ANDHRA PRADESH HIGH COURT

D.K. Krishnan

Vs.

Regional Transport Authority

Writ Petns. Nos. 271 and 272 of 1952

(Subba Rao, C.J. and Krishna Rao, J.)

18.10.1955

JUDGMENT

Subba Rao, C.J.

1. These are two connected petitions filed under Article 226 of the Constitution of India, one for the issue of a Writ of Certiorari to quash the order of the Regional Transport Authority, Chittoor, R. No. 203/A-2/52 dated 25-3-1952 and the other for directing him to renew the permit of bus MDI No. 242 in his favor.

2. The Regional Transport Authority, Chitoor, granted the petitioner a stage carriage permit in respect of bus MDI No. 242 to operate on the route Chittoor-Madanapalle. The permit of the said bus was to expire on 1-3-1952. On 3-1-52, he filed an application for renewal of the same. The said application was duly notified under Section 57(3), Motor Vehicles Act (hereinafter referred to as the Act) and representations were called for on or before 10-3-52. No representation objecting to the renewal was filed or received. The Secretary, Regional Transport Authority, Chittoor, in exercise of the powers delegated to him, refused to renew the permit on the ground that the history-sheet of the operator was bad and that he plied the vehicle without paying tax for 18 days. The said two Writs were filed to quash that order and to direct the Regional Transport Authority to renew the permit in petitioner's favor.

3. Mr. Sreenivasamurthi, learned counsel for the petitioner, questioned the validity of R. 134-A of the Madras Motor Vehicles Rules empowering the Board to delegate its powers to the Secretary and R. 160-C prescribing the payment of tax due as a condition of every permit on various grounds. On the basis that the said rules are invalid, he argued that the Secretary of the Regional Transport Authority had no power to refuse to renew the permit and that he also acted illegally in refusing it on the ground that no tax under the provisions of the Act was paid. We shall now proceed to consider the contentions raised by the learned counsel seriatim.

4. The first contention is that the rules including R. 160-C of the Madras Motor Vehicles Rules were issued by the Governor during the pendency of the Governor's Rule and therefore, they ceased to have any force under Sub-Section (4) of Section 93, Government of India Act, 1935,

after two years from the date of the proclamation.

To appreciate this contention, some of the relevant facts may be stated. On 30-10-1939, the Governor issued a proclamation under Section 93, Government of India Act assuming to himself all the powers of the Legislature and the Executive Government. On 30-3-1940, in exercise of the powers conferred under the various sections of the Act, the Governor issued the Madras Motor Vehicles Rules, 1940, to come into force on 1-4-1940. The proclamation ceased to have effect on 30-3-1946. The question is whether the rules issued by the Governor during the state of proclamation expired after two years from the date of the withdrawal of the proclamation. The answer to this question would depend upon the interpretation of the relevant provisions of Section 93, Government of India Act and the scope of the proclamation issued thereunder. The material portion of Section 93, Government of India Act reads :

> "If at any time the Governor of a Province is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of this Act, he may by proclamation
>
> (a) declare that his functions shall, to such extent as may be specified in the proclamation, be exercised by him in his discretion;
>
> (b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority and any such proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the proclamation including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority.
>
> Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend either in whole or in part, the operations of any provision of this Act relating to High Courts.
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> X X X X
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> 4. If the Governor, by a proclamation under this section, assume to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a provincial Legislature shall be construed as Including a reference to such a law.
>
> 5. The functions of the Governor under this section shall be exercised by him in his discretion and no proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion."

(5) Pursuant to the powers given to the Governor under this section, he issued a proclamation on 30-10-1939. The relevant portion of that proclamation reads :

> "Now, therefore, in the exercise of the powers conferred by Section 93 of the Act and with the concurrence of the Governor-General, the Governor by this proclamation
>
> (a) declares that all his functions under the Act shall be exercised by him in his discretion;
>
> (b) assumes to himself all powers vested by or under the Act in the Provincial Legislature

but not Bo as to affect any power exercisable by His Majesty with respect to Bills reserved for his consideration or the disallowance of Acts :
and he hereby makes the following incidental or consequential provisions which appear to him to be necessary or desirable for giving effect to the objects of this proclamation."

6. It will be seen from the aforesaid terms of the proclamation, read with the provisions of Section 93 that the Governor had taken upon himself the entire executive and legislative functions of the State. Under Section 49, Government of India Act, the executive authority of a Province shall be exercised on behalf of His Majesty by the Governor either directly or through officers subordinate to him and under Section 50 there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by order under this Act required to exercise his functions or any of them in his discretion. By reason of this proclamation, the executive authority of the Province entirely vested in the Governor and he was authorized to exercise the powers in discretion subject to certain restrictions. During the period of proclamation, therefore, the Governor could make laws in the place of the Legislature and also run the executive Government In exercise of his discretion. The Madras Motor Vehicles Rules were issued by the Governor in exercise of the powers conferred on him by the provisions of the Act. Section 68 of the Act confers rule-making power on the Government. Under that section, the Provincial Government may make rules for the purpose of carrying into effect the provisions of Chap. 4.' The definition of "Provincial Government" as it then stood in the General Clauses Act reads :

"S. 43 'Provincial Government' as respects anything done or to be done after the commencement of Part 3 of the Government of India Act, 1935, shall mean - (a) in a Governor's Province the Governor acting or not acting in his discretion and exercising or not exercising his individual judgment according to the provision in that behalf made by and under the said Act."

7. If so, the rule making power under Section 68 was conferred on the Governor authorized at the relevant date to administer the executive government of the Province. The Governor, who under the Proclamation, took over the powers of the Executive Government, was the person authorized to administer the executive government in the province during the period of the state of proclamation. The rules therefore were made by the Governor in exercise of the powers of the executive government and not in exercise of the powers of the Provincial Legislature, Sub-Section (4) of Section 93 of the Government of India Act limiting the life of the laws made by the Governor to a period of two years from the date on which the proclamation ceases to have effect in terms apply only to the laws made by the Governor in exercise of the powers of the Provincial Legislature vested in him. As the aforesaid rules were made by the Governor in exercise of the powers of the Executive Government, Section 93(4) has no application and therefore those rules will continue to have force unless they are repealed or otherwise cease to have any effect.

