
(1988) 09 KAR CK 0030
In the Karnataka High Court
Case No : W.P. Nos. 9908/88, etc

S.K. Sharma

APPELLANT

Vs

The Regional Transport Authority

RESPONDENT

Date of Decision : 26-09-1988

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 96(X)
Motor Vehicles Act, 1939 — Section 44

Citation : (1989) 3 KarLJ 279

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-In W.P.9908/88 rule has already been issued. In other writ petitions rule has not been issued. As in all these writ petitions the same resolution passed by the respondent delegating its power is challenged, rule is issued in the remaining writ petitions and all the petitions are heard for final disposal on consent of both sides.

2. The respondent in exercise of its power under sub-section(5) of Section-44 r/w Section 68 of the Motor Vehicles Act 1939 (hereinafter referred to as the Act) and Rule 96(x) of the Karnataka Motor Vehicles Rules 1963 (hereinafter referred to as the Rules), has passed the impugned resolution delegating its power to compound the offence. The said resolution reads thus:

"Sl.No.47, Sub.No.772/87-88. To fix the quantum of penalty and such other action to be taken u/s 60 of M.V.Act, 1939 against the owner of the Vehicle being used under special permit in violation of permit conditions.

RESOLUTION: There are 264 Heavy Passenger Vehicles in addition to some taxis running under Special permits in Bangalore Region. This Authority has delegated the powers of grant of special permits to the Secretary, RTA, for speedy disposal since it is held by the Hon'ble High Court of Karnataka in R.L. Doddamani v RTA, Bijapur reported in KLJ 1982, page 439 that in the scheme of the act applications under Section 63(6) of the Act should receive priority in the matter of disposal and should be disposed of well before the period for which the

Special permits sought for commences. Failing to do so would be to defeat the very purpose for which the provision was made in the Act.

Considerable number of check reports are received, wherein offences of use of vehicles covered under Special permits being used as stage carriages for carrying passengers not included in the Contract by collecting individual fares from each passengers for one side journey, picking up and setting down passengers not included in the contract on the line of the route, using the vehicles on unauthorised route performing unauthorised route performing unauthorised trips, etc. Other offences like non-production of documents, carrying overload, not performing journey according to the programme, not carrying"carrying list of passengers included in the contract and travelling in the vehicle.

Special permits are issued for such short periods or for a single journey that the cancellation of the permit is neither possible in the ordinary circumstances nor is of such a nature as to be effective-deterrent against the operator.

Whenever repeated cases of misuse of special permits was received, this authority relying on the decision of the Hon"ble High Court in Canara Public Convenience v RTA, reported in AIR 1971 Mysore 356 resolved to disqualify such operators from obtaining special permits for a period of fifteen days. This order was challenged by the respective owners before the KSTAT who upheld the orders of this Authority. The orders of the KSTAT was challenged by these owners before the Hon"ble High Court of Karnataka. The Hon"ble High Court of Karnataka in W.P. 13196 to 13220/1985, allowed the writ petitions and held that no such restriction or condition is imposed by the Act and Rules. Thus it follows that the impugned orders, which disqualifies the petitioners from obtaining special permits cannot at all be sustained.

However, it was held that it is open to the authority while considering the applications for grant of special permits to take consideration the violations if any of the conditions of the special permits granted in the past committed by the applicant in order to find out whether the applicant is suitable and entitled to grant of special permits. Hence, some applications were being rejected by the Secretary, RTA for offences-committed in the past, but this was not effective in curbing the menace of misuse of special permits.

"The Secretary, RTA under the powers vested in him as also the RTO and RA was suspending the certificate of registration under the provisions of Section 33(1)(b) of MV Act, 1939, relying on the decision of the Hon"ble Court of Karnataka in W.P.Nos, 10399 and 10400/84 dated 6.8.84 in A.B.Chinnagi v RTO Bijapur and another and in K. Noorullah v RTO and others in W.P.64/1981, disposed of on 16.9.1982 and in W.P. 1162/84, in M.H. Asmullah v Dy. Commissioner for transport disposed of on 7.6.1984, and in Ganapaiah Govind v Dy. Supdt. of Police, Karwar, wherein, it was held that if a vehicle is found being used for purpose other than the one for which the permit was granted, then it shall be deemed that the vehicle was being used without a valid permit, this suspension

had some effect on these who are misusing the special permits.

But the Hon"ble High Court of Karnataka in W.P. Appeal No. 2174 and 2175 of 1984 rendered on 9.12.1987 quashed the order of the learned single judge and held that when there is violation of condition of the permit action can be taken under section 60 of the Act and not under Section 33(1)(b).

