ANDHRA PRADESH HIGH COURT

N.S. Ghouse Miah

Vs.

Regional Transport Authority

Writ Petns. Nos. 53, 228, 332, 453, 1069, 1077, 1083, 1139, 1219, 1347 of 1961 and 541 of 1962

(P. Chandra Reddy, C.J. and Gopal Rao Ekbote, J.)

24.08.1962

JUDGMENT

Gopal Rao Ekbote, J.

1. In all these writ petitions filed under Article 226 of the Constitution of India as a common question of vires regarding Rule 153-D of the Motor Vehicles Act as introduced by G. O. Ms. No. 2455, Home, (Transport-I) Dated 25-11-1960 is raised, they can be conveniently disposed of by one common judgment. We are not much concerned with the facts mentioned in each petition, as we are not called upon to decide anything keeping in view those facts. It will serve our purpose if we consider the arguments advanced regarding the question of vires raised before us. In order to appreciate the various contentions advanced it is necessary to see what the new Rule 153-D states. The salient features of Rule 153-D are :

I. The rules are classified as :
(a) short routes covering a distance of upto 30 miles.
(b) medium routes covering a distance varying from 31 to 75 miles; and
(c) long routes covering a distance varying from 76 to 250 miles.

Other things being equal, preference for short routes including shuttle services will be given to new entrants and for medium routes to applicants with 1 to 4 stage carriages (excluding spare buses).

II. The transport authorities , in deciding whether to grant or refuse a stage carriage permit are directed to have regard to matters enumerated in clause (3) of the Schedule. It directs that applicants shall be screened and disqualified on one or more of the following principles :
(i) Financial instability,
(ii) unclean history sheet,

(iii) trafficking in permits,
(iv) if the applicant has no workshop facilities or other arrangements to attend to repairs effectively.....
Provided that a new entrant shall not be disqualified on this ground if he gives an undertaking, in writing, to make the necessary arrangement within a reasonable period. In an explanation attached to this sub-rule the minimum equipment of workshop for a unit of five stage carriages is shown.
(v) if the applicant has no main office or branch office on the route or resides beyond five miles from the route applied for to control the service,
(vi) if the application is on behalf of the others in order to evade the rules.
III. After eliminating the applicants through the process of screening and disqualifying marks are directed to be assigned for assessing the different qualifications of the applicants for the grant of permits, which include :
(a) sector or residential qualifications,
(b) business or technical experience in motor transport, and
(c) special circumstances in which the applicant is placed.
IV. Applications thus finalized shall then be disposed of according to sub-section (1) of Section 47 of the Motor Vehicles Act.

2. This rule is challenged by the petitioners on various grounds. It is firstly urged that the State Government is not competent to make this rule, as there is no specific provision to that effect in Section 68. It is also contended that clause (za) of sub-section (2) of Section 68 is inapplicable, because under that provision the State Government is only authorized to prescribe any other matter. Secondly it is urged that Rule 153-D oversteps the limits imposed by Chapter IV of the Motor Vehicles Act (hereinafter called as the Act) in general and Section 47 in particular. Thirdly it is argued that the said rule is also inconsistent with Chapter IV in general and Section 47 in particular. Lastly it is argued that the rule is violative of Article 19 (1) (g) and Article 14 of the Constitution of India inasmuch as it puts unreasonable restrictions which practically amount to prohibiting some operators from carrying on the trade and that it also makes invidious distinctions between persons similarly situate ed. We will consider these arguments in seriatim.

3. The contention of the learned advocate for the petitioners is that Section 68 which empowers the State Government to make rules does not specify except in (za) that rules can be made under Section 47. It is contended that the State Government under (za) of Rule 68 (2) was expected to first prescribe the matter for the purpose of making rules under Section 47 and then make the rules. In our judgment the argument has no substance. If we go through the whole of the Act, we find under various sections that some matters are left to be regulated by rules and perhaps, as is argued by the learned advocate for the petitioners, except Sections 47 and 55 in practically every other section some details relating to some matters are left to subordinate legislation. It will be seen that in all these sections the word 'prescribed' is used, which means according to Section 2 (21) of the Act - 'prescribed by rules made under this Act.' Now it is clear that these sections, wherever the word 'prescribed' occurs, do not expressly authorize any subordinate authority to make rules. It is only Section 68 (2) (za) which empowers the State Government to make rules in regard to all those matters mentioned in various sections as 'prescribed'. The argument therefore