8. It is then said that, after coming into force of the Constitution, the said rules ceased to have any effect as they were repugnant to the provisions of the Constitution.
To state it differently, the argument is that the rules were framed in the exercise of the discretion

of the Governor during the state of proclamation and that, under the Constitution, the Governor cannot, in the exercise of his discretion, make such rules and, therefore, the rules made by him are repugnant to the provisions of the Constitution. Article 372 of the Constitution of India provides for the circumstances in force of the existing laws and their adaptation. It says :

> "(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.
> (2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of the Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law, shall, as from such date as may be specified in the order, have effect subject to the adaptation and modifications so made, and any such adaptation or modification shall not be questioned in any Court of law.
> Explanation I : The expression 'law in force' in this article shall include a law "passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

9. The President in exercise of the power conferred under Article 372 passed the Adaptation of Laws Order, 1950. Under para 3 of that Order, as from the appointed day, the existing Central or Provincial laws mentioned in the schedules to that order, shall until repealed or amended by a competent Legislature or other competent authority have effect subject to the adaptations and modifications directed by those schedules, or if it is so directed, shall stand repealed. In the General Clauses Act, the following definition of the Provincial Government has been substituted.

> "Provincial Government shall mean as respects anything done before the commencement of the Constitution the authority or person authorized at the relevant date to administer executive government in the Province in question."

10. Under that clause Provincial Government shall mean as respects anything done before the commencement of this Constitution the authority or person authorized at the relevant date to administer the executive government in the province in question.
11. Para 4(1) and para 17 of the Adaptation of Laws Order, 1950, read :

> "Para 4(1) : Whenever an expression mentioned in col. 1 of the Table hereunder printed occurs otherwise than in a title or preamble (or in a citation or description of an enactment) in an existing Central or Provincial law, whether an Act, Ordinance or Regulation mentioned in the schedules to this Order or not, then unless that expression is by this Order expressly directed to be otherwise adapted or modified, or to stand unmodified, or to foe omitted, there shall be substituted therefore the expression set

opposite to it in col. 2 of the said table, and there shall also be made in any sentence in which the expression occurs such consequential amendments as the rules of grammar may require.

Para 17 : The provisions of this order, which adapt or modify any law so as to alter the manner in which, the authority by which or the law under or in accordance with which any powers are exercisable, shall not render invalid any modification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done before the appointed day; and any such notification, order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this order by the competent authority and under and in accordance with the provisions then applicable to such a case".

"Any Court, Tribunal or authority required or empowered to enforce any law in force in the territory of India immediately before the appointed day shall, notwithstanding that this order makes no provision or insufficient provision for the adaptation of the law for the purpose of bringing it into accord with the provisions of the Constitution, construe' the law, with all such adaptations as are necessary for the said purpose".

12. The effect of the aforesaid provisions may be stated thus. The rules made by the Governor during the state of proclamation must be deemed to have been made by the Provincial Government. Though by reason of the provisions of the Adaptation of Laws Order "State Government" is substituted for "Provincial Government" in Section 63 of the Act, under para 17 of the said Order, the said adaptation shall not render invalid the rules duly made before the appointed day. Even if there is any lacuna, the Court is empowered to construe the law with all the necessary adaptations i.e., the Court can construe the law made by the Provincial Government as that made by the State Government. If so read, there is no repugnancy between the rules and the provisions of the Constitution. The argument, namely that the rules were made in exercise of the discretion whereas under the Constitution the Governor cannot in exercise of his discretion make rules has no force, for the manner in which the rules were made, loses relevance when they are deemed to have been made by the Provincial Government itself. By reason of paras 17 and 21 of the Adaptation of Laws Order, the change in the authority empowered to make rules does not invalidate the Rules and if necessary the Court can adapt the rules as made by the authority substituted for the Governor. Though the rules were made by the Governor in the exercise of his discretion, the Court can adapt the rules as if made by the State Government under Section 6S of the Act. If so, under Article 372 of the Constitution of India, the rules being laws in force before the commencement of the Constitution, continue to be in force till altered by a competent authority.

13. Learned counsel's next contention is that Rule 134-A empowering the Regional Transport Authority to delegate its functions to the Secretary is invalid inasmuch as it was not laid for not less than 14 days before the Legislature of the Madras State. Section 133(1) reads :

"Every power to make rules given by this Act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the official Gazette and shall unless some later date is appointed, come into force on the date of such publication.
(3) All rules made under this Act by the Central Government or by any Provincial Government shall be laid for not less than fourteen days before the Parliament or the Legislature of a Part A State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications as Parliament or such Legislature may make during the session in which they are so laid."

14. It is not disputed that the aforesaid rule was not placed before the Legislature as required by Sub-Section (3). The learned counsel contends that the condition prescribed under the rule is mandatory and that its non-compliance invalidates the rule. The object of placing the rule before the Legislature is to secure legislative control over the rule making power of the Executive Government or persons authorized by it. Whether in practice the object is achieved or not is different matter. This device is borrowed from the English practice. The practice in England has been succinctly stated in Craies on Statute Law at page 277 under the heading 'Control of Statutory instruments by Parliament' thus :

"This is said by an eminent authority to be 'most ineffective' as regards procedure in the House for annulment of a statutory order :
(i) The statute may require that the rules made Under it shall be laid before the House 'as soon as may be1. By some statute it is expressly enacted that if the rules are not laid, they shall have no effect. For instance the Town and Country Planning Act, 1947, Section 69(5) provides that regulations made for the purpose of para (b) of the proviso to Sub-Section (2) of the section shall be of no effect unless they are approved by resolution of each House of Parliament.

There is generally no provision for amendment of the rules by the House. Questions may be put to the Minister or the matter may be discussed on the motion for adjournment or in the debate on the King's speech at the opening of the Session. Generally speaking the rules must be accepted or rejected but occasionally the 'parent' Act gives power to modify or amend, for instance the Government of India Act, 1935, Section 475(1), Ministry of Health Act, 1910, Section 8(3) and the Nurses Registration Act, 1919, Section 3(4).

(ii) The statute may provide that the Act is not to come into force before a certain time to be determined by Order in Council, i.e., the 'appointed day' clause, as for instance in the National Health Service Act 1946, and the Town and Country Planning Act, 1947.
(iii) The rules may be directed to lie for a specified time subject to a prayer for annulment. Subject to this the rules become effective immediately. This is called the method of Negative Resolution and is most usually employed. It appears to be the method contemplated by the Statutory Instrument Act, 1946, Section 5.
(iv) Rules to lapse unless approved. This is the method of Affirmative Resolution. For example, the orders of the Board of Trade under the Safeguarding of Industries Act 1921. A good example is - *'Metcalfe v. Cox[1]'*

(v) Sometimes it is directed that orders shall be of no effect unless they are approved by resolution of each House of Parliament. See for an example the Town and Country Planning, Development Charge Exemptions Regulations 1950 (S. I. 1950 No. 1233) made under Section 69 of the Town and Country Planning Act, 1947."

