

(1956) 09 AP CK 0008

Andhra Pradesh High Court

Case No: Writ Petition No. 860 of 1956

D.V. Narasimha Raju

APPELLANT

Vs

Regional-Transport
Authority and Another

RESPONDENT

Date of Decision: Sept. 21, 1956

Acts Referred:

Central Motor Vehicles Rules, 1989 " Rule 140, 147#Motor Vehicles Act, 1988 " Section 3, 44(3), 44(5), 47, 47

Citation: (1956) 09 AP CK 0008

Hon'ble Judges: Satyanarayana Raju, J

Bench: Single Bench

Advocate: G. Suryanarayana, for M. Dwarakanath, for the Appellant; A. Gangadhara Rao, for Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Satyanarayana Raju, J.

This is an application under Article 226 of the Constitution for the issue of a writ of mandamus or any other

appropriate writ directing the Central Road Traffic Board, Andhra, at Guntur, to discharge its duties u/s 64 of the Motor Vehicles Act and Rule

147 of the Motor Vehicles Rules and rehear the Petitioner"s application for stay of the operation of the order of the Regional Transport Authority,

West Godavari.

2. The Petitioner is a motor transport operator plying his vehicle ADW. 552 on the route, Koderu to Bhimavaram under a permit granted, by the

Regional Transport Authority, West Godavary. The said permit was suspended, by the. Regional Transport Authority in its proceedings dated 25-

6-1956 for a period of six months for alleged contravention of certain conditions of the permit. Against the order of suspension, the Petitioner

preferred an appeal u/s 64 of the Motor Vehicles Act to the Central Road Traffic Board. Pending the appeal, he prayed for stay of, the operation

of the order of suspension passed by the Regional Transport Authority. By an order dated 13th July 1956, the Secretary, Central Road! Traffic

Board, rejected the Petitioner's application for stay. Against that order, the Petitioner preferred a revision petition to the Government of Andhra.

Meanwhile, the Secretary, Regional Transport Authority, gave a notice calling upon him" to stop plying the vehicle from 10-8-1956.

3. It is contended for the Petitioner that the" Jurisdiction conferred on the Board to hear, and dispose of appeals preferred to it against orders of

the Regional Transport Authority is vested under the Act and the rules framed thereunder, in the Central Road Traffic Board and that in as much as

the power to grant interim stay is ancillary and incidental, to the power to hear and dispose of appeals, Rule 140-A (V) (3) of the Motor Vehicle

Rules, which empowers the Board to delegate to its Secretary the power to grant or, refuse interim stay, is invalid;

4. Now, the Motor Vehicles Act (hereinafter referred to as "the Act") enacts that the State Government shall, by notification in the Official

Gazette, constitute for the State a State Transport Authority, to exercise and discharge the powers and function"s1 specified in Section 44 (3) and

further that the Government shall in like manner, constitute Regional Transport Authori-"ties. to exercise and discharge throughout such areas as

may be specified in the notification in respect of each Regional Transport, Authority, the powers and functions conferred by or under Chapter IV

of the Act on such authorities (Vide Section 44 (1)).

Section 44(5) empowers the State Transport Authority and any Regional Transport Authority, if authorized in that behalf by rules made u/s 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. Section 64 of the Act provides that persons aggrieved by certain specified orders may within the prescribed time and

in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard.

The Act itself does not prescribe the authority to which the appeal should be preferred. Section 68 (2) (b) of the Act empowers the State

Government to make rules with respect to the conduct and hearing of appeals that may be preferred under Chapter IV of the Act and the fees to

be paid in respect of such appeals and the refund of such fees. Pursuant to the power conferred on the State Government, Rule 147 has been

framed prescribing the Central Board as the authority to whom an appeal against the orders of the Regional Transport Authority shall lie:

5. Rule 140-A empowers the Central Board to delegate by general or special resolution all or any of the powers vested in it, to its secretary of

assistant secretaries. That rule reads as follows:-

The Central Board may for the prompt and convenient despatch of its business by general or special resolution delegate to its Secretary and

