

(1999) 12 CAL CK 0045

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 9758 of 1998

All Bengal Rickshaw Union and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-12-1999

Acts Referred:

Calcutta Hackney Carriage Act, 1919 — Section 32, 35, 36, 6
Constitution of India, 1950 — Article 14, 19(1), 21, 226

Citation : AIR 2000 Cal 186 : (2000) 2 CALLT 72 : (2000) 1 CHN 199

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Mr. Srikumar Sinha, for the Appellant; Mr. Swadesh Ranjan Sarkar, Mr. Sanjib Mishra and Mr. Swapan Kr. Pal, for the Respondent

Judgement

A. Lala, J.—The petitioners are representing a union and the office bearers of the hand rickshaw pullers in the City of Calcutta asking relief in the nature of writ of mandamus as to the nature thereof commending the respondents to issue and/or renew pullers licence to the applicants in pursuant to the provisions of Calcutta Hackney-Carriage Act within a short period from the date of the application upon rejecting the Impugned order dated 4th May, 1998. In addition thereto the petitioners also sought relief in the nature of writ of certiorari to quash, rescind or to recall such impugned order dated 4th May, 1998 issued by the respondent No.3 in respect of issuance of fresh and/or renewed licence to the pullers of rickshaws and other consequential reliefs in the nature of writ of prohibition prohibiting the respondents from taking any penal action against the pullers from not having licence.

2. The petitioner contended that at present in Calcutta City about 6,000 licensed rickshaws are plying rickshaw having prior licence by the Hackney-Carriage Department. These licences were issued by the authority before 1950 and since then no single licence was issued to any person pursuant to their respective applications.

3. The Calcutta Hackney-Carriage Act provides for licence for pulling the rickshaw and pursuant to the same as may as 24,000 rickshaw pullers obtained driving licence from the licensing authority under Calcutta Hackney-Carriage Act, 1919:

4. Since 1950 the bearer licences are decreasing day by day due to adamant attitude of the registering authority is not renewing the pullers" licence and/or Issuing fresh licence on the ground of death and physical inability.

5. In one hand they are Issuing fresh licence to the owner by renewing their old licences when on the other hand provoking the rickshaw pullers to run the same without licence by refusing grant of licence.

6. According to the petitioners the authority concerned are taking double stand in respect of issuance of the pullers" licence with the owner of the rickshaws. Therefore, ultimate sufferer is also the owner of the rickshaw because without the appropriate pullers" licence the rickshaws cannot be pulled by the owners and in such circumstances rickshaws are ceased by the police authorities. They are destroying the rickshaws and taking measures as against the pullers.

7. Under sections 35 and 36 of the Calcutta Hackney-Carriage Act. 1919 the authorities have been empowered to take penal action against both owner and puller for not having the pullers licence.

8. Several representations were made but all are in vain. By such process the strength of fresh or renewed licensed rickshaw pullers have come down to 1700 from 24,000 as aforesaid.

9. They further contended that this is one of the convenient and essential mode of transport in the City of Calcutta. Poorer sections of the people are involved in this profession. The pullers are directly and Indirectly Involved and depending upon the earnings from the rickshaws. Several hundred families are depending thereon. The Calcutta Hackney-Carriage Act. 1919 has not been repealed and still in force. The pullers are entitled to get the necessary licences under this Act in order to ply the rickshaws in the City of Calcutta and Howrah wherever the law is applicable,

10. According to the petitioners the refusal to issue licence is clear interference with the trade and business of the section of people in violation of the Article 19(1) of the Constitution.

11. The petitioner contended that there is ample power to prosecute against the puller for not having licence but there is no such cause of non-supplying or renewing the licence under the Act.

12. Earlier writ petition was initiated. An order was passed for consideration of all the aspects by the appropriate administrative authority specially by an order In connection with W.P. No. 3262 of 1998. Pursuant to such order Deputy Commissioner of Police (Traffic). Calcutta issued an imitation to the General Secretary of the Union, respondent No.2 and upon hearing the parties rejected

the prayer as on 4th May, 1998 being annexure "F" to the petition challenging which the writ petition was moved before this Hon"ble Court.

