

(1995) 04 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No's. 2249, 653 of 1995 and 15506 of 1994 etc, and batch of 351 Nos.

S. Sengoda Gounder

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 19-04-1995

Acts Referred:

Arms Act, 1959 — Section 15, 4
Companies Act, 1956 — Section 10, 24, 57
Constitution of India, 1950 — Article 20(3)
General Clauses Act, 1897 — Section 11, 15, 24, 4, 6
Motor Vehicles Act, 1988 — Section 109, 110, 111, 111(1), 111(2)

Citation : (1995) 04 MAD CK 0021

Hon'ble Judges : K.A. Swami, C.J.;Raju, J

Bench : Division Bench

Advocate : S.C. Palaniswamy, S. Varadachari, Ms. K. Akhilandeswari, C.R. Krishnamoorthy, T. Padmanabhan, K.A. Sadagopan, N. Gopalakrishnan, R.S. Ramanujam, Dr. Subramanyan, P.B. Krishnan, K. Hariharan, Mrs. Radhagopalan, Ms. E. Sasikala, S. Gajendran, E.R. Nagamanickam, C.K. Vishnupriya, D. Selvam, V. Sanjeevi, C.R. Muralidharan, S. Parthasarathy, K. Kuppuswamy, P. Sukumar, Mrs. Bhagirathi Narayanan, K.M. Venugopal, K.R. Ramanujam, Ms. P. Vedavalli, M. Krishnappan, Ms. R. Swarnalatha, M. Baskar, K. Vijayakumar, S. Venugopal, R. Natesan, Ms. I. Sivakami and M. Sadagopan, for the Appellant; P. Sathasivam, Special Government Pleader, for the Respondent

Judgement

K.A. Swami, C.J.—Though Writ Petitions 4018, 4476, 4693 to 4685 and 4702 of 1995 are shown In the cause list but the respondents

are not served. Learned Special Government Pleader takes notice for the respondents. As they are connected with the batch of writ petitions

involving common questions of law and facts, we have heard those petitions also along with other petitions. In all these petitions,, the petitioners

who are stage carriage operators, have sought for a declaration that Rules

176(6) and 367 of the Tamil Nadu Motor Vehicles Rules, 1989

(hereinafter referred to as the Rules) are ultra vires of the powers conferred upon the State Government u/s 111(2)(g) of the Motor Vehicles Act,

1988 (hereinafter referred to as the Act).

2. During the pendency of these Writ Petitions, clause (g) of sub-section(2) of Section 111 came to be omitted by Central Act 54 of 1994 and at

the same time, the said provision came to be re-enacted by the very same Central Act 54 of 1994 as clause(o) in sub-section (1) of Section 110

of the Act.

3. Having regard to the contentions urged on both sides, the following points arise for consideration:-

(a) Whether Rules 176(6) and 367 of the Rules have ceased to be operative on the coming into force of Act 54 of 1994 by which clause (g) of

sub-section(2) of Section 111 was deleted and the same provision was re-enacted as clause(o) in sub-section (1) of Section 110 of the Act

thereby vesting the rule making power in the Central Government instead of the State Government.

(b) If point (a) is answered in the negative, whether Rules 176(6) and 367 of the Rules are ultra vires of the powers conferred by clause (g) of sub-

section(2) of Section 111 of the Act on the State Government.

Point (a): 4. Chapter VII of the Act deals with construction, equipment and maintenance of motor vehicles. It is in this Chapter, Sections 110 and

111 fall. In fact, the said Chapter contains only 3 sections, viz., Section 109 deals with the general provisions regarding construction and

maintenance of vehicles. Section 110 deals with the power of the Central Government to make rules and section 111 deals with the power of the

State Government to make rules. Clause(g) of sub-section(2) of Section 111 as in force upto 14/11/1994 as on that date, Act 54 of 1994 came

into force, was as follows:-

....

