
(2003) 03 AP CK 0050

In the Andhra Pradesh High Court

Case No : W.A. No's. 100, 123 and 124 of 2003

Statewide Recognized [RTA] Agents Welfare Association and
Others

APPELLANT

Vs

The Government of A.P. and Others

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Andhra Pradesh Educational Service Untrained Teachers (Regulation of Service and
Fixation of Pay) Act, 1991 — Section 2, 3
Constitution of India, 1950 — Article 14, 16, 162, 226, 309
Road Transport Corporations Act, 1950 — Section 53

Citation : AIR 2003 AP 358 : (2003) 3 ALT 352

Hon'ble Judges : Devinder Gupta, C.J.;B. Sudershan Reddy, J

Bench : Division Bench

**Advocate : S. Ramachander Rao, K.R. Prabhakar and P. Venkat Rao, for the
Appellant; The Additional Advocate General, for the Respondent**

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—These three writ appeals may be disposed of by a common judgment, since they are filed against the common order dated 6-1-2003 passed by a learned single Judge of this Court.

2. The petitioners in W.P. Nos. 21029, 20712 and 20522 of 2002 are the appellants in this batch of writ appeals. They have invoked the jurisdiction of this Court under Article 226 of the Constitution of India challenging the legality and validity of G.O.Ms. No. 178, Transport, Roads and Buildings (Tr.I) Department, dated 8-10-2002 on various grounds. They have accordingly prayed for issuance of a writ of Mandamus declaring the impugned G.O., as arbitrary, illegal, unjust, capricious and violative of principles of natural justice apart from being violative of Articles 14, 19, and 21 of the Constitution of India.

3. The learned single Judge after an elaborate consideration of the matter dismissed all the writ petitions. Hence these writ appeals.

4. We have elaborately heard the submissions made by Sri S. Ramachander Rao, learned Senior Counsel appearing on behalf of the appellants.

5. In order to appreciate the submissions made by the learned Senior Counsel, it may be just and necessary to notice the relevant facts leading to filing of the writ petitions:

6. The Government of Andhra Pradesh in G.O.Ms. No. 750, Home, dated 5-4-1965 issued Administrative Rules for Licensing and Regulating the conduct of Recognised Agents to represent Motor Vehicles Operators in the Office of the State Transport Authorities and Regional Transport Authorities. In G.O.Ms. No. 706, Transport, Roads and Buildings, dated 21-8-1976, the said administrative rules/orders were cancelled as it was found that they could not curb the malpractices of the Agents in the office of the Transport Department.

7. It appears that even after withdrawal of the said administrative rules/orders, it was found that the unlicensed Agents were indulging in some unlawful activities resulting in discredit to the Transport Department. It is under those circumstances, the Transport Commissioner has requested the Government to reintroduce the system of Agents by duly making certain modifications to the Administrative Rules issued in G.O.Ms. No. 750, Home, dated 5-4-1965. The Government having accepted the request of the Transport Commissioner issued Administrative Rules for the purpose of licensing and regulating the conduct of the recognised agents to represent the applicants before the Secretaries of the State and Regional Transport Authorities in the State. These Administrative Rules are called "ADMINISTRATIVE RULES FOR LICENSING AND REGULATING THE CONDUCT OF RECOGNISED AGENTS TO REPRESENT APPLICANTS BEFORE THE SECRETARY, STATE TRANSPORT AUTHORITY AND SECRETARIES, REGIONAL TRANSPORT AUTHORITIES IN THE STATE OF ANDHRA PRADESH" (for short "the Administrative Rules"). These Rules were notified in G.O.Ms. No. 255, Transport, Roads and Buildings (Tr.III) Department, dated 25th July, 1985.

8. The said Administrative Rules inter alia declare that no person shall be considered as recognised agent unless he holds a licence in form "B" appended to the Rules granted by the Secretary, State Transport Authority or by the Secretary, Regional Transport Authority of the region in which he resides. Application forms are prescribed to be filled in by the persons desirous of obtaining the licence. Certain qualifications are also prescribed. It is not necessary to notice in detail the scheme of the Administrative Rules. The whole object of the Administrative Rules, which are in the nature of executive instructions, issued by the Government is to facilitate the vehicle owners to be represented by a recognised agent and assist them by providing necessary guidance in filling the necessary applications and payment of required fee and taxes under the Motor Vehicles Act and Andhra Pradesh Motor Vehicles Taxation Act, and to file necessary papers in the office of the Regional Transport Office etc., on behalf of the vehicle owners and to receive back the papers after processed by the department. The said Administrative Rules also provide for

suspension and cancellation of the licence granted to the recognised agent and disqualify him from holding such licence in future and even to strike off his name from the roll of the recognised agents, if he is found to be indulged in any malpractice and activity detrimental to the principals" (owners of the motor vehicles) interest or prejudicial to the good, administration of the Transport Department in general and of the office of the State Transport Authority in particular.

