Regional Transport Officer, Chittoor and Others

Vs

Associated Transport Madras (P) Ltd. and Others

Civil Appeals Nos. 301-303 of 1970

(V. R. Krishna Iyer, A. D. Koshal JJ)

05.09.1980

JUDGMENT

KRISHNA IYER, J. –

1. We are in complete agreement with the reasoning and conclusions of the High Court and a brief statement of the short point that arises for decision and of the grounds for dismissing the appeal is all that is needed. The Motor Vehicles (Taxation of Passengers and Goods) Act passed by the Madras legislature in the composite Madras State was made applicable to Andhra Pradesh when that State was carved out. There were certain difficulties in the matter of levy of taxation on vehicles plying on inter-State routes and the State of Andhra Pradesh thought it fit to enact its own legislation, which it did in the form of the Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) Act, 1952 (16 of 1952), Section 4(1), A.P. Motor Vehicles Taxation Act, 1963 (A.P. Act 5 of 1963), whereof empowered the State Government to make necessary rules to effectuate the enactment. Pursuant to this power, certain rules were framed, of which Rule 1 consisted of three sub-rules. On June 19, 1957 sub-rules (4) and (5) were added to that rule sub-rule (5) ran thus :

> The proviso to sub-rule (1) of Rule 1 shall cease to be operative on and from October 1, 1955 and the composition fee calculated with reference to clause (a) or clause (b) of sub-rule (1) in respect of vehicle plying on inter-State routes lying partly in the Madras State and partly in the Andhra State shall, with effect from that date be paid in the State where the vehicles are registered and normally kept.

2. This sub-rule enabled operators of motor vehicles on inter-State routes lying partly in the Madras State and partly in the State of Andhra Pradesh to pay the tax duly to either these two States. It was, however, deleted along with sub-rules (3) and (4) on March 29, 1963 with effect from April 1, 1962 and it is the retrospectivity of the deletion that is challenged before us because the Andhra Pradesh State sought to collect tax for the period commencing April 1, 1962 from the respondent under the Act above referred to, although he had already paid the same to the State of Madras. The ground of invalidity was stated to be that Section 4(1) did not confer on the State Government power to make rules with retrospective effect.

3. Thus, the only question which engages our attention is at to whether Section 4(1) does confer on the delegate, namely, State Government, the power to make retrospective rules. The High Court, after an elaborate discussion on the jurisprudence of subordinate legislation, came to the conclusion that no such power was conferred on the State Government and that consequently the deletion which resulted in retrospective operation of the liability to payment of tax was bad in law.

4. The legislature has no doubt a plenary power in the matter of enactment of statutes and can itself make retrospective laws subject, of course, to the constitutional limitations. But it is trite law that a delegate cannot exercise the same power unless there is special conferment thereof to be spelled out from the express words of the delegation of by compelling implication. In the present case the power under Section 4(1) does not indicate either alternative. The position has been considered by the High Court at length and there is no need for us to go through the exercise over again. Indeed, considerable reliance was placed by learned counsel for the appellant on two circumstances. He argued that the impugned rule was framed in pursuance of a resolution passed by the legislature. The fact does not have any bearing on the question under consideration except for us to make the observation that the State Government should have been more careful in giving effect to the resolution and should not have relied upon its delegated power which did not carry with it the power to make retrospective rules. The second ground pressed before us by learned counsel for the appellant is that the rules had to be placed on the table of and approved by the legislature. This was sufficient indication, in his submission, for us to infer that retrospectivity in the rule-making power was implicit. We cannot agree. The mere fact that the rules framed had to be placed on the table of the legislature was not enough, in the absence of a wider power in the section, to enable the State Government to make retrospective rules. The whole purpose of laying on the table of the legislature the rules framed by the State Government is different and the effect of any one of the three alternative modes of so placing the rules has been explained by this Court in Hukam Chand v. Union of India ((1973) 1 SCR 896, 902 : (1972) 2 SCC 601, 606). Mr. Justice Khanna speaking for the Bench observed : (SCC p. 606, para 13)

The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act. It would appear from the observations on pages 304 to 306 of the Sixth Edition of CRAIES ON STATUTE LAW that there are three kinds of laying :

(i) Laying without further procedure;

(ii) Laying subject to negative resolution;

(iii) Laying subject to affirmative resolution.

The laying referred to in sub-section (3) of Section 40 is of the second category because the above sub-section contemplates that the rules would have effect unless modified or annulled by the Houses of Parliament. The act of the Central Government in laying the rules before each House of Parliament would not, however, prevent the courts from scrutinising the validity of the rules and holding them to be ultra vires if on such scrutiny the rules are found to be beyond the rule-making power of the Central Government.

5. It is, therefore, plain that the authority of the State Government under the delegation does not empower it to make retrospective rules. With this position clarified there is no surviving submission for appellant's counsel. The appeals must be dismissed and we do so with costs (one set).

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