(2) Without prejudice to the generality of the foregoing power, Rules may be made under this section governing all or 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 description or in particular

circumstances, namely:-

(g) the placement of audio-visual or audio or tape recorder type of devices in the vehicle.

As already pointed out, this clause came to be deleted with effect from 14-11-1994 by Act 54 of 1994 and re-enacted as clause (o) in Section

110 of the Act.. The re-enacted clause (o) is exactly similar. In other words, clause (g) in sub-section(2) in Section 111 has been bodily lifted and

placed as clause (o) in sub-section (1) of Section 110.

5. Rule 176 of the Rules framed by the State Government deals with the permit conditions. One of the conditions of the permit as mentioned in

sub-rule (6) of Rule 176 is as follows:-

(6) It shall be a condition of every stage carriage that no audio equipments shall be fixed or played inside the vehicle.

6. Similarly, Rule 367 of the Rules deals with audio visual, etc, and prohibition in stage carriages. The said Rule reads thus:-

367. Audio visual, etc., - prohibition in stage carriages.- No audio visual, radio or tape recorder or similar type of devices shall be fixed in any

stage carriage.

7. It is contended on behalf of the petitioners that as on and from 14-11-1994, the very rule making power has been taken away from the State

Government and it has been vested in the Central Government, that the impugned Rules cannot be held to be operative, therefore the State

Government is not entitled to enforce them. It is also contended that as the rule making power relating to the topics, viz., the placement of audio

visual or radio or tape recorder type of device in the vehicle is vested with the Central Government by Act 54 of 1994 as such the Parliament has

in express terms displayed the contra intention, therefore even on applying Sections 6 and 24 of the General Clauses Act, the Rules cannot be held

to continue to exist, because the amendment effected is not compatible and is inconsistent with the clause (g) of sub-section (2) of Section 111

which has been omitted by the very enactment An extreme contention also has been taken that Section 24 of the General Clauses Act does not

even apply to a case on hand, there fore the question of applying Section 24 to the General Clauses Act does not arise.

8. On the contrary, it is contended by learned Special Government Pleader that

as Central Act 54 of 1994 repeals one of the provisions of the Central Act and re-enacts the same provisions in the other portion of the Act and as the very same provision is continued, though the power to make rule on the subject is transferred to the Central Government, nevertheless, it cannot be said that there is a contra intention shown, or the amendment can be said to be inconsistent with the repealed provision, as such Sections 24 and 6 of the General Clauses Act are attracted.

9. We are of the view that the contentions raised on behalf of the petitioners cannot be accepted. It may be pointed out at once that the subject matter of clause (g) of sub-section (2) of Section 111 as it stood prior to coming into force of Act 54 of 1994 and the subject matter of clause (o) of sub-section (1) of section 110 of the Act is the same as enacted by Act 54 of 1994 is the same. Whenever a statute is repealed and re-enacted and there is no contrary intention found in the re-enacted statute, all acts done under the repealed enactment are continued, having regard to the provisions contained in Section 6 read with Section 24 of the General Clauses Act.

10. Section 6 of the General Clauses Act, 1897 (Central) reads thus:-

5. Effect of repeal: - Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto

made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment as repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment

as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and such penalty, forfeiture or punishment may be

imposed as if the repealing Act or Regulation had not been passed.

As far as Section 6 of the General Clauses Act is concerned the stress would be on the underlined words "anything duly done," occurring in clause

(b).

11. Section 24 of the General Clauses Act reads thus:-

24. Continuation of orders, etc. issued under enactments repealed and re-enacted.- Where any Central Act or Regulation is, after the

commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment,

notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with

the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is

superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted and when

any Central Act or Regulation, which by a notification u/s 5 or 5-A of the Scheduled Districts Act, 1874(14 of 1874) or any like law, has been

extended to any local area, has by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions

of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

As far as Section 24 of the General Clauses Act is concerned, we have to lay stress on the words underlined above and hold that "unless it is

otherwise expressly provided" and "so far as it is not inconsistent with the provisions re-enacted." the rules, regulations and acts done under the

repealed enactment would continue.