that Section 68 (2) (za) empowers the State Government to prescribe and specify some additional matters regarding which the State Government can make rules is not correct. In fact that would amount to delegating the powers of legislation itself a function which falls within the realm of the Legislature. On a plain reading of Section 68(2)(za) it is clear that the State Government is empowered to make rules in regard to matters which are specifically referred to in several sections using the word 'prescribed'. It also empowers the Government to frame rules in case any such matter is prescribed by the Legislature in future by following a legislative process. Clause (za) of sub-section (2) of Section 68, therefore, as is assumed by the learned advocate, is not relevant. It is nobody's case that the impugned rule is made under this provision. It is intended to serve altogether a different purpose. The argument of the learned advocate that the State Government should have prescribed first the subject under Section 68 (2) (za) and then made the rules, therefore, fails.

4. It is true that the rule in question is not made in pursuance of any provision mentioned in sub-section (2) of Section 68 of the Act. As is evident from the notification itself, the amendment is made in exercise of the powers conferred by sub-section (1) of Section 68 of the Act. Sub-section (2) does not exhaust the powers of the State Government to frame rules. It is not limited only to those matters enumerated in sub-section (2). The provisions of sub-section (2) do not restrict the powers mentioned in sub-section (1) as is clear from its wording. In *Emperor v. Sibnath Banerjee*[1], a similar argument was considered. The question before their Lordships of the Privy Council was whether Rule 26 made under the Defence of India Act was ultra vires of Section 2(2)(x). The contention was that the Federal Court failed to give weight to the opening words of Section 2(2) which were 'without prejudice to the generality of the powers conferred by sub-section (1)." The words of subsection (1) were 'The Central Government may, by notification in the Official Gazette, make such rules as appear it to be necessary or expedient for securing the defense of British India, the public safety, the maintenance of public order, or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.' Their Lordships of the Privy Council expressed their inability to agree with the Federal Court on the statement of the relative position of sub-sections (1) and (2) of Section 2 of the Defence of India Act. In the opinion of their Lordships the function of sub-section (2) was merely an illustrative one. The rule making power was conferred by sub-section (1) and the rules - rules which were referred in the opening sentence of sub-section (2) - were the rules which were authorized by and made under sub-section (1). The provisions of sub-section (2) were not restrictive of sub-section (1) as indeed was expressly stated by the words "without prejudice to the generality of the powers conferred by sub-section (1)." It was therefore held that "there can be no doubt - as the learned Judge himself appears to have thought - that the general language of sub-section (1) amply justifies the terms of Rule 26, and avoids any of the criticisms which the learned Judge expressed in relation to sub-section (2)." Their Lordships therefore expressed the opinion that 'Talpade's case, *Keshav Talpade v. Emperor*[2], was wrongly decided by the Federal Court, and that Rule 26 as made in conformity with the powers conferred by subsection (1) of Section 2 of the Defence of India Act.' This case was followed by the Supreme Court in *Santosh Kumar v. The State*[3], It was observed by Patanjali Sastri, J., that "it is manifest that sub-section (2) of Section 3 confers no further or other powers on the Central Government than what are conferred under sub-section

[1]72 Ind App 241
[2]1943 F. C. R. 49: (AIR 1943 FC 1)
[3]1951 S.C.J. 291

(1), for it is 'an order made thereunder' that may

provide for one or the other of the matters specifically enumerated in sub-section (2), which are only illustrative, as such enumeration is without prejudice to the generality of the powers confered by sub-section (1)." To the same effect are the cases decided by our High Court and reported in *State of Andhra Pradesh v. Jayalakshmi Rice Mill Contractors Co.*[4], and in an unreported case in *G. Sitaramaiah v. Collector of Central Excise, Hyderabad*[5], It is thus clear that sub-section (2) is not exhaustive but merely illustrative and it derives all the powers mentioned therein from sub-section (1), which is comprehensive and very wide in its scope. The argument therefore that because the rule under consideration does not fall within any one of the items enumerated in sub-section 2 of Section 68, the rule must be deemed to have been framed without having any power, cannot be accepted as correct.

5. The only point therefore which we have to consider is whether the State Government was competent to make the impugned rule under sub-section (1) of Section 68 of the Act. The words used in sub-section (1) are : The State Government may make rules for the purpose of carrying into effect the provisions of this Chapter.' Now it cannot be disputed that Section 68 as well as Section 47 are part of Chapter IV of the Act. The conclusion therefore is inescapable that the State Government is authorized to make rules for the purpose of carrying into effect the provisions of Section 47. The argument therefore that the State Government was not competent to make the impugned rules must be rejected.

