
Smt. Palaniammal and A. Ravindran Vs The Government of Tamil Nadu**Writ Petition No"s. 8986 and 9743 of 1998**

Court: Madras High Court**Date of Decision:** Jan. 19, 2009**Acts Referred:**

Constitution of India, 1950 " Article 14, 47#Motor Vehicles Act, 1988 " Section 29(1), 42(1), 42(3), 68F(1), 70#Succession Act, 1925 " Section 118#Tamil Nadu Motor Vehicles Rules, 1989 " Rule 248, 248(1)

Hon'ble Judges: K. Chandru, J**Bench:** Single Bench**Advocate:** M. Palani, for the Appellant; P.S. Raman, Addl. A.G. Asstd. by C.K. Vishnupriya, AGP, for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

Heard both sides. The petitioner in the first writ petition is a stage carriage operator at Vellitiruppur and the petitioner in the

second writ petition is another stage carriage operator at Salem. In these two writ petitions, the challenge is to the constitutional validity of proviso

to Rule 248(1) of the Tamil Nadu Motor Vehicles Rules, 1989 and to declare the same as unconstitutional.

2. In the first writ petition, notice of motion was ordered on 02.7.1998. The second writ petition was admitted on 17.8.1998 and directed to be

heard along with the first writ petition. On behalf of the respondent State, a common counter affidavit dated 30.8.2006 has been filed.

3. Before going into the rival contentions, it is necessary to extract the Rule in question, viz., Rule 248(1), which reads as follows:

248. Stage carriage - fixing Schedule of timing. - (1) The Transport Authority may, if no schedule of timings is already fixed or approved for a

stage carriage or a service of a stage carriages on any route, either on its own motion or on an application made to it in writing, by a general or

special order, fix and approve a schedule of timings for the particular stage carriage or the service of stage carriages in consultation with the

applicant and the persons providing transport facilities on the route or sectors thereof and while approving a schedule of timings, on an application

made to it in writing, it may approve the same with such modification as it deem necessary. It shall not be necessary for the Transport Authority to

send individual notice of the timings conference to the operators concerned and it shall be sufficient compliance of this provision, if the notice giving

the existing and proposed schedule of timings and the time, date and place at which the subject will be discussed, is affixed on the notice board of

the office of the Transport Authority and copies of the notice sent to the applicant and the concerned S.T.U. and bus owners Association of the

district through which the route passes:

Provided that in the case of stage carriages of State Transport Undertakings tentative timings may be fixed by the Transport Authority without

following the procedure laid down in the sub-rule in the case of introduction of the Stage Carriages on temporary permit.

4. Mr. M.Palani, learned Counsel for the petitioner submitted that an application for stage carriage permit is provided u/s 70 of the Motor Vehicles

Act, 1988 (for short "the MV Act"). Section 71 provides for the procedure for the Regional Transport Authority (for short "RTA") in considering

the application for stage carriage permit. Section 72 provides for the consideration of the application and also the guidelines for granting the stage

carriage permit by the RTA. Section 87 of the MV Act provides for power to the RTA as well as the STA to grant temporary permits without

following the procedure laid down in Section 80 of the MV Act. Therefore, Section 87 exempts the authorities from following the procedure for

grant of permit in terms of Section 80.

5. The learned Counsel after referring to the provisions submitted that fixation of timing is an essential requirement for grant of permit. But in the

guise of the power to frame rules provided under the Act, the respondent State had exceeded its limits and has granted a blanket power to the

authorities to grant not only temporary permit to the State Transport Undertakings (for short "the STUs") but also granted arbitrary power in fixing

tentative timings to the STUs alone. This facility has given a cutting edge to the STUs and it is clearly arbitrary and unconstitutional. In effect, such a

rule making power is not available to the State Government. It virtually deregulates the provisions of the Act whereas the MV Act is conceived to

regulate the operation of motor vehicles in the State of Tamil Nadu. Not only the proviso to Rule 248(1) is unconstitutional but it is also ultra vires

of the MV Act itself.