13. Under the above circumstances, it is pertinent to consider the scope and ambit of the Impugned order passed by the Deputy Commissioner of Police, Traffic Department, Calcutta. The Impugned order is as follows :

"This is to inform you that following a hearing of the representatives of All Bengal Rickshaw Union, the matter was considered in view of the Government policy.

(1) It was observed that Hon"ble Chief Minister of West Bengal desired that no pullers" licence should be Issued for slow moving vehicles.

(2) National Human Rights Commission recently passed an observation directing Calcutta Police to abolish the system of pulling rickshaws by a man and described it to be an Inhuman matter.

(3) From past experience, it has been observed that most of the puller licences were not renewed on time resulting in cancellation of pullers" licences in large quantities, and out of 18,000 licences issued earlier, only 1750 pullers" licences are in existence for non-renewal.

(4) Due to serious traffic problem In Calcutta, the slow moving vehicles are being reduced slowly for smooth running of vehicular traffic.

(5) In spite of an appeal to the rickshaw pullers for replacing the hand pulled rickshaws by Auto-rickshaws no application was received so far.

In view of the facts stated above, the prayers in this matter are rejected. The respondents of the concerned writ petitioner may be intimated accordingly."

14. Significantly enough, the Impugned order was passed as a Government policy although single Bench of this Court was pleased to dispose of the writ petition by directing the authority to consider the cause after giving opportunity of hearing. Secondly, the rejection was made in view of the desire of the Hon"ble the Chief Minister of West Bengal. Thirdly, the National Human Rights Commission recently observed to abolish this system of pulling of a rickshaw by a man and described as Inhuman matter. Lastly, the amount of licence of rickshaw pullers 18,000 come down to 1750 because of non-renewal of licence by them and due to serious traffic problem in Calcutta, the slow vehicles are being reduced slowly for smooth running of vehicular traffic and inspite of an appeal to the rickshaw puller for replacing the hand rickshaw pullers by Auto-rickshaws, no application was received so far all of which are observation as to the policy decision.

15. Therefore, where is the consideration? Consideration by the appropriate authority under an order of the court upon giving opportunity of hearing should not have been taken by the administrative authority so lightly. Unfortunately, now-a-days such type of activities have been developed. At the time of consideration, the administrative authority should remember that they and the

ordinary citizens are not in equal bargaining position. Mostly in the writ petitions governmental bodies are parties. One invoke the writ jurisdiction being aggrieved by or dissatisfied with an administrative action for getting equitable justice. This is the basic ingredient of the writ unlike the suit. Suit is a dispute between two private parties. Position of the administrative authority as respondent in a writ cannot be equally placed with a defendant/respondent in a suit or interlocutory application. Those who are discharging administrative functions made party respondents by virtue of their official capacity. Therefore, such circumstances, where Court of law thought it fit that administrative authority will be directed to render Justice by consideration cannot be taken as easy task or avoidable task otherwise fair play will be Ignored.

16. Respondents contended that about 5945 registered rickshaws were playing on the road with proper licence Issued and renewed by the authority but no new licence was issued after 1950. In 1982, 24,000 licences to the rickshaw pullers were issued under Calcutta Hackney-Carriage Act. They said that renewed applications were not submitted in time. No fresh or renewed licence was issued from 1990 and renewal of old pullers licence was given effect to for non submitting renewal applications in time.

