

PETITIONER:
N. VENKATESWARA RAO & ORS. ETC.

Vs.

RESPONDENT:
S.T.A & ORS. ETC.

DATE OF JUDGMENT: 21/11/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

WITH

C.A. NOS. 15713-15918/93 [@ SLP (C) Nos. 23497-507, 25867, 26003, 26004, 26005-06, 26020, 26724-42, 26999-27104, 27127-139, 27188-191, 27206-222, 27235-39, 27395-419/95], C.A NOS. 15919-921/96 [@ SLP (C) NOS. 24395-97/96 (CC 5297/95)], C.A. NOS. 15922-26/96 [@ SLP (C) NOS. 208/96, 209/96, 24400-401/96 (CC 82/96 AND 90/96)], C.A. NO. 16011/96 [@ SLP (C) NO. 24403/96 (CC 97/96)], C.A. NOS.15297-16010/96 [@ SLP (C) NOS. 270-299/96, 27757-810/95], C.A. NOS. 16012-623/96 [@ SLP (C) NOS. 24405-07/96 (CC-160/96), 3595/96, 548-533/96, 24970-71/95, Q.P. No. 259/95, C.A. NO. 16624/96 [@ SLP No. 4928/96] C.A. NOS. 16594-626/96 [@ SLP (C) NOS. 5877-5909/96 (CC 778/96)], C.A. NOS. 16025-16593/96 [@ SLP (C) Nos. 5021-34/96, 6083, 6145-47, 6149-56/96, 6084-6143, 4951-79, 1220-25, 5538-47/96, 6160-90, 8412-31, 6277-6356, 7824-47, 8534-69, 8575-8605, 10049-083, 10408, 10445-454, 11029-033, 11803-810, 10849-851, 10852-884, 9853, 12027, 10828-840, 12028-037, 11890, 12213, 11875-884, 13043, 13185-239/96, 14082-085, 14869, 14768-771, 14870-882, 14892, 16952/96, 22641 AND 22642/96]

O R D E R

Permission to file special leave petitions is granted. Delay condoned.

Leave granted in all the special leave petitions.

These appeals by special leave arise from the judgment of the Division Bench of the Andhra Pradesh High Court made in W.P. No. 6211/90 and batch, on December 21, 1991. All the appellants are owners of public carriers plying in the State of Andhra Pradesh and registered under the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") and the Rules made thereunder. Their vehicles have 3 axles and are called Taurus vehicles. It is their case that due to change in the size of the tyres of the front axles and the rear axle and the ply rating, the maximum self-laden weight got increased. Therefore, with permission of the Regional Transport Authority they have been plying the vehicles with increased laden weight from August 1988. But after March 31, 1990, they were interdicted on the ground that the weight was in excess of maximum permissible laden weight and maximum safe axle weight and as a consequence thereof their

business of transporting goods has been interfered with unnecessarily. As this was being done under the Notification dated June 8, 1989 issued by the Central Government in exercise of its power under Section 58 of the Act they challenged the said Notification as ultra vires the provisions of the Act. After the judgment of the High Court, the Rules came to be amended in 1994. When the appeals were preferred before this Court, by order dated February 1, 1996 this Court pointed out that the Central Government have to carry out the amendment to the Rules and the Schedule so as to bring them in conformity with the Amendment Act 54 of 1994. Time, when sought for to do the needful, was granted to the Government of India. As a result, now the notification has been issued on October 18, 1996 exercising the power under Section 58 (1) of the Act and also appended explanatory note to the said notification.

S/Shri Sudhir Chandra, Rajiv Dhawan, Smt. Amareswari, learned senior counsel and Shri L.N. Rao, learned counsel for the appellants, contend that the notification issued by the Government, in particular the words "whichever is less" after the end of the three clauses, is in abdication of the power given to the Central Government under Section 58(1) which empowers the Central Government to prescribe the maximum gross vehicle weight and the maximum safe axle weight by way of an appropriate Notification. The impugned Notification after referring to the three indices has provided that the maximum gross vehicle weight and the maximum safe axle weight shall be out of these three indicated weights, whichever is less. By providing like that, it has, instead of fixing such weight itself, has either abdicated or delegated the power in favour of the manufacturer. The Notification, as it is, clearly indicates that the Central Government has not exercised its power properly but has left determination of maximum gross vehicle weight and the maximum safe axle weight to the manufacturers. It was, therefore, submitted that exercise of the power is thus not consistent with the provisions of the Act. Shri Rajiv Dhawan has further contended that the Registering Authority has been given free-hand either to register or refuse to register the vehicles which is not in conformity with the Schedule and that, therefore, the action would always be an impediment to have the vehicle registered. Thereby, the Central Government have obviated the statutory power given under the Act.