In India also different phraseology is used in different Acts. Article 320(5) of the Constitution of India says :

"All regulations made under the Proviso to Clause (3) by the President or the Governor or Rajpramukh of a State shall be laid for not less than Fourteen days before each House of Parliament or the house or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the Session in which they are so laid."

Sections 16(3) and 17(3), Madras Motor Vehicles Taxation Act, 1931 prescribe a different procedure with respect to the rules made under those sections.

Section 16(3) : All Rules made under this section shall be laid on the table of the Legislative Assembly.

Section 17(3) : A draft of any rule proposed to be made under this section shall be laid on the table of the Legislative Assembly and the rule shall not be made, unless the Assembly approves the draft either without modification or addition or with modifications or additions; and upon such approval being given, the rule may be made in the forms in which it has been approved, and such rule, on being so made, shall be published in the Official Gazette, and shall thereafter be of full force and effect."

Section 475(1), Government of India Act, 1935, says :

"Any power conferred by this part of this Act on His Majesty in Council shall be exercisable only by order in Council and subject as hereinafter provided the Secretary of State shall lay before Parliament the draft of any order which it is proposed to recommend to his Majesty to make in Council under any provision, of this part of this Act and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the order may be made cither in the form of the draft of with such amendments as both Houses of Parliament may have agreed to recommend to His Majesty :

[1]1895 AC 328, (Infra. P. 289)

Provided that, if at any time when Parliament is dissolved or prorogued or when both Houses of Parliament are adjourned for more than 14 days, the Secretary of State is of opinion that on account of the urgency an Order in Council should be made under this part of this Act forthwith, it shall not be necessary for a draft of the order to be laid before Parliament, but the order shall cease to have effect at the expiration of 28 days from the

date on which the Commons House first sits after making of the order unless within that period resolutions approving the making of the order are passed by both Houses of Parliament".

Article 123 of the Constitution of India reads :

"If at any time, except when both Houses of Parliament are in Session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.
(2) An ordinance promulgated under this Article shall have the same force and effect as an Act of Parliament but every such Ordinance
(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament or if before the expiration of that period resolutions disapproving it are passed by both Houses upon the passing of the second of those resolutions ; and
(b) may be withdrawn at any time by the President."

* * * *

Article 151(1) of the Constitution runs :

"The reports of the Comptroller and Auditor General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.
(2) The reports of the Comptroller and Auditor General of India relating to the accounts of a State shall be submitted to the Governor or Rajpramukh of the State, who shall cause them to be laid before the Legislature of the State."
"Article 213(2) : An Ordinance promulgated under this Article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such ordinance
(a) shall be laid before the Legislative Assembly of the State or whether there is a Legislative Council in the State before both the Houses and shall cease to operate at the expiration of six weeks iron the re-assembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or as the case may be on the resolution being agreed to by the Council and
(b) may be withdrawn at any time by the Governor."
"Article 281 : The President shall cause every recommendation made by the Finance Commission under the provisions of the Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

15. The procedure of laying the rules before the Legislature and the legal effect of non-

compliance with that provision have been considered by Schwartz on the American Administrative law. 'At page 46' he observes :

> "There are, however, other safeguards upon the exercise of powers of delegated legislation which are external to the administrative process. These are the checks imposed by the Legislature and Judiciary. In this country, Parliamentary control over delegated legislation is exercised through the various forms of laying, prescribed in enabling Acts. Through them, the Legislature is enabled at least in theory to exercise a continuing supervision over administrative rules and regulations."

16. In Ridge's Constitutional Law, Edn. 8, the parliamentary scrutiny provided by the rules is discussed thus :

> Many rules and regulations do not become effective until they have been laid before either or both Houses of Parliament for a specified time; others do not become effective until a resolution to bring them into operation has been passed by the Commons, or sometimes, by both Houses; others become effective unless a resolution against them is moved in one or other of the Houses within a specified time. But these methods of Parliamentary control are not very real."

17. After discussing how parliamentary control over delegated legislation has become ineffective, the author points out that the procedure for laying orders before Parliament was considerably simplified by the Statutory Instrument Act. 1946. The gist of that Act is given at 'page 283' thus :

> "The procedure for laying orders before Parliament was considerably simplified by the Statutory Instruments Act, 1946, which gave effect to some of the earlier recommendations by providing that where an order is subject to annulment by resolution of either House, it shall be laid before both Houses for 40 days and if either House within that period passes a resolution praying for annulment no further proceedings shall be taken on the other and His Majesty may by Order in Council revoke it. A like provision was made for the case of orders required to be laid in draft before the House and, if there is a resolution within 40 days of the laying of the draft, no further proceedings are to be taken thereon."

18. C. K. Alien in his book "Law and Orders" at 'page 108' discusses the effect of the failure to lay the rules before the Parliament, He gives an incident that happened during the War. Pursuant to the powers given to the Government under the Fire Services (Emergency Provisions) Act, 1941, twenty three sets of regulations were issued before 25-8-1941 and 12-6-1944 but for one reason or other, these regulations were not placed before the Parliament.
The Home Secretary discovered the mistake in July 1944 and threw himself on the mercy of the House announcing that the said regulations had never been laid before the Parliament. After a somewhat bewildered debate, the House of Commons passed an Act of Indemnity, the sole

operative clause of which reads as follows : The Secretary of State is hereby freed discharged and indemnified from and against all consequences whatsoever, if any, incurred or to be incurred by him by reason of the said failure to lay before Parliament the regulations specified in the schedule to this Act as soon as may be after they were made, and those regulates shall be deemed to have been duly laid before Parliament in accordance with the requirements of the statute under which they were made".

19. We have mentioned all this to show how the Minister in charge realising his mistake threw himself at the mercy of the Parliament and the Parliament had to pass an Act of Indemnity. This also indicates that the rules 'to lay' are not made to be broken with impunity. But the question is what is the legal effect of the dereliction of duty on the part of the Minister or any other Officer concerned in net laying the rules before the Legislature. Alien poses the question at page 109 as follows :

> "The most important question of all is what is the legal effect of delegated legislation which is made and published in due form with the important exception that it has never been laid before Parliament for quarantine as required' by its parent Act",

and says that the answer depends on a perennial difficult question of statutory interpretation - whether the provisions of an Act are directory or imperative (or as it is sometimes called, mandatory.) Later on he proceeds to state :

> "Of course, if the statute expressly indicates what the effect of non-compliance is to be, the matter is plain; but in many cases it merely gives its command and' says nothing about the consequences of disobedience. The Courts then have to look at the general intendment of the section, and often of the whole statute, and although there can be no invariable rule, the general principle of interpretation is well stated by Maxwell.
> "Where the prescription of a statute relate to a public duty and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, without promoting the essential aims of the Legislature such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or in other words, as directory only'.