12. The matter is no more res Integra. It has been considered by the Supreme Court in a number of decisions. We will only deal with a few of

them. In State of Punjab v. Mohan Singh (AIR 1955 S.C. 84), there was a repeal and re-enactment. It was held,

But when the repeal is followed by fresh legislation on the same subject, we would-undoubtedly have to look to the provisions of the new Act, but

only for the purpose of determining whether they indicate a different intention. The line of enquiry would be not whether the new Act expressly

keeps alive old rights and liabilities, but whether it manifests an intention to destroy them. The Court cannot therefore subscribe to the broad

proposition that S. 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would

be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such

incompatibility of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material.

Again, in the very same decision, it is further held,

...the expression ""anything done"" occurring in S. 11 does not mean or include an act done by a person in contravention of the provisions of the

Ordinance. What the section contemplates and keeps alive are rules, notifications or other official acts done in exercise of the powers conferred by

or under the Ordinance and these powers are mentioned in several sections of the Act.

Therefore, in the light of the aforesaid interpretation placed on the words ""anything done"" occurring in section 6 of the General Clauses Act, it shall

have to be held that the Rules framed by the State Government when it had the power to frame, did fall within the expression ""anything done

under the repealed enactment. With regard to the contra intention, in the very same decision, it has been observed thus:-

We think that the provisions of Ss. 4, 7 and 8 make it apparent that it was not the intention of the legislature that the rights and liabilities in respect

of claims filed under the Ordinance shall be extinguished on the passing of the Act, and this was sufficient for holding that the present case would

attract the operation of S.6 of the General Clauses Act.....but as has been laid down above the point for our consideration is whether the Act

evinces an intention which is inconsistent with the continuance of rights and liabilities accrued or incurred under the ordinance and in our opinion this

question has to be answered in the negative.

Applying the very same test, in the instant case, we find that the re-enacted provision deals with the very same subject and it contains the very

same wordings. It does not direct discontinuance of the Rules framed under the repealed enactment. Therefore, it is not possible to hold that the

re-enacted provision merely because it vests the rule making power on the same subject with the Central Government is inconsistent or

incompatible with the continuation of the rules and regulations that were framed

by the State Government (sic) under the repealed enactment.

13. This decision has been followed in *The. Prathan Maharashtra Sugar Syndicate Ltd v. Janardhan Ramachandra Kulkarni and others* (AIR 1960

S.C. 794) in which there was repeal of 1913 Act by the Companies Act, 1956 wherein S.153-C of the 1913 Act was repealed and similar

provisions were also re enacted. Before re-enactment under the 1913 Act in application filed under S.153C of the Companies Act was filed

before the Additional District Judge, Poone. After the coming into force of 1956 Act it was contended that the District Judge could not continue

the proceedings because the jurisdiction had been altered. It was held that S. 6 of the General Clause Act was applicable. In addition to that it was

also further held that as 1956 Act apart from repealing 1913 Act has also re enacted similar provision. S.24 of the General Clauses Act was also

attracted. The relevant portion of the discussion is contained in Paragraph 9 of the Judgment which is as follows: -

We are unable to accept these contentions. Section 10 of the Act of 1956 deals only with the jurisdiction of courts. It shows that the District

Courts can no longer be empowered to deal with application under the Act of 1956 in respect of matters contemplated by S. 153-C of the Act of