Shri P.P. Malhotra, learned senior counsel for the Union of India, on the other hand, contends that Section 58 should be read with the Rules. Chapter 7 of the Rules prescribed various circumstances enumerated in the matter of construction, equipment and maintenance of the motor vehicles. After taking into consideration all the relevant factors, namely, the maximum axle weight, size and ply rating of the tyres and all other relevant factors, the manufacturers as well as the testing authorities are required to ensure that the Act and the Rules made thereunder are strictly complied with. The notification is only to ensure such a compliance. Thereby, the Central Government have not abdicated the power given under Section 58 of the Act to the manufacturers nor to the Registering Authority as its delegatee. Shri Raghuvir, learned senior counsel appearing for the State of Andhra Pradesh, has further argued that the indicia provided, namely, 'whichever is less' in the notification would manifest the object that the roadworthiness requires to be considered when the vehicle is registered; the entries in the register would indicate the maximum vehicle weight, axle weight and the

'tyre weight' which would approximately be less than the maximum prescribed so that the load weight of the goods and vehicle weight remain constant the roadworthiness of the vehicle would be continued and the safety of the carriage of goods would also be ensured. If such a construction is adopted, the Government of India cannot be said to have abdicated their power given under Section 58 of the Act.

In view of the rival contentions raised by the learned counsel on either side, the question is whether the impugned notification dated October 18, 1996 is in conformity with the provision of the Act? Section 2(3) of the Act defines "axle weight" to mean, in relation to an axle of a vehicle, the total weight transmitted by the several wheels attached to that axle to the surface on which the vehicle rests. Section 2 (15) defines "gross vehicle weight" to mean, in respect of any vehicle the total weight of the vehicle and load certified and registered by the Registering Authority as permissible for that vehicle. Section 2 (36) defines "registered axle weight" to mean, in respect of the axle of any vehicle, the axle weight certified and registered by the Registering Authority for that axle. "Registering Authority" has been defined under Section 2(37) to mean an authority empowered to register motor vehicles under Chapter IV. Section 109 in Chapter VII of the Act deals with construction, equipment and maintenance of the motor vehicles. It reads as under:

"(1) Every motor vehicle shall be so construed and so maintained as to be at all times under the effective control of the person driving the vehicle.

(2) Every motor vehicle shall be so constructed as to have right hand steering control unless it is equipped with a mechanical or electrical signaling device of a prescribed nature."

The Central Government have been given power under Section 110 to make rules regulating the construction, equipment and maintenance of the motor vehicles. Clause (b) of Section 110(1) provides that the size, nature, maximum retail price and condition of tyres including embossing thereon of date and year of manufacture and the maximum load carrying capacity are required to be prescribed. In accordance therewith, the Rules have been made. Chapter V of the Rules deal with construction, equipment and maintenance of the motor vehicles. Rule 92 gives a general prescription that "No person shall use or cause or allow to be used in any public place any motor vehicle which does not comply with the provisions of this Chapter." Rule 93 gives overall dimensions of the motor vehicles and Rule 94 prescribes the conditions of the tyres. Rule 95 prescribes the size, ply rating of tyres as per the Schedule gives therein, the details to which we will be dealt with at a later stage. Suffice it to state that Rule 95 prescribes the sizes of the tyres of motor vehicles specified in the column and the table prescribes the maximum weight permitted to be carried by such tyres specified in the corresponding column 3. Rule 126 provides for the prototype of every motor vehicle to be subject to test after the Motor Vehicles (Amendment) Rules, 1993 have come into force. It reads as under:

"126. Prototype of every motor vehicle to be subject to test - On and from the date of commencement of Central Motor Vehicles

(Amendment) Rules, 1993, every manufacturer of motor vehicles other than trailers and semi-trailers shall submit the prototype of the vehicle to be manufactured by him for test by the vehicle Research and Development Establishment of the Ministry of Defence of the Government of India or Automotive Research Association of India, Pune, or the Central Machinery Testing and Training Institute, Budni (MP), or the Indian Institute of Petroleum, Dehradun, and such other agencies as may be specified by the Central Government for granting a certificate by that agency as to the compliance of provisions of the Act and these rules."

