

## **Sri T.J. Damodara Vs The State of Karnataka, The Principal Secretary to the Government of Karnataka Transport Department and Transport Commissioner**

**Court:** Karnataka High Court

**Date of Decision:** June 17, 2013

**Acts Referred:** Karnataka Motor Vehicles (Conditions for Vehicles Engaged in Transport of School Children) Rules, 2012 "Rule 6, 6(2)

Motor Vehicles Act, 1988 "Section 212, 96, 96(2)

**Citation:** (2013) 3 AKR 755

**Hon'ble Judges:** A.N. Venugopala Gowda, J

**Bench:** Single Bench

**Advocate:** S.P. Shankar, for Sri C.V. Kumar, for the Appellant; Ravivarma Kumar, Advocate General for Sri T.K. Vedamurthy, AGA, for the Respondent

### **Judgement**

@JUDGMENTTAG-ORDER

A.N. Venugopala Gowda, J.

Constitutional validity of Sub Rule (2) of Rule 6 of Karnataka Motor Vehicles (Conditions for Vehicles

Engaged in Transport of School Children) Rules, 2012 (for short, "the Rules") has been questioned in this writ petition. The material facts are that

the Parliament enacted the Motor Vehicles Act, 1988 (Central Act 59 of 1988) (for short, "the Act"). S. 96 of the Act empowers the State

Governments to make Rules for the purpose of Chapter-V. Government of Karnataka in exercise of the power conferred by clause (xxxiii) of S.

96(2) read with S. 212 of the Act made the Rules under a Notification No. SARIE 01 SAEPA 2011, dated 18.01.2013 (Annexure-D). The

Rules have come into force on 01.05.2013. "School Cab" as per Rule 2(1)(c), means, a contract carriage with seating capacity not exceeding

12+1 complying with the requirements with valid permit issued under S. 74 of the Act. The Rules stipulate that no Owner or Operator of a Motor

Vehicle shall permit the use of the vehicle as a Transport Vehicle for carriage of School Children unless he carries a valid contract carriage permit

issued under S. 74 of the Act, permitting the use of the vehicle for the said purpose. Rule 6 is with regard to the conditions to be observed by the

Owner or Operator of the Motor Vehicle. Sub-Rule (2) of Rule 6 stipulates that the age of the vehicle shall not be more than fifteen (15) years

from the date of its initial registration, as on the date of entry to transport School Children.

2. The petitioner- T.J. Damodar, is the owner of a Maxi Cab bearing registration No. KA-05-B-5067, which is of 1992 model, with seating

capacity of 12+1, covered with permit No. Maxi/2301/2000, issued on 18.02.2000 and renewed on 18.12.2010, valid upto 17.12.2015. The

petitioner used the said vehicle for carrying the school children of Bishop Cotton School, Bangalore. He is aggrieved by the age of the vehicle fixed

as per Sub-Rule (2) of the Rule 6, at fifteen (15) years, from the date of its registration.

3. In justification of the impugned Rule, respondents have filed statement and additional statement of objections. It has been stated that, on

16.12.1997, Apex Court issued certain directions in the case of M.C. Mehta Vs. Union of India and Others, regarding safety aspects in buses

carrying School Children. Reference has also been made to W.P. No. 39591/2012, wherein, on 16.01.2013, a direction was issued to place on

record, an action plan, on how the guidelines issued by the Supreme Court on ensuring safety of School Children commuting between school and

home, in school buses/vehicles are being implemented, not only in the city of Bangalore but in the State. One of the information sought was as to

whether each of the vehicle comply the guidelines laid down by the Supreme Court. Reference has also been made to a scheme framed by the

Government of NCT of Delhi for regulating the motor cabs used for carrying School Children, wherein, it has been stipulated that the age of the

vehicle should not be more than 15 years from the date of its initial registration.

