J. Ramamurthy Naidu Vs. State of Andhra Pradesh and ors.

LegalCrystal Citation : legalcrystal.com/429773

Court : Andhra Pradesh

Decided On : Oct-18-1960

Reported in : AIR1961AP344

Judge : P. Chandra Reddy, C.J. and ;Ramachandra Rao, J.

Acts : Constitution of India - Article 226; Motor Vehicles Act, 1939 - Sections 44(2) and 60(3)

Appeal No. : W.A. No. 54 of 1960 and W.P. No. 994 of 1958

Appellant : J. Ramamurthy Naidu

Respondent : State of Andhra Pradesh and ors.

Advocate for Def. : The 3rd Government Pleader

Advocate for Pet/Ap. : K. Mangachari and ;K. Srinivasa Murthy, Advs.

Disposition : Appeal and writ petition dismissed

Judgement :

Chandra Reddy, C.J.

1. Writ Appeal No. 54 of 1960 and Writ Petition No. 994 of 1958 raise a common question relating to the interpretation of Section 44(2) of the Motor Vehicles Act and could therefore be disposed of by one judgment. For an appraisal of the contentions arising in these matters, it is sufficient to state a few material facts in Writ Appeal No. 54 of 1960.

2. The Regional Transport Authority, Nellore suspended the permit of the stage Carriage ADC No. 722 plying on the route Netlore to Tirupathi for a period of six months for a contravention of one of the conditions of the permit viz., overloading of the vehicle, after hearing the objections of the operator. An appeal was carried to the State Transport Authority with no success. The dispute was then taken in revision to the State Government by the aggrieved permit holder. That revision petition did not bear any fruit.

3. The operator then approached this Court for the issue of a Writ of Certiorari under Article 226 of the Constitution contending that the proviso to Rule 148 (b) of the Rules framed by the State Government in exercise of their rule-making power under Section 68 was ultra vires. This submission found acceptance with this Court with the result that the order of the Government rejecting the revision of the appellant was

quashed with a remark that it was open to the Government to consider afresh the revision petition in the light of the remarks made in the judgment of the High Court.

4. Thereafter, the matter was reconsidered by the Government and the revision petition was ultimately dismissed by them. It is to quash this order that the appellant has again invoked the jurisdiction of this Court under Article 226 of the Constitution.

5. The main argument urged by Sri K. Man-gachary in support of this Writ Appeal was that the punishment was imposed only by two of the members of the Regional Transport Authority and as such it was opposed to the mandatory provisions of Section 44(2) of the Motor Vehicles Act. The learned counsel maintains that as that section requires the constitution of the Regional Transport Authority with three members, it is not competent for two of the members of that Authority to dispose of any matter and every sitting of that authority should compose of three members.

6. We are satisfied that this submission made on behalf of the appellant is substantial. We may read that section at this juncture: Section 44(2):

'A State Transport Authority or a Regional Transport Authority shall consist of a Chairman who has had judicial experience and such other officials and non-officials, not being less than two as the State Government may think fit to appoint but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall bo appointed as or continue as a member of a State or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking he shall, within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office'.

7. It is manifest from this section that the Legislature desired that the State Transport Authority as well as the Regional Transport Authority should consist of three members. That being so, it is not open to two only of the members to deal with any matter. In order that the Regional Transport Authority should constitute a valid Tribunal it should compose of three members. Whatever might have been the position if a quorum was prescribed, in the absence of such a provision we think that the matter should be heard by all the three members of the Regional Transport Authority.

8. We find support for this view of ours in Kama Umi Isa Ammal v. Rama Kudumban, : AIR1953Mad129 . The point that fell to be considered there was whether the rule framed by the Government enabling two of the members of the Estates Abolition Tribunal to constitute a Tribunal was valid. Rajamannar C. J, and Venkata Rama Ayyar J. decided that the rule was ultra vires. Section 8 of the Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948) which requires that the Tribunal should consist of three members and which fell to be considered by their Lordships in the above cited case is in pari materia with Section 44(2) of the Motor Vehicles Act and that ruling therefore has analogy here. We do not think that this position could be seriously contested. The result is that there can be a valid sitting of the Regional Transport Authority only if all the three should sit for the meeting.

9. All the same, the appellant cannot get any relief here. He had not raised any objection to the hearing of the matter by the Chairman and another member of the Regional Transport Authority. In our opinion, this conduct of the appellant disentitles him to claim any relief in this writ appeal. We feel that the appellant, who allowed the

matter to be decided by two of the members without demurring to it, is debarred from seeking to repudiate the competence of two of the members to decide it.

10. In this opinion of ours we are fortified by the pronouncement of the Supreme Court in Messrs Pannalal Binjraj v. Union of India, (S) : [1957]1SCR233 . One of the questions posed there was whether the transfer of income tax assessment proceedings to one of the officers not having territorial jurisdiction infringed the provisions of Article 14 of the Constitution. In dealing with that petition, their Lordships remarked that the petitioners not having raised any objection to the case being transferred and having submitted to the jurisdiction of the Income-tax Officers to whom their cases had been transferred could not resort to Article 32 of the Constitution. His Lordship Mr. Justice Rhagwati, who spoke for the Court, says at page 412:

'It was only after our decision in Bidi Supply Co. v. Union of India, (S) : [1956]29ITR717(SC) we pronounced on 20-3-1956, that these petitioners woke up and asserted their alleged rights the Amritsar group on 20-4-1956 and the Raichur group on 5-11-1956. If they acquiesced in the jurisdiction of the Income-tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court'.

