

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2023



BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.15800 OF 2022 (GM - RES)

BETWEEN:

SRI SUDARSHAN V. BIRADAR

... PETITIONER

(BY SRI P.P.HEGDE, SR.ADVOCATE FOR
SRI VENKATESH SOMAREDDI, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY
CHIEF SECRETARY TO GOVERNMENT
VIDHANA SOUDHA,
BENGALURU - 560 001.
- 2 . STATE OF KARNATAKA
REPRESENTED BY
UNDER SECRETARY TO GOVERNMENT
PLANNING PROGRAMME MONITORING

AND STATISTICS DEPARTMENT
M.S.BUILDING, BENGALURU – 560 001.

3 . UNION OF INDIA
BY MINISTRY OF HOME AFFAIRS
REPRESENTED BY
THE REGISTRAR GENERAL INDIA
V.S.DIVISION WEST BLOCK-I
R.K.PURAM, NEW DELHI – 110 066.

... RESPONDENTS

(BY SRI B.V.KRISHNA, AGA FOR R1 AND R2;
SRI H.SHANTHI BHUSHAN, DSGI FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTIFICATION DTD.18.7.2022 BEARING NO.ODS 66 SSM 2022 INTRODUCING KARNATAKA REGISTRATION OF BIRTHS AND DEATHS (AMENDMENT) RULES 2022 VIDE ANNEXURE-C ISSUED BY R-2 AS ILLEGAL AND UNCONSTITUTIONAL.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.04.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question a notification dated 18.07.2022 issued by the State Government in exercise of its powers under the Registration of Births and Deaths

Act, 1969 ('the Act' for short) contending that the amendment is ultra vires the Act.

2. *Shorn* of unnecessary details, facts in brief, necessary for the resolution in the *lis*, are as follows:

The petitioner is a practicing Advocate enrolled in the Karnataka State Bar Council. The Government of India promulgates the registration of Births and Deaths Act, 1969 and permits the State Governments to bring in Rules in furtherance of the Act with the prior approval of the State Government. In terms of Section 30 of the Act, Karnataka Registration of Births and Deaths Rules, 1970 was promulgated. The Rules of 1970 comes to be repealed by 1999 Rules. Therefore, the Rules with the corresponding Act which was and is holding the field is of 1999.

3. On 18.07.2022, the Government of Karnataka brings in an amendment to Rule 9 of the Rules of 1999 substituting the words 'a Magistrate of First Class or a Presidency Magistrate' to that of an 'Assistant Commissioner (Sub-Divisional Magistrate)'. Protest erupted on this amendment contending that a power that was given

to the judiciary is taken away and laid at the hands of the Revenue Authorities. Representation is also submitted to the Government by the Karnataka State Bar Council seeking deletion of the amendment or withdrawal of the amendment. Reasons were indicated in the representation as to why the amendment was unworkable. When the State did not heed to the representation of the Karnataka State Bar Council, an Advocate has presented the subject petition contending that the amendment Act runs counter to the parent Act and is therefore, ultra vires the parent Act and to be quashed on account of it being unconstitutional.

4. Heard the learned senior counsel Sri. P.P.Hegde, appearing for the petitioners, Sri B.V.Krishna, learned Additional Government Advocate appearing for respondents 1 and 2 and Sri.H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondent No.3.

5. The learned senior counsel appearing for the petitioner would contend that the amendment to Rule 9 of the year 1999

Rules is beyond what is empowered to the State Government to make. Section 30 of the Act clearly empowers the Government to make Rules to carry out the purposes of the Act. Several purposes are enumerated. He would by taking this Court through the amendment contend that the amendment is beyond the Rule making power and therefore, requires to be obliterated.

6. On the other hand, the learned DSGI Sri Shanthi Bhushan would tacitly toe the lines of the learned senior counsel for the petitioner to contend that the Rule cannot take away the judicial power that was given under sub-rule (3) of Rule 9 of the 1999 Rules and place it at the mercy of the bureaucrats.

