

(1956) 10 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 74 of 1956

V. Dhanmull Sowcar

APPELLANT

Vs

Secretary, Regional Transport Authority at Vellore, North
Arcot and Others

RESPONDENT

Date of Decision : 09-10-1956

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 134
Constitution of India, 1950 — Article 14, 226, 245
Motor Vehicles Act, 1939 — Section 44(5), 60, 60(1), 68

Citation : AIR 1957 Mad 387 : (1957) ILR (Mad) 461 : (1957) 70 LW 122

Hon'ble Judges : Rajagopalan, J; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : R.M. Seshadri and R. Narayanan, for the Appellant; A.G. and Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The petitioner held a permit granted by the Regional Transport Authority, North Arcot Dt. for his motor bus MDJ 134.

On a report by the Assistant Motor Vehicles Inspector, that on 12-10-1954 the bus was overloaded by 39 persons, the Regional Transport

Officer, who was also the Secretary of the Regional Transport Authority, North Arcot Dt. issued a notice to the petitioner, held an enquiry and

eventually directed the suspension of the petitioner's permit for three months. That was confirmed on appeal by the Central Road Traffic Board.

The petitioner moved the Government to revise the orders u/s 64-A of the Motor Vehicles Act as it stood then. On 28-12-1955 the Government

reduced the period of suspension to two months.

2. The petitioner applied under Article 228 of the Constitution to quash the

proceedings and the orders of all the three authorities mentioned

above. The main contention of the petitioner was that the Regional Transport Officer had no jurisdiction to suspend the permit held by the peti-

tioner for his bus MDJ. 134.

3. Section 44(1) of the Motor Vehicles Act (hereinafter referred to as the Act) empowers the State Government to constitute Regional Transport

Authorities and to define the limits of the territorial jurisdiction of each such Regional Transport Authority. Section 45 specifies the Re-gional

Transport Authority to which an application for a permit should be preferred. It is that Regional Transport Authority that has to grant that permit,

4. Section 60 of the Act, which provides for the cancellation or suspension of a permit runs:

(1) The transport authority which granted a permit may cancel the permit or may suspend it for such Period as it thinks it:

(a) on the breach of any condition specified in Sub-section (3) of Section 59, or of any condition contained in the permit, or (b) if the holder of the

permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or (c) if the holder of the permit ceases to possess

the vehicle or vehicles Covered by the permit, or (d) if the holder of the permit has obtained the permit by fraud or misrepresentation:

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to submit his explanation.

(2) Where a transport authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the revocation or suspension.

5. Were Section 60 of the Act the only Statutory provision to be considered, it should be obvious that it was only the Regional Transport

Authority, North Arcot Dt. which had granted the permit to the petitioner that could claim authority to suspend it, and not its Secretary, the

Regional Transport Officer;

5a. Section 44(5) of the Act however enacts:

The State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made u/s 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.

The relevant portion of Rule 134-A runs:

The Board may for prompt and convenient despatch of business by general or special resolution delegate to the Secretary the following functions:

(xi) power u/s 60 of the Act to suspend a permit and the power u/s 63 (3) read with Section 60 of the Act to suspend counter-signatures of permits.

Rule 134-A itself is one of the rules framed in exercise of the rule making power vested in the Government by Section 68 of the Act. The relevant portion of Section 68 runs:

(1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters,

(za) any other matter which is to be or may be prescribed.

6. It was 6n these provisions that the jurisdiction of the Regional Transport officer to suspend a permit was founded, even though that permit had been granted by the Regional Transport authority of which the Regional Transport officer was the secretary. It was that jurisdiction that the Regional Transport officer, North Arcot Dt. exercised and it was that jurisdiction that the petitioner challenged in these proceedings before us.

7. It was Section 44(5) of the Act that provided for the delegation of powers, and the power vested in the Regional Transport Authority by

Section 60 to suspend a permit was delegated to the Regional Transport officer under the authority of the prescribed rule, Rule 134-A(xi). The

learned counsel for the petitioner contended that Section 44(5) was a void statutory provision, as the delegation it purported to provide for was

bad in law and unconstitutional. He urged that the terms of Section 44(5) were very wide. Any of the statutory powers entrusted by the Act to the

State Transport Authority or the Regional Transport Authority could be delegated by the respective transport authorities to any person, the only

limitation being that the delegation must be authorised by the rules framed u/s 68 of the Act. That rule making power was not retained by the

legislature but was vested in the State Government. The learned counsel submitted that this amounted to abdication of legislative functions. The

legislature did not retain any control either over the delegation which could be effected by the concerned transport authority, or over the

authorisation to effect that delegation which was wholly left to the State Government.

