

**A** INTER STATE TRANSPORT COMMISSION, NEW DELHI

v.

**P. MANJUNATH KAMATH & ORS.**

August 2, 1972

**B** [A. N. RAY, I. D. DUA AND M. H. BEG, JJ.]

*Motor Vehicles Act, 1939, s. 63A(2)(c)—Directions under section by Inter-State Transport Commission are administrative in character—Cannot bind Transport Authorities in the exercise of their quasi-judicial functions in granting permits etc.*

**C** The Inter-State Transport Commission issued directions under s. 63A(2)(c) of Motor Vehicles Act 1939 laying down that permits by the concerned authorities should be issued in a certain order of preference. The respondents who were applicants for permits for inter-State routes were adversely affected and in writ petitions under Art. 226 of the Constitution challenged the competence of the Commission to issue binding directions under s. 63A(2)(c) to a subordinate authority in respect of the exercise of quasi-judicial functions. The High Court allowed the writ petitions. In appeal by the Commission to this Court.

**D** HELD : It is important to notice that the Act has not conferred any power on the Commission to make Rules. In the absence of any power to enact subordinate legislation by way of rules the delegation of legislative power cannot be lightly inferred. The power to make rules has been expressly conferred on the Central Government under s. 133(1) and is subject to procedural safeguards. [770 G]

**E** This Court in *Naidu's* case held that the Transport Authorities in dealing with applications for permits and assessing the respective or rival claims of the parties discharge quasi-judicial functions and their orders are quasi-judicial orders. It is therefore essential to fundamentals of fair-play in the administration of law that the decision of these Transport Authorities in the matter of grant of permits should not be clogged by directions indicating the orders of preference as happened in the present case. [771 D]

**F** When the Act itself in s. 55 provides preference to Cooperative Societies, as far as possible, it is not appropriate to hold that the Commission would have power to do the identical things. In the present case, the Commission did not rest merely with giving the first preference to Cooperative Societies. The Commission thereafter indicated the order of preference to Transport Cooperative Societies, Limited Companies, Registered firms and lastly to others. [771 F]

**G** It is apparent that the order of preference indicated in the garb of directions is an encroachment upon the judicial discretion of the Transport Authorities in the matter of grant of permits. [771 G]

**H** The power of the Inter-State Transport Commission under section 63A(2)(c) of the Act to issue directions is referable only to directions of executive and administrative nature. The Commission has no power to trench upon the quasi-judicial functions of the Transport Authorities in the matter of grant of permits. The order of the High Court in quashing the direction must therefore be upheld. [772 A]

*B. Rajagopala Naidu v. State Transport Appellate Tribunal & Ors.*, [1964] 7 S.C.R. 1, applied. A

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1084 & 1091 of 1967 and 1081 of 1970.

Appeal by certificate from the judgment and order dated the 9th June 1966 of the Mysore High Court in W.Ps. Nos. 442, 884 and 441 of 1964. B

*M. K. Ramamurthi* and *S. P. Nayar*, for the appellant in all the appeals.

Respondent did not appear.

The Judgment of the Court was delivered by C

**Ray, J.**—These three appeals are by certificate from the judgments dated 9 June, 1966, 10 December, 1964 and 19 July, 1966 of the High Court of Mysore.

The only question which falls for consideration in these appeals is the interpretation of section 63A(2)(c) of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act). D

Civil Appeal No. 1084 of 1967 concerns applications for grant of permits on specified routes in the State of Maharashtra. On 8 April, 1963, the Regional Transport Authority, South Kanara issued a notification under Section 57(2) of the Act inviting applications from public carriers permit holders of South Kanara District intending to operate their vehicles in the State of Maharashtra. The permits were under reciprocal agreement between the State Governments of Mysore and Maharashtra. There were 28 vacancies for permits. 39 applications were made for the same. The respondent Kamath in Civil Appeal No. 1084 of 1967 submitted an application for permit. His application was rejected by the Regional Transport Authority, Mangalore. He preferred an appeal to the State Transport Appellate Tribunal. The State Transport Appellate Tribunal rejected the appeal. E

The Inter-State Transport Commission issued certain directions to the Regional Transport Authorities. These directions were issued under section 63A(2)(c) of the Act. These directions laid down the order of preference in the grant of permits. The Transport Authorities kept in view those directions. The principal point for consideration in these appeals is whether the Inter-State Transport Commission was competent to do so. F

Section 63A(2) of the Act deals with functions of the Inter-State Transport Commission. One of the principal functions is regulation of the operation of transport vehicles in an inter-State region. Section 45 of the Act deals with application where it is G

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A proposed to use the vehicle in two or more different States. Section 63 of the Act requires a permit granted in any one State to be countersigned by the State Transport Authority or the Regional Transport Authority of the other State. Section 63 further provides that it shall not be necessary to follow the procedure laid down in section 57 for the grant of counter-signatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States after complying with the requirements of sub-section (3A), or for the grant of counter-signatures of permits in pursuance of any direction issued by the Commission under clause (c) of sub-section (2) of section 63A. Section 63 further provides that the agreement between the States shall be published by each of the States concerned in the Official Gazette together with a notice of the date before which representations in connection therewith may be submitted, and the date, not being less than thirty days from the date of such publication, on which the representations will be considered.