6. Per contra, Mr. P.S. Raman, learned Additional Advocate General appearing for the State contended that the petitioners have no locus standi

to file a writ petition on a mere academic basis. They have not raised a single ground in the affidavits filed in support of the writ petitions as to how

they were prejudiced by the exercise of power under proviso to Rule 248(1) of the MV Rules. Further, not a single instance has been cited by

them wherein the grant of temporary stage carriage permits to an STU had affected their transport operations. The constitutional validity of a legal

provision cannot be challenged on theoretical basis. He further submitted that in case any person aggrieved by an order passed by the STA or

RTA with regard to grant of permit and any other order which has been passed under this Act, an appeal lies to the State Transport Appellate

Tribunal (for short "STAT") u/s 89 of the MV Act. Even in cases of where any appeal is not permissible the STAT has power of revision u/s 90 of

the MV Act. Section 87(1) of the MV Act clearly lays down that a temporary permit can be given only for a period of four months and that too

for the following occasions which are set out in the Act itself:

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, or

(d) pending decision on an application for the renewal of a permit: and may attach to any such permit condition as it may think fit.

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the

circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not

exceeding one year.

7. The learned Additional Advocate General also submitted that there was nothing wrong in granting temporary permits to the STUs in public

interest. The situations under which such permits are granted themselves have been delineated in Section 87 itself and therefore there can be no

arbitrariness in grant of such permits. Since the urgency of the situation requires power to fix such tentative timings and if the elaborate procedure

contemplated in the main rule is followed, the very purpose of grant of permits for the exigencies mentioned in Section 87 will be lost.

8. In this context, learned Additional Advocate General also referred to the averments made by the State found paragraphs 6 to 8 of the counter

affidavit which may be usefully extracted below:

Para 6. It is submitted that the writ petitioners have not mentioned any specific case for having violated the provisions of Rule 248. The allegation

of the writ petitioners that temporary permits are being misused by the State Transport Undertakings without any specific instance or case is not

acceptable.

Para 7. It is also submitted that the procedure laid down in Rule 248 of Tamil Nadu Motor Vehicles Rules, 1989 is being followed in all the cases

without any deviation. The fixation of tentative timings is considered only in the case of temporary permit that too for providing transport facilities to

meet the immediate needs of the travelling public.

Para 8. It is submitted that the averments made in paragraph 5 of the affidavits are untenable as the temporary permits are being granted by the

transport authorities u/s 87 of the Motor Vehicles Act, 1988 to State Transport Undertakings just to meet the urgent need arising due to various

reasons and in such cases only tentative timings are fixed according to the proviso to Rule 248(1) of the Tamil Nadu Motor Vehicles Rules, 1989.

The temporary permits are being issued only after justifying the need on the particular route for the benefits of the travelling public. Provisions of

adequate transport facilities immediately to the public is the primary duty of the Transport Authorities, which cannot be questioned by the

petitioners, without quoting the specific instance by which the petitioners are affected.

Based upon these averments, the learned AAG submitted that the classification made under the proviso to Rule 248(1) is perfectly valid besides it

is a reasonable classification which is not hit by the vice of Article 14 of the Constitution.

9. Notwithstanding the stand taken by the State, Mr. M.Palani, learned Counsel for the petitioner insisted on referring to several decisions of this

Court and the Supreme Court in support of his submissions. The learned Counsel referred to the judgment of this Court in Balasubramaniam

Roadways (Firm), Dindigul Vs. State of Tamil Nadu and Others, . In that case, this Court dealt with the scope of a circular issued by the

Government dated 25.1.1979 (under the provisions of the old Rules) wherein the STAs and RTAs were given discretionary power to fix suitable

timings. This Court held that the authorities under the Act are only bound by the Act and Rules and such a circular cannot bind the authority. That

case was also conceded by the then Government Pleader who appeared before the Court. The said decision has no application to the facts of the

present case where a valid rule has been made under the provisions of the MV Act.

10. Thereafter, the learned Counsel referred to the decision of the Constitution Bench of the Supreme Court in Budhan Choudhry and Others Vs.