20. The author, therefore, seems to indicate that where the statute itself does not expressly indicate the effect of non-compliance with the rule to lay such as in the present case, it is directory only and its non-compliance does not invalidate the rule.

21. In Anson's Law and Custom of the Constitution' Vol. II Part I, at p. 255, after describing the different phraseology used by the Parliament for providing a measure of control over delegated legislation, the learned author proceeds to state :

> "There is clearly no rational principle affecting the treatment of different cases and government have shown great reluctance to accord effective control".

22. The author does not indicate his view on the question of the validity of the rule if it is not laid before the Parliament.

23. Wade in his book on 'Constitutional Law" describes the nature and effect of parliamentary control over delegated legislation. Dealing with the case of a regulation, which is merely to be laid before Parliament, the author says that the control of the Parliament is ineffective but he does not express his view in regard to the validity of a rule not placed before the Parliament.

24. Barnard Schwartz in his book "The Law and the Executive in Britain" seems to indicate that the contravention of the rule has the effect of invalidating the rule itself for the author says at page 109 :

> "The general statutory provision with regard to the laying of delegated legislation before Parliament has been to the effect that such instrument 'shall, so soon as may be after they are made, be laid for each house'.
> The interesting point then arises regarding what are the legal effects of a failure to comply with the statutory requirement; i.e., of the failure of the agency concerned to lay.....Sir William Graham Harrison was of the opinion, that 'a direction that rules are to be laid before Parliament is directory only' that is, failure to 'lay' does not invalidate the delegated legislation.
> Dr. Alien is also of this opinion, although conceding that 'it is a little startling' to say that a command to lay Ministerial regulations before the Legislature is 'a mere instruction for the guidance and government of those on whom the duty is imposed'. One might, however, logically assert that the legislative requirement here is mandatory - that failure to comply with it invalidates the delegated legislation. If laying is of any value as a check upon the Executive, its requirement should be strictly enforced.
> The failure to comply here should go to the 'essence' as much as those defects in formal procedure which our Courts have often held to invalidate transactions. The point at any rate seems to be settled in favor of this view by Section 4(1) of the Statutory Instruments Act, which provides that where any statutory instrument is required to be laid before Parliament after being made, a copy of the instrument, shall be, laid before each House of Parliament and shall so be laid before the instrument comes into operation".

There is much to be said for the view expressed by this learned author, for the object of the rule to lay is to have an effective legislative control over delegated legislation and this object may be defeated if the non-observance of the condition has not the effect of invalidating the rule. But at the same time, if the dereliction of duty by the concerned Minister or any other officer invalidates a statutory rule, which has already come into force, it may affect the rights of the public or invalidate transactions that have taken place on the basis of that rule.
The Legislature assumes that the executive will discharge the duties laid upon it strictly and there is also no reason to assume that the executive deliberately will withhold the laying of the rules on the table of the Legislature. As often as not, the non-observance of the rules happens more out of mistake than out of the deliberation. The Legislature can if it chooses, take necessary action

against the Minister or other officer concerned.

25. The question was discussed in 65 Law Quarterly Review at page 439 thus :

> "If an Act of Parliament provides that regulations made under the Act shall be laid before Parliament as soon as possible and Shall be subject to disapproval is this provision mandatory, invalidating the regulations if it is not complied with, or is it merely directory ? The point does not appear to have arisen in any reported English case, although the Home Secretary's failure to lay a series of National Fire Service regulations before Parliament led to the National Fire Service Regulations (Indemnity) Act, 1944, which not only indemnified the Home Secretary' but also provides (perhaps ex abundanti cautela) that the regulations 'shall be deemed to have been duly laid before Parliament in accordance with the requirements of the statute under which they were made'.
> However, in the unreported case of *'Springer v. Dooley*[2]*',* the Court of Error of Barbados held that in such a case the statutory provision was mandatory and regulations invalid. Collymore, C.J. approved the words in the Court below that "where the Legislature delegates its law making power to a subordinate authority and reserved the right to review the regulations made, by such subordinate body and if necessary to disallow them, and attaches conditions to secure that it shall have tire opportunity to exercise its powers of review as the supreme legislative authority, such conditions are mandatory.,
> The whole question is one of some difficulty, and Dr. C.K. Alien, in his Law and Orders' (1945) pp. 107 to 112 reached a tentative conclusion to the contrary effect, although this contrary view (which has always been held in the departments) struck him as being a little startling (p. 110). Despite fluctuations in recent years in the judicial attitude towards legislative acts of the Executive (*'Black-pool Corporation v. Locker*[3]*',* is significant of the modern approach) few would be surprised to find the Courts construing an Act In such a way as to make parliamentary control effective rather than ineffective".

26. The author of this article also to some extent supports the view that the rule is mandatory.

27. Before adverting to the cases having a direct bearing on the question raised, it may be convenient at this stage to notice the law on the question of the interpretation of the word 'shall' in the section under scrutiny. Maxwell in his book on "The Interpretation of Statutes" states at page 381 :

> "On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in

[2] May 17, 1949

[3] 1948-1 KB 349

> neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed or in other words

as directory only. The neglect of them, may be penal indeed, but it does not affect the validity of the act done in disregard of them".

28. In construing the word 'shall' in Section 40(1), Government of India Act whereunder "all orders and other proceedings of the Governor-General in Council shall be expressed1 to be made by the Governor-General in Council 'shall1 be expressed to be made by the Governor-General in Council and shall be signed by a Secretary to the Government of India", the Federal Court in *J.K. Gas Plant Manufacturing Co., Ltd. v. Emperor*[4]*',* was not prepared to imply a prohibition to allow validity to orders of the Governor-General in Council otherwise than as provided in that Sub-Section and construed the word 'shall' as only directory. In coming to that conclusion at pp. 41-42 their Lordships observed :

> "The general principle on which Courts have to decide such cases as this, where a statute requires that something shall toe done in a particular manner without expressly declaring what shall band the consequences of non-compliance, are in our judgment accurately and conveniently set out in Section 3 "Imperative or Directory" on pages 372 to 374 of Maxwell. It is to be noted that the question whether the provision is affirmative or negative has a material bearing.
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> If it is in the affirmative, it is a weaker case for reading the provisions as mandatory. Further according to the passage in Maxwell, we are in our judgment entitled to consider certain questions; first would the whole aim and object of the Legislature in constituting the Governor-General in Council and conferring far reaching powers* which have by statute been conferred on the Governor-General in Council, be plainly defeated if the provisions of Section 40(1) were not held to imply a prohibition to allow validity to orders of the Governor-General in Council expressed otherwise than as provided in Sub-Section (1) of Section 40 ? Secondly would the construction contended for by the appellants involve general inconvenience and injustice to innocent persons without promoting the real aim and object of the Constitution Act ? Thirdly, is the construction suggested in conformity with the whole scope and purpose of the Constitution Act ?"