Section 63A(2)(c) of the Act is as follows :

“63A. (2) The Commission shall perform throughout an inter-State region all or such of the following functions as it may be authorised to do by the Central Government by notification in the Official Gazette, namely :—

(c) to issue directions to the State Transport Authorities or Regional Transport Authorities interested regarding the grant, revocation and suspension of permits and of permits and of counter-signatures of permits for the operation of transport vehicles in respect of any route or area common to two or more States.”

The directions issued by the inter-State Transport Commission under section 63A(2)(c) were *inter alia* these :

(i) Preference will be given in the following order in the grant of the permits.

(a) A Co-operative Society

(i) at least 50 per cent of the members of which are not related to each other;

(ii) 75 per cent of the members of which are also employees and

- (iii) the main business of which is the provision of transport services.
- (b) Transport Co-operative Societies other than the above.
- (c) A limited company or a registered firm.
- (d) Others.

The respondent Kamath made an application under Article 226 of the Constitution to the Mysore High Court. The respondent Kamath challenged the decision of the Transport Authorities. The main grounds for challenge were these. The Inter-State Transport Commission issued directions to the Transport Authorities indicating the order of preference for grant of permits. The Transport Authorities became bound by and kept in view these directions. These directions invaded, infringed and impinged on the authority and jurisdiction of the Transport Authorities for the grant of permits. Therefore the decisions of the Transport Authorities were vitiated.

The High Court came to the conclusion that the directions issued by the Inter-State Transport Commission encroached on the quasi-judicial jurisdiction of the Regional Transport Authority.

Civil Appeal No. 1091 of 1967 concerns the grant of inter-State permit under the reciprocal agreement between the Governments of Mysore and Maharashtra. The Regional Transport Authority, Belgaum on 20 September, 1963 invited applications under section 57(2) of the Act from operators holding substantive public carrier permits issued by that Authority for variation of the conditions of permit by the inclusion of three new straight inter-State routes between the places in Belgaum District, connecting with places lying in Maharashtra State in the said permit and for grant of counter-signature by the State Transport Authority, Maharashtra under the reciprocal agreement between the two States. The respondent Jaknur submitted an application. The total number of applications was 25. The application of respondent Jaknur was rejected. The respondent Jaknur thereupon made an application under Article 226 of the Constitution to the Mysore High Court. The respondent Jaknur impeached the decision of the Transport Authority, Belgaum on these grounds. The Inter-State Transport Commission on 3 October, 1963 issued directions indicating the order of preference in the matter of grant of permits. These directions were the same as in the other appeal. The respondent Jaknur challenged the directions as violative of and infringing the quasi-judicial jurisdiction and authority of the Transport Authorities. The grounds for challenge were similar to those in Civil Appeal No. 1084 of 1967. The contentions of the respondent Jaknur found favour with the High Court.

A Civil Appeal No. 1081 of 1970 concerns grant of inter-State permit for the plying of vehicles on certain specified routes between the State of Mysore and the State of Kerala. The Regional Transport Authority on 26 September, 1963 called from owners of carriers who had been granted permits applications for grant of counter-signature by the Kerala State Transport Authority for plying of vehicles on routes between the States of Mysore and Kerala. There was inter-State agreement between the two States for the plying of such vehicles. The respondent Hegde made an application. His application was rejected. The principal ground for rejection of the application was that the respondent Hegde was not in a position to command facilities to the public. The respondent Hegde thereupon filed an application under Article 226 of the Constitution before the Mysore High Court. The respondent Hegde challenged the decision of the Transport Authority on grounds similar to those in Civil Appeal No. 1084 of 1967, that the decision of the Transport Authority was invaded by the direction of the Inter-State Transport Commission indicating the order of preference.

D Counsel for the appellant contended that under section 63A(2) (c) of the Act the Inter-State Transport Commission was competent to issue directions to the State or the Regional Transport Authorities regarding grant of permits, and, therefore, the indicating of order of preference in the directions amounted only to laying down criteria to be applied in dealing with permits.

E This Court in *B. Rajagopala Naidu v. State Transport Appellate Tribunal & Ors.*<sup>(1)</sup> construed section 43A of the Motor Vehicles Act as inserted by the Madras Amending Act 20 of 1948. Section 43A was as follows :

F "The State Government may issue such orders and directions of a general character as it may consider necessary, in respect of any matter relating to road transport, to the State Transport Authority or a Regional Transport Authority; and such Transport Authority shall give effect to all such orders and directions."