7. The learned Additional Government Advocate would seek to justify the amendment contending that they have only followed every other State Government who have given the power to the Revenue Authorities in cases where the births and deaths are registered after a long delay and therefore, the State Government

has brought in this amendment to be in tune with every other State.

8. I have given my anxious consideration to the submissions made by the learned senior counsel and other respective learned counsel and have perused the material on record. In furtherance whereof, the issue that falls for my consideration is:

"Whether the Karnataka Registration of Births and Deaths (Amendment) Rules, 2022 amending Rule 9 of the Births and Deaths Rules, 1999 is ultra vires the Registration of Births and Deaths Act, 1969?"

9. To consider and answer the said issue, it is necessary to notice the provisions of law that are germane, i.e., the Registration of Births and Deaths Act, 1969, Registration of Births and Deaths Rules, 1999 and the impugned amendment.

Section 13 of the Registration of Births and Deaths Act, 1969 reads as follows:

"13. Delayed registration of births and deaths.--(1)
Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action."

(Emphasis supplied)

Section 13 deals with delayed registration of births and deaths. Any birth or death of which information is given to the Registrar of births and deaths, after the expiry of the period specified, but within 30 days of its occurrence, shall be registered on payment of such late fee. Any birth or death of which delayed information is given after 30 days, but within one year, shall be registered with

the written permission of the prescribed authority and on payment of prescribed fee. Sub-section (3) of Section 13 mandates that any birth or death which has not been registered within one year of its occurrence can also be registered and such registration shall happen only after an order by a Magistrate of the First Class or a Presidency Magistrate under sub-section (3) on verifying the correctness of the birth or death. The aforesaid is the mandate of the Act.

Section 30 of the Act reads as follows:

30. Power to make rules.—(1) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for—

(a) the forms of registers of births and deaths required to be kept under this Act;

(b) the period within which and the form and the manner in which information should be given to the registrar under section 8;

(c) the period within which and the manner in which births and deaths shall be notified under sub-section (1) of section 10;

(d) the person from whom and the form in which a certificate as to cause of death shall be obtained;

(e) the particulars of which extract may be given under section 12;

(f) the authority which may grant permission for registration of a birth or death under sub-section (2) of section 13;

(g) the fees payable for registration made under section 13;

(h) the submission of reports by the Chief Registrar under sub-section (4) of section 4;

(i) the search of birth and death registers and the fees payable for such search and for the grant of extracts from the registers;

(j) the forms in which and the intervals at which the returns and the statistical report under section 19 shall be furnished and published;

(k) the custody, production and transfer of the registers and other records kept by Registrars;

(l) the correction of errors and the cancellation of entries in the register of births and deaths;

(m) any other matter which has to be, or may be, prescribed.

1[(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]”

(Emphasis supplied)

Section 30 empowers the respective State Governments to make Rules to carry out the purposes of the Act with the approval of the Central Government. Rules to be made for several purposes are also enumerated in Section 30. Therefore, Section 30 empowers the State Government to make Rules to carry out purposes of the Act.

10. When the Act came into force in the year 1969, the Government of Karnataka had promulgated the Karnataka Registration of Births and Deaths Rules, 1970. It held the field up to 1999. By a notification dated 30.12.1999, the Government of Karnataka in exercise of its powers conferred under Section 30 of the Act, notifies Rules to be coming into effect from 01.01.2000. Rule 9 becomes germane to be noticed. It runs as follows:

"9. Authority for delayed registration and fee payable thereof

- 1) *Any birth or death of which information is given to the Registrar after the expiry of the period specified in rule 5, but within thirty days of its occurrence, shall be registered on payment of a late fee of rupees two.*
- 2) *Any birth or death of which information is given to the registrar after thirty days but within one year of its occurrence, shall be registered only with the*

written permission of the Tahsildar or the Commissioner/Chief Officer, as the case may be, and on payment of a late fee of rupees five.