9. In supersession of the Administrative Rules so issued from time to time and referred to hereinabove, the Government vide G.O.Ms. No. 207, Transport, Roads & Buildings (Tr.II) Department, dated 29th June, 1988 issued the revised Administrative Rules making certain changes. The revised rules themselves were issued in order to ensure the accountability of the recognised Agents to the principals (owners of the motor vehicles) as well as the Transport Department.

10. Barring some minor changes, the scheme of the Administrative Rules continued to be the same enabling the recognised agents to whom the licences were granted to represent the owners of the motor vehicles before the authorities concerned in connection with applying for and obtaining the various licences, permits etc., as may be required.

11. The Government of Andhra Pradesh under the impugned G.O., abolished the agent system and accordingly cancelled the Administrative Rules earlier issued for Licensing and Regulating the conduct of recognised agents to represent private motor vehicles operators in the offices of the Transport Department. The Government in its wisdom thought it fit to dispense with the continuance of the agent system. In the impugned G.O. itself, it is mentioned that it has come to the notice of the Government that the authorised agents were being engaged as intermediaries for collection of unauthorised money from the public to let vehicles through check posts, for issue of driving licences, registration of vehicles and such other services. Free movement of so called licenced agents within the office premises, through whom transactions are conducted, caused undue nuisance to the public resulting in bad name to the department. Prosecution of such intermediaries involved in such unauthorised activities of collection of unauthorised money has increasingly become difficult. It is under those circumstances, the Government came to the conclusion that it has become essential to give up the system of licenced agents and to prohibit their entry into the offices of the Transport Department. The Government also came to the conclusion that on account of computerisation of offices in the department, the needs of the customers are being taken care of through the "help desks" established in the offices, which not only provide guidance but also supply the statutory forms and in the process, the interference of agents has substantially come down. In view of the changed scenario that the dependency of agents has come down substantially, the Government felt that there is no need to continue the agent system. It is the said G.O., which is impugned by the recognised agents in the writ petitions filed by them.

12. Sri S. Ramachander Rao, learned Senior Counsel contended that the action of the Government in abolishing the very agent system is arbitrary, capricious and violative of fundamental rights guaranteed by Articles 14 and 21 of the Constitution of India. It is mainly contended that the said decision of far reaching consequences resulting in displacement of about more than 3500 licenced agents without any notice and providing any opportunity of being heard is violative of principles of natural justice. It was submitted that by virtue of the impugned order of withdrawal of the very agent system, the subsisting licences stood cancelled even before the expiry of the time specified in the licences. Such a course is not permissible in law.

13. In the counter affidavit filed by the Government it is clearly explained that the very system was conceived to help the public visiting the offices of transport department in connection with various transactions and with a view to provide assistance in filling up the statutory application forms to be presented before the proper authorities in the department. The system of recognising the agents for such purposes, according to the averments made in the counter affidavit, has resulted in widespread practice of authorised agents acting as intermediaries for collection of unauthorised money from the public for completion of various transactions. Situation had reached to such a stage where on account of free access of the licenced agents and their free movement within the office premises resulted in causing undue nuisance to the public adversely effecting the image of the department. The Transport Commissioner is stated to have observed that the system of licenced agents should be given up since those agents were found virtually functioning as conduits of corruption. The system was found to be misused and bringing bad name to the department. The Government also noticed that on account of computerisation and radical reforms introduced facilitating smooth disposal of applications and requirements of the vehicle owners, there is hardly any necessity to continue the agent system. After taking those factors and host of other relevant factors into consideration, the Government, as a policy measure, decided to dispense with the agent system. The Government accordingly reformulated its decision to do away with the old agent system. Such a decision is purported to have been taken in the best public interest and in order to curb the unauthorised activities like collection of unauthorised money from the public causing undue nuisance to the public.

14. We have already adverted to the scheme of the Administrative Rules issued by the Government from time to time. These Rules are not framed by the Government in exercise of any rule making power traceable to the provisions of the Motor Vehicles Act, 1988 and the Andhra Pradesh Motor Vehicles Taxation Act, 1963. They are in the nature of executive instructions meant for the guidance of the officers of the department in the matter of recognising an individual as agent. The scheme itself is meant for the convenience of the owners of the vehicles and providing them facility of being represented before the authorities by the recognised agents. The scheme was never intended to provide any employment opportunities to the recognised agents. Admittedly, there is no

employer and employee relationship between the Government and the recognised agents. The recognised agents were only authorised to assist the vehicle owners in providing necessary guidance and help them in filling up the necessary applications and payment of required fee and taxes etc.