6. It is next argued that Rule 153-D goes beyond the scope generally of Chapter IV and particularly of Section 47. Advancing this argument reliance is placed on the following two decisions. *Huzrat Syed Shah v. Commissioner of Wakfs*[6], *Manickyamma v. The State of Andh-Pra*[7], It is true that in one of these decisions, it is laid down that 'the Legislature instead of incorporating the rules in the statute itself, ordinarily authorises the Government to carry out the details by framing rules and once the rules are framed, they are incorporated in the statute itself and become part of the statute and the rules must be governed by the same principle as the statute itself. In such a case, it might be permissible to supplement the provisions of the statute itself, within the limits. But where as provided in Section 68 (1) rules are to be framed for carrying out the purposes of the Act, such rules cannot travel beyond the four corners of the Act itself.' The correctness of this proposition can hardly be disputed. What we have however to see in this particular case is whether the impugned rule in any way goes beyond the scope of Chapter IV or Section 47. No argument is advanced before us to show in what way the impugned rule transgresses the limits imposed generally by Chapter IV. The argument however was limited to Section 47. The short answer as far as Section 47 is concerned is provided by that Section in Section 47 (1) (a) of the Act viz., 'the interest of the public generally', The State Government is surely competent to lay down by way of general guidance certain fundamental principles, which will be according to them in the interests of the public generally. The heading will cover any ground which might not have been expressly mentioned in Section 47. It is neither possible nor is it desirable to restrict the discretion of the Regional Transport Authority to grant or refuse a stage carriage permit on considerations of public interest.

[4] 1959-1 Andh WR 44 at p. 53 : (AIR 1959 And Pra 352 at p. 358)
[5] W.P. No. 20 of 1960 D/-16-7-1961 (AP)
[6] AIR 1954 Cal 436
[7] (1959) 1 Andh WR (SN) 28

7. Even otherwise we do not think that the scope of the Section is limited to the factors to be taken into consideration while granting stage carriage permit mentioned in Section 47. It is not correct to say that Section 47 of the Act forms a complete code or that the factors mentioned

therein are exhaustive. In our view that is clear from the words 'shall have regard to' in Section 47. The requirement of the section is that the matter specified in the Section may be taken into consideration. In other words, the primary duty of the Regional Transport Authority is to take into consideration the matters specified but it does not follow that the hands of the Regional Transport Authority are tied to the consideration of these matters alone and they must shut their eyes to everything else. Likewise Section 47 does not prohibit in any manner the Government from making any rules under which some other factors are to be taken into consideration in addition to those mentioned in Section 47. It goes without saying that those considerations must be germane to the matters mentioned in Section 47. No rules can be made for that purpose which can legitimately be considered as extraneous or irrelevant or not germane to the matters for the purposes of granting the permit. It must be noted that Section 47 does not say anything with regard to the question of giving preference to one or the other applicant. What Section 47 of the Act says is that "A Regional Transport Authority shall after considering the application for a stage carriage permit have regard to the following matters." To have regard to those factor mentioned therein does not mean giving preference on any one of the grounds. They are undoubtedly relevant factors to be taken into consideration either for the purposes of granting or refusing to grant a permit. The words 'shall have regard to' mean that the Regional Transport Authority must consider and bear in mind the matters specified in Section 47(1) of the Act. They however do not mean that in addition the Regional Transport Authority must not consider any other relevant circumstances or matters. They mean that consideration of the matters enumerated under Section 47 is indispensable, but they do not prevent in addition consideration of all relevant circumstances. Looking at from this point of view, Section 47 and the Rules made thereunder are not exhaustive. In addition to these provisions the Regional Transport Authority will well be within its competence if it takes into consideration some very relevant and germane matters for the purpose of considering the grant or refusal to grant a permit. We are therefore clear that the impugned rule falls within the scope of Section 47 and does not in any way over-step any limit imposed by Section 47. In fact no such limit is imposed. The rule, as stated above, will have, of course, to be considered subject to other objections regarding its validity. But the argument that any rules made in addition to Section 47 will necessarily travel beyond the scope of Section 47 cannot be accepted as correct.