- 3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of a Magistrate of the first class or a Presidency Magistrate under section 13(3) and on payment of a late fee of rupees ten."**

(Emphasis supplied)

Sub-Rule (3) of Rule 9, again mandates that any birth or death which has not been registered within one year of its occurrence shall be registered only on an order of a Magistrate of the First Class or a Presidency Magistrate. Therefore, sub-rule (3) of Rule 9 of the Rules was in consonance with the Act i.e., sub-section (3) of Section 13 of the Act. This again held the field upto 2022. The Government of Karnataka by a notification dated 18.07.2022 brings in an amendment to Rule 9 particularly to sub-rule (3) of Rule 9 of the Rules. The notification runs as follows:

"NOTIFICATION

In exercise of the Powers conferred by sub-section (1) of section 30 of the Registration of Births and Deaths Act, 1969 (Central Act 18 of 1969), the Government of Karnataka, With the approval of the Central Government hereby makes, the following rules, further to amend the Karnataka Registration of Births and Deaths Rules 1999, Namely.

RULES

1. Title and Commencement - (1) These rules may be called the Karnataka Registration of Births and Deaths (Amendment) Rules, 2022.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment of rule 9: In the Karnataka Births and Deaths Rules 1999, in rule 9, in sub-rule (3), for the words "a Magistrate of the first class or a Presidency Magistrate", the words and brackets "an Assistant Commissioner (Sub-Divisional Magistrate)" shall be substituted.

*By Order and in the Name of the
Governor of Karnataka*

Sd/- 18/7/2022

(PAPANNA)

*Under Secretary to Government (S-1)
Planning Programme Monitoring and
Statistics Department"*

(Emphasis supplied)

The State Government by the amendment Rules substitutes the words in sub-rule (3) of Rule 9 which hitherto read "a Magistrate of the First Class or a Presidency Magistrate" with the words and brackets which now reads "an Assistant Commissioner (Sub-Divisional Magistrate)". By this amendment Rules, the State Government takes away the power of the Magistrate of the First Class and places it at the mercy of the Assistant Commissioner. It

is this amendment that brings the petitioner to this Court. In the light of the said contention, the examination is, whether the amendment Rules of 2022, is intra vires the Act, or ultra vires.

11. The power to make Rules is delegated to the State Governments under Section 30 of the Act. Therefore, the Rules that are made are delegated legislation. Delegated legislation can be challenged before the Courts on the ground that it is ultra vires the parent Act. The Court examining the said issue can adjudge the legality and validity of the delegated legislation on the touchstone of the doctrine of ultra vires. The doctrine of ultra vires has two aspects, substantive and procedural. When the delegated legislation travels beyond the scope of the Authority conferred by or is in conflict with the parent statute, it becomes invalid on the ground of it being substantive ultra vires. If any prescribed procedure under the parent statute is deviated while framing the Rules, in terms of power conferred under the parent Act, such a Rule would be declared ultra vires the parent Act, for violation of the procedure that is stipulated under the parent Act for it to become procedural ultra vires. What is alleged in the case at hand

is substantive ultra vires and not procedural ultra vires. Whenever any person or body of persons exercising statutory authority acts beyond the powers conferred upon it by the statute such acts become ultra vires and resultantly void. Therefore, substantive ultra vires would mean delegated legislation goes beyond the scope of the authority conferred on it by the parent statute. It is the fundamental principle of law that a public authority cannot act outside the powers that is conferred upon it.

12. On the bedrock of the aforesaid principles, the challenge in the case at hand is required to be noticed. The offending provisions of law are extracted hereinabove. Sub-Section (3) of Section 13 of the Act which deals with delayed registration of births and deaths mandates that any birth or death which has not been registered within one year of its occurrence shall be registered only on an order made by a Magistrate of the First class or a Presidency Magistrate after verifying the correctness of the birth or death. Therefore, it is the judicial power conferred upon the First Class Magistrate under the Act and such registration on delay can be only on an order made by the Magistrate. Therefore, the power

conferred under the Act is neither quasi judicial nor administrative, it is "Judicial". If Section 13 of the Act confers certain judicial power upon a Magistrate, it is trite that the Rules cannot take it away by going beyond or deviating from what is mandated under the Act.