The State of Bihar, . This is for the purpose of showing the scope of Article 14 of the Constitution. Reliance was placed on paragraph 5 which may

be usefully reproduced below:

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In

order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on

an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must

have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely,

geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification

and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not

only by a substantive law but also by a law of procedure. The contention now put forward as to the invalidity of the trial of the appellants has,

therefore to be tested in the light of the principles so laid down in the decisions of this Court.

11. The learned Counsel also submitted that while the Supreme Court itself has allowed certain advantages to the STUs, but in respect of Chapter

IV of the MV Act (old Act), there is no such advantage given to them. And if for any permit under Chapter IV they will have to compete along

with other transport operators. For this purpose, the learned Counsel relied upon the judgment of the Supreme Court in *The Parbhani Transport*

Co-operative Society Ltd. Vs. The Regional Transport Authority, Aurangabad and Others, . Reliance was placed on paragraph 9 of the judgment,

which may be usefully reproduced below:

9. Now the position here is different. The Government has of course the power to do any business it likes and therefore the business of running

stage carriages. We have earlier drawn attention to the change made in Clause (a) of Section 42(3) by the amendment of 1956. Previously, it was

not necessary for the Government to obtain permits u/s 42(1) for buses that it intended to run as stage carriages. Since the amendment the

Government can no longer run transport vehicles for commercial purposes without obtaining permits u/s 42(1). Now the plying of buses as stage

carriages is a commercial enterprise and for such buses, therefore, under the sections as they stand, the Government would require permits as

anyone else. That being so, the sections clearly contemplate that the Government may apply for and obtain permits for its buses run as stage

carriages. The rule applied in *Nazir Ahmad case*¹ does not permit the ordinary meaning of Section 42 Sub-section (1) and Sub-section (3) Clause

(a) to be cut down because of the provisions of Chapter IV-A. The Act lays down two independent sets of provisions in regard to the running of

buses by the Government, one under Chapter IV and the other under Chapter IV-A. Chapter IV-A was intended to give the Government, a

special advantage. When the Government chooses to proceed under that chapter, it becomes entitled as a matter of right u/s 68-F(1) to the

necessary permits. Under Chapter IV the Government does not have any such advantage; it has to compete with other applicants, to secure

permits to be able to run its buses. The powers under the two Chapters are therefore different. To such a case the principle of *Nazir Ahmad case*

cannot be applied.

12. But, however, in the present Act, both Section 87 of the MV Act as well as Rule 248(1) of the MV Rules provides for temporary permit not

only for the STUs but also for private operators. Therefore, there is no discrimination in the matter of grant of temporary permits. However, in

view of the exigencies for which temporary buses will have to be operated. In many circumstances, the private operator may not come forward to

operate a bus either on account of lack of spare buses or on account of lack of business. The STUs may come forward to operate buses because

it is state owned and profit making may not be the only criteria when they are made to operate on such routes arising out of public interest.

Therefore, the decision relied on by the learned Counsel has no application to the facts of the present case.

13. The learned Counsel also relied upon the decision of the Supreme Court in *Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental*

Action Group and Others, . This is for the purpose of showing the scope of judicial review over a subordinate legislation. The learned Counsel

placed reliance upon paragraphs 104 and 117, which may be reproduced below:

Para 104. A policy decision, as is well known, should not be lightly interfered with but it is difficult to accept the submissions made on behalf of the

learned Counsel appearing on behalf of the appellants that the courts cannot exercise their power of judicial review at all. By reason of any

legislation, whether enacted by the legislature or by way of subordinate legislation, the State gives effect to its legislative policy. Such legislation,

however, must not be ultra vires the Constitution. A subordinate legislation apart from being intra vires the Constitution, should not also be ultra

vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative

policy as also give effect to the purport and object of the Act and in good faith.

Para 117. Unreasonableness is certainly a ground of striking down a subordinate legislation. A presumption as to the constitutionality of a statute is

also to be raised but it does not mean that the environmental factors can altogether be omitted from consideration only because the executive has

construed the statute otherwise.

