

Chief Commissioner, Delhi and Others

Vs

Chadha Motor Transport Co.

Civil Appeal No. 466 of 1965

(J. C. Shah, R. S. Bachawat, G. K. Mitter JJ)

04.03.1968

JUDGMENT

BACHAWAT, J.-

The respondent carries on the business of collecting, forwarding and distributing goods carried by public carriers in Delhi. On October 27, 1956, the Chief Commissioner, Delhi issued a notification under s. 68(2)(ww) of the Motor Vehicles Act, 1939. Under this notification, the respondent and other agents engaged in the business of collecting, forwarding and distributing goods carried by public carriers are required to take out licences. The respondent filed a writ petition in the Punjab High Court challenging cl. (ww) of s. 68(2) and the aforesaid notification on various grounds and asking for an order quashing the notification. A single Judge of the High Court struck down cl. (ww) and allowed the writ petition. He held that the clause was ultra vires and invalid and therefore the notification issued under it was also invalid. His decision was affirmed on Letters Patent Appeal by a Division Bench of the High Court. The appellants have preferred the present appeal from this order after obtaining a certificate from the High Court.

Chapter IV of the Motor Vehicles Act, 1939 provides for control of transport vehicles. The chapter contains Ss. 42 to 68. Section 68(1) provides that a State Government may make rules for the purpose of carrying into effect the provisions of Chap. IV. Section 68(2) provides that without prejudice to the generality of the foregoing power, rules under the section may be made with respect to all or any of the matters enumerated in the various sub-clauses thereof. Clause (ww) of s. 68(2) provides that the State Government may make rules for "the licensing of agents engage in the business of collecting, forwarding and distributing of goods carried by public carriers." This clause was inserted in s. 68(2) by Delhi Act No. 5 of 1954 and also later by Central Act No. 100 of 1956.

The High Court held that as the rules framed under s. 68 can be made only for the purpose of carrying into effect the provisions of Chap. IV, such rules must relate to a substantive provision of law in the chapter. As there was no substantive provision in Chap. IV requiring agents engage in the business of collecting, forwarding and distributing goods carried by public carriers to take out licences, the legislature had no power to enact cl. (ww) of s. 68(2) authorising the framing of rules for the licensing of such agents. The legislature must, in the first instance, make a law requiring such agents to take out licences. As they legislature did not make such a law, the clause is ultra vires its powers and is invalid.

We are unable to accept this line of reasoning. Section 68(2) specifically enumerates the matters on which rules under the section can be made for the purpose of carrying into effect the provisions of Chap. IV. Clause (ww) of s. 68(2) is an expression of the will of the legislature that rules for the

licensing of agents engaged in the business of collecting, forwarding and distributing goods carried by public carriers may be made for the purpose of carrying into effect the provisions of Chap. IV. The proposition that the legislature must in the first instance incorporate in the Act a section requiring a class of persons to take out licences before it can enact a section authorising the making of rules for such licensing is unsound and must be rejected. Within the limits of the legislative powers, Parliament and the State legislatures have plenary powers of legislation, and they may delegate to an executive authority the power to make rules for the licensing of any class of persons. This law may be open to attack on the ground that it is not on a matter on which the legislature is competent to legislate or on the ground that there is excessive delegation of legislative power. But it cannot be struck down on the ground that the legislature has made no other provision for licensing in the body of the Act. There is no constitutional prohibition against the making of a law authorising the making of rules on any topic without the support of another substantive provision of law in the body of the Act. Take Chap. VII of the Motor Vehicles Act dealing with motor vehicles temporarily leaving or visiting India. That chapter contains one section, namely s. 92. The section provides for the making of rules only. It authorises the Central Government to make rules inter alia for the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of India to any place outside India and prescribing the conditions subject to which motor vehicles brought temporarily into India from outside India by persons intending to make a temporarily stay in India may be possessed and used in India. There is no other substantive provision of law in Chap. VII or any other Chapter of the Act on the subject of motor vehicles temporarily leaving or visiting India. But the absence of such a substantive provision does not render either s. 92 or the rules made under it invalid. If the Central Government frames rules under s. 92, such rules must be complied with.

We, therefore, hold that cl. (ww) of s. 68(2) cannot be struck down on the ground that there is no other substantive provision of law in the body of the Act requiring the taking out of licences. On behalf of the respondent it was suggested that the clause is invalid on the ground that it is a law on a subject on which the legislature is not competent to legislate. It was also suggested that it is bad on the ground of excessive delegation of legislative power. The High Court has not struck down the clause on either of these grounds. Nor has the High Court considered the other grounds raised in the petition challenging the validity of the notification dated October 27, 1956. As the High Court has not dealt with the other contentions raised in the petition, the matter must be remanded to the High Court.

In the result, the appeal is allowed, the order of the High Court is set aside and the matter is remanded to the High Court, so that the High Court may deal with it in accordance with law. In the circumstances of the case, there will be no order as to costs in this Court.

Appeal allowed.##

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