

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.1084 OF 2017

Kundan M. Kerkar and ors.		Petitioners.
Versus		
State of Goa, through Chief Secretary & others.		Respondents.

Mr. Rohit Bras de Sa, Advocate for the Petitioners.

Mr. Dattaprasad Lawande, Advocate General with Mr. Deep Shirodkar, Additional Govt. Advocate for the Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 12 December 2017.

ORAL ORDER : *(Per N.M. Jamdar, J.)*

The four Petitioners, who are plying motor cabs in the State of Goa, by this Petition have sought a declaration that the Motor Vehicles (Amendment) Rules, 2015, which have amended and substituted Rule 140 of the Goa Motor Vehicles Rules, 1991, are unconstitutional. By these Rules, the Government of Goa has introduced the Digital Meter System to be fitted in the Motor Cabs.

2. The challenge is primarily on two counts. First, that there is no hearing given to the Petitioners who had submitted their

objections to the Draft Rules. Second, the Rules are beyond the rule making power conferred on the State Government.

3. The Government of Goa, Department of Transport, issued a notification bearing No.D.Tpt/EST/2306/2015/2193 on 2 July 2015, publishing the Draft Rules titled “the Goa Motor Vehicles (Amendment) Rules, 2015” in the Official Gazette. The Draft Rules stated that they were being published as required under Section 212 of the Motor Vehicles Act, 1988. It was stated in the notification that the persons likely to be affected, can lodge their objections to the Draft Rules, which would be taken into consideration at the time of finalisation of the Rules. The Petitioners submitted their objections and suggestions on 14 July 2015. On 26 November 2016, the Government of Goa finalised the Rules and issued a Notification to that effect. The Rules titled “the Goa Motor Vehicles (Amendment) Rules, 2015” were thus finalised and Rule 140 stood amended and substituted. The Petitioners have challenged the said Rules primarily on the above stated grounds.

4. We have heard Mr. Rohit Bras de Sa, learned Counsel for the Petitioners and Mr. D. Lawande, learned Advocate General for the Respondents.

5. Mr. De Sa, the learned Counsel for the Petitioners submitted that the State Government had called for objections and the Petitioners having submitted their objections, by virtue of Section 100 of the Act of 1988, the State Government was obliged to give hearing to the affected persons, such as the Petitioners. It was submitted that the Rules are, in fact a Scheme, since they affect and seek to regulate a large number of motor cabs in the State of Goa. He submitted that the Rules in effect have a colour of a Scheme and, therefore, they fall within the ambit of Section 97 of the Act which regulates the Road Transport service. Mr. De Sa relied on the decision of the Apex Court in the case of *Cellular Operators Association of India & Ors. vs. Telecom Regulatory Authority of India & Ors.*,¹ and submitted that the Apex Court has held that even for subordinate legislation, the State should consider the submissions of the stakeholders which will reduce arbitrariness in subordinate legislation making process. He submitted that the State Government has not taken into consideration various aspects such as fixation of fares, which the Petitioners could have pointed out if they were given an opportunity of hearing. He submitted that the Rules are framed in breach of Section 100 of the Act of 1988. Furthermore, they are beyond the rule making power of the State and the Rules could not have been finalised unless the fares were fixed. It was submitted that the Rules violate Articles 14, 19 and 21 of the

¹ (2016) 7 SCC 703

Constitution of India as the Rules breach the fundamental rights of the Petitioners and are arbitrary.

6. The Rules of 2015 have amended Rule 140 of the Goa Motor Vehicles Rules, 1991 and the amended Rule reads thus :

“140. Motor cabs to be fitted with fare meters.— (1) Every motor cab plying in the State of Goa shall be fitted with a fare meter of digital type with printer and Global Positioning System (GPS) tracking device approved by the State Transport Authority from the date as may be notified by the Director of Transport.

(2) No new permit to a motor cab shall be granted or its existing permit renewed unless such motor cab is fitted with such digital meter.

(3) No permit of a motor cab shall be transferred unless it is fitted with the digital meter.

(4) No fitness certificate to a motor cab shall be issued or its existing fitness certificate renewed unless such motor cab is fitted with the digital meter.

(5) The digital meter shall be sealed at three points, namely at the meter, at the junction box and at the adopter.

(6) The motor cab shall not ply for hire unless the fare meter bears an intact seal of the Legal Metrology Department to indicate that the fare meter has been tested and is in working condition. The seal shall be always kept intact.

(7) Any alterations to the fare meter shall be carried out only by the Legal Metrology Department with the written permission of the Secretary, State Transport Authority.

