Supreme Court of India
A. Sanjeevi Naidu Etc. Etc vs State Of Madras And Anr on 5 February, 1970
Equivalent citations: 1970 AIR 1102, 1970 SCR (3) 505
Author: K Hegde
Bench: Hegde, K.S.

PETITIONER:
A. SANJEEVI NAIDU ETC. ETC.

Vs.

RESPONDENT:
STATE OF MADRAS AND ANR.

DATE OF JUDGMENT:
05/02/1970

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
HIDAYATULLAH, M. (CJ)
SHAH, J.C.
GROVER, A.N.
RAY, A.N.
DUA, I.D.

CITATION:
1970 AIR 1102 1970 SCR (3) 505
1970 SCC (1) 404
CITATOR INFO :
RF 1971 SC1002 (5)
E 1973 SC 974 (2)
RF 1973 SC1461 (223)
R 1974 SC2192 (33,34,47,131)
R 1978 SC 68 (133,146,173,211)
RF 1982 SC 149 (709)
RF 1987 SC2106 (6)

ACT:
Motor Vehicles Act 4 of 1939, s. 68(c)-Validity of scheme framed upon formation of requisite opinion by Secretary and not Minister. Rule 23-A authorising Secretary-Validity of-Constitution of India, Art. 166(3)-Scope of.

HEADNOTE:
A draft scheme for the nationalisation of certain transport routes was prepared and published by the respondent State Government under Section 68(C) of the Motor Vehicles Act 4 of 1939. The validity of the scheme was challenged by the

appellants, who were private stage carriage operators, in a petition under Article 226 of the Constitution but the petition was dismissed by the High Court.

In appeal to this Court the validity of the scheme was mainly challenged on the ground that the opinion requisite under Section 68(C) was not formed by the State Government but by the Secretary to the Government acting pursuant to powers conferred on him under Rule 23-A of the Madras Government Business Rule. It was further contended that the said rule was ultra vires, the provisions of the Constitution; Parliament has conferred powers under Section, 68-C to a designated authority and that power can be exercised only by the authority specified and no one else. The authority concerned in the present case was the State Government and it could not have delegated is statutory 'functions to any one else. By Government was meant the Governor aided and advised by his Ministers. The requisite opinion should therefore have been formed by the Minister to whom the business had been allocated under the Rules.

HELD : The functions under the Motor Vehicles Act had been allocated by the Governor to the Transport Minister under the Rules and the Secretary of that Ministry had been validly authorised under Rule 23-A to take action under s. 68(C) of the Act.

In the very nature of things, neither the Council of Ministers nor an individual Minister can attend to the numerous matters that come up before the Government. Those matters have to be attended to and decisions taken by various officials at various levels. When those officials discharge the functions allotted to them, they are doing so as limbs of the Government and not as persons to whom the power of the Government had been delegated. [513 G]

Under our Constitution, the Governor is essentially a constitutional head; the administration of the State is run by the Council of Ministers. in order to obviate the difficulty that would arise if the Council of Ministers had to deal with every matter, the Constitution has authorised the Governor under sub-article (3) of the Article 166 to make rules for the more convenient transaction of the business of the Government of the State and for the allocation amongst its Ministers of the business of Government. All matters excepting those in which the Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on

506

the advice of the Chief Minister. Apart from allocating business among the Ministers, the Governor can also make rules on the advice of his Council of Ministers for more convenient transaction of business. He can not only allocate the various subjects amongst the Ministers but may go further and on the advice of his Ministers, designate a particular official to discharge any particular function. [511 F]

The cabinet is responsible to the Legislature for every action taken in any of the Ministries. This is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of -the functions of the Government. Similarly an individual Minister is responsible to, the Legislature, for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. In every well-planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day-to-day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the, Government. [512 A]
Emperor v. Sibnath Banerjee & Ors. L.R. 72 I.A. p. 241; Kalyan Singh v. State of U.P. [1962] Supp. 2 S.C.R. 76; Ishwarlal Girdharlal Joshi v. State of Gujarat and anr., [1968] 2 S.C.R. 266, Capital Multipurpose Cooperative Society v. State of Madhya Pradesh and Ors. Civil Appeal No. 2201/1966 decided on 30-3-1967; referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 397, 400 to 402, 404 to 417, 422 to 4.41, 451, 1158 to 1161, 1176, 1178 to 1181, 1204, 1207 and 1407 of 1969.