Assistant Secretaries all or any of the powers vested in it, provided that no delegation shall be made in respect of the following:

(i) powers u/s 44(5)(a) of the Act, to settle disputes or differences of opinion" the Regional Transport Authorities;

(ii) powers u/s 44(3)(c) of the Act, to settle disputes or differences of opinion between the Regional Transport Authorities;

(iii) power u/s 47 of the Act to grant or refuse state carriage permits in cases where objections or representations are received with reference to

Section 57(3) of the Act;

(iv) power u/s 50 of the Act to grant or refuse contract carriage permits in cases where objections or representations are received ;

(v) power u/s 64 of the Act to hear and dispose of appeals except. (i) The power to dispose of appeals against the order passed by the Secretary.

Regional Transport Authority by virtue of the powers delegated to him by the Regional Transport Authority.

(2) The power to refuse to entertain appeals where such appeals are out of time and are otherwise clearly inadmissible under these rules, and, " (3)

The power to grant or refuse interim stay of orders of the Regional Transport authorities or their Secretaries under the delegated powers appealed

against; Provided also that the Central Road Traffic; Board shall not delegate the power to dispose of appeals against the order of the Secretary,

Regional Transport Authority to its Assistant Secretaries.

6. The rule contains a prohibition against delegation of certain specified powers and among the matters in respect of which there is a prohibition

against delegation is the power u/s 64 of the Act to hear and dispose of appeals. This is contained in Rule 140-A (V). The prohibition against

delegation by the Central Board to its Secretaries under Rule 140-A (V) does not however extend to the power to grant or refuse interim stay of

orders of the Regional Transport Authorities which are appealed against.

7. Now, the validity of Rule 140-A (V) (3): is attacked on the ground that the Government cannot frame a rule authorising the Central Board to

delegate its power to grant or refuse stay, which is a Part of, the power to hear and to dispose of appeals, to its Secretaries. As already stated, the

Act itself does not prescribe the authority to whom appeal should be preferred. The power to make rule prescribing the authorities to, which

appeals are to be preferred and regulating the conduct and the hearing of these appeals is vested in the Government.

Section 44(5) empowers the Central Board, if authorised in that behalf by rules made u/s 98 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. In exercise of the rule making

power conferred u/s 68, the Government framed rules which empower the Central Board to delegate in favour of its Secretary the power to grant

or refuse stay of orders appealed against, but prohibiting the Central Board from delegating its power to hear and dispose of appeal.

The rules themselves enumerate the powers in respect of which the power of delegation conferred on the Central Board can, and cannot be

exercised. Therefore, it is a case where the statute itself confers power on the Central Board to dispose of appeals but empowers it to delegate the

ancillary power to grant or refuse stay to its Secretary, and it cannot be held that the rule is invalid.

8. The contention advanced on behalf of the Petitioner proceeds on the assumption that the procedure governing Courts of law must be the

procedure that must be adopted by the Central Road Traffic Board The Central Road Traffic Board, and the other tribunals created under the Act

it cannot be equated to Courts of Law. The tribunals created under the Act can regulate their own procedure and the procedure followed in

Courts of law need not necessarily be adopted by them in all cases.

9. In a recent decision of Court Krishanahi v. Secretary. R.T.A. Chatter. 1959 ALT 127 s (S) AIR 1958 AP 129 (A.) the validity of Rule 134-

had to be considered. Under the rule the Board may for prompt and convenient dispatch of business by general or special resolution delegate to

the Secretary the power u/s 47 of the Act to grant or refuse a stage carriage permit in cases where no objections or representations are received

with reference to Section 57 (3) of the Act Dealing with the contention that Rule 134-A is invalid, it was held thus.