8. Before we deal with these contentions we can dispose of a possible argument, that where an enactment entrusted judicial power to a tribunal,

delegation of that power by that tribunal was not permissible in law. The position in English law was summed up by the learned author in *Broom's*

Legal Maxims. 10th Edn. at page 571:

Nor can an individual, clothed with judicial functions, delegate the discharge of those functions to another, unless, as in the case of a County Court

fudge, he be expressly empowered to do so. For the ordinary rule is that, although a ministerial officer may appoint a deputy, a judicial officer

cannot.

The learned author quoted the observation of Lord Camden in *Entick v. Carrington*, 19 State Tr. 1029 at p. 1063 (A), where he held that a

magistrate could not have a deputy to execute any part of his employment;

The right is personal to himself, and a trust that he can no more delegate to another, than a justice of peace can "transfer his commission to his

clerk.

That principle was rested by Denning L. J. in *Barnard v. National Dock Labour Board*, 1953 2 QB 18 (B):

While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it

is enabled to do so expressly or by necessary implication.

The power to cancel or suspend a permit on the grounds specified in Section 60(1) with a further specific statutory provision in Section 60 itself

that the holder of a permit should be given an opportunity to meet the charges and that the final order should furnish reasons for the punishment

imposed would appear to be at least quasi-judicial in its scope. But Section 44(5) of the Act makes an express provision for the delegation of any

of the powers conferred by the statute on the Regional Transport Authority. Section 44(5) makes no distinction between the administrative or

ministerial functions of the Regional Transport authority and its judicial or quasi-judicial functions. It was the same enactment that created the

Tribunal, the Regional Transport authority, and vested powers in it, including the power to delegate any of these statutory powers. That the

nomination of the authority or person to whom any of those powers could be delegated was left not to the Regional Transport Authority itself but

to the State Government does not detract from the specific provision made by the Act itself in Section 44(5) for the delegation of powers. In

Krishnan v. Secretary, Regional Transport Authority. Chittoor, 1936 Andh WR 142 at p. 154: ((8) AIR 1936 And 129 (C), Subba Rao C. J.

observed:

The legislature itself conferred certain Powers on the Regional Transport authority and also authorised them to delegate the said powers to

another nominated by the Government. If the legislature has conferred judicial powers on A or B, it cannot be contended that the said conferment

is invalid. If, instead of nominating B, it authorises A to delegate his function to B, or to a person nominated by the Government, we cannot say that

the legislature has in any way abdicated its functions, in effect, the legislature has substantially legislated on the subject and left the nomination of the

person to the Government.

We respectfully agree with these observations.

9. Section 60 of the Act conferred the power to cancel or suspend a permit on the Transport authority which granted that permit. That was

obviously to specify with precision which among the Regional Transport authorities that were constituted by the State Government u/s 44 (1) of the

Act should exercise the power, for which Section 60(1) of the Act made provision. We have already referred to Section 45 of the Act which

specified the Regional transport authority, of the several Regional transport authorities constituted u/s 44 (1), to which an application should be

made for a permit.

The learned Advocate General was well founded in his contention, that the qualifying phrase in Section 60(1) ""which granted a permit"" was not

intended to make the power conferred by Section 60(1) of the Act one to be exercised ""virtuo officio"" that is a right ""personal"" to the grantee, the

Regional transport authority, within the meaning of the principle laid down by Lord Camden in 19, St. Tr. 1029 (A), ""a trust that that grantee

cannot delegate to another."" We have already pointed out that the Act itself

made express provision for delegation in Section 44(5). That specific statutory provision did not offend even the well recognised principle of Jaw enunciated by Lord Camden in 19 St. Tr. 1029 (A).

To explain the scope of the qualifying phrase ""which granted a permit"" in Section 60(1), the learned Advocate General invited our attention to the provisions of Section 59 and Section 61 of the Act, which provided for the transfer of a permit and vested that power in the Regional transport authority with a similar qualifying phrase ""by which the permit was granted"" or ""which granted the permit"". We have dealt with this aspect only to emphasise that the specific provision made to Section 44(5) for the delegation of powers of a Regional transport authority, inclusive of the power conferred by Section 60(1) of the Act, does not offend any well recognised concept of jurisprudence.

