(1990) 08 CAL CK 0037

Calcutta High Court

Case No: C.O. No. 7480 (W) of 1990

Balbir Singh and Others		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Aug. 29, 1990

Acts Referred:

- Motor Vehicles Act, 1988 - Section 110, 12, 137, 164, 208

Citation: 95 CWN 714

Hon'ble Judges: A.M. Bhattacharjee, J

Bench: Single Bench

Advocate: Malay Kumar Basu and Dilip Kumar Samanta, for the Appellant;Uma Sanyal, for the Respondent

Judgement

A.M. Bhattacharjee, J.

The main question involved in this Writ Petition is whether the provisions of Rule 88 of the Central Motor vehicles Rule''s, 1989 are illegal and invalid and it is not disputed that while the petition shall succeed if the question is answered affirmatively, a negative answer would warrant dismissal of the Petition. Section 59 of the Motor Vehicles Act, 1988 empowers the Central Government to prescribe age limit of motor vehicles. Rule 88 of the Central Motor Vehicles Rules, 1989 has accordingly provided that "no national permit shall be granted in respect of a goods carriage which is more that nine years old" and under Sub-Rule (2) and the explanation thereto, such period of nine years, "shall be computed from the date of initial registration of the goods carriage concerned" and the "national permit shall be deemed to be invalid from the date the vehicle covered by the permit completes nine years from the date of its initial registration" With Section 59 of the Act staring at the face authorising the Central Government to specify or prescribe age limit, it is difficult to find anything wrong in the impugned Rule 88; but Mr. Basu, Learned Counsel for the Petitioner, thinks that he has found one infirmity and, in his view, the infirmity alleged by him is bad enough to in validate the Rule.

2. The contention of Mr. Basu is that, even conceding that Rule 88 can be framed by the Central Government in exercise of the powers conferred by Section 59 of the Act, the Rule in fact must be taken not to have been made in exercise of such power, as would clearly appear from the Notification being No. G.S.R. 590(B), dated 2nd June, 1989, where under the Central Motor Vehicles Rule, 1989, have been promulgated. The relevant portion of the Notification reads thus:-

In exercise of the powers conferred by Section 12, 27, 64, Sub-Section (14) of Section 88, Sections 110, 137, 164 and 208 read with 211 of the Motor Vehicles Act, 1988 (59 of 1988), the Central Government hereby makes the following Rules.

It is true, as urged by Mr. Basu, that the Notification does not specifically refer to Section 59. It, however, refers to Section 64 which empowers the Central Government to make Rules to provide for the matters specified in the various clauses of Section 64 and the residuary clause (p) empowers the Central Government to make Rules to provide for "any other matter which is to be, or may be, prescribed by the Central Government". Now if section 59 authorises, as it does, the Central Government to specify or prescribe the age limit of a motor vehicle, then there should be no reason why such specification or prescription cannot be made in exercise of the powers conferred by clause (b) of Section 64 and it is not, as it can not be, disputed that the aforesaid Notification dated 2nd June, 1989, specifically refers to section 64.

3. But even accepting argue do that it is not Section 64(p), but Section 59, which generates the power to authorise the Central Government to provide for age limit of motor vehicles, and that Section is not recited or referred to in the Preamble or the Introductory part of the Notification where under the Central Rules have been promulgated, would it in the least affect the efficiency of Rule 88 of the Rules ? I would like to have no manner of doubt that if the concerned authority has the legal authority to make the Rules, the validity of the Rules is in no way affected solely on the ground that in the introductory recital of the Notification, whereunder the Rules are formally published, the source of that authority is not recited at all or wrongly recited. As would be obvious from the introductory words of the Notification and, in particular, the closing words extracted hereinabove, namely, "the Central Government hereby makes the following Rules", the Rules are what follow those Introductory preamble, and not the prelude that precedes them. If in the Central Rules, which followed those introductory recital, the Central Government has in fact exercised the powers vested in it u/s 59 in framing Rule 88, the fact that the source of the power, being Section 59, is not referred to at all or that no source or any wrong source has been referred to at all or that to, can not affect the legality or validity of the Rules. Recital of the sources of power is a mere matter of form; but the exercise of the power, where it validly exists, is the substance. And we have now travelled a very long distance from those days of formal or technical approach, to declare unhesitatingly that it is the substance that counts and must take precedence

over mere form. As pointed out by the Supreme Court in Thakur Pratap Singh Vs. Shri Krishna Gupta and Others, and also in Nani Gopal Biswas Vs. The Municipality of Howrah, , time has come to deprecate the tendency of the Courts towards mere technicalities and the real and the substance must not be allowed to be out-weighed or adversely affected by any ritualistic formality or the absence thereof.