8. In view of the opinion we have expressed above, the argument that the impugned rule is inconsistent with Section 47 or Chapter IV of the Act does not hold water. No specific provision of Chapter IV was brought to our notice against which the impugned rule can be considered as inconsistent. The only argument advanced is that the impugned rule is inconsistent with Section 47(1)(e) of the Act. Section 47(1)(e) is in the following terms :-

> "47(1). A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely :-
>
> (a).....
>
> (b).....
>
> (c).....
>
> (d).....
>
> (e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending."
>
> We do not see any provision of the impugned rule repugnant to Section 47 (1) (e). The

argument that new entrants are given preference in respect of short routes making that rule inconsistent with Section 47 (1)(e), as the existing operators are affected by such rule, cannot be sustained. It must be remembered that no monopoly can be created on one hand, and on the other no situation can be created whereby every time every route must fall in the hands of a new operator. Judicious balance therefore is attempted to be maintained by this rule by putting a little emphasis on the new entrants in order to avoid the possibility of any monopoly. It is unnecessary for us to go into the question whether the policy of the Government as adumbrated in the said rule is the proper one to be followed. This is not the forum for attacking that. What we are expected to see only is whether the rule made in pursuance of any policy is valid and a good law. The argument that new entrants will affect the old operators cannot be accepted as a sound one. A similar question arose for consideration before the Calcutta High Court in *Gopal Chandra v. State of West Bengal*[8], In that case Rule 57-A made by the State Government was challenged on the ground that it was inconsistent with the provisions of Section 47 of the Motor Vehicles Act and as such was ultra vires. Rule 57-A reads as follows :-

"Limitation for the grant of stage carriage or contract carriage permits :-

(1) When applications for a permit in respect of a stage carriage or a contract carriage have been received from a person holding one or more permits in any one or more regions, areas or routes and from a person having no such permit, other conditions being equal, preference shall be given to the latter.

(2) . . . . . ."

Repelling this contention, P.B. Mukharji, J., who spoke for the Bench, observed :-

> "On proper consideration of these different sub-clauses (of Section 47) it does not appear to me that Rule 57-A of the Motor Vehicles Act is inconsistent with any one of them."

9. It is thus clear that the impugned rule is not in any way inconsistent with Section 47(1)(e) of the Act. All that the rule says is that when other conditions are equal, a preference will be given to the new entrant as against a permit holder in the matter of a permit. The rule in our view is inoffensive so far as the purposes of Chapter IV or Section 47 of the Act are concerned. If other conditions are equal, then this preference offends no rule or section of that statute. No section in the Act expressly or impliedly prohibits the giving of such a preference. It is therefore not correct to say that the

[8] AIR 1962 Cal183

impugned rule is inconsistent with Section 47 (1) (e).

10. There is however one provision which requires a careful consideration to see whether it is repugnant to Section 47. The Proviso to sub-section (1) of Section 47 states :

> "Provided that other conditions being equal, an application for a stage carriage permit from a co-operative society registered or deemed to have been registered under any enactment in force for the time being shall, as far as may be, be given preference over

applications from individual owners."

In the impugned rule under clause (iv) (2) (c) a provision is made that

> "one mark may be awarded for the applicant for being co-operative society registered or deemed to have been registered under the Madras Co-operative Societies Act, 1932 or a 'public company' as defined in clause (iv) of sub-section (1) of Section 3 of the Indian Companies Act, 1956."

It is clear that whereas Section 47 directs preference to be given only to a co-operative society, the said rule places 'public company' at par with the co-operative society and such a public company is given preference over the other individual operators inasmuch as one extra mark is awarded for that purpose. Although there is no 'public company' involved in any of the applications before us, it was argued that the said provision of the rule is inconsistent with Section 47. In our opinion the subordinate legislative authority cannot add 'public company' by way of rule and thus create a body either at par with the co-operative society or give it a preference over other operators by awarding one more mark because it is a 'public company'. This function legitimately falls within the realms of the Legislature and not that of a delegated authority. We therefore feel that the rule to that extent over-steps the limit imposed by Section 47 and makes a substantive law and not a procedural one. It is therefore to that extent bad and must be struck down. It is indisputably inconsistent with Section 47, because the authority which Section 68 gives to the Government is for the purpose of carrying the Act into effect and not with the view of neutralising or contradicting any provision of the Act.

11. It is then argued that sub-rule 5 of clause (iii) of Rule 153-D is violative of Article 19(1)(g) inasmuch as it is not a reasonable restriction on the right of the petitioners to ply buses. Sub-rule (5) of clause (iii) of Rule 153-D reads as follows :-

> "If the applicant has no main office or branch office on the route or resides beyond five miles from the route applied for to control the service."