Rule 126-A prescribes that the testing agencies referred to in Rule 126, shall, in accordance with the procedure laid down by the Central Government, also conduct tests on vehicles drawn from the production line of the manufacturer to verify whether these vehicles conform to the provisions of Rule 115 of the Rules. Rule 115 speaks of emissions of smoke, vapour, etc. from motor vehicle and also other conditions, the details of which are not material for the purpose of these cases. Registration of motor vehicle is dealt with under Rule 47 read with Form 20 and Rule 47 (a) and (b) in conformity with Form 21 and Rule 47 (g), 115(b), 124, 126-A and 127, as specified in Form 27. In Form 20, column 25 prescribes specification of gross vehicle weight as specified by the manufacturer and the same has to be registered in the form. Column 26 specifies maximum axle weight etc., the details of which have been mentioned in clauses (a) to (d). Column 30 prescribes number, description and size of tyres on each axle. Column 31 prescribes maximum axle weight in respect of each axle. Similarly in Form 21 in clauses (a) to (d) of column 11 maximum axle weight and number and description of tyres (in case of transport vehicle), front axle, rear axle, any other axle, tandem axle have been specified. Column 13 specifies gross vehicle weight. Thus it could be seen that all the provisions of the Act and the Rules specify the maximum weight of axle and tyres and the required weightage to be mentioned in the Certificate of Registration in Form 20, 21 and 22 conformably to Rule 47. Equal are the provisions with respect to the tyres which need no reiteration.

In this behalf, the power of the Central Government has been crystallized in Section 58 of the Act. Section 58 reads as under:

"58. Special provisions in regard to transport vehicles. - (1) The Central Government may, having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle, (other than a motor cab), and its make and model and other relevant considerations, by notification in the Official Gazette, specify, in relation to each make and model of a transport vehicle, the maximum [gross vehicle] weight of such

vehicle and the maximum safe axle weight of each axle of such vehicle.

(2) A registering authority, when registering a transport vehicle, other than a motor cab shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely:-

(a) the unladen weight of the vehicle;

(b) the number, nature and size of the tyres attached to each wheel;

(c) the gross vehicle weight of the vehicle and the registered axle weights pertaining to the several axle thereof; and

(d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided, and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle.

(3) There shall not be entered in the certificate of registration of any such vehicle any gross vehicle weight on a registered axle weight of any of the axle different from that specified in the notification under sub-section (1) in relation to the make and model of such vehicle and to the number, nature and size of the tyres attached to its wheels:

(4) When by reason of any alteration in such vehicle, including an alteration in the number, nature or size of its tyres, the gross vehicle weight of the vehicle or the registered axle weight of any of its axles no longer accords with the provisions of sub-section (3), the provisions of Section 52 shall apply and the registering authority shall enter in the certificate of registration of the vehicle revised registered weights which accord with the said sub-section."

A reading thereof would clearly indicate that the Central Government may, having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle and its make and model and other relevant considerations, by notification in the Official Gazette, specify, in relation to each make and model of a transport vehicle, the maximum gross vehicle weight of such vehicle and the maximum safe axle weight of each axle of such vehicle. When the Registering Authority registers a transport vehicle it should enter in the record of registration and also enter in the certificate of registration of the vehicle, the unladen weight of the

vehicle the number, nature and size of the tyres attached to each wheel; the maximum gross vehicle weight of the vehicle and the registered axle weights pertaining to the vehicle axles thereof. When by reason of any alteration in such vehicle including the alteration in the number, nature, size of tyres, the gross vehicle weight of the vehicle or the registered axle weight of any of its axles no longer accords with the provisions of sub-section (3), the provisions of Section 52 shall apply and the Registering Authority has no enter in the certificate of registration of the vehicle, revised registered weights which should accord with the said sub-section. The scheme of the Act and the Rules would provide an in built procedure under the Act to maintain construction, equipment and maintenance of the motor vehicle as regards its maximum gross vehicle weight, maximum safe axle weight, the nature and size of the tyres fitted to the vehicle and also the maximum safe axle weight of each axle of the vehicle as entered in the certificate of registration or revised, if there occurred change in the weight.

The question, therefore, is whether the Government in exercising its power under Section 58(1) of the Act has abdicated its power in favour of the manufacturers as contended by the learned counsel for the parties? On consideration of the scheme of the Act and the purpose it seeks to serve, namely, roadworthiness and the safety of the vehicle and also the safety of the transport, we think that the Government has not abdicated its power in exercising its power under section 58(1) of the Act by issuance of the notification dated October 18, 1996. It is seen that in the notification the Government specified that in relation to the transport vehicles (other than motor cabs) of various categories detailed in the Schedule, the maximum gross vehicles weight and the maximum safe axle weight of each axle of such vehicle shall, having regard to the size, nature and number of the tyres of the maximum weight permitted to be carried by the tyres as specified in Rule 95 of the Rules which reads as under:

"(1) Vehicle manufacturers rating of the gross vehicle weight and axle weight respectively for each make and model as duly certified by the testing agencies for compliance of rule 126 of the Central Motor Vehicles Rules, 1989, or

(ii) the maximum gross vehicle weight and the maximum safe axle weight of each vehicle respectively as specified in the Schedule below for the relevant category, or

(iii) the maximum load permitted to be carried by the tire(s) as specified in the rule 95 of the Central Motor Vehicles Rules, 1989, for the size and number of the tyres fitted on the axle(s) of the relevant make and model, whichever is less:

Provided that the maximum gross vehicle weight in respect of all such transport vehicles, including multi-axle vehicles shall not be more than the sum total of all the maximum safe axle weight put together subject to the restrictions, if any, on the

maximum gross vehicle weight given in the said Schedule."

It is seen that Schedule has been attached to this notification in which they have mentioned the rigid vehicles, semi-articulated vehicles as enumerated therein, the details of which are redundant to be extracted in the judgment, but they become part of the judgment. It is true that clause (1) by itself indicates and gives an impression that the Central Government had abdicated its discretion in favour of the manufacturer, of rating the gross vehicle weight and the axle weight respectively. But it must be understood in the light of the explanatory note added by the Government which reads as under:

"The notification specifies the maximum Gross Vehicle Weight and maximum Safety Axle Weight for various categories of transport vehicles. It is not possible to specify this for each make and model because of the very large number of models manufactured by different manufacturers. Further with the rapid technological advancements in the automobile industry new models are being added regularly and there will be practical difficulties and delays in the notification of these modelstheir market introduction. However, this aspect has been taken care of by the requirement of certification to be issued by the nominated testing agencies under CMVR for each make and model of transport vehicles. Further the schedule in this notification covers the various categories of vehicles, currently manufactured in the country and thus includes each make and model of transport vehicle.

The notification ensures that the maximum Gross Vehicle Weight and the maximum safe axle weight for registration are in accordance with the stipulation of the Government from the point of view of roads and bridges. Further, it ensures that the maximum weights permitted to be carried by the tire are as per rule 95 CMVR. Additionally it ensures that the vehicle manufacturers' ratings are never exceeded as this is fundamental for the safety and satisfactory operation of the transport vehicle.

The schedule in the notification specifies the maximum gross vehicle weight and safe axle weight. Tyre sizes are not recommended to be included in this schedule because manufacturers have to choose the appropriate size and number of tyres from design considerations to meet various requirements such as

durability, ground clearance, ride and handling, braking and steering, road conditions, standardisation of tyres on all the axles etc.

A reading of it would indicate that due to rapid technology and change in the manufacture of the automobile vehicle by the industry, several new models are being added regularly; it is practically difficult for the Government to specify on day-to-day the maximum vehicle weight or the maximum axle weight which would cause delay in implementation thereof. Therefore, the Government, having regard to the changing manufacturing pattern and changing situation, have decided that the manufacturer specifies the maximum gross vehicle weight and the axle weight. It necessarily requires to be decided by the testing agencies specified in Rule 126 and they should act in conformity with the provisions of the Act and the Rules and should certify accordingly. When they so do, it in effect amounts to a direction by the Central Government to the authorities to comply with the provisions of the Act. Thereby, before registration of the vehicle, after the construction of the motor vehicle with equipment as mentioned in the Act the Registering Authority shall be required to verify whether it is in conformity with the provisions of the Act, Rules and the notification. One that is done, the question of discrimination or arbitrariness on the part of the Registering Authority does not arise. Rule 126-A of the Rules came into force with effect from December 30, 1993. Therefore, any vehicle registered prior to the said date should conform with the specifications mentioned in item (ii) of the notification read with the Schedule attached to Rule 95 of the Rules. Subsequent thereto, they all required to comply with the law as enumerated hereinbefore.