G In *Naidu's*<sup>(1)</sup> case the State Government under section 43A of the Act gave directions prescribing criteria for selection and devised a marking system for applicants. This Court held that the power of the State Government to issue orders and directions in respect of any matter relating to road transport to the State or Regional Transport Authorities did not embrace any power of the State Government to give directions in respect of matters which had been entrusted to the Tribunals constituted under the Act and which are to be dealt with by those Authorities in quasi-judicial manner. The words "orders and directions"

were held in that case to be equivalent to executive acts. Those words could cover only the field of administrative orders and directions. This Court said that the structure of the Act indicated that section 43A of the Act did not include "the area which is the subject-matter of the exercise of quasi-judicial authority by the relevant Tribunals".

Counsel for the appellant contended that the reasoning in *Naidu's* case (*supra*) could not apply to the interpretation of section 63A(2)(c) of the Act which spoke only of "directions" and not of "orders and directions". This contention is unsound both on logic and principle.

Section 63A of the Act speaks of various powers of the Inter-State Transport Commission. First, there is power to prepare schemes for the development, co-ordination or regulation of the operation of transport vehicles and in particular of goods vehicles in an inter-State region. Secondly, the Commission has power to settle all disputes and decide all matters on which differences of opinion arise in connection with the development, co-ordination or regulation of the operation of transport vehicles in an inter-State region. Thirdly, the Commission has power to issue directions to the State Transport Authorities or the Regional Transport Authorities interested regarding the grant, revocation and suspension of permits and counter-signatures of permits for the operation of transport vehicles in respect of any route or area common to two or more States. Fourthly, the Commission has power to grant, revoke or suspend any permit or counter-sign any permit for the operation of any transport vehicles in respect of such route or area common to two or more States as may be specified in this behalf by the Central Government. These four powers are separate and distinct.

It is important to notice that the Act has not conferred any power on the Commission to make Rules. In the absence of any power to enact subordinate legislation by way of rules the delegation of legislative power cannot be lightly inferred. Under section 133(1) of the Act power to make rules is conferred on the Central Government. Furthermore, the power to make rules is subject to the condition of rules being made after previous publication. The rules so made are also to be published in the Official Gazette. Again, rules made by the Central Government or the State Government shall be laid for not less than 14 days before Parliament or the State Legislature as the case may be. These safeguards are provided when power to make subordinate legislation has been conferred on the Central Government or the State Government.

A The provisions contained in section 63A(4) of the Act are that where the Commission in the exercise of discharge of powers and functions under section 63A(2)(c) issues directions to the State or the Regional Transport Authorities, those authorities shall give effect and will be guided by such directions. Orders or directions which have the force of law by reason of statutory power bind the authorities by reason of sustenance from the statute. It is only when orders of directions are in the nature of administrative orders and directions and they do not have the force of statutory rules that it is not inappropriate to provide that orders or directions shall be followed by the authorities. This Court applied this reasoning to the interpretation of section 43A of the Act in *Naidu's* case (*supra*) and held that the provisions in section 43A that the Transport Authorities "shall give effect to all such orders and directions" indicated that the directions were of a general character in respect of administrative matters.

D This Court in *Naidu's* case (*supra*) held that the Transport Authorities in dealing with applications for permits and assessing the respective or rival claims of the parties discharge quasi-judicial functions and their orders are quasi-judicial orders. It is, therefore essential to fundamentals of fair-play in the administrative of law that the decision of these Transport Authorities in the matter of grant of permits should not be clogged by directions indicating the order of preference as happened in the present case.

E Section 55 of the Act which deals with applications for the public carriers permit states that other conditions being equal an application for a public carrier's permit from a Co-operative Society, shall, as far as may, be given preference over the applications for grant of permits. When the Act provides preference to Co-operative Societies, as far as possible, it is not appropriate to hold that the Commission would have power to do the identical things. In the present case, the Commission did not rest merely with giving the first preference to Co-operative Societies. The Commission thereafter indicated the order of preference to Transport Co-operative Societies, Limited Companies, Registered firms and lastly to others.

G It is apparent that the order of preference indicated in the garb of directions is an encroachment upon the judicial discretion of the Transport Authorities in the matter of grant of permits.

H The High Court was correct in holding that the Commission was not vested with any power to issue "directions which may have the effect of fettering the Regional Transport Authorities or the State Transport Authorities concerned in performance of their quasi-judicial functions under the provisions of the Act"

The power of the Inter-State Transport Commission under section 63A(2)(c) of the Act to issue directions is referable only to directions of executive and administrative nature. The Commission has no power to entrench upon the quasi-judicial functions of the Transport Authorities in the matter of grant of permits. The order of the High Court in quashing the direction is upheld.

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The appeals therefore fail. The respondents did not appear. Therefore, there will be no order as to costs.

G. C.

*Appeals dismissed.*