4. Sri S.P. Shankar, learned Senior counsel, appearing for the petitioner inter alia contended that;

a) The Act posited the power to make Rules by way of delegated legislation in the State Governments, as well as the Central Government and the

delegate in respect of those powers is given a specified role to enact Rules and such power is not an executive Act but a legislation function. He

submitted that the power to make Rules has been conceded in favour of the State Governments in Ss. 28, 38, 65, 96, 107, 111, 138 and 176 of

the Act.

b) S. 59 of the Act deals with fixing of the age of the motor vehicles and the provision being specific, ensures power only in Central Government

and hence, it is the Central Government alone which is empowered, authorized and enabled to fix the age of the motor vehicles and not in any

State Government.

c) Since the impugned Rule infringes the provisions of S. 59 of the Act and since the State is not able to enact the Rules beyond the scope of S. 59

of the Act or inconsistent therewith or repugnant thereto, the impugned Rule is liable to be struck down.

d) State Government is placed under an embargo/restriction in terms of S. 59 and the State is disabled to resort to general rule making power

without being authorized to specifically to do so by the Act.

e) The impugned Rule being contrary to S. 59 of the Act, would clash with the Fundamental Rights of the petitioner under Articles 14, 19 and 21

of the Constitution and also the Directive Principles of habilitating the self-employees and hence, needs to be struck down.

f) The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is

conferred has to act within the limits of authority conferred by the Act and that the Rules cannot be made to supplant the provisions of the enabling

Act but to supplement it. He submitted that the Rules and Regulations made under power conferred by the statute are supporting legislation and

can have the force and effect, if validly made as an Act passed by the competent legislature and not otherwise. He submitted that the control over

delegated legislation operates at two levels, firstly, at the point of delegation of power by the legislature and secondly, at the point of exercise of

delegated legislative power by the State. Support was sought to be derived from the decisions in the cases of State of Karnataka and Another Vs.

H. Ganesh Kamath and Others, ; State of Madhya Pradesh and Another Vs. Bhola @ Bhairon Prasad Raghuvanshi, ; Ashok Lanka and Another

Vs. Rishi Dixit and Others, and St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another,

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g) Since the Rules have been made in exercise of the power conferred by Clause (xxxiii) of S. (2) of 96 read with S. 212 of Motor Vehicles Act,

the claim of the respondents that the power is in fact found in S. 96(2)(xxiii) cannot be accepted in view of the statement of law by the Apex

Court, in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

5. Prof. Ravivarma Kumar, learned Advocate General, on the other hand contended that;

a) Sub Section (1) of S. 96 of the Act enables the State Government to make Rules for the purpose of carrying into effect the provisions of

"Chapter-V" of the Act and sub Section (2) contains illustration of the subject over which the power can be exercised and that the language of sub

Section (2) makes it clear that the matters mentioned therein are not exhaustive, merely illustrative and it is evident beginning with the words,

"without prejudice to the generality of the foregoing power". He submitted that the rule making power which emanates from sub Section (1) cannot

be abridged by any illustration mentioned in sub Section (2).

b) The Rules vide Annexure-D have been made by the State Government for the purpose of carrying to effect of provisions of Chapter-V of the

Act "i.e., control of Transport Vehicles", more particularly falling under S. 96(2)(xxiii) i.e., the "Regulation of Motor Cab Ranks". He submitted

that it is incumbent on the State to safeguard the safety of the school children, which is guaranteed under Articles 21 and 21-A of the Constitution

of India and that the powers thereunder override the provisions of the Act, even if there were to be any conflict. He further submitted that there is

no conflict between S. 59 of the Act and the impugned Rule nor any repugnancy could be found, as both the provisions operate in two different

fields.

c) Reliance was placed on the decisions of the Apex Court in the case of M.C. Mehta Vs. Union of India and Others, and Supreme Court

Employees" Welfare Association and Others Vs. Union of India (UOI) and Another, .

6. In view the rival contentions and the record of the writ petition the point for determination is "whether the impugned Rule is ultra vires the

provisions of the Act?"