14. But in the very same judgment in paragraph 96, the Supreme Court had laid down that a statute must be read as a whole and its subordinate

legislation has to be read in the light of the provisions of the Act whereunder it has been made. It must also be read having regard to the purpose

and object for which the statute is made.

15. The learned Counsel placed reliance upon the judgment of the Supreme Court in *John Vallamattom and Another Vs. Union of India (UOI)*, .

In the aforesaid judgment, the Supreme Court dealt with the vires of Section 118 of the Indian Succession Act, 1925 and struck it down as it

discriminated against Christians. The learned Counsel placed reliance upon the passages found in paragraphs 27 and 28, which may be usefully

extracted below:

Para 27.Testators constitute a homogeneous class and they cannot be divided arbitrarily on the basis of duration of their survival which is

unrelated to the purpose of executing a Will. In that view of the matter, the period of twelve months has no nexus with the object of performing a

philanthropic act. Thus, the impugned provision is violative of Article 14 of the Constitution.

Para 28. The provision relating to making of testamentary disposition by the citizens of India vis-à-vis those professing the religion of Christianity

must be judged on the touchstone of Article 14 of the Constitution of India. It is true that they form a class by themselves but ex facie I do not find

any justifiable reason to hold that the classification made is either based on intelligible differentia or the same has any nexus with the object sought

to be achieved. In fact, the respondent has failed to show that there exists any such object.

16. In the impugned rules, in respect of the grant of temporary permit, both the private operators as well as the STUs have been treated in the

same manner. Only in the case of grant of timing, the authorities have been empowered to grant tentative timings without notice. The petitioner had

not pointed out any case where the authorities have ignored the relevant circumstances and dealt with the grant of timing in an arbitrary manner.

17. The learned Counsel relied upon the judgment of the Supreme Court in Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative

Council and Others, . He placed reliance upon the passages found in paragraph 13, which may be usefully reproduced below:

Para 13. It may be noted that under Paragraph 8, the Chairman or the Speaker of a House is empowered to make rules for giving effect to the

provisions of the Tenth Schedule. The rules being delegated legislation are subject to certain fundamental factors. Underlying the concept of

delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice

do is to lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime

guide to the meaning of delegated legislation and the extent of the power to make it. The true extent of the power governs the legal meaning of the

delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote

that object, while at all times remaining true to it. That is the rule of primary intention. Power delegated by an enactment does not enable the

authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of

subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision.

But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart

from or vary its ends. (See Section 59 in chapter ""Delegated Legislation"" in Francis Bennion's Statutory Interpretation, 3rd Edn.) The aforesaid

principle will apply with greater rigour where rules have been framed in exercise of power conferred by a constitutional provision. No rules can be

framed which have the effect of either enlarging or restricting the content and amplitude of the relevant constitutional provisions. Similarly, the rules

should be interpreted consistent with the aforesaid principle.

18. For the very same proposition, the learned Counsel referred to the judgment in Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala

and Others, and relied upon the passages found in paragraphs 17 and 28, which may be usefully extracted below:

Para 17. A rule is not only required to be made in conformity with the provisions of the Act where under it is made, but the same must be in

conformity with the provisions of any other Act, as a subordinate legislation cannot be violative of any plenary legislation made by Parliament or the

State Legislature.

Para 28. The Rules in terms of Sub-section (1) of Section 29 of the Act, thus, could be framed only for the purpose of carrying out the provisions

of the Act. Both the power to frame rules and the power to impose terms and conditions are, therefore, subject to the provisions of the Act. They

must conform to the legislative policy. They must not be contrary to the other provisions of the Act. They must not be framed in contravention of

the constitutional or statutory scheme.

19. He further placed reliance upon the decision of the Supreme Court in State of Kerala and Others Vs. Unni and Another, . The passages found

in paragraphs 32, 34 and 35 are relied upon by the learned Counsel, which may be usefully extracted below:

Para 32. If by reason of the rule-making power, the State intended to impose a condition, the same was required to be a reasonable one. It was

required to conform to the provisions of the statute as its violation would attract penal liability. It was expected to be definite and not vague.

