

Mysore State Road Transport ... vs Gopinath Gundachar Char on 6 October, 1967

Equivalent citations: 1968 AIR 464, 1968 SCR (1) 767, AIR 1968 SUPREME COURT 464, 1967 2 SCWR 864, 1968 SCD 898, 1968 2 LBLJ 144, 1968 2 SCJ 102

Author: R.S. Bachawat

Bench: R.S. Bachawat, K.N. Wanchoo, V. Ramaswami, G.K. Mitter, K.S. Hegde

PETITIONER:

MYSORE STATE ROAD TRANSPORT CORPORATION

Vs.

RESPONDENT:

GOPINATH GUNDACHAR CHAR

DATE OF JUDGMENT:

06/10/1967

BENCH:

BACHAWAT, R.S.

BENCH:

BACHAWAT, R.S.

WANCHOO, K.N. (CJ)

RAMASWAMI, V.

MITTER, G.K.

HEGDE, K.S.

CITATION:

1968 AIR 464 1968 SCR (1) 767

CITATOR INFO :

E&D 1974 SC1613 (14)

R 1976 SC1027 (14)

R 1985 SC 883 (7)

RF 1986 SC2166 (6)

RF 1988 SC 587 (14)

ACT:

Road Transport Corporation Act 64 of 1950-ss. 14, 19(1)(a), 19 (1)(b), 19(1)(c), 34, 45(1) and 45(2)(c)-Whether Corporation can appoint officers and servants in the absence of any regulations framed under s. 45(2)(c).

HEADNOTE:

The General Manager of the appellant Corporation issued a notice on July 21, 1964 inviting applications for appointments, to two junior posts in the Corporation. The respondent, who was an employee of the Corporation and claimed that he had a right to be promoted to one of the posts, filed a writ petition under Art. 226 of the Constitution challenging the notice on the ground that the Corporation had no power to issue it. The High Court, following its earlier decision in *Karnakar Mangesha Desai v. State of Mysore and other* [1960](1) *Mysore Law Journal* 72), held that until regulations had been framed by the Corporation under s. 45(2) (c) with the previous sanction of the State Government-and this has admittedly not been done-the Corporation could not appoint officers and servants and lay down their conditions of service.

On appeal to this Court by special leave.

HELD: Allowing the Appeal: section 14(2) expressly confers upon the Corporation the incidental power to appoint such officers and servants as it considers necessary for the efficient performance of its functions and Section 19(1)(c) empowers it to provide for its employees suitable conditions of service. Although the conjoint effect of ss-14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government under s. 34 and the regulations, if any, framed under s. 45(2)(c). until such regulations are framed or directions are given, the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it thinks fit. [770 H: 771 A, B-D].

There was no merit in the contention that the General Manager had no power to issue the notice dated July 21, 1964 in the absence of any resolution by the Corporation under s. 12(c) expressly authorising him to issue it. [771 F].

Dundee Harbour Trustees v. D. & J. Nicol, [1915] A.C. 550, 556, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1299 of 1967. Appeal by special leave from the judgment and order dated November 16, 1966 of the Mysore High Court in Writ Petition No. 1464 of 1964.

Shyamala Pappu and Vineet Kumar, for the appellant. R. D. Datar and S. N. Prasad, for the respondent.

The Judgment of the Court was delivered by Bachawat, J The respondent was a class III employee in the statistical department of the Mysore State Road Transport Corporation. In October 1961, he was temporarily promoted to act as statistical superintendent at Hassan. On July 21, 1964, the General Manager of the Corporation issued a notice inviting applications for appointments to class 11 junior posts of (a) assistant/divisional statisticians and (b) labour welfare officers on a pay of Rs. 220 per month in the pay scale of Rs. 220-15-400-EB-20-500 plus the usual dearness and other allowances admissible under the Rules. On August 11, 1964, the respondent tiled a writ petition in the High Court at Mysore claiming that the Corporation had no power to issue the notice and praying for an order quashing it. The High Court allowed the petition and quashed the notice. The Corporation has filed this appeal by special leave. For the proper appreciation of the point in issue, it is necessary to read ss. 14 19(1)(a), 19(1)(b), 19(1)(c), 34. 45(1) and 45(2)(c) of the Road Transport Corporation Act, 1950 (Act No. 64 of 1950):

"14(1). Every Corporation shall have a Chief Executive Officer or General Manager and a Chief Accounts Officer appointed by the State Government. (2) A Corporation may appoint such other officers and servants as it considers necessary for the efficient performance of its functions.