29. Ramaswami and Rai, JJ. in *'Hirday Narayan Singh v. Jang Bahadur*[5]*',* expressed the rule of construction at page 269 as follows :

> "For it is an established rule that if a statute imposes a public duty and requires that it should be performed in a certain manner or within certain time or on certain conditions such cases will be regarded as intended to be directory otherwise injustice or inconvenience will result to persons who have no

[4] AIR 1947 FC 33

[5] AIR 1952 Pat 265

> control over those exercising their duty without promoting the essential aim of the Legislature".

30. The aforesaid' principles afford a reasonable guidance for construing the provisions of

Section 133 of the Act.

31. We shall now consider the relevant case law on the subject. In *'Bailey v. Willamson[6]'* the question arose whether the regulations made under the Parks Regulation Act were in force at the time the accused in that case committed the offence. Section 9 of that Act says that

> "any rule made in pursuance of the first schedule to this Act shall be forthwith laid before both Houses of Parliament, if Parliament be sitting or If not, then within three weeks after beginning of the then next ensuing session of Parliament and if any such rules shall be disapproved of by either House of Parliament within one month after the same shall have been so laid before Parliament, such rules, or such parts thereof as shall be disapproved of, shall not be enforced".

The Act was passed on 27-6-1872 and published on the 30th of September. Parliament was not then Sitting. In November the accused was convicted of delivering an address in the park not in accordance with the rules. The Court of Queen's Bench held that Section 4 of the Regulations, together with the rules if made, took effect one month after the passing of the Act and Section 9 imposed a condition subsequent by which any rule disapproved of by either House of Parliament was not to be enforced after such disapproval. The conviction was held good as, according to the learned Judges, the rule was in force and had not been disapproved by the Parliament. Blackburn, J. observed at page 129 :

> "I think the Legislature has expressed the Intention that the rules shall be made, and an intention that if after the period limited Parliament expressed its disapproval it shall cease to be a rule, but it is to be a rule up to that time and as such, any transgression of it may be punished by a summary conviction under Section 4".

Quain, J. says at page 132 :-

> "We have no negative words at, all in Section 9. The approval of Parliament is not at all necessary. It is very remarkable that the word used1 is disapproved, so that the act must be an act of disapproval on the part of Parliament and not of approval, and the section does not say that the rule, it disapproved, shall be null and void, or of no effect, or that it shall be repealed, or anything of that kind; but it simply says that it shall not be enforced".

32. This judgment is, therefore, authority for the position that where a rule has to be laid before the Parliament only to enable it to express its disapproval the rule comes into effect immediately and may cease to be operative from the date Parliament

[6](1873) 8 QB 118

expresses its disapproval.

33. In *'Starey v. Graham[7]',* the question was whether the Registrar of Patent Agents Rules 1899 were valid. Under Sub-Section (4) of Section 101 of 46 and 47 Vic. Chap. 57, "any rules made in pursuance of this section, shall be laid before both Houses of Parliament, be in Session at the

time of making thereof, or if not then as soon as practicable after the beginning of the next session of Parliament". Channel, J. in dealing with the said requirement of law observes at page 412 :

> "For my part, I somewhat doubt whether the provisions of Section 101 are more than directory and whether it is necessary in any particular case where reliance is placed on such rules to prove that its provisions had' in fact been complied with".

34. It is true that, in that case, the learned Judges held that the provisions of Section 101 had been substantially complied with. But the observation of Channel, J. indicates that, where the rule only requires the laying of the rules before Parliament the said requirement is only directory.

35. In 1895 AC 328, the question turned upon the interpretation of Section 20 of the Universities (Scotland) Act, 1889 whereunder all ordinances-made by the Commissioners are to be published in the Edinburgh Gazette, laid before Parliament and submitted to the Queen-in-Council for approval and "no such ordinance shall be effectual until it shall have been so published, laid) before Parliament and approved by Her Majesty-in-Council" the condition of laying before Parliament was clearly made a condition precedent for the coming into force of the rules.

36. This question arose in India in the High Court of Pepsu in *'Dalmer Singh v. State of Pepsu'*[8], Under Article 320(5) of the Constitution, the regulations made are to be laid before the House. In dealing with the question whether the requirement is directory or mandatory, Chopra, J. at page 102 says :

> "The language and purpose of its provisions, make me think that the sub-article is meant to be a directory one. The regulations are only to be laid before the House for fourteen days as soon as practicable after they are made. They are not to be formally approved by the House, but they are to be subject to any modifications the House may choose to make during the session in which they are so laid.
>
> The use of the word 'shall' is not very much material. Article 166(1) also uses the word 'shall' while requiring the executive orders to be expressed in the name of the Governor. But in the latter case it has been held in *'Dattatreya Moreshwar v. State of Bombay*[9]*',* that on omission to comply with its provisions does not render the executive action a nullity".

37. A Division Bench of the Calcutta High Court in *'Munna Lal Tewary v. Harold R. Scott'*[10]*,* had also to consider the scope of Article 320(5).

[7](1899) 1 QB 406 [9] AIR 1952 SC 181 (G1)
[8] AIR 1955 Pepsu 97 [10] AIR 1955 Cal 451

Chakravartti, C.J. dealing with, the contention that the clause of the said Article is only mandatory, says at page 459 :

> "It is well-known that when an Act provides that rules framed under a section of it shall have to be laid before the Legislature, the provision is generally made in one or other of three forms. There is either a mere direction that any rules framed under a particular section shall have to be laid before the Legislature for a certain period or there is a

provision that the rules shall not come into effect till after they have been laid before the Legislature and have laid there for a stated period or it may be said that the rules shall have to be laid before the Legislature and if the Legislature disapproves or amends or modifies them, they have effect only as so amended or modified.

X X X X

The provisions of Clause (5) of Article 320 are, however, entirely different. In the first place, all that the clause requires and enjoins is that the regulations shall be laid before the Legislature for a period of not less than 14 days.

It is not said that till the regulations have been so laid and till after they have lain for a particular period, they shall not come into force. Again, the clause provides that after the regulations have been placed before the Legislature they shall be subject to modification whether by way of repeal or amendment.