17. They further contended that although the authorities are authorised to take penal action under sections 35 and 36 but no penal action was taken since 1990. Due to Government policy of abolishing slow moving vehicle from the City of Calcutta gradually, issuance of fresh rickshaw pullers" licence or renewal of pullers" licence to the pullers were not considered. They also contended that due to congestion in the City of Calcutta slow moving vehicles have become hazardous for the smooth flow of vehicular traffic. Therefore, general policy was to abolish slow moving vehicle slowly and steadily. In this context, it may be mentioned that in the year 1996 it was decided that one Auto-rickshaw licence will be given to eight pullers but in spite of appeal in this respect to the rickshaw pullers for replacing the hand pulled rickshaws by Auto-rickshaw, no application was received so far by the concerned authority. There is a policy decision in this respect and other aspects as already taken into account, therefore, the application should not be allowed by this Court in reiterating old concept by Interfering with the policy decision.

17. In the instant case law is prescribing In favour of the rickshaw pullers in getting licences. Such law has not been repealed as yet. Even thereafter any policy decision is taken by the Government de hors the law will not be sustainable. Policy decision does not necessarily means a tactical stand to avoid Court of law. Policy decision is not sacrosanct but subject to legal sanction. If the Government is eager to make a policy decision either it has to make within Tour corners of law or let it be placed immediately before the legislative body for repealing or amending the existing enactment by replacing new one as per policy decision. Moreover, desire of a Chief Minister of a State or observation of Human Rights Commission cannot put forward before the High Court being the Court of

superior Judiciary. Hence such desire or observation too cannot be placed beyond the law.

18. Mr. Swadesh Ranjan Sarkar, learned counsel appearing in support of the petitioner contended that three important aspects are necessary to be considered under the Calcutta Hackney-Carriage Act, 1919. Such aspects are available under sections 32, 35 and 36 of the Act. Section 32 prescribes as follows :

"Section 32. Driver of Hackney-Carriage to have licence

(1) no person shall act as a driver of a Hackney-Carriage without a licence granted by the registering officer. (2) no person shall be so licensed unless the registering officer after due enquiry, sub satisfied-

(a) that he is competent to drive a Hackney-Carriage and has sufficient knowledge of localities in Calcutta;

(b) that he is of sober habits, has not been convicted of common offence which in the opinion of the registering officer is of such a nature as to render him unfit to hold a driver's licence and;

(c) that he is not less than 18 years of age. Therefore, apart from the grounds given above under the section, the important part for the consideration in this respect is in the opinion of the registering Officer, is of such a nature as to render him unfit to hold a driver's licence." Section 6 prescribes that appropriate Deputy Commissioner of Police is the registering officer. In the cases above u/s 32 the individual performance of the persons concerned are needed and the opinion, if any, in respect of such person.

19. Therefore, under no stretch of imagination the impugned order passed herein cannot be taken into account as u/s 32. Similarly, sections 35 and 36 prescribe the following :

Section 35. Penalty for not haveing licence, or lending it out.

20. If any person acts as the driver of a Hackney-Carriage without holding a licence in force for the time being.

or transfers, or lends his licence, or allow the same to be used by any other person,

he shall, for every such offence, be liable to a fine not exceeding 20 rupees and, in default of payment of fine, to simple Imprisonment for a period not exceeding 10 days.

Section 36. Penalty for permitting unlicensed person to act as driver

If any owner of a Hackney-Carriage permits any person, who has not obtained the driver's licence, or whose licence has either expired or been cancelled or suspended, to drive such carriage for hire, he shall be liable, for every such offence, to a fine not exceeding 50 rupees, and, in default of fine, to simple

imprisonment for a period not exceeding 14 days :

Provided that such owner and such licenced driver shall be subject to all the provisions of this Act, for any act done or omitted to be done by such driver directing such employment. In like manner as If such driver had been duly licensed.

21. In these two sections conditions for Imposition of penalty for not having licence or lending it out to take it for permitting unlicensed person to act as a driver are provided. Such penalties are applicable in personnel but not in rem as prescribed under the impugned order of the Deputy Commissioner of Police (Traffic).

22. A criticism has been made by the learned counsel appearing on behalf of the state that it is not fit to go on. They cannot call back palanquin to be used as conveyances for passengers at this stage. This is of course, true. But question is about the rehabilitation of the poorer section of people within the social structure.