Appeals from the judgments and orders dated January 6, 1969 of the Madras High Court in Writ petitions Nos. 846 of 1968 etc.

K. K. Venugopal, K. R. Nambiar and A. S. Nambiar, for the appellants (in C.As. Nos, 397, 400 to 402, 422,, 423, 441 and 451 of 1969).

M. C. Chagla, V. Subramaniam, V. T. Gopalan, Radharani, C. S. Prakasa Rao and K. Jayaram, for the appellant I s (in. C.As. Nos. 404 to 417, 1179, 1180 of 1407 of 1969). M. K. Ramamurthi, Shyamala Pappu and Vineet Kumar, for the appellant (in C.A. No. 1176 of 1969).

R. V. S. Mani, for the appellants (in C.As. Nos. 424 to 428, 1158 to 1161 and 1207 of 1969).

A. K. Sen, C. A. Prakasa Rao and R. Gopalakrishnan, for the appellants (in C.As. Nos. 429, 431 to 438, 440, 441, 1178 and 1181 of 1969).

C. S. Prakasa Rao, A. R. Ramanathan and R. Gopalakrishnan, for the appellant (in C.A. No. 430 of 1969).

C. S. Prakasa Rao, R. Gopalakrishnan and Sudhir Khanna, for the appellant (in C.A. No. 439 of 1969). C. S. Prakasa Rao, K. K. Venugopal and R. Gopalakrishnan, for the appellant (in C.A. No. 1204 of 1969). Niren De, Attorney General for India and A. V. Rangam, for the respondents (in C . A. No. 397 of 1969).

S. V. Gupte and A. V. Rangam, for the respondents (in C.A. No. 400 of 1969).

A. V. Rangam, for the respondents (in C.A. Nos. 401, 402, 404 to 417, 422 to 441, 451, 1158 to 1161, 1176, 1178 to 1181, 1204, 1207 and 1407 of 1969).

The Judgment of the Court was delivered by Hegde, J. These 52 appellants are private stage carriage operators in the State of Tamil Nadu. They have been operating in various routes in that State. Some of those routes are proposed to be rationalised. A draft scheme of nationalisation has been prepared and published under s. 68 (C) of the Motor Vehicles Act (Central Act IV of 1939) (to be hereinafter referred to as 'the Act'). The validity of the -draft scheme was challenged by the appellants before the High Court of Madras under Art. 226 of the Constitution. Incidentally the validity of some of the provisions of the amending Act XVIII of 1968 (Madras Act) also came to be challenged in those petitions. A division bench of the Madras High Court consisting of Anantanarayanan C.J. and Natesan J. have dismissed those petitions. As against the decision of the High Court these appeals have been brought on the strength of the certificates issued-by the High Court.

In these appeals we are primarily concerned with the validity of the draft scheme under challenge. The ground on which it is challenged is that the opinion requisite Under s. 68 (C) of the Act was not formed by the State Government but by the Secretary to the government in the Industries, Labour and Housing Department, acting in pursuance of the powers conferred on him under rule 23(A) of the Madras Government Business Rules (to be, here inafter referred to as 'the Rules'). The contention of the appellants is that the said rule is ultra vires the provisions of the Consti- tution. There is no dispute that if the rule in question is valid, the challenge directed against the &aft scheme must fail. The High Court has opined that that rule is a valid rule. It is the correctness of that conclusion that is primarily in issue in these, appeals.