The word 'amendment' causes no difficulty, because I can conceive of even draft rules being amended, but the clause also speaks of repeal and that provision to my mind, indicates conclusively that the regulations do not depend for their validity on being laid before the House and certainly do not depend on the- Legislatures' approval. The word 'repeal' implies and connotes that what is to be repealed is already law, for otherwise repealing could have no meaning and there could be no question of repeal at all.

Even apart from the meaning suggested by the word 'repeal' it appears to me that in view of the limited character of the provision contained in clause 5 limited in the sense that it is confined to a direction for laying the regulation before the House the clause can be construed only as a provision of a directory character".

We respectfully agree with the learned Judge's observations.

38. The aforesaid discussion in the text books and the case law indicate' the various methods adopted by the Parliament or legislature to control delegated legislation. That control is sought to be effected by directing the rules or regulations made by the delegated authority to be laid before the Parliament. But the statutory provisions made in the different Acts with regard, to the laying of delegated legislation before the Parliament adopted different phraseology leading to different results. A correct summary of the different modes of phraseology adopted by the Parliament has been given at page 277 of Craies on Statute Law which we have already extracted supra.

The following briefly are the principal kinds of statutory instruments (1) those which are subject to negative resolution, (2) those which are subject to affirmative resolution, (3) those which are required to be laid before Parliament but are not payable and (4) those in regard to which Parliament in clear terms made laying of the rules as a condition precedent or a condition subsequent specifying the consequences of its non-compliance. The same variations of Parliamentary control are also adopted in the Indian Statutes. Where the statute makes the laying of the rules before Parliament a condition precedent or the resolution of the Parliament a condition subsequent, there is no difficulty as, in the former case, the rule has no legal force at all till the condition precedent is complied with and in the latter case, it ceased to have force from the date of non-compliance with the condition subsequent. Nor can there be any difficulty in a case where the Parliament or the Legislature, as the case may be, specifically prescribes the legal effect of 'non-compliance with that condition. But more important question arises when the

Parliament directs the laying of the rules before the Parliament without providing for the consequences of non-compliance with the rule. As aforesaid, learned authors are inclined to take different views on the effect of non-compliance with such a rule. We must concede there is force in the view expressed by Bernard Schwartz In his book on "The Law and Executive in Britain" that the rule is mandatory. But, after considering the question carefully, We are inclined to adopt the view that, in the case of a statute directing rules to be laid before the Parliament or the Legislature without any condition attached, the rule is only directory. Though the statute says that the rules shall be laid before the Parliament as the provision in the statue is conceived in public interests, the dereliction of the duty by the Minister or other officer concerned in not following the procedure should not be made to affect the members of the public governed by the rules. It may be asked and legitimately too that when the Parliament to keep its control over delegated legislation directs that the rule shall be laid before the Parliament and if that rule is construed as directory, the object itself would be defeated. But the Parliament or the Legislature, as the case may be if they intended to make that rule mandatory, they would have clearly mentioned the legal consequences of its non-compliance as they have done in other cases. In such a case, the Parliament may assume that the Minister discharges the duty entrusted to him and ordinarily, except perhaps by over-sight or mistake, there is no reason to apprehend that a responsible Minister or his subordinates will neglect the duty cast on them. If there is any such dereliction of duty, Parliament or the Legislature can always take appropriate action against the Minister or the officer concerned. We have come to this conclusion, rather reluctantly as in our country, which has recently adopted the democratic constitution, there is greater reason that Parliamentary control should be more-effective than in Englandwhere Parliamentary institutions have been in existence for a long time.

This defect perhaps may be cured by the Indian Parliament or the Legislature, as the case may be, making a law similar to the Statutory Instruments Act, 1946 made in England prescribing, definitely the conditions, the period and the legal effect of the laying of the rules before the Parliament or the Legislature.

39. Bearing in view the aforesaid principles we shall proceed to consider the scope of Section 123 of the Act, Sub-section (1) prescribes that there-should be previous publication of the rules. Sub-Section (2) says that all the rules made under this. Act shall be published in the official gazette and shall, unless some later date is appointed, come into force on the date of such publication. It is clear from this provision that the rules come into force immediately they are published, unless the Act provides for a different date. Sub-Section (3) then says that the rules shall be laid for not less than fourteen days before the Legislature as soon as possible after they are made and shall be subject to such modification as Parliament or such Legislature may make during the session in which they are so laid. This rule, therefore, is not made either a condition precedent or a condition subsequent to the coming into force of the rules. It does not provide for any affirmative resolution. The rule continues to be in force till it is modified by the Parliament. If Sub-Section (3) is only directory, in view of the opinion expressed by us, it is clear from a fair reading of the words used in the section that the rules made under the section came into effect immediately they were published and they continued to be in force because it is not suggested that they were modified by the Legislature. We, therefore, hold that the rule in question is valid.

40. The validity of R. 134-A is attacked on another ground, namely that Government cannot frame a rule authorizing the Board to delegate its judicial functions to its secretary. Under Rule 134-A the Board may for prompt and convenient despatch of business, by general or special resolution delegate to the Secretary, among others, the power under Section 47 of the Act to grant

or refuse a stage carriage permit in cases where no objection or representations are received with reference to Section 57(3) of the Act. Section 44(5) of the Act empowers the Regional Transport Authority, if authorized in this behalf by rules made under Section 68, to 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 Government in exercise of the rule making power conferred under Section 68 prescribed rules nominating the authority to whom the Regional Transport Authority can delegate their functions under Section 47. It is, therefore, not a case of an authority on whom the Legislature conferred certain judicial powers delegating the said powers to another. The Legislature itself conferred certain powers on the Regional Transport Authority and also authorized them to delegate the said powers to another nominated by the Government. If the Legislature has conferred judicial powers A or B, it cannot be contended that the said conferment is invalid. If, instead of nominating B, it authorizes 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 had substantially legislated on the subject and left the nomination of the person to the Government.

41. The cases cited at the Bar do not really help us in considering the validity of the aforesaid provision. The scope and the limits of delegation of legislative powers have been elaborately considered by the Supreme Court in *In re : Article 143*. Constitution of India and Delhi Laws Act (1912) etc. AIR 1951 Supreme Court 332. Their Lordships pointed out that the Legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. The passage from the judgment of Ranney, J. of the Supreme Court of Ohio in *'Cincinnati W. and Z. R. Co. v. Clinton Country Commrs*[11]*',* brings out the limits of the power of delegation in the following words :

> "The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be and conferring authority or discretion as to its execution to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection

[11] 1 Ohio St 88

> can be made".