13. The power no doubt is available under Section 30 of the Act under any State Government to promulgate Rules. Rules are promulgated by the Government of Karnataka. The Rules initially promulgated and which held the field *qua* Rule 9 of the year 1999. Sub-rule (3) of Rule 9 clearly depicted what is depicted under the Act, as sub-rule (3) of Rule 9 of the Rules maintains the power of the Magistrate to pass an order in the circumstance of delayed registration of a birth or a death. The amendment to Rule 9 notified on 18.07.2022 substitutes the words with "An Assistant Commissioner (Sub-Divisional Magistrate)". The mandate of the Act is tinkered by the amendment Rule which runs counter to the Act. The amendment to the Rule, a delegated legislation is to the effect that the parent Act itself is amended. This power, in my view, is unavailable to the State Government in exercise of its

power under Section 30 of the Act. A delegated legislation cannot travel beyond the parent Act which delegates such power to the State to legislate for the purposes of the Act.

14. As observed hereinabove, it is trite law that the Rule making power conferred upon by the parent Act cannot travel beyond the mandate of the parent Act. The view of mine in this regard is fortified by the judgment of the Apex Court in the case of **UNION OF INDIA V. A.SRINIVASAN**¹ wherein the Apex Court considers the entire spectrum of the law rendered from time to time and holds that a provision therein was contrary to the provision contained in the enabling Act. The Apex Court has held as follows:

"21. *At this stage, it is apposite to state about the rule-making powers of a delegating authority. If a rule goes beyond the rule-making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. **Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it.***

22. *In this context, we may refer with profit to the decision in General Officer Commanding-in-Chief v. Subhash Chandra Yadav [(1988) 2 SCC 351 : 1988 SCC (L&S) 542 :*

¹ (2012)7 SCC 683

(1988) 7 ATC 296 : AIR 1988 SC 876] wherein it has been held as follows : (SCC p. 357, para 14)

"14. ... before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, **(1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.**"

23. In *Delhi Admn. v. Siri Ram* [(2000) 5 SCC 451 : AIR 2000 SC 2143] it has been ruled that it is a well-recognised principle that the **conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.**

24. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331] the Constitution Bench has held that : (SCC p. 433, para 18)

"**18.** ... **statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature.** Rules and regulations made by reason of the specific power conferred by the statute to make rules and regulations establish the pattern of conduct to be followed".

25. In *State of Karnataka v. H. Ganesh Kamath* [(1983) 2 SCC 402 : 1983 SCC (Cri) 514 : AIR 1983 SC 550] it has been stated that : (SCC p. 410, para 7)

"7. ... It is a well-settled principle of interpretation of statutes that the **conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.**"

26. In *Kunj Behari Lal Butail v. State of H.P.* [(2000) 3 SCC 40 : AIR 2000 SC 1069] it has been ruled thus : (SCC p. 46, para 13)

"13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, **it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.**"

27. In *St. Johns Teachers Training Institute v. National Council for Teacher Education* [(2003) 3 SCC 321 : AIR 2003 SC 1533] it has been observed that : (SCC p. 331, para 10)

"10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. **The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.**"

28. In *Global Energy Ltd. v. Central Electricity Regulatory Commission* [(2009) 15 SCC 570] this Court was dealing with the validity of clauses (b) and (f) of Regulation 6-A of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading Licence and Other Related Matters) Regulations, 2004. In that context, this Court expressed thus : (SCC p. 579, para 25)

"25. It is now a well-settled principle of law that the rule-making power 'for carrying out the purpose of the Act' is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act."

29. *In the said case, while discussing further about the discretionary power, delegated legislation and the requirement of law, the Bench observed thus : (Global Energy Ltd. case [(2009) 15 SCC 570] , SCC p. 589, para 73)*

"73. The image of law which flows from this framework is its neutrality and objectivity : the ability of law to put sphere of general decision-making outside the discretionary power of those wielding governmental power. Law has to provide a basic level of 'legal security' by assuring that law is knowable, dependable and shielded from excessive manipulation. In the contest of rule-making, delegated legislation should establish the structural conditions within which those processes can function effectively. The question which needs to be asked is whether delegated legislation promotes rational and accountable policy implementation. While we say so, we are not oblivious of the contours of the judicial review of the legislative Acts. But, we have made all endeavours to keep ourselves confined within the well-known parameters."