15. The Administrative Rules themselves do not confer any enforceable right as such upon any of the recognised agents. The rules were designed to structure the discretion of various authorities in the matter of recognising individuals as agents and with a view to ensure transparency and accountability in their action of conferring recognition of individuals as agents. These Rules do not even prescribe for the payment of any remuneration as such to the recognised agents. Payment of remuneration, if any, obviously, is in between the principal (owner of the vehicle) and agent.

16. A bare perusal of the Administrative Rules issued from time to time in clear terms reveal that the Government depending upon the need and necessity and with a view to provide assistance to the owners of the motor vehicles in the matter of filing applications seeking licences etc., introduced the agent system purely as an administrative measure. The said system was introduced for the first time in the year 1965 and remained in force till 21-8-1976 when the entire system was abolished. The system was reintroduced at the request of the Transport Commissioner and duly notified in G.O.Ms. No. 255, Transport, Roads & Buildings (Tr.III) Department, dated 25-7-1985. It is evident that after abolition of the agent system in 1976 until its reintroduction in 1985, the agent system was not prevalent for a period of more than nine years.

17. The Administrative Rules for licensing and regulating the conduct of recognised agents to represent the motor vehicles operators merely provide an access to the recognised agents and their entry into the premises of the offices of the department in order to provide necessary assistance to the vehicle owners. But for such recognition, they would not have had the access to participate in the matter of processing the applications of the owners of the vehicles.

18. The State did not pay even a pie at any point of time either as commission or fee of whatsoever nature to any of the recognised agents. The contention that the abolition of the policy has resulted in deprivation of livelihood of the recognised agents is totally misconceived and unsustainable.

19. It is stated in clear terms that the Government received reports from the various responsible quarters that the very agent system introduced to facilitate prompt processing of applications by the vehicle owners has become counter productive.

20. Be it as it may, the Government came to the conclusion that on account of computerisation and other reforms introduced there is no need to have the agent system any further.

21. The short question that falls for consideration is as to whether the appellants were entitled for any notice and opportunity of being heard in the matter? Whether the principles of natural justice are applicable to the situation on hand? Whether the Government is required to comply with the principles of natural justice whenever it changes its policy and reformulates a new policy?

22. The learned Senior Counsel placed strong reliance upon the decision of the Supreme Court in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, . The learned Senior Counsel relied upon the observations made by the Supreme Court in the said decision that "rule of law posits that the power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. The audi alteram partem rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi judicial orders but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule."

23. In order to decide whether the decision in *Delhi Transport Corporation* (1 supra) is at all applicable to the situation on hand, it is necessary to briefly notice the question that had fallen for consideration in the said case.

24. In the civil appeals, special leave petitions and civil miscellaneous petitions, the question of constitutional validity of the right of the employer to terminate the services of permanent employees without holding any inquiry in certain circumstances by reasonable notice or pay in lieu of notice had fallen for consideration. The central question involved in all those cases is one, i.e. whether the clauses permitting the employers or the authorities concerned to terminate the employment of the employees by giving reasonable notice or pay in lieu of notice but without holding any inquiry, are constitutionally valid and, if not, what would be the consequences of termination by virtue of such clauses or powers, and further such powers and clauses can be so read with such conditions which would make such powers constitutionally and legally valid? The whole controversy centered around Regulation 9 (b) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952. The said Regulations were framed in exercise of the powers conferred u/s 53 of the Delhi Road Transport Act, 1950, which enables the formulation of Regulations. The said Regulation deals with termination of service of an employee of the authority without any notice or pay in lieu of notice. The Apex Court held that "Regulation 9 (b) which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Article 14 of the Constitution." It is in that context, the Supreme Court observed that "audi alteram partem rule

which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule." The observations and the law declared by the Supreme Court are required to be understood in the context that the employment under the public undertakings is held to be a public employment and a public property. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired. The Supreme Court dealt with the question as to whether the service of a permanent employee of a public corporation can be terminated without assigning any reasons whatsoever and by merely issuing one month's notice or one month's pay in lieu of notice.

25. In the case on hand, there is no employer and employee relationship between the State and the recognised agents. There is no law providing for the appointment of the recognised agents to facilitate the vehicle owners for presentation of their applications etc., only through the recognised agents. The Government as a policy measure introduced the system of recognised agents and in view of its own experiences reformulated its policy and accordingly dispensed with the system of recognised agents. In our considered opinion, no legal right much less any fundamental right of any of the appellants has been infringed.