(8) The owner, driver, attendant of the motor cab or any other person who breaks or tampers in any way with the seal or marks placed on a fare meter, or who with an intent to deceive, tampers with the fare meter or the driving

mechanism thereof, shall be deemed to have committed a breach of this rule and shall be liable for a penalty as specified in section 177 of the Act.”

As can be seen, the Rules have amended the earlier Rule 140 and has incorporated the concept of fare meter of digital type with printer and Global Positioning System (GPS) tracking device. As per the Rules, the fare meter of digital type with printer and Global Positioning System would be finalised and implemented on every motor cab plying in the State of Goa.

7. The Motor Vehicles Act, 1988 confers power on the State Government to frame Rules in respect of various subjects. Section 96 of the Act of 1988 indicates the areas on which the State Government can frame Rules. Power to frame Rules governing taxi meters on motor cabs is provided under Section 96(2)(xx), which reads thus :

“96. Power of State Government to make rules for the purpose of this Chapter.

(1) ...

(2) ...

(xx) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining, testing and sealing taxi meters;”

The bare perusal of the Rule 96(2)(xx) makes it abundantly clear that the rule making power exists with the State Government in respect of

the taxi meters on the Motor Cabs. The Rules of 2015 refer to this source of power.

8. One of the principal arguments advanced by Mr. D'Sa is requirement of personal hearing, based on Section 100 of the Act of 1988. Section 100 falls under Chapter VI of the Act of 1988 which deals with 'Special Provision relating to State Transport Undertakings'. As rightly pointed out by the learned Advocate General, Section 100 has to be read conjointly with Sections 97 to 102. Section 99 deals with preparation and publication of proposals regarding road transport service of a State transport undertaking. This provision enables the State to formulate a Scheme in public interest to notify that on a particular route there shall ply only the State transport to the exclusion, complete or partial of other operators. After the Scheme is finalised, Section 102 contemplates cancellation or modification of the Scheme. It is in the context of this Scheme referred to Section 99 of the Act of 1988, that Section 100 is to be interpreted. Sections 99 and 100 of the Act of 1988 read thus :

“99. Preparation and publication of proposal regarding road transport service of a State transport undertaking.—

[(1) Where any State Government is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated 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 Government may formulate a proposal regarding a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and other relevant particulars respecting thereto and shall publish such proposal in the Official Gazette of the State formulating such proposal and in not less than one newspaper in the regional language circulating in the area or route proposed to be covered by such scheme and also in such other manner as the State Government formulating such proposal deem fit.

[(2) Notwithstanding anything contained in sub-section (1), when a proposal is published under that sub-section, then from the date of publication of such proposal, no permit shall be granted to any person, except a temporary permit during the pendency of the proposal and such temporary permit shall be valid only for a period of one year from the date of its issue or till the date of final publication of the scheme under section 100, whichever is earlier.]

x x x

100. Objection to the proposal.—(1) *On the publication of any proposal regarding a scheme in the Official Gazette and in not less than one newspaper in the regional language circulating in the area or route which is to be covered by such proposal any person may, within thirty days from the date of its publication in the Official Gazette, file objections to it before the State Government.*

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter, if they so desire, approve or modify such proposal.

(3) The scheme relating to the proposal as approved or modified under sub-section (2) shall then be published in the

Official Gazette by the State Government making such scheme and in not less than one newspaper in the regional language circulating in the area or route covered by such scheme and the same shall thereupon become final on the date of its publication in the Official Gazette and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has the previous approval of the Central Government.

(4) Notwithstanding anything contained in this section, where a scheme is not published as an approved scheme under sub-section (3) in the Official Gazette within a period of one year from the date of publication of the proposal regarding the scheme in the Official Gazette under sub-section (1), the proposal shall be deemed to have lapsed.

Explanation.—In computing the period of one year referred to in this sub-section, any period or periods during which the publication of the approved scheme under sub-section (3) was held up on account of any stay or injunction by the order of any Court shall be excluded.”

X X X

9. It can be clearly seen that the Scheme referred to in Section 100 of the Act of 1988 is the Scheme envisaged in Chapter VI. The Scheme referred to in Section 100 is completely different than the Rules framed by the State exercising powers under Section 96. Publication, commencement and laying of the Rules is governed by Section 212 of the Act of 1988 and Section 212 does not contemplate any personal hearing. A hearing is to be given under

Section 100 since the Scheme framed would completely or partially stop the business of the private operators. There is no question of the Rules of 2015 having colour of a scheme attracting Section 100. Section 100 refers to the State road transport system impacting private business. Under Rules of 2015, no such contingency arises. There is no basis to contend that the Rules of 2015 be equated to the scheme contemplated under Section 100 of the Act of 1988. The hearing contemplated under Section 100 under these circumstances, therefore, cannot be made basis of a challenge to the Rules framed, commencement of which is governed by Section 212 of the Act of 1988. It is stated in the Rules of 2015 that they were finalised after consideration of the objections. We are, therefore, unable to accept the contention of Mr. De Sa that the Rules of 2015 should be set aside on the ground that no hearing was given to the Petitioners as mandated under Section 100 of the Act of 1988.