7. The Act replaced the Motor Vehicles Act, 1939. The object of bringing and repealing the Act, 1939 is for rationalization of certain definitions

with additions of certain new definitions of new type of vehicles in view of the changes in the transport technology, strict procedures relating to

grant of driving licences and period of validity thereof, keeping in view the pattern of passenger and freight movements by taking into consideration

the road safety standards of anti pollution control devices and provision for enhancing compensation in case of no fault liability and hit and run

vehicular accidents and also the maintenance of State register for driving licences and vehicles registration.

8. In Subhash Chandra and Others Vs. State of U.P. and Others, the petitioner, a grantee of permits to ply mini-buses as contract carriages,

challenged a condition fastened by the State in the permits, that the mini buses shall not be more than seven years old models and as ultra vires S.

51(2) of the 1939 Act. While deciding the matter, Apex Court by observing that, if Indian life is not ultra vires Indian law every condition to save

life and limb is intra vires such salvation provision, has held as follows:

4. Section 51(2)(x) authorises the impost of any condition, of course, having a nexus with the statutory purpose. It is undeniable that human safety

is one such purpose. The State's neglect in this area of policing public transport is deplorable but when it does act by prescribing a condition the

court cannot be persuaded into little legalism and harmful negativism. The short question is whether the prescription that the bus shall be at least a

seven-year old model one is relevant to the condition of the vehicle and its passenger's comparative safety and comfort on our chaotic highways.

Obviously it is. The older the model, the less the chances of the latest safety measures being built into the vehicle. Every new model incorporates

new devices to reduce danger and promote comfort. Every new model assures its age to be young, fresh and strong, less likely to suffer sudden

failures and breakages, less susceptible to wear and tear and mental fatigue leading to unexpected collapse. When we buy a car or any other

machine why do we look for the latest model? Vintage vehicles are good for centenarian display of curios and cannot but be mobile menaces on

our notoriously neglected highways. We have no hesitation to hold, from the point of view of the human rights of road users, that the condition

regarding the model of the permitted bus is within Jurisdiction, and not to prescribe such safety clauses is abdication of statutory duty.

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6. The unreported ruling in Civil Writ No. 7317 of 1975 interprets Section 38 of the Act and the non-issuance of the fitness certificate because the

model was not recent enough. May be, the vehicle, regardless of the year of its make, may be fit and the refusal to certify fitness merely because it

is old may not always be right. But we see no conflict between a vehicle being fit to ride and the condition, as an additional requirement and safety

factor, in the shape of the year of the model. This is an extra measure, a further insurance against machine failure and cannot contradict the "fitness"

provision.

(Italicized by me for emphasis)

9. In Bharath Kumar, A. Vs. Karnatka State Transport Appellate Tribunal and another, the appellant applied for grant of a stage carriage permit

and the RTA granted permit subject to certain conditions including that the petitioner shall produce the documents of 1985 or later model vehicle.

Operator questioned the condition imposed with regard to the age of the vehicle as illegal before Karnataka State Transport Appellate Tribunal

and the appeal was allowed and the resolution of RTA was modified to the effect that the operator shall be granted permit in respect of a 1983

model vehicle subject to the condition of replacing the said vehicle by a less than 10 years old vehicle as and when the vehicle covered by the

permit becomes 10 years old from the date of initial registration which shall be a condition of the permit. Correctness of the said order was

questioned in a writ petition and a learned Single Judge took the view that under S. 72(2) of the Act, RTA can grant a permit for a stage carriage

of a "specified description" and the expression "specified description" would include the year of manufacture also. The contention of the operator

that S. 59 of the Act militates against imposing conditions under S. 72(2) of the Act so as to prescribe the age limit in regard to the vehicles to be

covered by permits was rejected. (See Bharat Kumar Vs. Karnataka State Transport Appellate Tribunal, The operator questioned the said order

in a writ appeal by raising a basic contention that the authorities acting under the Act cannot impose a condition as to the age of a vehicle which is

covered by a permit. While dismissing the appeal, it has been held as follows:

6. .... Therefore, while Chapter IV relates to control of motor vehicles by registration and condition thereto, Chapter V relates only to transport

vehicles. Under the Act at Chapter IV, Section 59 occurs which empowers the Central Government to fix the age limit of a motor vehicle. That has

relevance only in regard to issue of certificate of fitness and Section 56 which provides for certificate of fitness is subject to Section 59 of the Act.