(3)The conditions of appointment and service and the scales of pay of the officers and servants of a Corporation shall-

(a) as respects the Chief Executive Officer or General Manager and the Chief Accounts Officer be such as may be prescribed, and

(b) as respects the other officers and servants be such as may, subject to the provisions of section 34, be determined by regulations made under this Act.

19(1). Subject to the provisions of this Act, a Corporation shall have power.

(a) to operate road transport services in the State and in any extended area;

(b) to provide for any ancillary service-,

(c) to provide for its employees suitable conditions of service including fair wages, establishment of provident fund, living accommodation, places for rest and recreation and other amenities.

34(1). The State Government may, after consultation with a Corporation established by such Government give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under sub-section (1) except with the previous

permission of the State Government.

45(1). A Corporation may, with the previous sanction of the State Government. make regulations, not inconsistent with this Act and the rules made "thereunder, for the administration of the affairs of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--

(c) the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief, Executive Officer or General Manager and the Chief Accounts Officer;"

Admittedly, no regulations were framed by the Corporation under s. 45(2)(c) prescribing the conditions of appointment and service and the scales of pay of its officers and servants. In the affidavit filed on behalf of the Corporation, it was stated that the Corporation was taking necessary steps for the framing of the regulations. The High Court following its earlier decision in *Karnakar Mangesha Desai v. State of Mysore and others*(1) held that until regulations were framed by the Corporation under s. 45(2)(c) with the previous sanction of the State Government, the Corporation could not appoint officers and servants and lay down their conditions of service. We think that the judgment of the High Court is erroneous and should be set aside.

In *Dundee Harbour Trustees v. D. & J. Nicol*(1), Viscount Haldane L. C. said: "The answer to the question whether a corporation created by a statute has a particular power depends exclusively on whether that power has been expressly given to it by the statute regulating it, or can be implied from the language used. The question is simply one of construction of language, and lot of presumption." Bearing in mind this statement of law, let us consider whether the appellant had the power to appoint officers and servants and to lay down their conditions of service in the absence of regulations framed under s. 45(2)(c) of the Road Transport Corporation Act, 1950. The appellant is an autonomous Corporation incorporated under the Act for the purpose of operating road transport services in the State and extended areas. For the proper discharge of its functions, it is necessary for the Corporation to appoint officers and servants. Section 14(2) expressly confers upon the Corporation the incidental power to appoint such officers and servants as it considers necessary for the efficient per-

(1) [1966] 1 Mysore Law Journal 72.

(2) [1915] A.C. 550, 556.

formance of its functions. Section 19(1)(c) empowers it to provide for its employees suitable conditions of service. Section 14(3) provides that the conditions of appointment and service and the scales of pay of its officers and servants shall be such as may subject to the provisions of s. 34 be determined by regulations made under the Act. Section 45(2)(c) 'empowers the Corporation to frame regulations with the previous sanction of the State Government prescribing the conditions of appointment, service and scales of pay of the officers and servants. If the State Government issues any directions under s. 34 relating to the recruitment and conditions of service of the employees, the Corporation must obey those directions. The conjoint effect of ss.14(3)(b),34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government under s.34 and the regulations, if any, framed under s.45(2)(c). But until such regulations are framed or directions are given. the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it thinks fit. There is necessarily a time- lag between the formation of the Corporation and the framing of regulations under s. 45(2)(c). During the intervening period, the Corporation must carry on the administration of its affairs with the help of officers and servants. In the absence of clear words, it is difficult to impute to the legislature the intention that the Corporation would have no power to appoint officers and servants and fix the conditions of service unless the regulations under s.45(2)(c) are framed.

There is no merit in the further contention that the General Manager had no power to issue the notice dated July 21, 1964 in the absence of any resolution by the Corporation under s.12(c) expressly authorising him to issue it. In the exercise of his general powers of management the General Manager had clearly the power to issue a notice inviting applications from intending candidates, It is not alleged that he made any appointment pursuant to the notice. The respondent also contended that he had the right to be promoted to a class II junior post. But there is nothing on the record to show that he has any vested right of promotion to the post. Civil Miscellaneous Petition No. 3032 of 1967 filed by the respondent asking for liberty to adduce additional evidence and to raise new contentions is dismissed.

In the order dated August 17, 1967 granting special leave to the appellant, the Court directed that the appellant must pay the costs of the respondent in any event. In the result, the appeal is allowed, the order of the High Court is set aside and the writ petition is dismissed. The appellant shall pay the costs of the appeal to the respondent pursuant to the order dated August 17, 1967.

R.K.P.S.

Appeal allowed.