1913. This does not indicate that the rights created by S.153-C of the Act of 1913 were intended to be destroyed. As we have earlier pointed out

from 1955 1 SCR-898: ((S) AIR 1955 SC 84) the contrary intention in the repealing Act must show that the rights under the old Act were

intended to be destroyed in order to prevent the application of S.6 of the General Clauses Act. But it is said that S. 24 of the General Clauses Act

puts an end to the notification giving power to the District Judge. Poona to hear the application under S. 153-C of the Act of 1913 as that

notification is inconsistent with S.10 of the Act of 1956 and the District Judge cannot therefore continue to deal with the application. Section 24

does not however purport to put an end to any notification. It is not intended to terminate any notification; all it does is to continue a notification in

force in the stated circumstances after the Act under which it was issued, is repealed. Section 24 therefore does not cancel the notification

empowering the District Judge of Poona to exercise jurisdiction under the Act of 1913. It seems to us that since under S.6 of the General Clauses

Act the proceeding in respect of the application under S.153-C of the Act of 1913 may be continued after the repeal of that Act, it follows that the

District Judge of Poona continues to have jurisdiction to entertain it. If it were so, the S.6 would become infructuous.

From the aforesaid Rule laid down by the Supreme Court, it is clear that the rules framed by the State Government in exercise of its power under

clause (g) of sub-section (2) of section 111 of the Act continue to be in force, until they are repealed or replaced by new Rules framed by the

Central Government or held to be ultra vires of the Rule-making power of the State Government.

14. In *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, the question as to continuation of Coal Mines Regulations

framed under the Mines Act, 1923 which was repealed by 1952 Act and similar provisions were re-enacted by the same Act on the coming into

force of 1952 Act, was considered. It was held that in view of the provisions contained in Section 24 of the General Clauses Act, the regulations

framed under the repealed enactment must be deemed to have been continued as 1952 Act re-enacted the provisions contained in Mines Act,

1923. The relevant portion is contained in paragraph 9 of the judgment, which is as follows:-

The present is a case where the Mines Act, 1923 was repealed and was re-enacted with modifications as the Mines Act, 1952. Section 29 of the

1923 Act empowering the Central Government to make regulations consistent with the Act for specified purposes was re-enacted in the 1952 Act

as S.57: regulations were made in 1926 under S.29 of the 1923 Act but at the relevant date, in 1955, no regulation had been made under S.57 of

the 1952 Act, so that in 1955 the Mines Regulations, 1926 had not been suspended by any regulations made under the re-enacted provisions of

S.57 of the 1952 Act: Therefore if S.24 of the General Clauses Act is operative, the Mines Regulations, 1926 were in force at the relevant date in

1955 and shall be deemed to have been made under S.57 of the 1952 Act, as there is no provision express or otherwise, in the later Act to the

contrary and the regulations are not inconsistent with the re-enacted provisions.

15. In *Neel alias Niranjana Majumdar Vs. The State of West Bengal*, Sections 6 and 24 of the General Clauses Act came up for consideration.. In

that case, the Notification was issued u/s 15 of the Arms Act which was repealed and re-enacted in West Bengal (Prevention of Violent Activities)

Act, 1970. While considering the applicability of Sections 6 and 24 of the General Clauses Act and following the decision in The Chief Inspector

of Mines and Another Vs. Lala Karam Chand Thapar etc., , it was held as follows:-

Section 6(b) of the General Clauses Act however, provides that where any Central Act or regulation made after the commencement of the Act

repeals any earlier enactment then, unless a different intention appears, such repeal shall not affect the previous operation of any enactment so

repealed or any thing duly done or suffered thereunder. Section 24 next provides that where any Central Act is repealed and re-enacted with or

without modification, then, unless it is otherwise expressly provided, any notification issued under such repealed Act shall, so far as it is inconsistent

with the provisions re-enacted continue in force and be deemed to have been made under the provisions so re-enacted unless it is superseded by

any notification or order issued under the provisions so re-enacted. The new Act nowhere contains an intention to the contrary signifying that the

operation of the repealed Act or of a notification issued thereunder was not to continue. Further, the new Act re-enacts the provisions of the earlier

Act, and Section 4 in particular as already stated, has provisions practically identical to those of Section 15 of the earlier Act. The combined effect

of Sections 6 and 24 of the General Clauses Act is that the said notification of 1923 issued u/s 15 of the Act of 1878 not only continued to operate

but has to be deemed to have been enacted under the new Act.