Section 68(C) prescribes :

"Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly coordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion .thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct." This section requires that the State transport undertaking must form the opinion contemplated therein. In the State of Tamil Nadu, the State transport undertaking is a department of the State government. Therefore the necessary

opinion should have been formed by the State government. It was urged on behalf of the appellants that under our constitutional set up, the requisite opinion could have been formed either by the Council of Ministers or the Minister to whom the business in question had been allocated under the 'Rules'. The same could not have been formed by the 'Secretary who is merely an official and that too by the Secretary who is not the head of the department to which the functions under the Act had been assigned. The contentions advanced on behalf of the appellants proceed thus : The executive power of the State vests in the Governor (Art.

154). In the exercise of that power he has to be aided and advised by the Council of Ministers with the Chief Minister at the head (Art. 163(1)) but the Governor can make rules for more convenient transaction of the business of the government of the State and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion, (Art. 166(3)). A Minister can only deal with the business that has been allocated to him by the Governor under 'the Rules'. He is not competent to deal with any other business. Motor Vehicles Act has been allocated to the Home Department. Mr. Karunanidhi, the Transport Minister was not in-charge of the Home Department. Therefore his department could not have dealt with functions arising under the Act. Further the Governor could not have allocated any business to a Secretary. Hence in making rule 23(A), the Governor exceeded the powers -conferred on him under Art. 166(3).

On the other hand, it was urged on behalf of the State of Tamil Nadu that originally the functions under the Motor Vehicles Act had been allocated to the Home Department but when Mr. Annadurai formed the D.M.K. government in Tamil Nadu in 1967, the Home Department as such was not allocated to any Minister. The various subjects included in that department were split up and distributed amongst the various Ministers. Transport was allocated to Mr. Karunanidhi. Motor Vehicles Act as such was not allocated to any Minister. The department of Transport included functions under the Motor Vehicles Act as well. Ever since the D.M.K. ministry was formed, the functions under the Motor Vehicles Act were dealt with by the Transport ministry. At the instance of the Transport Minister, Mr. Karunanidhi, Governor framed rule 23(A) for the more convenient discharge of the business. On behalf of the government, it was further urged that Art. 166(3) has two, parts namely (1) rules for the more convenient transaction of the business of the government of the State and (2) rules relating to allocation of business of the State among the Ministers. It was said that after allocating the business of the government among 'various Ministers, it was open to the Governor on the advice of the ministry to make rules for the convenient discharge of the business allocated. Rule 23(A) is one such rule made under Art. 166(3). Hence its validity is not open to question.

The impugned rule 23(A) was introduced for the first time by G.O.Ms. No. 2715 Public dated 22-12-67. Under sub-cl. (1) of that rule, it is provided that powers and functions which State transport undertaking may exercise under s. 68(C) of the Act shall be exercised and discharged on behalf of the State government by the Secretary to the Government of Madras in the Industries. Labour -and Housing Department. The rule further provides that cases relating to such powers and functions of the State transport undertaking under s. 68(C) need not be submitted to the Minister in-charge. Under sub-cl. (2) of that rule, the powers and functions of the State government under s.

68(D) of the Act and the rules relating thereto are directed to be exercised and discharged by the Secretary to the government in the Home Department. Rule 4 of 'the Rules' deals with allocation and disposal of business. It provides. that the business of the Government shall be transacted in the department specified in the 1st Sch. and classified and distributed between those departments as laid down therein. Rule 5 says that Governor shall, on the advice of the Chief Minister allot the business of the government among the Ministers, assigning one or more departments to the charge of a Minister but the proviso to that rule says that nothing in that rule shall prevent the assigning of one department to the charge of more than one Minister.