This authority has not so far fixed the compounding fee that can be recovered for violation of conditions of special permit, if the permit holder is agreeable to do so and the compounding fee prescribed vide sub.No. 111/83-4 dt. 22.10.83 is only in respect of stage carriages, Authorikshaws, taxi cabs and goods vehicles.

Having regard to the offences that are being committed by those who are operating their vehicles under special permits, it is resolved as under:

"For the first offence of using the vehicle as a stage carriage i.e. by carrying passengers not included in the contract by collecting individual fares for one side journey, for picking up and setting down passengers not included in the contract on the line of the route, not carrying list of passengers included in the contract and travelling in the vehicle compounding fee of Rs. 1000/- shall be recovered if the registered owner is agreeable to do so.

For the commission of second offence detailed above, compounding fee of Rs.2000/- shall be recovered if the registered owner is agreeable to compound the offences. In the event of third and subsequent offences referred to above, the applications for grant of special permit shall be rejected, relying on the decision of the Hon"ble High Court in W.P.Nos. 13196 to 13200/85 dt. 11.10.1985.

For purpose of determining first offences, second offences, third offence, the offences committed on or after 1.3.88 shall be taken into consideration.

For other offences like overloading, non-production of documents, not producing DL not exhibiting badge, vehicle plying with mechanical defects, the compounding fee prescribed by the RTA at the meeting held on 23.10.1983 shall be recovered.

For offences of not performing journeys according to the programme or itenary Rs.500/- for the first offence and Rs.1000/- for the second offence shall be recovered if the registered owner is agreeable to compound the offences.

Pending this resolution the Secretary, RTA, has compounded offences committed by some owners under the exigencies of circumstances and the action taken hitherto by the Secretary, RTA, to compound the offences, under the powers delegated to him is ratified."

3. From the aforesaid resolution it is clear that the R.T.A.has delegated the power to compound on payment of certain sum in respect of various offences committed by the Motor Vehicle Operators while operating the vehicles which are mentioned in the said resolution.

4. The contention of the petitioners is that such a delegation with limitations on the exercise of power by the delegate is impermissible, in as much as the relevant rule enabling the respondent to delegate the power itself does not provide for imposition of such restrictions and conditions. On the contrary, it is contended by the learned Government Pleader Sri Ramesh, that it is permissible for the R.T.A. to delegate a part of the power and retain the remaining power to deal with the cases which do not fall in the categories mentioned in the resolution. That the various amounts mentioned in respect of the first and the subsequent offence is only to enable the delegate to exercise the power judiciously and not arbitrarily and it is open to the delegator to fix the amount of compounding fee; that the delegation is beneficial to the motor vehicle operators because it enables them to agree to pay the amount and avoid going through the further proceedings as otherwise they are required to appear before the R.T.A. and contest the proceedings, in addition to this there is no compulsion that they must agree for the amount. Therefore, it is submitted that even if the court were to take the view that the resolution does not squarely fall within the ambit of sub-section (5) of Section 44 read with Section 68 of the Act and Rule 96(x) of the Rules, the court should not strike down the same as it is beneficial to the operators.

5. Having regard to the aforesaid contentions, the point that falls for consideration is whether the impugned resolution is permissible in law?

6. In this regard the relevant provisions of the Act and the Rules are as follows: Sub-section (5) of Section 44 of the Act which is found in Chapter IV of the Act provides thus:

"The State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made under Section 68, may delegate such of its powers and functions to such authority or person and subject to such restrictions, limitations and conditions as may be prescribed by the said rules.

Thus the delegation of such of its powers and functions by the R.T.A. as per sub-section (5) of Section 44 of the Act is governed by the Rules framed under Section 68 of the Act. Even the restrictions, limitations and conditions to be imposed on the exercise of power by the delegate have to be prescribed by the Rules.

7. Section 68 of the Act which also falls under Chapter IV of the Act empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter IV of the Act. In exercise of this power the State Government has framed the Rules to carry out the purpose of Chapter IV of the Act. Those Rules are found in Chapter IV of the Rules. Rule 96(x) of the Rules empowers the R.T.A. for prompt and convenient despatch of business to delegate its power under Section 60 of the Act to suspend the permit, power under Section 63(3) r/w Section 60 of the Act to suspend countersignature of permits and power under Section 60(3) of the Act to recover from the holder of a permit

a sum of money agreed upon by the holder of the permit in lieu of suspension of permit or the countersignature of permit.