30. *In this context, it would be apposite to refer to a passage from State of T.N. v. P. Krishnamurthy [(2006) 4 SCC 517] wherein it has been held thus : (SCC p. 529, para 16)*

"16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the

subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. **But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."**

31. In *Pratap Chandra Mehta v. State Bar Council of M.P.* [(2011) 9 SCC 573] , while discussing about the conferment of extensive meaning, it has been opined that : (SCC p. 604, para 58)

"58. ... The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent Act. It is also clear that it may not always be absolutely necessary to spell out guidelines for delegated legislation, when discretion is vested in such delegatee bodies. In such cases, the language of the rule framed as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court."

(Emphasis supplied)

It is further germane to notice the judgment of the Division Bench of Madhya Pradesh High Court in the case of **KALLU KHAN V. STATE OF MADHYA PRADESH**², wherein the Division Bench considers the very enactment, which reads as follows:

"15. For the regulation of registration of births and deaths and matters connected therewith, Parliament has enacted the Registration of Births and Deaths Act, 1969. Different procedures were prescribed under Chapter III-

² 2022 SCC OnLine MP 243

Registration of Births and Deaths and section 13 deals with Delayed Registration of Births and Deaths. Same is reproduced hereinbelow for ready reference:—

"13. Delayed registration of births and deaths. —

(1) Any birth of which information is given to the Registrar after the expiry of the period specified therefore, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before the notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action."

16. *Certain penalties have also been prescribed under section 23 of the Act of 1969 to those persons who may fail without any reasonable cause to give information which it is his duty to give under any of the provisions of sections 8 and 9. He may face imposition of penalty as prescribed. Similarly, power to prosecute (section 25) and power to compound offences (section 24) are also provided under the frame work of Act of 1969. Therefore, it is clear that any noncompliance or omission to give information attracts penalties/penal provisions.*

17. Act of 1969 gives power to the State Government to make rules as per section 30 of the Act of 1969. Same bears significance in the set of factual set up of present case. For ready reference section 30 of the Act of 1969 is reproduced hereinbelow:—

"30. Power to make rules.— (1) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for—

(a) the forms of registers of births and deaths required to be kept under this Act;

(b) the period within which and the form and the manner in which information should be given to the Registrar under section 8'

(c) the period within which and the manner in which births and deaths shall be notified under sub-section (1) of section 10;

(d) the person from whom and the form in which a certificate as to cause of death shall be obtained;

(e) the particulars of which extracts may be given under section 12;

(f) the authority which may grant permission for registration of a birth or death under sub-section (2) of section 13;

(g) the fees payable for registration made under section 13;

(h) the submission of reports by the Chief Registrar under subsection (4) of section 4;

(i) the search of birth and death registers and the fees payable for such search and for the grant of extracts from the registers;

(j) the forms in which and the intervals at which the returns and the statistical report under section 19 shall be furnished and published;

(k) the custody, production and transfer of the registers and other records kept by Registrars;

(1) The correction of errors and the cancellation of entries in the register of births and deaths;

(m) any other matter which has to be, or may be, prescribed. (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Legislature."

18. If section 13(3) and 30(f)(g) are seen in juxtaposition then it makes the legislative intent clear that by section 13(3) of the Act of 1969, Parliament has given the authority to Judicial Magistrate First Class (or Presidency Magistrate) to verify the correctness of the birth or death if not registered within one year of its occurrence and understandably so because after one year dispute and discrepancies may occur in respect of date of birth or death of a person.

