles Act, 1988 which deals with repeals and savings. In the light of the various clauses in the said provision even though the inspection was made prior to 1.7.89, it is open to the petitioner to pursue her remedy even after enforcement of New Act.

9. Regarding the second contention of the learned Advocate General, as requested, I have carefully perused Section 60 (2-A) of the Motor Vehicles Act, 1939. The said provision was inserted after the decision of the Division Bench rendered in B. Batcha Saheb Vs. Secretary, Regional Transport Authority North Arcot at Vellore and Another, . After going through the law laid down by Their Lordships in the Division Bench as well as Section 60 (2-A) of the 1939 Act, I am in agreement with the contention of the learned Advocate General that the said decision deals with delegation of powers by the Regional Transport Authorities and not State Transport Authority. Accordingly, I sustain the objection raised by the learned Advocate General.

10. Inasmuch as the constitutionality of Rule 149 of the Tamil Nadu Motor Vehicles Rules, 1989 is being questioned in this Writ Petition, apart from the contentions raised by the learned Advocate General it is worthwhile to refer the following decisions:

(1) P.J. Irani Vs. The State of Madras, ; (2) Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, ; (3) Bhakta Rame Gowda and others Vs. State of Karnataka and another, .

11. In P.J. Irani Vs. The State of Madras, , Constitutionality of the provisions of the Madras Buildings (Lease and Rent Control) Act (Act 25 of 1949) was considered. An argument was advanced in that case that without any proper guidelines or categories the power to be exercised by the Government is arbitrary and violative of Article 14 of the Constitution of India. Their Lordships in that Constitutional Bench have expressed thus:

"In considering whether the reasons given by the Government are sufficient to bring the order within the objects of the Act, the High Court had no power to act as if it were sitting in appeal over the Government's decision. A court cannot set aside an order u/s 13 on the ground that it would not itself have made the order for the reasons for which the Government had made it. All that Court has to see is whether the power was used for any extraneous purpose, that is to say, not for achieving the object for which the power had been granted. When it is alleged that the power was used for a purpose other than achieving the object, for which the power is granted, the initial onus must be on the party which alleges abuse of power and there must be prima facie evidence in support of the allegation. It is only then that the onus may shift."

While rejecting the contention that the Act conferred an unguided and arbitrary power on Government to discriminate between one building and another and choose at their will and pleasure, Their Lordships while citing an earlier decision have concluded thus:

"It is argued that the Section does not lay down the principles on which exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Article 14. It is true that the Section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs Section 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided: Vide Harishankar Bagla and Another Vs. The State of Madhya Pradesh, ."

The learned Judges of the High Court were therefore correct in their conclusion that Section 13 of the Act was constitutionally valid but that individual orders of Government passed under that Section could be the subject of judicial review in the manner already indicated."

12. In the second case, namely, Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, , another Constitutional Bench of the Hon"ble Supreme Court has concluded thus:

"40. As regards the second part of the contention relating to the discretion conferred on the appropriate Government to specify the authority which may exercise the power under sub-section (2), it may be stated that the said discretion is given to the Government itself and not to a subordinate Officer. In Virendra Vs. The State of Punjab and Another, this Court was dealing with Section 2 (1) (a) of the Punjab Special Powers (Press) Act, 1956, which uses the expression "the State Government or any authority so specified in this behalf. The validity of the said provision was assailed on the ground that it gave unfettered and uncontrolled discretion to the State Government or to the Officer authorised by it and reliance was placed on the earlier decision of this Court in Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, . Rejecting the said contention, this court held: (SCR p. 321)

"In the first place, the discretion is given in the first instance to the State Government itself and not to a very subordinate officer like the licensing officer as was done in Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, . It is true that the State Government may delegate the power to any officer or person but the fact that the power of delegation is to be exercised by the State Government itself is some safeguard against the abuse of this power of delegation."

41. It has, however, been submitted that in Verendra case, this Court struck down Section 3(1) of the said Act which also used the same expression, viz., "the State Government or any authority authorised by it in this behalf. But on a perusal of the judgment, we find that Section 3(1) was not struck down on the ground that the power could be delegated by the State Government to any authority. It was held to be bad on the ground that there was no time-limit for operation of the order made u/s 3(1) and no provision was made for any representation being made to the State Government and in this regard the provisions contained in Section 3 were contrasted with those contained in Section 2(1) (a) where in a time-limit of two months had been prescribed for operation of the order and a right to make a representation to the State Government had also been conferred. Keeping in view the fact that the power to specify the authority which can exercise the power conferred under sub- section (2) of Section 25-N has been conferred on the appropriate Government, we are unable to hold that the delegation of the power to the appropriate Government to specify the authority renders the provisions of Section 25-N as arbitrary or unreasonable. The first contention is, therefore, rejected."

13. In the last decision, namely, Bhakta Rame Gowda and others Vs. State of Karnataka and another, the following conclusion is relevant:

"6. A Constitution Bench of this Court had held in B.S. Vadera Vs. Union of India

(UOI) and Others, that rules made under the proviso to Article 309 of the Constitution are legislative in character and, therefore, they could be made with retrospective effect. The same principle was reiterated in several decisions, viz., Chief Secretary to Government of Andhra Pradesh and another Vs. V.J. Cornelius and others, , P.D. Aggarwal and Others Vs. State of U.P. and Others, , Supreme Court Employees' Welfare Association v. Union of India, , R.L. Bansal and others Vs. Union of India and others, , and V.K. Sood Vs. Secretary, Civil Aviation and others, . The view of the Tribunal that the rules cannot be made with retrospective effect is *ex facie* illegal and unsustainable. The rules also were struck down on yet another ground, namely, until the guidelines have been provided for working out the rules, the rules are non est and, therefore, the second proviso is *ultra vires*. This view also is not correct. The operation of the rules does not depend on the guidelines to be laid. Merely because the guidelines have not been provided in the manner in which the backlog vacancies are required to be filled up, the second proviso to Rule 8 made in exercise of the power under proviso to Article 309 does not become non est. (*Italics supplied*)

At best, it remains unworkable. The Government is required to formulate the guidelines under Article 16(4) of the Constitution as to the manner in which the backlog vacancies are required to be filled up. Admittedly such guidelines have not been provided including preparing the roster, identifying the backlog vacancies and the placement of the officers between the general and reserved categories which were annexed for the first time along with the counter affidavit filed in the Tribunal. Under these Circumstances, the view of the Tribunal is not correct. It may be construed to the extent the second proviso remains unworkable until the guidelines under Article 16(4) have been issued by the State Government. Under these circumstances, whatever promotion have been given, they would remain valid subject to laying down of the guidelines and working out of the backlog vacancies in the light of the guidelines provided thereunder and adjustment of the 11 officers promoted under the second proviso. All the promotions will be subject to the above fitment and adjustment between general candidates and the reserved candidates in the respective categories, namely, Scheduled Castes and Scheduled Tribes and Other Backward Classes in accordance with the guidelines and the law laid down by this court. The State Government is directed to complete the exercise within a period of three months from the date of the receipt of the order."

14. In the light of the above decisions of the Supreme Court, I hold that even in the absence of any categories or details of irregularities, Rule 149 cannot be termed as unreasonable or arbitrary or vitiated. As observed by Their Lordships, the exercise of the power being quasi judicial in nature and not purely administrative and discretionary, guidelines are not required. Further, the power has to be exercised in accordance with the objective indicated in statement of objects and reasons given in the Act. Accordingly, absence of guidelines is not a vitiating factor when the power is of quasi judicial and not purely administrative and discretionary nature. Thus I do not find any merit in the writ petition and the

same is dismissed. No costs.