Possession of arms, such as a sword, without a licence or contrary to the terms and conditions of such a licence would thus be an offence

punishable with imprisonment under the Arms Act, 1959. Though the possession of and carrying a sword were alleged to have been committed in

1970, that is, after the repeal of the Arms Act, 1878, the said notification of 1923 issued under the repealed Act would despite its repeal continue

to be in force and its provisions would be deemed to have been enacted under the new Act by virtue of S.24 of the General Clauses Act.

This was the construction placed upon these two sections by this Court in the Chief Inspector of Mines v. Lala Karam Chand Thapar (1962) I

SCR 9 = AIR 1961 S.C. 83 where the question as to the meaning of Sec.24 of

the General Clauses Act arose. In that case, the directors of a colliery company and its managing agents were prosecuted under the Mines Act, 1952 for violation of Coal Mines Regulations of 1926 made under Mines Act, 1923, which was repealed by 1952 Act. Repelling the contention that the prosecution in respect of the violation of those Regulations made under the repealed Act was unauthorised and invalid, the Court construed Section 24 of the General Clauses Act to mean that when an earlier Act is repealed by a later Act Which re-enacted the provisions of the earlier Act, Regulations framed under the repealed Act continue in force and are deemed to have been made under the provisions so re-enacted, must be so construed as to have continuity of force and are to be regarded as laws in force at the date of the offence within the meaning of Article 20(3) of the Constitution. In that case, the breach of those Regulations took place before the commencement of the new Act. Even then the prosecution under the new Act was held to be valid on the ground that the Regulations were deemed to have been made under the new Act. In the present case, the offence of being in possession of and carrying a sword without licence took place after the commencement of the new Act of 1959. The said notification by virtue of Section 24 of the General Clauses Act having to be deemed to have been made u/s 4 of the Arms Act, 1959, the notification was in force on the date of the alleged offence.

16. We have already pointed out that there is no contrary intention shown by Act 54 of 1994, as the very same subject has been dealt with by clause (0) of Sub-section (1) of Section 110 by re-enacting the omitted provisions contained in clause (g) of Sub-section (2) of section 111. Therefore, we are of the view that subject to the rules being intra vires of the powers of the State Government to frame such rules, Rules 176 (6) and 367 must be held to have been continued irrespective of the fact that the power to frame rules on the subject as to placement of audio visual or radio or tape recorder type of device in the vehicle has been taken away from the State Government and vested with the Central: Government by Act 54 of 1994. Further, neither fresh Rules are framed by the Central; Government nor the Rules framed by the State Government are repealed by the Central Government. Point (a) is answered accordingly.

17. Point (b)

It is contended on behalf of the petitioners that Rules 176 (6) and 367 of the Rules completely prohibit placement of audio equipments and also the audio visual, radio or tape recorders or similar type of devices in any stage carriage. The said rules are beyond the rule making power of the State Government; that Section 111 (2) (g) as it stood prior to 11-04-1994 did not empower the State Government to frame such rules so as to deny to the stage carriage owners to have the audio visual, radio or tape recorder type of devices fixed in a stage carriage vehicle. We have already pointed out that chapter VII of the Act deals with the construction, equipment and maintenance of motor vehicles, Section 109 provides that every motor vehicle shall be so constructed and so maintained as to be at all times under effective control of the person driving the vehicle. Section 110 empowers the Central Government to frame the rules in respect of the topics mentioned therein and Section 111 empowers the State Government to frame rules in respect of the topics mentioned therein.