19. As per section 15 of Juvenile Justice (Protection and Care of Children) Act, 2015; wherein, person above 16 years but below 18 years if commits heinous offence then after due procedure as prescribed may be tried in Children's Court rather than before Juvenile Justice Board. Age of prosecutrix assumes importance in matters of POCSO Act and to avoid all these complications, section 13 of Act of 1969 provides mechanism for verification of claim regarding correctness of birth or death beyond one year of its occurrence, before the Judicial Magistrate First Class only and not before the Executive Magistrate.

20. Perusal of section 30 of Act of 1969 reveals that authority/power to make rules to the State Government has been given by the Parliament in respect of section 13(2) and in respect of fees payable for registration is made under section 13. But very specifically, section 13(3) is not under the purview of Rule Making Authority of State Government. In fact, sub-section (2) of section 30 starts with following words:— "In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for", therefore, State

Government can make rules as per the letter and spirit of section 30 and 13(3) of Act of 1969 only and cannot go beyond that.

21. In the State of Madhya Pradesh, in exercise of powers conferred by section 30 of the act of 1969, State Government made rules namely M.P. Registration of Births and Deaths Rules, 1999. Earlier rules with the nomenclature Registration of Births and Deaths M.P. Rules, 1973 were repealed by the Rules of 1999, therefore, at present Rules of 1999 are in existence.

22. Here, Rule 9 is worth consideration because it gives authority for delayed registration and fee payable. Rule 9 of Rules of 1999 is reproduced hereinbelow for ready reference:—

"9. Authority for delayed registration and fee payable therefore. — (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified in Rule 5 but within thirty days of its occurrence, shall be registered on payment of a late fee of rupees two.

(2) Any birth or death of which information is given to the Registrar after thirty days but within one year of its occurrence, shall be registered only with the written permission of the office authorised in this behalf and on payment of a late fee of rupees five and on the officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of a Magistrate of the first class or an Executive Magistrate and on payment of a late fee of rupees ten."

23. Perusal of Rule 9(3) indicates that with Magistrate of First Class (apparently JMFC), **the authority of Executive Magistrate has also been inserted which if is read in consonance with section 13(3) and section 30(2)(f) and**

(g) of Act of 1969 then it gives an impression that Act nowhere provides any authority to Executive Magistrate to deal with delayed registration, but Rules included him.

Xxxxxx

28. Rule 13(3) in specific terms gives authority to Magistrate of First Class (or a Presidency Magistrate) to exercise authority for delayed registration but nowhere gives any authority to Executive Magistrate. Even otherwise, spirit of section 13(3) indicates that correctness of birth or death is to be made after due verification by JMFC and that verification can only be made by way of a judicial proceeding, may be it a summary proceeding, but certainly as per recognized principles of adjudication.

29. JMFC has all the necessary tools including to call witnesses, requisition of record from any public authority, compelling the attendance of officers/witnesses and appreciating the rival submissions and evidence beside other tools of adjudication. Executive Magistrate is not equipped with such adjudicatory tools including the authority as referred above. Therefore, understandably, legislative intent under section 13(3) was to confer jurisdiction over JMFC only and not otherwise.

30. Careful reading of section 30 of Act of 1969 if seen in juxtaposition to section 20 of the General Clauses Act, 1897, it makes the case further clear that State Government could not have framed Rules contrary to the directions contained in section 30 of Act of 1969. In other words, the Attempt cannot exceed the Authority. Section 20 of General Clauses Act, 1897 is reproduced hereinbelow for ready reference:—

"Section 20. Construction of notifications etc., issued under enactments. — Where, by any Central Act or regulation, a power to issue any notification, order, scheme, rule, form or bye-law is conferred, then expressions used in the notification, order, scheme, rule,

form, or byelaw, if it is made after the commencement of this act, shall unless there is anything repugnant in the subject or context, have the same respective meaning as in the Act or Regulation conferring the power.”