10. It should also be noted that the Act left it to the State Government to constitute the State and Regional Transport authorities, though the Act itself specified the powers to be vested in those authorities. That is also a factor to be taken into account in deciding what is the scope of the delegation for which Section 44(5) of the Act provided. It vested in the Government the power to nominate the person or authority to whom the State Transport authority or the Regional transport authority, all of them constituted by that Government itself, could delegate specified powers, specified in the rules framed by the Government, and subject to the conditions and limitations imposed by those prescribed rules.

11. We now come back to the contention of the learned counsel for the petitioner that the delegation for which Section 44(5) provided was unconstitutional. We have referred to a passage from the judgment of Subba Rao C. J. in 1956 2 Andh WR 142 : (S) AIR 1956 Mad 129 (C), in which the learned Judge pointed out:

In effect the legislature has substantially legislated on the subject and left the nomination of the person to the Government.

That he amplified at page 155 of the report:

The legislature cannot abdicate its functions and delegate them to others. But it can always delegate its powers to determine some fact or state of things upon which the operation of the law made would depend.... The Act clearly and definitely prescribed the powers to be exercised by the

Regional Transport authority. It authorised them to delegate such powers to such authority as prescribed by the rules. The Government under the rule making power only nominates the authority to whom a prescribed power can be delegated. Therefore there is no abdication on the part of the legislature of its legislative functions." We are in respectful agreement with these observations. In our opinion Section 44(5) of the Act does not amount to an abdication of legislative functions by the legislature. Taking the scheme of the Act as a whole, it was left to the State Government to constitute the State and Regional transport authorities. The powers they were to exercise were specified by the Act. Exercise of those powers had to be regulated by the State, and a fairly extensive rule making power was conferred on the State Government by Section 68 of the Act for carrying into effect the provisions of Chapter IV of the Act. Neither, the validity of the section which conferred that rule making power nor the validity of Section 44(5) which specifically referred to that rule making power can be challenged as constituting an excessive or unconstitutional delegation of the legislative functions of the legislature that enacted the Motor vehicles Act.

12. The next contention of the learned counsel for the petitioner was that Section 44(5) itself did not contain any declaration of the policy of the legislature. It did not prescribe any standards for the exercise of the power which it conferred on the statutory transport authorities to delegate any of its functions. The learned counsel contended that to entrust such arbitrary powers to the State Government constituted a violation of Article 14 of the Constitution, as the operation of Section 44(5) might result in discriminatory legislation. We are unable to accept that contention.

We have pointed out that the functions entrusted to the statutory authority, the State Transport authority or the Regional Transport authority, were specified by the Act. The Tribunals themselves were creatures of the Act. They had to be constituted by the State Government. The discharge of the functions of these statutory tribunals had to be regulated by the rules prescribed, rules made by the State Government in exercise of the specific power vested in it. It is a little difficult to accept the contention, that the Regional Transport authority was left without any guidance in exercising the powers for which provision was made by Section 44(5) of the Act.

It is not the State Government that could delegate any power vested in the Regional Transport authority. Section 44(5) empowered only the

Regional transport authority to delegate its power. But the limitation set upon the exercise of the power was that such a delegation must be

authorised by the State Government and should be subject to such limitations as may be prescribed by the rules made by the State Government

under the rule making power conferred on it by Section 65(1) of the Act.

The State Government itself has been given large powers to ensure the proper administration of the Act in accordance with the principles and

policy embodied in the Act. It cannot be said that the State Government, on whom the power was conferred by Section 44(5) to regulate and

authorise the delegation of powers for which Section 44(5) provided, was left without any guidance by the Act itself.

13. We hold that Section 44(5) of the Act is valid.

14. The further contention of the learned counsel for the petitioner was that even if Section 44(5) of the Act could not be struck down as invalid

and unconstitutional, Rule 134-A, and in particular Rule 134-A(xi) were ultra vires the rule making authority, the State Government.