10. The reliance placed by Mr. De Sa on the decision of the Apex Court in *Cellular Operators Association of India*, is misplaced. The Apex Court was considering the reasonableness in the State action and the parameters of judicial review. It is in this context that the Apex Court made the following observations in paragraph 92 of the report, which is relied upon by the learned Counsel for the Petitioners.

“ 92. We find that, subject to certain well-defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be “transparent” in the manner pointed out above. Since it is beyond the scope of this judgment to deal with subordinate legislation generally, and in particular with statutes which provide for rule making and regulation making without any added requirement of transparency, we would exhort Parliament to take up this issue and frame a legislation along the lines of the US Administrative Procedure Act (with certain well-defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation-making power is exercised after due consideration of all stakeholders’ submissions, together with an explanatory memorandum which broadly takes into account what they have said and the reasons for agreeing or disagreeing with them. Not only would such legislation reduce arbitrariness in subordinate legislation-making, but it would also conduce to openness in governance. It would also ensure the redressal, partial or otherwise, of grievances of the stakeholders concerned prior to the making of subordinate legislation. This would obviate, in many cases, the need for persons to approach courts to strike down subordinate legislation on the ground of such legislation being manifestly arbitrary or unreasonable.”

The Apex Court, at the outset, made it clear that it was beyond the scope of the judgment to deal with subordinate legislation generally. The Apex Court observed that it would exhort Parliament to take up the issue and frame a legislation whereby due consultations of all stakeholders' view be taken into account even for subordinate legislation. In the present case, the Petitioners had submitted their

objections. The Rules of 2015 state that suggestions were notified and considered. The Apex Court has nowhere suggested in this decision that there should be a personal hearing to the objector. Consideration of objections/suggestions does not necessarily mean that they must be accepted.

11. The next contention of Mr. De Sa is that the Rules are in excess of the rule making power of the State. It was contended that unguided power is given to the Authorities. This submission cannot be accepted. Rule 96(2)(xx), reproduced earlier, confers the specific power on the State Government to approve and fix standard types of taxi meters to be used. Finalisation of the digital fare meter with printer and global positioning system would be done by the Authorities of the State, looking at the technical aspects. There is no unguided power conferred on the State as the Rules have been framed to cover a limited area, which includes various technical aspects.

12. It was then contended by Mr. De Sa that since the fares have not been finalised, therefore, the Rules of 2015 are unworkable and cannot be implemented. We are unable to accept this contention of the Petitioners. The power conferred on the State Government under Section 96(2)(xx) to frame rules to approve and fix the

standard types of taxi meters is not subject to any pre-condition. We do not find any such statutory embargo on the power of the State Government to frame the Rules. This power is a stand-alone power, which has been exercised. We cannot, therefore, entertain the challenge to the Rules of 2015 on this count.

13. Mr De Sa has drawn our attention to the Rules framed by the Maharashtra State which, according to him, are more comprehensive and have a workable scheme. The Maharashtra Rules cover a larger area. All that the Rules of 2015 have done, is to amend the existing Rules to introduce a digital type meter with printer and global positioning system and these Rules cannot be set aside by referring to the Rules framed by another State.

14. The contention of Mr. De Sa that fundamental rights of the Petitioners are affected by the Rules of 2015, is without any merit. The Digital Taxi Meters are not a novelty, but are in tune with the current times. The Digital Taxi Meters are a general norm in various countries. How fixation of Digital Meters will affect the fundamental rights of the Petitioners, is not demonstrated at all. On the other hand, if Digital Meters are installed, one can foresee that it will inspire confidence in the travellers, leading to increase in the use of motor cabs, which in the long run will benefit the Petitioners and

other motor cab operators themselves. By exercising the rule making power to introduce transparency in the motor cab transportation, it cannot be said that the State has acted arbitrarily. Having an accurate meter system on the motor cabs being essential, framing of the Rules by the State in that regard, is far from arbitrariness. Therefore, the Rules of 2015, do not affect the fundamental rights of the Petitioners under Article 19 of the Constitution of India. They do not affect the right to life of the Petitioners under Article 21. Neither they can be called as arbitrary to invoke Article 14 of the Constitution of India.

15. The challenge of the Petitioners to the Rules of 2015 being without any merit, the Writ Petition is rejected.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.