42. The following passage from 'Locker's Appeal', 72 Pa St 491, extracted by Mahajan, J. in his judgment also defines the limits of delegated legislation :

> "The Legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of Government."

43. In *'Benjamin P. Runkle v. United States*[12]*',* White C.J. held that the President of America cannot delegate the judicial functions conferred on him as commander-in-chief of the Army. At p. 1171 the learned Judge observed :

> "As commander in chief of the Army he has been made by law the person whose duty it is to review the proceedings of Courts martial in cases of this kind. This implies that he is himself to consider the proceedings laid before him and decide personally whether they ought to be carried into effect. Such a power he cannot delegate....

And this because he is the person and the only person to whom has been committed the important judicial power of finally determining upon an examination of the whole proceedings of a Court martial, whether an officer holding a commission in the Army of the United States shall be dismissed from service as a punishment for an offence with which he has been charged and for which he has been tried."

44. This Judgment does not say anything more than the obvious fact that a Judge on whom judicial power is conferred cannot delegate his functions to a 3rd party. It is not necessary to multiply decisions. The Legislature cannot abdicate its functions and delegate them to others. But it can always delegate its power to determine some fact or state of things upon which the operation of the law made would depend. It is also clear that, if the Legislature confers judicial power upon a specified person, he cannot, delegate that function to another. But, in this case, neither the provisions of Section 44(5) of the Act nor R. 134/A made by the Provincial Government contravene the aforesaid principles. Under Section 44(5) the Legislature does not purport to abdicate any of its functions. The Act clearly and definitely prescribed the powers to be exercised by the Regional Transport Authority. It authorized 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 the prescribed power can be delegated. Therefore, there is no abdication on the part of the Legislature of its legislative functions. Nor is there any justification for the contention that the Regional Transport Authority is suo motu delegating its judicial functions - for the' purpose of this argument we assume that it is exercising judicial functions - to a third party,' The Legislature itself conferred that power of| delegation and only left the nomination of the delegate to the local Government. In this view, there is no question of any delegation of any judicial powers by a judicial authority on whom specific powers are conferred by the Legislature. We see, therefore, no merits in this contention.

[12](1887) 30 Law Ed 1167

45. It is then contended, that R. 160-C la beyond the legislative competence of the Central Legislation, under Rule 160-C, it shall be a condition of every permit that the vehicle or vehicles specified in it shall not be used on any public road unless the tax due in respect of such vehicles has been paid in accordance with the provisions of the Madras Motor Vehicles Taxation Act, 1931, and the notifications issued thereunder.

It is argued that this rule in substance enforces the collection of the tax due under the Motor Vehicles Taxation Act, 1931 and also imposes a punishment by way of cancelling the permit if the tax is not paid. On that basis, it is argued that the rule made in 1951 encroaches upon the legislative field of the State and is, therefore, void. It is disputed that the collection of tax and the imposition of punishment for non-payment are within the exclusive field of the State Legislature. See Items 57 and 64 of List II of Sch. 7. The learned counsel for the Government contends that the 'pith and substance' of the Act and the rules is to regulate and control the plying of mechanically propelled vehicles and the Union Legislature has power to make laws in respect of the said subject-matter under Item 35 of the Government list and that the mere fact that, la

making the law, it incidentally encroached upon the State field does not make the law invalid.

46. In every Federal structure, there is bound to be a conflict between two legislative bodies operating in different fields. This question, therefore, necessarily arose on many an occasion in India and also elsewhere and the problem was satisfactorily solved though there was always bound to be difficulty in applying the solution to the facts of each case. The following passage from the judgment of Latharm, C.J. in - *'Bank of New South Wales v. Commonwealth[13]',* clearly summarizes the law on the subject at page 187 thus :

> "Thus when a question arises as to the validity of legislation it is the duty of the Court to determine what is the actual operation of the law in question in creating, changing, regulating or abolishing rights, duties, powers or privileges, and then to consider whether that which the enactment does fall in substance within the relevant authorized subject matter, or whether it touches it only incidentally, or whether it is really an endeavor, by purporting to use one power, to make a law upon a subject which is beyond power."

47. Lord Atkin in - *'Gallagher v. Lynn[14]',* restates the law on the subject as follows :

> "It is well established that you are to look at the true nature and character of the legislation - *'Charles Russell v. The Queen[15]',* , 'the pith and substance' of the legislation. If, on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field.
>
> The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field. Nor are you to look only at the object of the legislator. An Act may have a perfectly lawful object e.g. to promote the health of the inhabitants, but may seek to achieve that object by invalid

[13]76 Comm-W LR 1 at p. 187 [15]1882-7 AC 829
[14]1937 AC 863

> methods e.g. a direct prohibition of any trade with a foreign country.
>
> In other words, you may certainly consider the clauses of an Act to see whether they are passed in respect of the forbidden subject. In the present case any suggestion of an indirect attack upon trade is disclaimed by the appellant. There could be no foundation for it.,
>
> The true nature and character of the Act, its pith and substance, is that it is an Act to protect the health of the inhabitants of Northern Ireland; and in those circumstances, though it may incidentally affect trade with County Donegal it is not passed in respect of trade, and is therefore not subject to attack on that ground."

48. Maurice Gwyer, C.J., in - *'Subrahmanyam Chettiar v. Muthuswami Goundan[16]',* in the context of the constitutional validity of the Madras Agriculturists' Relief Act vis-a-vis the Negotiable Instruments Act made similar observations at page 51 :

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment, may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in at forbidden sphere.

Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its 'pith and substance' or its 'true nature and character' for the purpose of determining whether it is legislation with, respect to matters in this list on in that ..... in my opinion this rule of interpretation is equally applicable to the Indian Constitution Act".