Rule 6 prescribes that each department of the secretariat shall be under a Secretary who shall be the official head of the department. Under rule 7, the Council of Ministers constituted under Art 163(1) is held collectively responsible for all the executive orders issued in the name of the-Governor in accordance with rules, whether such orders are authorised, by an individual Minister on a matter pertaining to his portfolio or as a result of the discussion at the meeting of the Council of Ministers. Rule 9 provides that without prejudice to the provisions of rule 7, the- Minister in-charge of a department shall be primarily responsible for the disposal of the business pertaining to his department. Section III of the "Rules" containing rules 21 to 30 deal with the departmental disposal of business. Rule 21 says that except as otherwise provided by any other rule cases shall ordinarily be disposed of by or under the authority of the Minister in-charge who may by means of standing orders give such directions as he may think fit for the disposal of cases in the department; copies of such standing orders shall be sent to the Governor -and the Chief Minister. Rule 22 provides that each - Minister shall by means of standing orders arrange with the secretary of the department what matters or class of matters are to be brought to his personal notice; copies of such standing orders has to be sent to the Governor and the Chief Minister. Rule 23 prescribes that except as otherwise provided in the rules, all cases shall be submitted to the Minister in-charge by the secretary of the department to which they belong. Then comes rule 23(A) to which reference has already been made.

The first question that has to be decided is whether the functions under the Motor Vehicles Act had been assigned to Mr. Karunanidhi, the Minister for Transport. It is true that when the various departments were reorganized in 1961, Motor Vehicles Act as well as Transport were included in the Home Department. But when the D.M.K. ministry came to power after the 1967 general elections, the Home Department as such was not allocated to any Minister. The various subjects included in that department were distributed amongst several Ministers. Transport was allocated to the Transport Minister. Motor Vehicles Act as such was not allocated to any Minister. The allocation of business among the various Ministers appears to have been made under broad heads. In 1961 while allocating subjects to the various departments there was a detailed and exhaustive enumeration of the subjects. But that method was not adopted in 1967 while distributing the business of the government among the various Ministers. The functions under the Act undoubtedly relate to Transport department. It cannot be assumed that functions under the Act had not been assigned to any Minister. It is proved that those functions were being discharged by the Minister for Transport. 'Hence we agree with the High Court that those functions had been allocated to the Transport Minister and that the State transport undertaking was being run by the Transport ministry.

Mr. Karunanidhi has in his affidavit filed before the High Court sworn to the fact that rule 23(A) was framed at his instance. Admittedly he could have assigned the functions under s. 68(C) of the Act to the Transport Secretary by making a standing order under rule 22. If he could have done that, we fail to see why he could not advise the Governor through the Chief Minister to make rule 23 (A). It was urged on behalf of the appellants that the parliament has conferred powers under s. 68(C) of the Act to a designated authority. That power can be exercised only by that authority and by no one, else. The authority concerned in the present case is the State government. The government could not have delegated its statutory functions to any one else. The government means the Governor aided and advised by his Ministers. Therefore the required opinion should have been formed by the Minister to whom the business had been allocated by 'the Rules'. It was further urged that if the functions of the Government can be discharged by any one else, then the doctrine of ministerial responsibility which is the very essence of the cabinet form of government disappears; such a situation is impermissible under our Constitution.

We think that the above submissions advanced on behalf of the appellants are without force and are based on a misconception of the principles underlying our Constitution. Under our Constitution, the Governor is essentially a constitutional head; the administration of State is run by the Council of Ministers. But in the very nature of things, it is impossible for the Council of Ministers to deal with each and every matter that comes before the Government. In order to obviate that difficulty the Constitution has authorised the Governor under sub-Art. (3) of Art. 166 to make rules. for the more convenient transaction of business of the government of the State and for the allocation amongst its Ministers, the business of the government. All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister. Apart from allocating business among the Ministers, the Governor can also make rules on the advice of his Council of Ministers for more convenient transaction of business. He can, not only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But this again he can do only on the advice of the Council of Ministers.