Indisputably, the State having regard to the provisions of Article 47 of the Constitution of India, must strive hard to maintain public health. While,

however, imposing conditions in regard to the prescription of norms, it was expected of the State to undertake a deeper study in the matter. It

should have undertaken actual experiments. It should have specified mode and manner in which the percentage of ethyl alcohol can be found out

by the licensee. A subordinate legislation can be questioned on various grounds. It is also well known that a subordinate legislation would not enjoy

the same degree of immunity as a legislative Act would. (See Vasu Dev Singh v. Union of India.)

Para 34. Unreasonableness is one of the grounds of judicial review of delegated legislation. Reasonableness of a statute or otherwise must be

judged having regard to the various factors which, of course, would include the effect thereof on a person carrying on a business.

Para 35. While we are not oblivious of the fact that nobody has any fundamental right to carry on business in toddy or liquor, but all the licensees

are entitled to be treated equally. If the matter of validity or otherwise of the subordinate legislation is to be considered, Article 14 of the

Constitution of India shall be attracted. (See State of Punjab v. Devans Modern Breweries Ltd.; Ashok Lanka v. Rishi Dixit (I) and Ashok Lanka

v. Rishi Dikshit (II).)

20. Lastly, the learned Counsel also placed reliance upon the judgment of the Supreme Court in *State of Tamil Nadu and Another Vs. P.*

Krishnamurthy and Others, . The learned Counsel relied on paragraphs 15 and 16, which may be usefully reproduced below:

Para 15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to

show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make

such rules).

Para 16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and

also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent

statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But

where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but

with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

21. There is no quarrel over the legal propositions laid down in the aforesaid judgments cited by the learned Counsel for the petitioners. The only

question is whether they have any application in impugning the proviso to Rule 248(1) of the MV Rules. It has already been stated that in the grant

of temporary permits there are no discrimination between private operators and the STUs. The proviso only enables the authorities to fix the

tentative timings in respect of STUs alone as the situation that is contemplated in Section 87 warrants such exclusion of notice. As rightly

contended by the learned AAG, an aggrieved person in terms of an order passed under Rule 248(1) can always invoke the revisional remedies

before the STAT. It is one thing to say that the power conferred is arbitrary and it is another thing to hold that in a particular case power has been

exercised improperly. If the petitioners are aggrieved, they have remedies in terms of the latter grievance.

22. It is also necessary to refer to the scope of the judicial review in this regard. A reference may be made to the decision of the Supreme Court in

Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . The

passages found in paragraphs 14 and 28 may be usefully reproduced below:

Para 14. ...In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of

delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation

conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power

to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It

would be wholly wrong for the Court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would

best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by

the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions

will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within

the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of

the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of

the Legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures,

substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and

purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question

as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the statute. Though this

legal position is well-established by a long series of decisions of this Court, we have considered it necessary to reiterate it in view of the manifestly

erroneous approach made by the High Court to the consideration of the question as to whether the impugned Clause (3) of Regulation 104 is ultra

vires.

Para 28. As pointed out by a Constitution Bench of this Court in *Fatehchand Himmatlal v. State of Maharashtra* "the test of reasonableness is not

applied in vacuum but in the context of life's realities....

23. It may also be useful to refer to the decision of the Supreme Court in *Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam* and others, with

reference to the application of Article 14 of the Constitution in testing the validity of a legislation. The passages found in paragraphs 118 and 120

are relevant and they may be usefully extracted below:

Para 118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so

construed as to make it effective and operative, on the principle ""ut res magis valeat quam pereat"". It is, no doubt, true that if a statute is absolutely

vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review

by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute,

does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal

Co. v. Manchester Racecourse Co. Farwell J. said: (pp. 360-61)

Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare

them void for uncertainty.

Para 120. It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and

the nothing short of impossibility should allow a court to declare a statute unworkable. In Whitney v. IRC Lord Dunedin said: (AC p. 52)

24. In the light of the above, the two writ petitions are misconceived, devoid of merits and accordingly they deserve to be dismissed. However,

there will be no order as to costs.