11. To the same effect is the judgment of the Madras High Court in Latchmanan Chettiar v. Corporation of Madras, ILR 50 Mad 130: (AIR 1927 Mad 130) (FB), to which reference was made by the Supreme Court in (S) : [1957]1SCR233 .

12. Sri K. Mangachary for the appellant contends that despite the failure of the appellant to raise any such objection, he is entitled to a relief because his acquiescence does not confer any power on the Tribunal, which had no jurisdiction in the matter. To substantiate his proposition the learned counsel called our attention to the decision in United Commercial Bank Ltd. v. Their Workmen, : (1951)ILLJ621SC .

There, the Supreme Court held that since only two of the three members of the Industrial Tribunal constituted by the Central Government in order to decide certain disputes between the United Commercial Bank and its employees took part in the proceedings throughout the service of the third member not being available to the Industrial Tribunal at all relevant sittings, the award given by the Tribunal was ineffective.

It was laid down that only two members could not constitute the Tribunal and since the duty to work and decide was a joint responsibility of all the three members originally constituted as the Tribunal the matter was one of absence of jurisdiction and not a mere irregularity in the conduct of the proceedings, and the defect could not be cured by acquiescence or estoppel. We do not think that this pronouncement of the Supreme Court would render any assistance to the appellant. There, an objection was raised that two members alone could not decide the dispute.

Further, Section 16 of the Industrial Disputes Act required that all the members of the Tribunal shall sign the award: Lastly, the controversy did not arise in that case in the exercise of the writ jurisdic-tion under Article 32 of the Constitution. It fell to be considered by the Supreme Court in an appeal. The situation here is different. The appellant has invoked the extraordinary jurisdiction of this Court under Article 228 of

the Constitution which has to be exercised to render substantial justice to the patties and it falls within the doctrine of (S) : [1957]1SCR233 .

13. Sri Mangachary next relied on the observa-tions of Satyanarayana Rao J. in Madhav Rao v. Suraya Rao, : AIR1954Mad103 (FB). The question there was whether the dis-pute relating to the election of the Board of Directors of a Cooperative Society was not within the ambit of Section 51 of the Madras Cooperative Societies Act and consequently the Deputy Registrar had not initial jurisdiction to deal with the matter and set aside the election.

The learned Judges held that such a dispute was attracted by Section 51 of the Act and hence it was within the competence of the Deputy Registrar to deal with that matter. However in the course of the judgment, the learned Judges remarked that if he had no jurisdiction to entertain such dispute the fact that no objection was taken by the petitioner would not make any material difference since it would be a case of initial want of jurisdiction.

The learned Judges referred to ILR 50 Mad 130: (AIR 1927 Mad 130) (FB) and distinguished it on the ground that that case was not a case of initial want of jurisdiction. These remarks of the Full Bench are based on their opinion that if the election of the Board of Directors could not be regarded as a dispute within the scope of Section 51 of the Act, it would be question of initial want of jurisdiction.

We do not think that those remarks will have any application here because it could not be said that there was any question of want of inherent jurisdiction. The power of the Regional Transport Authority to suspend a permit cannot be disputed. The only point that is raised in this appeal is whether it could be done by two members alone. There is therefore no question of want of Inherent jurisdiction.

But even if the observations are susceptible of being construed as applicable to cases of this type also, we are not bound to give effect to them as they are merely obiter. Such a proposition would run counter to (S) : [1957]1SCR233 . It follows that the appellant cannot successfully invoke our jurisdiction under Article 226 of the Constitution.

14. The only point that survives is whether the Regional Transport Authority should now be called upon to permit the appellant to compound the offence committed by him. In the context of this point, it is necessary to look at the terms of Section 60(3) of the Motor Vehicles Act:

''Where a permit is liable to be cancelled or suspended under Clause (a) or Clause (b) or Clause (c) of Sub-section (1) and the transport authority is of opinion that, having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money then, notwithstanding anything contained in Sub-section (1), the transport authority may instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit the sum of money agreed upon.'

15. It is immediately plain that the power to require the holder of the permit to compound the offence should be exercised by the transport authority, only at the time of deciding whether the punishment should be imposed or whether some amount of money should be recovered in lieu of punishment from the permit holder. This

discretion could be exercised by the transport authority only at that time if it feels that the circumstances o the case would warrant it.

It may be mentioned that such power cannot be exercised by the transport authority or an appellate authority or Government exercising revisional jurisdiction long after the imposition of the punishment. It may also be mentioned that this Section does not confer any right on an operator to compound the offence. He cannot demand that he should be permitted to pay a sum of money in lieu of the cancellation or suspension of the permit.

It is entirely a matter for the Tribunal concerned to consider that question at the time of imposing the punishment. We therefore see no good reason to comply with the request of the appellant to direct either the Regional Transport Authority or the State Transport Authority or the Government to consider the desirability of permitting the appellant to compound the offence committed by him.

16. In the result, the Writ Appeal is dismissed with costs. Advocate's fee is fixed at Rs. 100/-.

17. This decision of ours governs W. P. No. 994 of 1958. We may here incidentally mention that the question of the applicability of Section 60(3) of the Motor Vehicles Act is not raised in this Writ Petition. This Writ Petition is also dismissed with costs. Advocate's fee is fixed at Rs. 100/-.