8. In this connection it is relevant to refer to Rule 133 of the Rules which relates to recovery of money in lieu of cancellation or suspension of permit. It provides

For the purpose of making an order under sub-section(3) of Section 60 of the Act, the Transport Authority shall consider the circumstances as to the gravity of offence alleged against the permit holder and whether the permit holder has committed similar offence in the past, Sub-Rule (2) thereof further provides that if after considering the circumstances mentioned in sub-rule (1), the Transport Authority is of the opinion that it would not be necessary to cancel or suspend the permit it may, require the holder of the permit, if he is agreeable to pay any money in lieu of cancellation or suspension of the permit to execute an agreement stating the amount he is agreeable to pay in Form No. 77 as a fee for compounding. Sub-rule (3) further provides that if the party executes the agreement in Form No. 77, the Transport Authority may pass a conditional order for recovery from the holder of the permit the sum of money agreed upon. Under sub-rule (4), if the amount ordered under sub-rule (3) is not paid within seven days from the date of agreement, the Transport Authority may notwithstanding that the penalty has been levied may cancel or suspend the permit.

9. Thus the power as to suspension of permit, suspension of counter-signature of permits, grant or rejection of special permit and the determination of other offences mentioned in the impugned resolution and compounding of the offences in lieu of suspension of the permit or countersignature of permit on payment of certain sum agreed upon by the holder of the permit has to be exercised in the light of the provisions contained in Rule 133 of the Rules. It is a judicial power. There is no question of splitting the judicial power into two parts-one part covering suspension of permit and counter-signature of permit and another part covering compounding of the offence in lieu of suspension of the permit and counter-signature of permit. The question of compounding of the offence arises only after determination of facts as to commission of the offence. Thus in order to compounding of the offence, the authority has to first determine whether the offence is committed. Thereafter the authority has to consider whether in the facts and circumstances of the case, the offence can be permitted to be compounded. Thus the entire process is one integrated whole; compounding of the offence alone cannot be separated as it depends upon the proof of commission of the offence. Form No. 77 as provided, enables the holder of the permit to execute the same agreeing to the amount. Thus it is clear from the provisions of the Act and the Rules that as to what should be the amount of compounding fee is a part of one judicial process of determination of facts as to commission of offence. Therefore, it cannot be fixed in advance. It all depends upon the circumstances of each case. Maximum and minimum amount of compounding fee could have been fixed by the legislature but it is not done. The same could have been done by the Rules but the Rules are silent and they do not

prescribe any amount. Thus the Act and the Rules have left the matter to the judicial determination. Therefore the amount of compounding fee has to be determined with reference to gravity of the offence and other surrounding circumstances including the one whether the offence is committed for the first time. Thus it is not permissible for the RTA to fix the amount of compounding fee while delegating the power under Rule 96 of the Rules. Prescription of the amount affects the exercise of judicial power and thereby it contravenes sub-section (3) of Section 60 of the Act which specifically provides that where a permit is liable to be cancelled or suspended under Clause (a) or Clause (b) or Clause (e) of sub-section (1) and the Transport Authority is of the opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then the Transport Authority may instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon. The delegate steps into the shoes of the delegator and is entitled to and should be allowed to exercise the power in the same manner as the delegator. From the relevant rules referred to above, it is clear that Clause (x) of Rule 96 does not specify any limitation or condition to which the delegate may be subjected to in exercising the power delegated to him. Thus in the absence of such limitations and conditions prescribed by the Rules, it was not at all permissible or the R.T.A. while delegating its power to impose limitations on the power of the delegate by fixing the amount of compounding fee. In this regard it is also relevant to notice a decision of the Supreme Court in *B. Rajagopal Naidu v State Transport Appellate Tribunal* (A.I.R. 1964 S.C. 1573) wherein it has been observed thus:

"In interpreting Section 43A, it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law, that in exercising their authority and in discharging their quasi-judicial function, the Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. In the exercise of discretion conferred on a quasi judicial tribunal is controlled by any such direction, that forges fetters on the exercise of quasi judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the principles which have to be followed by the Tribunals in dealing with the said matters. The scope of the jurisdiction of the Tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said Tribunals may also be prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights

guaranteed by the Constitution. But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders. This position is so well established that we are reluctant to hold that in enacting Section 43A the Madras Legislature intended to confer power on the State Government to invade the domain of the exercise of judicial power." (Emphasis supplied)

10. It is contended by Sri Ramesh, learned Government Pleader that the decision was rendered in the context of control on the quasi-judicial power of the Transport Authority by the executive or administrative directions issued by the State Government; whereas in the instant case, the power exercised by the R.T.A. does not relate to executive or administrative matters; but it is delegation of the quasi-judicial power; therefore, the aforesaid observations of the Supreme Court are not applicable to the present case. No doubt those observations were made in the context of the directions issued by the State Government in respect of administrative matters which however invaded the domain of quasi-judicial power of the Transport Authority.