49. Rajamannar, C.J. and Venkatarama Ayyar, J. following the aforesaid principles held In - ***'A.*** *M. S. S. V. M. and Co. v. State of Madras*[17]*',* that if a law is in respect of a subject within exclusive jurisdiction of the State Legislature, it is valid even though, in the result, it might trench incidentally on subjects beyond its competence. The short question, therefore, is what is the 'pith and substance' or 'the true nature and character' of R. 160-C of the Madras Motor Vehicles Rules read with other provisions of the Act and the rules framed thereunder. The Madras Motor Vehicles Taxation Act, 1931, was enacted to regulate and control the plying of motor vehicles in the interest of the public. The taxation of motor vehicles, the mode of collecting the tax and the punishment for non-payment are all regulated by it. Rule 160-C does not purport to trench upon any of the provisions of the said Act. It does not provide for imposition of the tax, the collection of the tax or for punishment for non-payment. The punishment may have a wide connotation and may take in a disqualification from office or from the pursuits of a lawful avocation, within its fold. See - *'Cummings v. The State of Missouri*[18]*',* Tills rule does not in terms impose any punishment for non-payment of tax. As a part of the general scheme of control, the rule-making authority framed this rule presumably with a view to satisfy itself that the owner of the vehicle concerned has paid all the taxes

[16] AIR 1941 FC 47 [18](1871) 18 Law Ed 357

[17] AIR 1954 Mad 291

pertaining to the vehicle though under different Act so that the service which is run in the interests of the public may not be disturbed or interrupted by any proceedings taken under that Act. The mere fact that a permit holder may be compelled to pay his tax under the Madras Motor Vehicles Taxation Act in time if he intends to continue his service cannot make the rule any the less a rule made for the control of the plying of motor vehicles. The 'pith and substance' of the rule when read in the context of the other provisions of the Act is only to control and regulate the plying of motor vehicles and it does not either expressly or by necessary implication encroach upon the forbidden field. The persuasive effect of the rule on a permit holder to pay his tax cannot be a ground for holding that the rule making authority legislated on at forbidden subject. We, therefore, hold that in its true nature and character, Rule 160-C is confined only to the field allotted to the Central Legislation and, therefore, the rule is valid.

50. The last of the contentions is that Rule 160-C offends Article 19(1)(g) of the Constitution of India and that the restriction placed upon the petitioner's right to carry on his business of plying

motor Vehicles for hire, namely, that he should pay the tax under the Madras Motor Vehicles Taxation Act is unreasonable, not in the interest of the public and extraneous to the purpose for which the Act is made. Under Article 19(6) of the Constitution :

> "nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevent the State from making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause".

The restriction now imposed is that the permit holder shall not use the vehicle on the road unless the tax due in respect of such vehicle has been paid in accordance with the provisions of the Motor Vehicles Taxation Act, The Motor Vehicles Taxation Act levied tolls on motor vehicles, presumably for the purpose of raising sufficient funds for keeping the roads in order. That Act also provides a machinery for the recovery of the tax payable by the owner of a vehicle. Under Section 7 of that Act, the defaulter is liable to fine. Under Section 9 the tax can also be recovered as if it is an arrear of land revenue i.e., the vehicle along with his other properties could be attached and sold under the Revenue Recovery Act under Section 10 of the Act. The amount collected by way of taxes is distributed among the various local bodies and the Provincial Government, having regard to the principles laid down in the section. The aforesaid sections, therefore, clearly show that the amount was collected to enable local bodies) to maintain roads, to facilitate, motor traffic and also to meet the costs incurred by the Provincial Government in exercising their administrative functions in regard to the control of motor vehicles in the province. The tax collected under the Motor Vehicles Taxation Act is, therefore, not an extraneous circumstance unconnected with the control of motor vehicles in the State. If the tax is not collected the Provincial Government, who exercises administrative control, may not have sufficient funds to effectively control the traffic in motor vehicles. If the tax is not paid, the roads on which the motor vehicles ply may not be kept in good condition. If the tax is not paid, there is every likelihood of the motor vehicles being attached and sold under the Motor Vehicles Taxation Act and will not be available for public use.
To have a continuous and effective motor service it is necessary that the persons, who ply motor vehicles for hire, should regularly pay their taxes. In the circumstances, we cannot say that when the rule-making authority made payment of tax in respect of motor vehicles a condition of the permit there is unreasonable restriction on the fundamental right of the permit holder.

51. The learned counsel for the petitioner places strong reliance upon my judgment in Writ Petn. No. 476 of 1952 (Andhra) (S). There, I made the following observations :

> "The petitioner has certainly fundamental right to carry on his business. Is the restriction now put upon him by the Transport Authority on the said right reasonable in the interest of the general public ? He was carrying on his business; for a long period of time. His antecedents appear to be beyond reproach. He paid all his taxes regularly till the last quarter of the year 1951. His non-payment of taxes for the quarter was due to his pre-occupation in the election to the State Legislature and the House of People and the illness of the clerk who was in charge of his business.
> Immediately he came to know of it, he paid all the taxes before the notice was issued to

him calling upon him to show cause why his permit should not be cancelled and for the next quarter also he had paid all the taxes. There is also an adequate machinery under the Motor Vehicle Taxation Act enabling the Government to realise the taxes by prosecution or by recovery as if they were of revenue.

In the aforesaid circumstances, I must hold that the cancellation of the permits after the entire arrears were paid is not a reasonable restriction on the petitioner's right to do business, much less is it in the interests of the general public".

52. Having regard to the aforesaid facts, I held that the cancellation of the permit was an unreasonable restriction on the right of the petitioner therein to carry on his business, I do not either expressly or by necessary implication decide that R. 160 (c) is ex facie an unreasonable restriction on the right of a permit holder to carry on his business. That judgment, therefore, should be confined only to facts of that case.

53. Govinda Menon, J. had considered a similar question in Writ Petn. Nos. 556 and 557 of 1952 (Andhra). (T). There, the renewal of the licenses was refused on the ground that the vehicles had been plied during the several periods for which tax had not been paid and that such plying was deliberate and habitual. The learned Judge observed :

"Where a person who plies a motor bus without paying the tax is found out, it is certainly proper exercise of authority, in the matter of granting license, to refuse the licence for a person guilty of such an act.",

54. The learned Judge did not think that it was an unreasonable restriction on the petitioner' right to carry on business. This matter was taken on appeal and Rajamannar, C.J, and Rajagopala Ayyangar, J. in - *'Rasipuram Union Motor Service*

Ltd. v. State of Madras[19]*',* confirmed the judgment of Govinda Menon, J.

The learned Judges held that the Regional Transport Authority should refuse to give the preference for renewal over applicants for new permits, to a person who has persistently broken one of the conditions of the permit by plying the vehicles without paying the taxes. Though the question raised now was not considered by the learned Judges, the conclusion of the learned Judges is consistent with the view that Rule 160-0 is constitutionally valid. We, therefore, hold that the condition laid down in Rule 160-C is not extraneous to the control of motor vehicle traffic and that it is not an unreasonable restriction upon the right of the permit holder to ply his vehicles for hire.

55. Before leaving this case, we must express our appreciation of the manner in which learned counsel for the petitioner Mr. K. Srinivasamurthi and the learned counsel appearing for the Government Mr. A. Gangadhara Rao have worked up the cases and placed ail the relevant material before us.

56. In the result, both the petitions fail and are dismissed with costs in Writ Petn. No. 271 of 1952. Advocate's fee Rs. 100/-.

Petition dismissed.

[19] AIR 1954 Mac 205