Next contention is as to para (ii) of the notification. There is no quarrel across the Bar as regards clause (ii) thereof because it specified maximum gross vehicle weight and the maximum safe axle weight of each vehicle respectively as specified in the Schedule to the relevant categories enumerated hereinbefore. A serious contention was raised with regard to clause (iii) of the notification which says that the maximum load permitted to be carried by the tyre(s) as specified in Rule 95 for the size and number of the tyres fitted on the axle(s) of the relevant make and model would be "whichever is less" among all the three clauses. In this behalf it is contended that some manufacturers have given the maximum vehicle weight of 22 tonnes while Schedule I prescribes 25 tonnes as the maximum gross vehicle weight in respect of rigid vehicle having 3 axle, two tyres on front axle and eight tyres on rear tandem axle and the maximum safe axle weight is six tonnes on front axle and 19 tones on rear tandem axle. This would create incompatibility for non-registration by the registering authorities and, therefore, it is not in conformity with the Act. We find no force in the contention. It is seen that each manufacturer is required to conform to the provisions of the Act, Rules and the specifications mentioned by the Government in that behalf. The manufacturers send them for testing to the appropriate authority specified in Rule 126 of the Rules. When so tested what is specified in the Rules is the maximum; but it does not mean that it should be in excess of it. It may be less. It is seen that the Rules indicate the minimum of weightage. Take for instance, if the maximum axle weight is 100 tones and weightage of the tyres fitted to it is 106 tones, it does not mean that the owner has the right to fit his tyres in excess of the maximum safe

axle weight given and registered in the vehicle. In other words, in an appropriate case the maximum safe axle weight and the maximum vehicle weight should always be conformable; though in respect of tyres fitted into the vehicles, the weight is variable. It should always be less than the maximum of the safe axle weight mentioned in the certificate of registration. The words "whichever is less" require to be understood in that sense. Note II of Rule 95 should be understood in this perspective. If such a construction is adopted, in fairness, Shri Sudhir Chandra, learned senior counsel, has stated that there may not be any impediment in the enforcement of the provisions of the Act. We agree with the learned counsel in that behalf. The maximum safe axle weight would always be the criteria and the maximum vehicle weight should normally be in conformity with the safe axle weight so that the roadworthiness of the vehicle, the safety of the vehicle and also the safety of the carriage of the goods would always remain without creating any traffic hazards. The driver would carry the good without any hiatus in the carriage of the goods. Thus we consider that the Government have not abdicated its controlling power under section 58(1) of the Act.

Shri Rajiv Dhawan, learned senior counsel, has placed reliance on a passage of Administrative Law by H.W.R. Wade (Seventh Edition) at page 358 which reads thus:

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon the authority is in substance exercised by another. The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them. In this class might be included the case of the cinema licensing authority which, by requiring films to be approved by the British Board of Film Censors, was held to have surrendered its power of control and also the case of the Police Complaints Board, which acted as if it were bound by a decision of the Director of Public Prosecutions when only required to 'have regard' to it. This doctrine has been applied to voting by local councillors.

Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise. The Minister of

Housing and Local Government made it a rule to refuse planning permissions for gravel working on top-class agricultural land whenever the application was opposed by the Minister of Agriculture. The court held that this was to put the decisive power into the hands of the wrong minister and that a decision so taken must be quashed. Similarly the court invalidated a reinstatement order made under wartime labour regulations by a national service officer, who was empowered to direct reinstatement of workers dismissed for misconduct. For the officer was acting under directions from the minister, whereas he was a statutory authority in his own right and should have exercised his personal discretion."

It is seen from the above passage that the proper authority who has been empowered to exercise the power, has abdicated its power in its exercise of the discretion vested by the Parliament in its administrative actions. The author has stated that the Parliament having given the discretion to the authorities, they cannot abdicate its power to the officers to exercise that power. Similar is the case of the British Censor Board etc. It is seen that the said passage is inapplicable to the facts of this case. As stated earlier, the Act itself regulates the manner in which the vehicles are to be constructed, equipped fitted and maintained and various indicia have been prescribed in that behalf. The manufacturer is required to conform to the specifications. As stated earlier, Rule 95 of the Rules specifies the size of the tyres of the motor vehicles specified in Column 1 of the Schedule. Rating is specified in the corresponding entry in column (2) of the Schedule and the maximum weight permitted to be carried by such tyres is specified in column 3. The relevant columns specify each type of tyres.

It is true that Note (ii) of the notification which gives the above maximum weightage in respect of tyres of transport vehicle goods, shall be applicable subject to the conditions that the axle load does not exceed 6% of the permitted limit. They apply in relation to the registered axle weight recorded in the certificate of registration of the vehicle. As stated earlier, this is only to indicate that the axle load should not exceed 6% or it should always be above the safe axle load specified in the Rules. As stated earlier, the safe axle load would always be the determining factor since roadworthiness and safety would hinge upon the axle load vis-a-vis the tyres fitted to the axles as specified in the Act.

This it could be seen that the Central Government have not abdicated their power of control and prescribing specification under Section 58 of the Act nor it is a delegation of the manufacturer. Therefore, we do not find any illegality in the order passed by the High Court warranting interference.

The appeals and the writ petition are accordingly dismissed. No costs.

JUDIS