15. The first contention of the learned counsel under this head was that Section 44(5) in terms authorised only the delegation of powers brought

into existence by the prescribed rules and not for the delegation of any of the statutory powers specified by the Act itself as vesting in the

appropriate authority, the State Transport authority, or the Regional Transport authority. To appreciate this contention the relevant portion of

Section 44 (6) may be set out again:

The State Transport authority and any Regional Transport authority may delegate such of its powers and functions to such authority or person

.. as may be prescribed by the said rules.

16. It was urged that the provision has to be read as "the Regional Transport authority may delegate such of its powers and functions as may be

prescribed by the rules to such authority or person as may be prescribed by the rules." The authority or person to whom the statutory powers and

functions of the Regional Transport authority may be delegated has to be specified in the prescribed manner in the rules framed u/s 68 of the Act.

Prescribed" has been defined by Section 2 (21) of the Act as "prescribed by

rules made under the Act", unless, of course, the context warrants a different interpretation. If the person or authority to whom the powers can be delegated is specified by the State Government in a prescribed rule one of the requirements of Section 44(5) is satisfied. Similarly if any of the statutory functions of the Regional transport authority is specified in a prescribed rule, the other requirement of Section 44(5) for a valid delegation is satisfied. We are unable to see any real basis in the language of Section 44(5) for the contention of the learned counsel, that is only a function or power that is the creature of a prescribed rule, and not any of the statutory powers, that can be delegated under the provisions of Section 44(5). The legislature enumerated the powers and functions of the State Transport authority and those of the Regional Transport authority.

In addition the legislature enacted Section 44 (3) (d) which provided for the conferment on the State Transport authority functions as may be prescribed. The ambit of Section 44(5) is the entirety of the powers and functions, the statutory powers and functions of the State Transport authority and those of the Regional Transport authority as well as the function of the State Transport authority founded ultimately on Section 44 (3) (d). Both as a matter of plain language of Section 44(5) and as one of the intendment of the legislature, it seems clear to us that what Section 44(5) provides for is delegation of any of its powers and functions, by the Transport authority concerned to a person or authority specified by an appropriate rule framed by the State Government u/s 68 of the Act.

17. The next contention of the learned counsel was that Rule 134-A(xi) fell outside the scope of Section 63 of the Act, and was therefore ultra vires the Government. In *M.K. Padmanabhan Vs. The State of Madras and Another*, one of us pointed out that Sub-section 2 of Section 68 of the Act does not exhaust or otherwise limit or control the rule making powers of the Government under Sub-section 1 and that Sub-section 2, only amounts to a statutory recognition that all the specific items mentioned therein are within the scope of the general powers conferred by Sub-section

1. The position in fact, as we understood the learned counsel for the petitioner, was not challenged by him. What the learned counsel urged was that the power of the Government u/s 68 (1) was limited by the purpose

specified in Section 68 (1) itself, "the purpose of carrying into effect the provisions of this Chapter". (Chap. IV). The learned counsel submitted that the true scope of Section 44(5) read with Section 68 (1) of the Act was that anything ancillary to the exercise of a power conferred on a Regional Transport authority by the Act could be delegated by that authority u/s 44(5), on satisfying the conditions imposed by Section 44(5) but that Section 44(5) did not authorise the delegation of the exercise of the statutory power itself. We are unable to accept that the scope of the delegation authorised by Section 44 (6) of the Act is so limited.

It is true that Section 44 (6) requires that before a Transport authority could delegate any of its powers and functions it should be authorised in that behalf by a rule or rules made u/s 68 of the Act. Section 68 of the Act empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter. Section 44 (5) is one such provisions If there is to be delegation u/s 44(5), that is for the purposes of Section 44(5), there should be a rule. To give effect to the purpose of the Act, and to achieve a valid delegation u/s 44(5), a rule has to be framed, there has to be a prescribed rule. Rule 134-A does carry into effect the provisions of Section 44(5); without Rule 134-A there can be no delegation of powers, which as we said, is one of the purposes of the Act declared by Section 44(5) of the Act. Rule 134-A would certainly fall within the scope of Section 68(2) (za). "Any other matter which is to beprescribed". As we said the specification in Section 68(2) (za) does not control the generality of the power conferred by Section 68 (1) of the Act. Of course, it does not enlarge it either. Rule 134-A, in our opinion, and certainly item (xi) of that rule fall within the scope of Section 68 of the Act. It Is a rule prescribed for the purposes of carrying into effect the provisions of Chap. IV within the meaning of 6. 68 (1) of the Act

18. The validity of Rule 134-A was upheld in *Krishna v. Secretary Regional Transport authority, Chittoor*, 1956 Andh WR 142: ((S) AIR 1956 Andhra 129 (C), and with that conclusion we are in respectful agreement.