But the principle underlying those observations is that judicial or quasi-judicial power whether exercised by the original authority or the delegate, the authority entrusted with that power must be free to exercise that power in accordance with law and such exercise should not be fettered by any limitations or by any extraneous guidance as it would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial process. Therefore, those observations are applicable to the case on hand. The R.T.A. while delegating its power has imposed a restriction on the exercise of power by the delegate that it should exercise it in a particular manner thereby taking away the application of judicial mind by the delegate in as much as the delegate is not allowed to deal with the matter according to his best judgment. Therefore, the resolution delegating the power under Section 60(3) of the Act with certain limitations cannot be sustained.

11. In this regard it is also relevant to notice a division Bench decision of this Court in *C.P. Nanjunda Chetty v Mysore Revenue Appellate Tribunal, Bangalore* (A.I.R. 1963 Mysore 213). While considering sub-section(1) of Section 60 and sub-section (5) of Section 44 of the Act, it is observed thus:

"It is true that the opening words of Section 60(1) on which the argument rests do state that the transport authority which granted a permit" is the authority which can cancel a permit or suspend it. Do those words mean that transport authority which granted the permit cannot delegate that power to a person or authority selected by it under Section 44 (5)? If Section 44(5) empowers delegation of the powers and functions of a Regional Transport Authority to one selected by it and does not circumscribe the scope of that delegation so as to make the delegation of a particular power outside the ambit of such permitted delegation, what becomes plain is that 11 those powers and functions entrusted to the Regional Transport Authority by the Act which are capable of delegation

may be delegated. That Section 60(1) which confers on the transport authority which granted the permit the power to cancel or suspend it, is, it is obvious, as much subject to the provisions of Section 44(5) of the Act as are the other provisions of the Act conferring power on a transport authority or imposing a duty on it. If the submission made for the petitioner that a power confided by the Act is exercisable only by that authority to which is expressly confided, is accepted, Section 44(5) would be devoid of content and becomes purposeless. In my opinion, the true construction to be placed on Section 60(1) is that the authority which can cancel or suspend a permit is the authority "which granted it, unless that power is delegated by it under Section 44(5). Once such delegation is made, the delegate steps into the place of the authority whose delegate he is and becomes the repository of that power. If that was the process by which the Secretary of the Regional Transport Authority, Chitradurga acquired the power to suspend a permit, the argument that he was not the person who granted the permit to the petitioner can be of no avail since the power exercisable by the Secretary is really the power of the authority which granted the permit which has devolved on him by delegation." (Emphasis supplied)

12. Thus from the aforesaid observations, it is also clear that once delegation of quasi-judicial power takes place, the delegate steps into the place of the authority whose delegate he is and becomes the repository of that power. Whereas in the instant case, the delegate is not entitled to exercise the power of the R.T.A. in the same manner in which the R.T.A. is entitled to exercise it by reason of the limitation imposed on the delegate by the impugned resolution; therefore, it is impermissible.

13. The contention is that the delegation is in the interest of the motor vehicle operators, therefore, it is a beneficial piece of subordinate legislation, hence even if it is held that it is beyond the power of the R.T.A. it need not be interfered with. In support of this contention, learned Government Pleader has placed reliance on a decision in *M/s. Sha Ghelabhai Devji v Assistant Commissioner of Commercial Taxes* (I.L.R. 1985 Kar.1330). It is not possible to agree with the contention. There is no question of delegation being beneficial to the operators of the Motor vehicles. On the contrary, the delegation is harmful since it takes away the judicial application of mind by the delegate and thereby it causes great harm to the Motor Vehicle Operators because without application of the judicial mind to the facts and circumstances of the case, the delegate can only ask the motor vehicle operators whether they are willing to pay the amount as prescribed in the resolution. In this regard it is contended that it is open to the Motor Vehicle Operators to agree or not to agree. That again leads to duplication of proceedings and does not serve the purpose because the R.T.A. is not relieved of its burden. Hence the contention is not well-founded.

14. For the reasons stated above, the point raised for determination is answered in the negative. Consequently, these writ petitions are entitled to succeed. Accordingly, these writ petitions are allowed. The impugned resolution passed

in Subject No. 772/87-88 dated 24-2-1988 passed by the R.T.A. Bangalore, is quashed reserving liberty to the respondent to delegate the power in accordance with law and in the light of the observations made in this order.

If any proceeding is pending before the Secretary, R.T.A. Bangalore against any of the petitioners pursuant to the impugned resolution passed in Subject No.772/87-88 dated 24-2-1988, the Secretary, R.T.A. shall transmit the same to the R.T.A. which shall deal with those cases in accordance with law.

Sri P.R. Ramesh, H.C.G.P. is permitted to file his Memo of Appearance on behalf of the respondents in six weeks.

Writ petitions allowed.