10. The Government in exercise of the rule making power conferred u/s 3 prescribed rule nominating the authority to whom the Regional Transport

Authority can delegate their functions u/s 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 authorised

them to delegate the said powers to another nominated by the Government." "This decision was affirmed in *Amaravathi Motor Transport Co. v.*

State of Andhra 1956 ALT 285 : AIR 1956 AP 232) (B). (10) The statute itself gives the right and also provides the remedy for the enforcement

of that right. It provides that the right of appeal should be exercised by the Central Board but it empowers the Board to delegate the ancillary

power to grant or refuse stay of the operation of the under appealed against, to its Secretary. Instead of the rule itself providing for the exercise of

the power to grant or refuse stay by the Secretary, it empowered the Board to delegate that power. I am unable to find any valid ground for

holding that the rule is invalid. I am also unable to accede to the contention or the learned Counsel for the Petitioner that the delegation is repugnant

to Rule 140 -A (V) and ultimately to Rule 147 itself. The following passage from Cooley's *Constitutional Lionizations* eighth edition, page 353, is

apposite in this context:

In every sovereign state there resides an absolute and uncontrolled power of legislation. In Great Britain this complete power rests in the

Parliament in the American States it resides in the people themselves as an organized body politic. But the people, by creating the constitution of

the United States, have delegated, this power as to certain subjects, and under certain restrictions, to the Congress of the Union; and that portion

they can not resume, except as it may be done "through amendment of the national Constitution. To the exercise of the legislative power, subject to

this limitation they create by their State Constitution, a legislative department upon which they confer it; and granting it in general terms, "they must

be understood to grant the whole legislative power which they possessed, except so far as at the same time they saw fit to impose restrictions.

While, therefore, the Parliament of Britain possess completely the absolute and uncontrolled power of legislation, the legislative bodies of the

American State possess the same power, except first, as it may have been limited by the Constitution of: the United States ; and, second, as it may

have been limited by the Constitution of the State. A Legislative act cannot, therefore, be declared void, unless its conflict with one of these two

instruments can be pointed out.

11. It is then contended that the right of appeal conferred on an unsuccessful party is rendered nugatory if stay is refused, and in support of this

contention reliance is placed upon a decision of the Court of Appeal in *Wilson v. Church No. 2* (1879) 12 Ch D 454. (C). Brett, L. J. stated that

where the right of appeal exists, the Court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if

successful from being nugatory.

This is a sound principle which ought to govern the exercise of judicial discretion and no exception can be taken to this principle. But whether in a

given case the direction is to be exercised to favour the applicant or not, is a matter for the exercise of the discretion by the proper authority. While

no doubt it is true that the discretion must be judicially exercised, in the sense that the exercise should not be arbitrary or capricious, it is also well-

settled that the exercise of the discretion by the authority on which such discretion is conferred must not be lightly interfered with, more so in

exercise of the powers of this Court under Article 226 of the Constitution.

12. Relying upon the Bench decision *VETCHA SREERAMAMURTHY Vs. THE Income Tax OFFICER VIZIANAGARAM, AND*

ANOTHER., the learned Counsel for the Petitioner also contended that discretionary statutory power conferred upon an authority for the public

good is coupled with a duty to perform it and the fact that the exercise of the power is left to his discretion does not exonerate him from

discharging his duty. As has been stated by the Division Bench, there is an essential distinction between refusal to exercise the discretion and

manner of its exercise. If the authority fails to discharge his duty by refusing to exercise his discretion when facts calling for its exercise of discretion

in law, the Court will compel him to do so. If the authority concerned exercises his discretion, honestly and in the spirit of the statute, no mandamus

will be issued directing him to exercise his discretion in a particular way.

13. The application before me is for the issue of a writ of mandamus to direct the Central Board to rehear the stay of application which has been

rejected by its secretary, and I am not now called upon to correct the discretion exercised by the Secretary in refusing the stay. Even otherwise I

do not think that the exercise of the discretion by the Secretary of the Central Road Traffic Board in refusing to grant stay is either arbitrary or

capricious. In my opinion the Petitioner has not succeeded in making out a case for the interference of this Court under Article 226. The writ

petition must therefore fail and it is dismissed with costs. Advocates.