18. It is contended on behalf of the petitioners that wherever the enactment intended to empower the State Government to frame Rules to prohibit or restrict of doing certain thing, it has specifically provided by using the expression ""prohibiting"", such as in clauses (b) and (c) of Section 111 (2), State Government has been specifically empowered to frame the Rules to prohibit or restrict the use of audible signals at certain times in certain places and to prohibit carrying of appliances likely to cause annoyance of danger, whereas in respect of other matters, where the Legislature intended to empower the State Government to make rule for allowing certain things it has not used the expression ""prohibit"" or ""restrict"". It has not used negative language. It has used only positive language such as seating arrangement in public service vehicles and protection of passengers against weather, the periodical testing and inspection of vehicles by prescribed authorities, particulars other then registration marks to be exhibited by vehicles and the manner in which they shall be exhibited, the use of trailers with motor vehicles and the placement of audio visual or radio or tape recorder type of devices in the vehicle. Therefore, it is contended that clause (g) of sub-section (2) of Section 111 did not empower the State Government to frame the rules as per Rules 176 (6) and 367 of the Rules.

19. Whereas it is contended by learned Special Government Pleader that sub-section (1) of Section 111 uses the words, "'A State Government may make rules regulating'", that as the word "regulating" includes prohibition also, it is open to the State Government to prohibit fixing of radio or tape recorder type of devices or placement of audio visual in any stage carriage in the interest of the traveling public and also the general public and if such devices are allowed to be used in a stage carriage vehicle, the attention of the driver is likely to be diverted and he may not be able to concentrate on the road. consequently, it may result in disaster to passenger due to accident.

20. Firstly, the word "regulating" is not used in sub-section (2) of Section 111 of the Act. Sub-section (1) of Section 111 of the Act which uses the word "regulating" deals with construction, equipment and maintenance of motor vehicles and trailers with respect to all matters other than the matters specified in subsection (1). of Section 110. Rules under these three topics have been framed and the same are contained in Chapter VII of the Rules. Though the rule-making power of the State Government under sub-section (1) of Section 111 of the Act is not subject to the provisions contained in sub-section (2) of section 111 of the Act, nevertheless, it is also possible to hold that the rule-making power enjoyed by the State Government u/s 111 (1) of the Act is more comprehensive than the one enjoyed under sub-section (2) of section 111 of the Act. Even then it is not possible to construe the expression "'Regulating'" occurring in sub-section (1) of section 111 of the Act out of context and widen the scope of clause (g) of sub-section (2) of section 111 of the Act. The expression "'Regulating'" is used in the context of making rules as to construction, equipment and maintenance of motor vehicle. Audio-visual or radio or tape-recorder type of device do not form an integral part of construction, equipment and maintenance of motor vehicle as without these devices motor vehicle can be complete and fit for operation. Further, the expression "Regulating" or "Regulate" is not ordinarily synonymous with the word "prohibit".

21. Learned Special Government Pleader placed reliance on the two decisions of the Supreme Court in K. Ramanathan Vs. State of Tamil Nadu and Another, and State of Tamil Nadu Vs. Hind Stone and Others,

22. It may be pointed out that it is an established rule of interpretation that a meaning to be given to the word "regulating" is determined in the

context in which such expression is used. In *K. Ramanathan Vs. State of Tamil Nadu and Another*, , at paragraph No. 19, the Supreme Court has

specifically observed thus:-

It has often been said that the power to regulate does not necessarily include the power to prohibit and ordinarily the word "regulate" is not

synonymous with the word "prohibit". This is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition.

At the same time, the power to regulate carries with it full power over the things subject to regulation and in absence of restrictive words, the

power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control and involves the adoption of a rule or

guiding principle to be followed or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to

check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression, it

would therefore appear that the word "regulation" cannot have any inflexible meaning as to exclude prohibition. It has different shades of meaning

and must take its colour from the context in which it is used having regard to the purpose and object of the legislation and the Court must

necessarily keep in view the mischief which the Legislature seeks to remedy"". Therefore, the meaning to be attached to the word ""regulating

depends upon the object and intendment of the enactment and the context in which such word is used. In the instant case, even if we accept the