4. This question ought to have been, and is now without doubt, beyond all debate and dispute and reference may be made to a two-Judge Bench decision of the Supreme Court in Municipal Corporation of the City of Ahmedabad Vs. Ben Hiraben Manilal, where it has been ruled that "it is well-settled that exercise of a power, if there is indeed a power, will be referable to a jurisdiction., when the validity of the exercise of that power is in issue, which confer validity on it, and not to a jurisdiction under which it would be nugatory though the Section was not referred, and a different or wrong Section of a different provision was mentioned".

5. I had the occasion to consider this question in a Division bench sitting with Nandi, J. in Bimal Kumar Bouri alias Roy Vs. State, and we have also ruled that if a legislation, principal or subordinate, leaves no room for doubt as to its ambit, operation or amplitude, the same cannot be circumscribed nor its validity can be questioned, simply or solely because in the preamble or the introductory part, the source of the power to make the law was not referred to at all or was wrongly referred to.

6. A century old Division Bench decision of the Bombay High Court had decided an allied question in Pitambar vs. Dhondu (ILR1887 12 Bom 486 at 489) and referring to it with approval, a five-Judge Bench of the Supreme Court in L. Hazari Mal Kuthiala (L. Hazari Mal Kuthiala Vs. The Income Tax Officer, Special Circle, Ambala Cantt.,), has held that if a power could be validly exercised under a legal authority, the exercise of such power must be ascribed to such actually existing authority, even though the person exercising the power (borrowing from the Bombay decision) "was not quite alive to it at the time". The unanimous five-Judge Bench decision of the Supreme Court in Hukumchand Mills Ltd. Vs. The State of Madhya Bharat and Another, is also a clear authority for the view that "it is well-settled that merely a wrong reference to the power under which certain actions are taken by the Government would not per se vitiate the action done, if they can be justified under some other power under which the Government could lawfully do these acts" and that if a legislative provision could validly be made under a lawful source of power, "the mere mistake in the opening part of the Notification in reciting the wrong source of power does not affect the validity of the provisions in question.

7. I would accordingly hold that, firstly, in referring to Section 64 in the introductory recital of the Notification promulgating the Central Rules, there has been substantial reference to the source of the proper to frame Rule 88 of the Rules and that, secondly, even otherwise, absence or wrong reference to the source of power, where one validly exists, cm not per se affect the legality of the exercise.

8. Mr. Basu has then urged that so long a certificate of Fitness in respect of a transport vehicle granted u/s 56 of the Motor Vehicles act is validly operative, the provisions of Rule 88 providing for in validation of National Permit on the expiry of the period specified in Rule 88 must stand out-weighed as the Rule, being a subordinate legislation, cannot be allowed to operate against the principal statutory provisions of the Act in Section 56. As I have already indicated, the Rule 88 has been, and must be deemed to have been, made under the provisions of Section 59 read with Section 64(p), and the provisions of Section 56 have been categorically subordinated to the provisions of Section 59, both in the opening words of Section 56(1) and also in Section 59(3) this contention made by Mr. Basu must accordingly be rejected. The Writ Petition is accordingly dismissed and the interim order granted shall, as it cannot but; stand vacated and consequently, National Permit, if any, granted or renewed in favour of the Petitioner, solely on the strength of the said interim order, shall stand invalidated. The operation of this order shall, however, remain stayed for a period of two weeks only from this date to avoid inconvenience, if any, to the Petitioners. No costs.

A.M. Bhattacharjee, J.

On undertaking to apply for certified copy of this Judgment given by the learned Advocate for the parties let xerox copy of this judgment be given to the learned Advocate for the parties by the office duly countersigned by the concerned officer.