Section 72 of the Act empowers the R.T.A. to grant permit for a stage carriage of a "specified description", subject to certain conditions which

may be prescribed under the Rules. While granting registration what is primarily to be looked at is the road worthiness or fitness of the vehicle so

as not to affect public safety and convenience. However, while granting permits for a transport vehicle the Authority may also take into

consideration the safety and convenience of passengers who travel in such vehicle apart from road-worthiness and depending upon the nature of

the permit that is granted by the Authority concerned, a condition in this regard could be imposed by the said Authority. Thus, the provisions of

Section 59 and Section 72 operate in two different fields and the Authorities acting under both the provisions can impose conditions relevant

thereto including as to date of manufacture of the same.

(Italicized by me for emphasis)

10. S. 59 of the Act appears in Chapter-IV of the Act. The provisions under Chapter-IV of the Act, primarily provide for "registration of Motor

Vehicles". Ss. 40 to 55 provide for amongst other, granting, refusing, cancellation and suspension of registration of Motor Vehicles. S. 56 relates

to certificate of fitness with regard to Transport Vehicles. S. 58 relates to special provisions with regard to Transport Vehicles and S. 59 relates to

power to fix the age limit of a Motor Vehicle.

11. S. 59 of the Act being material, the same reads thus:

59. Power to fix the age limit of motor vehicle.- 1) The Central Government may, having regard to the public safety, convenience and objects of

this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of

which the motor vehicle shall not be deemed to comply with requirements of this Act and the rules made thereunder.

Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

2) Notwithstanding anything contained in sub-section (1), the Central Government may, having regard to the purpose of a motor vehicle, such, as

display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car rally,

by notification in the Official Gazette, exempt, by a general or special order, subject to such conditions as may be specified in such notification, any

class or type of motor vehicle from the operation of sub-section (1) for the purpose to be stated in the notification.

3) Notwithstanding anything contained in section 56, no prescribed authority or authorized testing station shall grant a certificate of fitness to a

motor vehicle in contravention of the provisions of any notification issued under sub-section (1).

12. S. 65 of the Act gives power to the State Government to make rules, "other than the matters specified in Section 64", for the purpose of

carrying into effect provisions of Chapter-IV of the Act.

13. Chapter-V of the Act, with regard to "control of Transport Vehicles", has within it, Ss. 66 to 94, which provide for the necessity of possessing

the permits for operation of stage carriage, contract carriage, goods carriage vehicles, the conditions attached to all the permits, cancellation and

suspension of permits. S. 95 is with regard to power of State Government to make rules as to "stage carriage and contract carriage vehicles" and

S. 96 is with regard to "'power of State Government to make rules for the purpose of Chapter-V of the Act'". State Government has been

empowered to make Rules for the purpose of carrying into effect of provisions of Chapter-V of the Act. In order to effectuate the control of

Transport Vehicles, the State Governments have been empowered to adopt the measures as envisaged under the Act. One such measure is to

grant permit. Without prejudice to the generality of the power under sub Section (1) of S. 96, the State Governments have been empowered to

frame Rules under sub Section (2) of S. 96, with respect to "all or any of the matters mentioned therein", which includes the "regulation of motor

cab ranks".

14. The Central Government has the power to make Rules as per S. 64 In respect of the "matters enumerated therein". With reference to

provisions under S. 59 of the Act, there is no specific mention in S. 64. As per S. 65(1), the State Governments have been empowered to make

Rules, "other than the matters specified in S. 64", for the purpose of carrying into effect of provisions of Chapter-IV.

15. The power of the State Governments to make Rules under S. 96 of the Act has to be construed with reference to the provisions under

Chapter-V of the Act, by keeping in mind the objects sought to be achieved by the Act. Since the Act provides making Rules under Ss. 64 and

65, for the purpose of Chapter-IV of the Act, the same has to be read along with the power of the State Governments under Ss. 95 and 96 of the

Act.