contention of the learned Special Government Pleader that the word "regulating" occurring in sub-section (1) can also be read as governing or

applicable to the provisions contained in sub-section (2) it has to be read in the context in which such word occurs. If the word ""Regulating"" is

examined having regard to the object of Chapter VII of the Act and also the words contained in clause (g) of sub-section (2) of Section 111 and

keeping in view that is stated in para 21 above, it is not possible to hold that the word ""regulating"" empowered the Government to completely

prohibit the placement of audio visual or fixing of the radio or tape recorder type of device in any stage carriage vehicle. We have already pointed

out that the very wordings contained in subsection (2) of Section 111 disclosed that wherever the Legislature intended to empower the State

Government to make a rule prohibiting or restricting of doing certain things, the words ""prohibiting"" and ""restricting"" have been used, but in other

places, no such words are used. Further, sub-section (2) as already pointed out, does not contain any such expression "regulating". It only

provides that ""without prejudice to the generality of the foregoing power, rules may be made under this section governing all or any of the following

matters either generally in respect of motor vehicles or trailers of a particular class or description or in particular circumstances, namely:-

Therefore, as sub-section (2) opens with the words without prejudice to the generality of the foregoing powers which are contained in sub-section

(1) of Section 111 of the Act, we have considered the power of the State Government keeping in view the context in which the word "regulating"

is used and the object and the purpose for which audio visual has to be placed in a stage carriage and radio or tape recorder type of devices is to

be fixed in a stage carriage. In conclusion, we are of the view that the word ""Regulating"", occurring in subsection (1) of section 111 cannot be held

to empower the State Government to frame rules completely prohibiting the placement of audio visual or fixing of radio or tape recorder type of

devices in the vehicle, when sub-section (2) of section 111 of the Act specially empowers the State Government to frame the Rules regarding

placement of audio-visual or fixing of radio or tape-recorder type of devices in the vehicle. Of course, it would have been possible for the State

Government to prescribe certain conditions, and/or specifications of the vehicles in which the audio visual equipments could be placed or radio or

tape recorder type of devices could be fixed. But, Rules 176 (6) and 367 are framed in such a way that it is not even possible to read down those

rules. The rules completely prohibit the placement of audio or fixing of the radio or tape recorder type of devices in a stage carriage" vehicle.

23. Similarly, the rule contained in the decision reported in State of Tamil Nadu Vs. Hind Stone and Others, cannot also be made applicable to

present case in the light of what is stated above.

24. It is next contended that if the audio visuals are allowed to be placed in a stage carriage vehicle or radio or tape recorder type of devices are

allowed to be fixed, it would affect the public health and also the safety and security of passengers.

25. It is not possible to appreciate as to how placement of such electronic devices would in any way affect the public health. It was open to the

State Government to specify the type of devices to be fixed and also the safety measures to be taken, to ensure that the concentration of the driver

of the vehicle is not in any way affected. It was also open to the State Government to specify as to the body of the vehicle to be constructed in

such a way that the use of such electronic media or device in the vehicle does not in any way disturb the driver. However, the State Government

had chosen to frame the Rules prohibiting the use of electronic devices in a stage carriage, contrary to the provision contained in Section 111 (2)

(g) of the Act as it stood at the relevant point of time in these days of improved transport system and when the whole attempt is to make traveling a

pleasure it is not possible to hold that a stage carriage cannot be permitted to be provided with such devices. Therefore, we are of the view that

Rules 176 (6) and 367 of the Rules are ultra vires of the Powers of the State Government. Accordingly, they are liable to be struck down. Point

(b) answered accordingly. For the reasons stated above, these writ petitions are allowed. Rules 176 (6), 367 of the Rules are declared as ultra

vires of the rule making power of the State Government and the same are struck down. In the facts and circumstances of the cases, there will be

no order as to costs. In view of the orders passed in the main writ petitions, no further order are necessary in the connected writ miscellaneous

petitions and the same shall stand disposed of accordingly.