26. The learned Senior Counsel also placed strong reliance upon the judgment of the Supreme Court in *P.Tulsi Das & others v. Government of A.P. & others* 2002 [7] SUP 524 in support of his submission that the rights accrued to or acquired by a citizen even under the executive instructions made in exercise of the executive power under Article 162 of the Constitution would be as much rights acquired under law and protected to that extent. The Supreme Court in the said decision was dealing with an extreme submission made for and on behalf of the State that the rights derived and claimed must be under any statutory enactment or rules made under Article 309 of the Constitution of India and that in other respects there could not be any acquisition of rights validly, so as to disentitle the State to enact the law. It is in that context, the Supreme Court observed:

".....in the absence of Rules under Article 309 of the Constitution in respect of a particular area, aspect or subject, it was permissible for the State to make provisions in exercise of its executive powers under Article 162 which is co-extensive with its Legislative powers laying conditions of service and rights accrued to or acquired by a citizen would be as much rights acquired under law and protected to that extent." (Emphasis is of ours).

27. The Supreme Court further observed that "the orders passed by the Government, from time to time, beginning from February 1967 till 1985 and upto the passing of the Andhra Pradesh Educational Service Untrained Teachers (Regulations of Services and Fixation of Pay) Act, 1991, to meet the administrative exigencies and cater to the needs of public interest really and

effectively provided sufficient legal basis for the acquisition of rights during the period when those instructions were in full force and effect.....Such rights, benefits and perquisites acquired by the Teachers concerned cannot be said to be rights acquired otherwise than in accordance with law or brushed aside and trampled at the sweet will and pleasure of the Government, with impunity."

28. We fail to appreciate as to how the said judgment renders any assistance or supports the claim of the appellants. Certain benefits were given to the untrained teachers concerned under the executive instructions issued by the State Government in exercise of its executive power under Article 162 of the Constitution of India and all of them have reaped certain financial benefits under those instructions. Those instructions themselves were issued in the absence of any statutory enactment or rules made under proviso to Article 309 of the Constitution of India. The benefits so reaped by the untrained teachers acquired the status of right since they have reaped the benefits for a long period from 1965 to 1985. When such rights were sought to be taken away with retrospective effect from 10-2-1967 under sections 2 and 3 (a) of the Andhra Pradesh Educational Service Untrained Teachers (Regulations of Services and Fixation of Pay) Act, 1991, the said provisions were struck down by the Supreme Court as arbitrary, unreasonable and expropriatory and as such is violative of Articles 14 and 16 of the Constitution of India. The prospective exercise of power thereunder, however, was held not unconstitutional. The provisions, which were brought into force with retrospective effect in order to deprive the teachers who have already reaped the benefits, were held to be unconstitutional being expropriatory in their nature, since the impugned provisions made serious inroads into the vested rights of the employees therein.

29. We have already noticed that there is no employer and employee relationship between the State and the recognised agents. No enforceable rights as such were conferred upon the recognised agents.

30. It is very well settled and needs no reiteration in our hands that the judgment cannot be construed as an Act of Parliament. They are to be read in the context of the questions which arose for consideration in the case in which the judgment was delivered and not as embracing all aspects of every question relating to the subject or laying down principles of universal application. The Courts are required to ascertain the true principles laid down by the previous decision, in the context of the questions involved in that case from which the decision takes its colour. (See for the proposition: Krishena Kumar and Others Vs. Union of India and others,).

31. An attempt has been made by the learned Senior Counsel to rely upon the observations made in the judgments of the Supreme Court referred to hereinabove, without any attempt to ascertain the ratio decidendi by an analysis of the facts of the case and the process of reasoning and without adverting to the principle upon which the questions before the Court have been decided. The proposition is so well settled and we do not intend to burden this judgment with

various authorities.

32. It is not possible for this Court to judicially review the relative merits of different policies formulated by the State from time to time introducing the agent system and dispensing with and reviving the same and finally cancelling the system itself. It is quite possible that there can be two honest but different views as to the desirability of continuing or not continuing the system. The Court cannot substitute its own opinion for that of the State. Every administration is entitled to learn from its past experience and precisely that is the reason as to why the policies keep on changing and evolving. The administration cannot be prevented from reformulating its own policies in the light of its own experience.

33. It is true that the Court may even review the policy of the executive if it is clearly demonstrated that such policy is contrary to any statutory provision or the Constitution. But the Court cannot consider the relative merits of different policies and decide for itself whether a wise or better one can evolve.

34. In taking of a policy decision - be it formulation or reformulation, the principles of natural justice have no role to play. There is no principle of natural justice, which requires prior notice and hearing to persons who are generally affected as a class by a policy decision of the Government and particularly in cases where no statutory or constitutional rights are infringed.

35. In the circumstances, we hold that the policy decision of the Government dispensing with the agent system cannot be interfered with by this Court on the ground of being violative of principles of natural justice. Principles of natural justice have no application in a situation similar to the one on hand.

36. We hardly find any reason to interfere with the impugned order of the learned single Judge. No case is made out requiring our interference in the matter.

37. The writ appeals fail and shall accordingly stand dismissed. No order as to costs.