19. Our attention was invited to a subsequent decision of the Andhra High Court in *Amaravathi Motor Transport Co. v. State of Andhra*, 1958 An. WR 400: AIR 1956 Andhra 232 (E) where, while upholding the validity of Rule 134-A(xi) as well within the scope of the rule making power

conferred upon the State Government by Section 68 (1) of the Act, the learned Judges came to the conclusion, that the Regional Transport officer

had power under rule 134-A(xi) only to suspend a permit that he himself had granted, and that he had no jurisdiction to suspend a permit that had

been granted by the Regional Transport authority. The learned Chief Justice observed at page 404 (of Andhra WR) : (p. 234 of AIR):

It is clear that rule 134-A(xi) is a general provision and Section 60(1) is a special provision overlapping each other to same extent in respect of the

same subject matter. Both provide for suspending a permit already issued. While rule 134-A(xi) says that the Secretary can suspend a permit,

under certain circumstances, Section 60 enacts that the Secretary can suspend a permit only if he has granted it. Section 60 being a special

provision governing suspension of a permit by an authority who issued it overrides the general rule empowering the authority to cancel a permit

issued even by a superior officer.

20. With all respect to the learned Chief Justice, we are unable to agree. We are unable to discover any real basis for holding that Section 60 is a

special provision and that rule 134-A(xi) should be construed as a general provision regulating the jurisdiction to cancel or suspend permits.

Section 60 of the Act is the only provision in the Act itself, which provides for the exercise of the power to suspend or cancel a permit. It is that

power that can be delegated u/s 44(5) of the Act. It was that power that can be delegated to the Regional Transport officer under rule 134-A(xi).

The validity of that delegation was upheld by the learned Judges and we have already held that rule 134-A including item (xi) thereof is intra vires.

The delegation u/s 44(5) is subject to any limitations or conditions that can be imposed by the rule making power. Rule 134-A(xi) did not impose

any condition either expressly or by necessary intendment that the operation of that rule was confined only to a permit granted by the Regional

Transport officer -himself.

The authority to grant a permit was given to the Regional Transport authority by the Act. Delegation of that power was permissible u/s 44(5) of the

Act, and a limited power was delegated to the Regional transport officer by rule 134-A(1). We have endeavoured to explain the scope of the

qualifying phrase ""which granted a permit"" in Section 60(1). of the Act. In our

opinion, Section 60(1) is the only statutory provision for the power to punish by suspension. Exercise of that power is further regulated by Rule 134-A(xi). The delegation of the Jurisdiction to exercise that power is valid. Still, what has been delegated is only the power conferred by Section 60(1) of the Act. If the delegation is valid, it is that power, subject to the conditions and limitations imposed by rule 134-A(xi) that vests in the Regional transport officer, and that vesting is valid.

21. We have so far discussed the question at issue as if it were res integra as far as this Court is concerned, reserving to the last a reference to an unreported decision of a Division Bench of this court in W. P. No. 87 of 1951 (F). After referring to Section 44(5) and to rule 134-A(xi) the learned Judges held:

So the Regional Transport officer was acting well within the scope of the provisions of the Act in passing an order of suspension".

The learned Judges also observed:

Once a function is among those prescribed by the rules, delegation cannot be challenged".

22. We respectfully agree with these observations, and that is a decision binding on us as authority.

23. The only question raised before us was that of the jurisdiction of the Regional Transport Officer. That depended on the validity of the delegation effected by Rule 134-A (xi) u/s 44(5). That validity we have upheld.

24. The rule is discharged. The petition is dismissed. No order as to costs.

25. We understood the scope of the arguments at one stage to be only the validity of the delegation effected by Rule 134-A(xi) read with Section 44(5) of the Act. After we had read out the earlier portion of the judgment, Mr. Seshadri re presented that he had further points those specified in paragraphs 7 and 8 of the affidavit of the petitioner. Those in our opinion do not vitiate either the existence of the jurisdiction or even its exercise.