16. In *Pratap Chandra Mehta Vs. State Bar Council of M.P. and Others*, with regard to power to frame Rules, Apex Court has held as follows:

51. The power to frame rules has to be given a wider scope, rather than a restrictive approach so as to render the legislative object achievable.

The functions to be performed by the Bar Councils and the manner in which these functions are to be performed suggest that democratic standards

both in the election process and in performance of all its functions and standards of professional conduct need to be adhered to. In other words,

the interpretation furthering the object and purposes of the Act has to be preferred in comparison to an interpretation which would frustrate the

same and endanger the democratic principles guiding the governance and conduct of the State Bar Councils.

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58. The above enunciated principles clearly show that the language of the statute has to be examined before giving a provision an extensive

meaning. The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such

rules framed are within the field circumscribed by the parent Act. It is also clear that it may not always be absolutely necessary to spell out

guidelines for delegated legislation, when discretion is vested in such delegatee bodies. In such cases, the language of the rule framed as well as the

purpose sought to be achieved, would be the relevant factors to be considered by the Court.

(Italicized by me for emphasis)

17. In *Kunj Behari Lal Butail and Others Vs. State of H.P. and Others*, Apex Court has held that it is very common in legislature should provide

for general rule making power to carryout the purposes of the Act and when such power is given, it may be permissible to find out the object of the

enactment and then see, if the rules framed thereunder satisfy this test of functionality and such test will determine, if the rule falls foul of such

general power conferred on the delegate and if the rule making power is expressed in usual general form, then it has to be seen, if the rules made

are protected by the limits prescribed by the parent Act.

18. In *State of West Bengal and Others Vs. Bengal Bus Syndicate and Others*, , the material facts were, that on 17th March 2005, the West



Bengal State Government amended the West Bengal Motor Vehicle Rules by Inserting a new Rule-88-A, which provided for imposition of special

conditions on permits restraining plying of Transport Vehicles (passenger as well as goods) beyond a particular age and in any particular area of

the State. The rule enabled the State, by issue of a Notification to be published in the official gazette, to direct the State Transport Authority or the

Regional Transport Authority, as the case may be, to impose such special conditions on issue of permits for Transport Vehicles as may deem fit,

restricting the plying of Transport Vehicles beyond particular age and in any particular areas of the State for safe movement of the vehicular traffic

to avoid congestion and to reduce the level of automobile pollution and for safety of the passengers in public interest. The vires of the said

amended rule and the notification issued thereunder, when questioned in the writ petitions on the ground that the State Government has no

legislative competence to make the rule fixing the age of the vehicle, as this subject is within the exclusive power of Central Government under S.

59 of the Act, as such, the aforesaid amendment is wholly ultra vires provisions of the Act and invidious situation has been meted out to the

operators having vehicles manufactured in December 1989, moreover there cannot be any reasonable nexus with the object and reasons to be

achieved for framing the said amended Rules as far as the vehicles plying within the Kolkata Metropolitan area and outside this area are concerned

and the reasons given for the aforesaid amendment is wholly arbitrary and absurd, a learned Single Judge struck down the Rule and the

notification, by recording a finding that the State Government while making the impugned Rule in exercise of power u/s 96 has exceeded the scope

and purview of the section itself and that the State Government cannot frame any Rule touching any matter, save and except those mentioned in

sub-Section (2) of S. 96 of the Act and, the provisions under clause (xxxiii) of sub-Section (2) of S. 96 of the Act being the residuary one, cannot

be read to cover matter dissimilar to those mentioned in other clauses. When the State Government preferred an appeal, after examining the

relevant provisions, the Division Bench, while reversing the order passed by the learned Single Judge held as follows:

22. In our view to ensure public safety, convenience and to fulfill the object of this Act motor vehicles as defined in the said Act and quoted above

cannot be allowed to be driven anywhere after expiry of a certain period as may be prescribed by the Central Government. This age limit will be

applicable to all types of vehicles irrespective of mode of user.