If any applicant fails to satisfy this condition according to clause (iii), he shall be screened and disqualified on that ground alone. It means that his application will not be considered under Section 47 of the Act. It is pertinent to note that on possessing residential qualifications specific marks are allotted under clause (iv) of the said rule and to that extent in our view clause (iv) cannot be challenged. But when it prohibits any applicant to file his application simply because he has no main office or branch office on the route or that he resides beyond five miles from the route or that in case any, such application is filed, it shall be screened and the applicant declared disqualified, it clearly prohibits him from carrying on the trade. That provision appears to us unreasonable. It is now fairly established that a citizen has a fundamental right to ply motor vehicles on public pathways under Article 19(1) (g) of the Constitution of India and any infringement of that right by the State can be justified only if it falls within the scope of Article 19(6) thereof. If that is so, then any restrictions put on the citizens, which result in totally disqualifying them from applying for any permit, would practically nullify the fundamental right which they enjoy under Article 19(1)(g). It is true that in *M. Ramayya v. State of Andhra*[9], it is

decided by a Bench of our High Court that the fact that the operator is an existing operator in respect of a part of the route in question is not an extraneous or irrelevant consideration, or that the reason in awarding the permit in favour of one operator that he is a resident of a place which is on the route in question, while the other operator is a resident of a place far away from the route in question, is neither irrelevant nor an improper consideration. It must however be remembered that we are not striking down this provision on that ground. In fact we are upholding the provision, that is, clause (iv) as good, which allows some marks for this purpose. We do not mean to say that the sector or residential qualification cannot be taken into consideration while granting or refusing to grant permits. What we say is that sector or residential qualification cannot be so imposed as to debar all others even from applying for permits. That would, in our view, amount to preventing or prohibiting the people from carrying on a trade which they are constitutionally entitled to carry on. This view of ours is supported by *Chintaman Rao v. State of Madhya Pradesh*[10], In that case it was observed by Mahajan, J., as he then was :-

> "The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permittee by clause (6) of Article 19, it must be held to be wanting in that quality."

Any discrimination based on the place of residence in our view is not reasonable and valid. The said provision of sub-rule (5) of clause (iii) must therefore be struck down.

12. The only point which now survives for consideration is whether the proviso to sub-rule (4) of clause (iii) of Rule 153-D is violative of Article 14 of the Constitution. Sub-rule (4) to which that proviso is attached runs as follows :-

> "If the applicant has no workshop facilities or other arrangements to attend to repairs efficiently :
> Provided that a new entrant shall not be disqualified on this ground if he gives an undertaking in writing, to make the necessary arrangements within a

[9] AIR 1956 And 217
[10] 1950 SCR 759

> reasonable period."

It is argued that the doctrine of equality of opportunities is being ignored by making an invidious distinction between a new entrant and a person already operating services. There is no justifiable cause for doing that. In our view, this proviso makes an arbitrary discrimination. It looks to us unreasonable to favour the new entrants or place the existing operators under any disadvantage, in the circumstances that do not admit of any reasonable justification in this different and conflicting kind of treatment. This invidious classification does not seem to have any purpose behind it, nor it can claim to be reasonably related with the objective which is sought to be

achieved. The objective is clear that every operator, whether he is a new entrant or an old one, should have a sufficiently equipped workshop. If that objective is to be realised, then the proviso could be made applicable to both these classes and the old operator should be given the same facilities as are now being given to the new entrants. If the new as well as the old entrant gives an undertaking in writing that he will make the necessary arrangements within a reasonable time, he should not be disqualified. As long as that proviso therefore is not amended giving equal opportunities to both these classes, we have no other alternative than to declare it as violative of Article 14 of the Constitution, and therefore bad in law.

13. The provisions which we have struck down can be separated from the rest of the rule which can still be enforced. In our opinion after omitting the provisions which we have found as bad the rest of the rule is workable and does not frustrate the intention of the rule-making authority, and is quite independent of the bad portion of the impugned rule. The argument that the entire rule should go on that ground must be rejected.

14. No other arguments except as above were pressed before us. As we are told that the applications filed by the various petitioners are still under consideration of the appropriate authority, it is enough in our view that we decide the questions raised before us and declare the correct position of the law and leave the rest to be decided by the appropriate authority. In view of this, therefore, we do not find any further necessity to issue a writ in the form of Mandamus. The petitions therefore will be dismissed with the above said observations. In the circumstances of the case we do not make any order as to costs. Advocate's fee Rs. 50/- in each petition.
Writ petitions dismissed.