(Emphasis supplied)

The Apex Court in a judgment rendered on 16.12.2022 in the case of **KERALA STATE ELECTRICITY BOARD V. THOMAS JOSEPH**³ has held as follows:

"66. *At this stage, it is apposite to state about the rule making powers of a delegating authority. **If a rule goes beyond the rule making power conferred by the statute, the same has to be declared invalid. If a rule supplants any provision for which power has not been conferred, it becomes invalid.** The basic test is to determine and consider the source of power, which is relatable to the rule. Similarly, a rule must be in accord with the parent statute, as it cannot travel beyond it.*

67. *Delegated legislation has come to stay as a necessary component of the modern administrative process. Therefore, the question today is not whether there ought to be delegated legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the Administration is exercised properly; the benefits of the institution may be utilised, but its disadvantages minimised. **The doctrine of ultra vires envisages that a rule making body must function within the purview of the rule making authority conferred on it by the parent Act. As the body making rules or regulations has no inherent power of its own to make rules, but derives such power only from the statute, it has to necessarily function within the purview of the statute. Delegated legislation should not travel***

³2022 SCC OnLine SC 1737

beyond the purview of the parent Act. If it does, it is ultra vires and cannot be given any effect. Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act or statute law or the general law; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.

68. In this context, we may refer with profit to the decision in *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav* reported in (1988) 2 SCC 351, wherein it has been held as follows:—

"14.before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void....."

69. In *Additional District Magistrate (Rev.) Delhi Admn. v. Siri Ram* reported in (2000) 5 SCC 451, it has been ruled that it is a well recognised principle that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

70. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* reported in (1975) 1 SCC 421, the Constitution Bench has held that:

"18.....These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Rules and regulations made by reason of the specific power conferred by the statute to make

rules and regulations establish the pattern of conduct to be followed. ..."

71. *In State of Karnataka v. H. Ganesh Kamath reported in (1983) 2 SCC 402, it has been stated that:*

"7.It is a well-settled principle of interpretation of statutes that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto."

72. *In Kunj Behari Lal Butail v. State of H.P. reported in (2000) 3 SCC 40, it has been ruled thus:—*

"13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power conferred. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent act....."

73. *In St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education reported in (2003) 3 SCC 321, it has been observed that:*

"10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislation. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details....."

74. In *Global Energy Limited v. Central Electricity Regulatory Commission* reported in (2009) 15 SCC 570, this Court was dealing with the validity of clauses (b) and (f) of Regulation 6-A of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading Licence and other Related Matters) Regulations, 2004. In that context, this Court expressed as under:—

"25. It is now a well-settled principle of law that the rule-making power "for carrying out the purpose of the Act" is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act.

75. In the aforementioned case, while discussing further about the discretionary power, delegated legislation and the requirement of law, the Bench observed thus:

"73. The image of law which flows from this framework is its neutrality and objectivity : the ability of law to put sphere of general decision-making outside the discretionary power of those wielding governmental power. Law has to provide a basic level of "legal security" by assuring that law is knowable, dependable and shielded from excessive manipulation. In the contest of rule-making, delegated legislation should establish the structural conditions within which those processes can function effectively. The question which needs to be asked is whether delegated legislation promotes rational and accountable policy implementation. While we say so, we are not oblivious of the contours of the judicial review of the legislative Acts. But, we have made all endeavours to keep ourselves confined within the well-known parameters."

76. In this context, it would be apposite to refer to a passage from *State of T.N. v. P. Krishnamurthy* reported in (2006) 4 SCC 517 wherein it has been held thus:—

16. *The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."*

77. *In Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh reported in (2011) 9 SCC 573, while discussing about the conferment of extensive meaning, it has been opined that:*

58. *....The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent Act. It is also clear that it may not always be absolutely necessary to spell out guidelines for delegated legislation, when discretion is vested in such delegatee bodies. In such cases, the language of the rule framed as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court."*

78. *In Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council reported in (2004) 8 SCC 747, this Court explained the concept of delegated legislation thus:*

13. *.....Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is to lay down the outline.*

This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it. The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote that object, while at all times remaining true to it. That is the rule of primary intention. Power delegated by an enactment does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. (See Section 59 in chapter "Delegated Legislation" in Francis Bennion's Statutory Interpretation, 3rd Edn.)....."