The cabinet is responsible, to the legislature for every act ion taken in any of the ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of the governmental functions. Similarly an individual Minister is responsible to the legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. Even the most hard working minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day to day administration. His primary function is to. lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the 'government. When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it -on behalf of the government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of government business generally or

as regards any specific case. Subject to that over all power, the officers designated by the 'Rules' or the standing orders, can take decisions on behalf of the government. These officers are the limbs of the government and not its delegates. In Emperor v. Sibnath Banerji and ors. (1) construing s. 5 9 (3) of the Government of India Act, 1935, a provision similar to Art. 166(3), the Judicial Committee held that it was within the competence of the Governor to empower a civil servant to transact any particular business of the government by making appropriate rules. In that case their Lordships further observed_ that the Ministers like civil servants are subordinates to the Governor. In Kalyan Singh v. State of U.P.(2) : this Court repelling the contention that the opinion formed by an official of the government does not -fulfil the requirements of s. 68 (C) observed : "The opinion must necessarily be formed by somebody to whom, under the rules of business, the conduct of the business is entrusted and that opinion, in law, will be the opinion of the State Government. It is stated in the counter-affidavit that all the concerned officials in the Department of Transport considered the draft scheme and the said scheme was finally approved by the Secretary of the Transport Department before the (1) L. R. 72 T. A. p. 241.

(2) [1962] Sup. (2) S. C. R. p .76.

notification was issued. It is not denied that the Secre- tary of the said Department has power under the rules of business to act for the State Government in that behalf. We, therefore, hold that in the present case the opinion was formed by the State transport undertaking within the meaning of s. 68 (C) of the Act, and that, there was nothing illegal in the manner of initiation of the said Scheme". In Ishwarlal Girdharlal Joshi etc. v. State of Gujarat and anr. (3) this Court rejected_the contention that the opinion formed by the Deputy Secretary under s. 17(1) of the Land Acquisition Act cannot be considered as the opinion of the State government. After referring to the rules of business regulating the government business, this Court observed at p. 282 "In our case the Secretaries concerned were given the jurisdiction to take action on behalf of Government and satisfy themselves about the need for acquisition under s. 6, the urgency of the matter and the existence of waste and arable lands for the application of sub-ss. (1) and (4) of s. 17. In view of the Rules of business and the Instructions their determination became the determination of Government and no exception could be taken." In Capital Multi-purpose Co-operative Society v. State of Madhya Pradesh and Ors. (1), this Court dealing with the scope of s. 68 (D) of the Act observed that the State Government obviously is not a natural person and therefore some natural person has to give hearing on behalf of the State Government and hence the hearing given by the special secretary pursuant to the power conferred on him by the business rules framed under Art. 166(3) is a valid hearing. As mentioned earlier in the very nature of things, neither the Council of Ministers nor an individual Minister can attend to the numerous matters that come up before the Government. Those matters have to be attended to and decisions taken by various officials at various levels. When those officials discharge the functions allotted to them, they are doing so as limbs of the government and not as persons to whom the power of the government had been delegated. In Halsbury Laws of England Vol. I 3rd Edn. at p. 170, it is observed :

"Where functions entrusted to a Minister are performed by an official employed-in the Minister's department (1) [1968] 2, S. C R. p. 266.

(2) C. A. 2201 of 1966 decided on 30.3.1967. L8Sup CI/70-3 there is in law no delegation because constitutionally the act or decision of the official is that of the Minister." Similar view has been expressed in "Principles of Administrative Law" by Griffith and Street. That is also the view taken by Sir Ivor Jennings in his "Cabinet Government".

For the reasons mentioned above, we are of opinion that the functions under the Motor Vehicles Act had been allocated by the Governor to the Transport Minister under "the Rules" and the Secretary of that ministry had been validly authorised under rule 23-A to take action under S. 68 (C) of the Act. The validity of some of the provisions of Madras Act 18 of 1968 which amended the Act was canvassed before us,. It is not necessary to go into those questions for deciding the validity of the impugned scheme. Those questions can be more appropriately gone into and decided if 'and when action is taken on the strength of those provisions. Hence we leave open those questions.

In the result these appeals fail and they are dismissed with costs-hearing fee one set.

R.K.P.S. Appeals dismissed.