23. In the context as above Section 96 of the said Act is to be read to ascertain the scope and purport thereof. This Section empowers State

Government to make rule for the purpose of carrying into effect the provision of Chapter V which deals with control of Transport Vehicles. In

order to effectuate control of transport vehicle the State Governments are empowered to adopt all measures as envisaged in the said Act. One of

such measure is to grant permit. When the motor vehicle is offered for transport of passenger obviously member of the public become users unlike

non transport vehicle, on payment of consideration. Though Section 59 of the said Act is part of Chapter IV of Act, age limit so prescribed in

Section 59 is sine qua non for all purposes viz. amongst other permit for transport vehicles. But that does not mean that State is powerless to fix

age limit of transport vehicle for granting permits but with rider that such fixation of age limit must not be more than that fixed by the Central

Government.

24. Therefore, object of condition of age limit for granting of permit cannot be the same as that of power of fixing age limit of motor vehicle for

registration of the vehicle, u/s 59 of the Act. Significantly Section 56 provides for necessity for issuance of Certificate of fitness of transport

vehicles. Similarly Section 58 mandates certain requirement for transport vehicle as special condition. In the Rule framed by the Central

Government nothing has been provided regarding age limit of the vehicle for granting permit except national permit. Hence this subject still remains

virgin. According to us Section 59 of the Act does not curb the power to make rule by the State regarding fixing of age for grant of permits by the

State & Regional Transport Authorities. The State while framing Rule is to make it sure that there should not be inconsistency or contradiction to

the Rule framed by the Central Government. We therefore hold while rejecting submission of the learned Counsels for the respondents, that the

learned trial Judge has incorrectly concluded that the State Government while framing impugned Rule encroached upon the power of the Central

Government conferred upon u/s 59 of Act. Hence the decisions cited on the questions of encroachment are not at all relevant, accordingly we

choose not to deal with the same.

25. Various conditions for granting permit in respect of these vehicles are attached and such power of stipulating condition is provided in Sub-

section (1) of Section 96 of the Act. The matters and/or subjects mentioned in Sub-section (2) of Section 96 in our view as rightly urged by Mr.

Advocate General are merely illustrative and further in-exhaustive and this will appear from the language of Sub-section 2 which starts with the

words without prejudice to the generality of the foregoing power namely power conferred upon the State Government under Subsection (1).

26. According to us the subject and/or matters are mentioned Clauses (i) to (xxxiii) in Sub-section (2) of Section 96 of the Act illustratively

because of the fact at the time of enactment the Legislature could not foresee all the eventualities and situation in future to come, as such legislature

with its wisdom keeps residuary power reserved so that in future the delegated Legislature can deal with the situation appropriately that could not

be thought of earlier. In this context we examine the impugned Rule, while reading the same it appears that State Government has taken upon itself

the power to impose special condition of permit by restricting plying of transport vehicles (passenger as well as goods) beyond a particular age and

in any particular area of the State. It is thus plain by fixing age limit for granting permit for plying of transport vehicles for passengers and goods the

State Government by this Rule nowhere has contemplated to prohibit all types of motor vehicle being plied. It restricts transport vehicle in a

particular area. According to us when the power is given to the State to issue permit, power for imposition of condition is always implied.

(Italicized by me for emphasis)

The legislative intent attaching due significance to the "public safety" is evident from the object and reasons of the Act, the provisions of the Act and

the Rules framed thereunder. Regulation of Motor Vehicles is vested in the State and/or Statutory Authorities and is a matter of paramount public

safety. In the circumstances, I do not find the impugned Rules to be ultra vires the provisions of the Act. The Court should give an interpretation

which would serve the legislative intent and object of framing the Rules, in preference to one which would frustrate the very purpose of enacting the

Rules as well as undermining the public safety and interest.

For the reasons aforesaid, as well as the reasons recorded in the above reproduced Judgments, the writ petition being devoid of merit is rejected

with no order as to costs.