79. *In McEldowney v. Forde reported in [1971] A.C. 632 : [1969] 3 WLR 179, Lord Diplock explained the role of the Courts in this area in the following words:*

"The division of functions between Parliament and the courts as respects legislation is clear. Parliament makes laws and can delegate part of its power to do so to some subordinate authority. The courts construe laws whether made by Parliament directly or by a subordinate authority acting under delegated legislative powers. The view of the courts as to whether particular statutory or subordinate legislation promotes or hinders the common weal is irrelevant. The decision of the courts as to what the words used in the statutory or subordinate legislation mean is decisive. Where the validity of subordinate legislation made pursuant to powers delegated by Act of Parliament to a subordinate authority is challenged, the court has a threefold task : first, to determine the meaning of the words used in the Act of Parliament itself to describe the subordinate legislation which that

authority is authorised to make, secondly, to determine the meaning of the subordinate legislation itself and finally to decide whether the subordinate legislation complies with that description."

80. A delegated power to legislate by making rules or regulations 'for carrying out the purpose of the Act', is a general delegation without laying down any guidelines; it cannot be exercised so as to bring into existence the substantive rights or obligations or disabilities not contemplated by the provisions of the Act, 2003 itself. The Court, considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute.

81. It is important to keep in mind that where a rule or regulation is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the Court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the Court should proceed with caution before declaring the same to be invalid.

82. Rules or regulation cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinating legislative functions, or, what is fictionally called, a power to fill up details.

83. A Constitution Bench of this Court in the case of *Sukhdev Singh (supra)*, while explaining the fine distinction between a rule and regulation and also the power of the delegate authority to frame such rules or regulations has made few very important observations which we must take notice of and quote as under:

"11. The contentions on behalf of the employees are these. Regulations are made under the statute. The origin and source of the power to make regulations is statutory. Regulations are self-binding in character. Regulations have the force of law inasmuch as the statutory authorities have no right to make any departure from the regulations.

12. Rules, regulations, schemes, bye-laws, orders made under statutory powers are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority making the rules is after the coming into force of the Act in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes.

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14. Subordinate legislation is made by a person or body by virtue of the powers conferred by a statute. By-laws are made in the main by local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their areas or resorting to their undertakings. Regulations may determine the class of cases in which the exercise of the statutory power by any such authority constitutes the making of statutory rules.

15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such

corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.

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18. The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. In America a "public agency" has been defined as an agency endowed with governmental or public functions. It has been held that the authority to act with the sanction of Government behind it determines whether or not a governmental agency exists. The rules and regulations comprise those actions of the statutory or public bodies in which the legislative element predominates. **These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject-matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute. Rules and regulations have been distinguished from orders or determination of statutory bodies in the sense that the orders or determination are actions in which there is more of the judicial function and which deal with a particular present situation. Rules and regulations on the other hand are actions in which the legislative element predominates.**

(Emphasis in original)

The Apex Court again considers the entire spectrum of the law and lays down that Statutory Bodies cannot use the power to make rules to enlarge the powers beyond the scope intended by the legislature. Any action of the State in excess of their power would be declared a nullity on the ground of it being ultra vires the Act.

15. In the light of the provisions as afore-quoted, the law laid down by the Apex Court in the afore-quoted judgments and judgment rendered by the Division Bench of High Court of Madhya Pradesh, there can be no trace of a doubt that the amendment to Rule 9 of the Rules as notified on 18.07.2022 travels beyond the parent Act i.e., the enabling Act, as the amendment runs completely counter to sub-section (3) of Section 13 of the Act for it is inconsistent with the said provision of law. Therefore, the amendment Rules notified on 18.07.2022 would lose its legal legs to stand, as it is *not intra vires the Act, but ultra vires*; if it is ultra vires the parent Act, it cannot but be held to be illegal and a nullity. On all the aforesaid analysis, if the amendment Rule of 2022 is not obliterated **"it would be permitting the tail to wag the dog"**.

16. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) The notification dated 18.07.2022 is obliterated.
- (iii) All actions taken in furtherance of the said notification are declared to be a nullity in law.

**Sd/-
JUDGE**

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