23. This is not unknown that fast moving modern vehicles and slow moving old vehicles are running side by side in various Cities of the world even in the City of Calcutta.. Moreover, when hand pulling rickshaw has become cultural symbol of City of Calcutta by virtue of famous novel "City of Joy" such type of vehicle got heritage value of the City which is to be protected. This is also important that for the sake of modernisation some times we make old as obsolete. Obsolete is the thing, obsolete is the mechanism but not the human consideration. To place or replace such people is the socialism but not the theoretical concept alone. Therefore, for the sake of socialism, rehabilitation of the people will come forward before making a thing or mechanism obsolete. The Impugned order is more about adaptation of new policy than the rehabilitation. Therefore, the same is not sustainable.

24. It is also to be remembered that Article 19(1)(g) prescribes that all citizens shall have a right of profession or to carry on any occupation, a trade or business, Therefore, it is high time to evaluate about the Interference in respect of trade or business of a class of citizens in the name of policy decision when the law is not repealed but is existing. As it was held in several occasions that court is normally reluctant in interfering with the policy decision but that does not necessarily mean the words "policy decision" has a magical effect that the same will override the law and Court will become the silent spectator. Therefore, the question of policy decision has also to be evaluate upon its proper prospective.

25. Mr. Sarkar has cited various decisions to establish his case. First of all, he relied upon State Transport Authority, W.B. and others Vs. Asis Kumar Roy and others, and stated that the High Court can, in the exercise of its Jurisdiction under Article 226, issue a writ of Mandamus or pass order or directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority and in a proper case in order to prevent injustice resulting to concerned parties. The Court may itself pass an order or

give directions which the Government or the public authority should have passed or given.

26. Thereafter, he relied upon 1996 (1) CLJ 397 (Jhikire, Howrah Bus Syndicate & Ors. v. The Regional Transport Authority Howrah & Ors. with other matters) in its paragraph 15 and contended that the decision of the Regional Transport Authority to fix the strength of the fleet in terms of the recommendations of the Zilla Parishad in this view of the matter must be held to be wholly Illegal and without jurisdiction. The authority cannot take or act on the basis of the recommendations of any other person who has no role to play under the statute. By citing these two Judgments, in effect. Mr. Sarkar wanted to conclude his argument by saying that the Statute provided for the reliefs for the petitioners and if it Is not done by them, court is there to grant such relief. Other part of his argument is that the authority should act in accordance with law not with the advice of any person who is not a part and parcel of the statutory authority.

27. Mr. Sanjib Mishra, learned counsel appearing on behalf of the State respondent contended that renewal or non-renewal of a licence of rickshaw puller or owner is a matter of policy which cannot be Interfered with by the Court of law. Licences were lapsed and no extension was sought for. Therefore, question of extension of licences cannot arise at all. The renewal was made only for the puller, but not for the owner which is a mere representation from the bar and no such case is made out by the petitioners.

28. He emphatically stated that the writ petition is not maintainable as it is framed.

29. He has relied upon a Judgment reported in 1993 (2) CW 99 (Siliguri Inter-District Minibus Owners" Association & Ors. v. Sri Bijan Krishna Bhowmick) wherein a Division Bench of this Court in its paragraph 6 held that the writ petition, at the instance of an association, is not maintainable since the association itself is not affected by any order. The members of such association may be affected by common order and may have common grievance, but for the purpose of enforcing the rights of the members, writ petition at the instance of such association is not maintainable.

30. Since it is a question of maintainability of the writ petition which is touching very existence therein I have no other alternative but to go through the Judgment very carefully to come to an appropriate finding. From the facts and circumstances of this case it appears to me that the question arose for granting leave to prefer an appeal against an order in question which does not directly affect the Interest of applicants who are not parties to the writ application wherein a Division Bench of this Court held that association of bearers have no locus standi to prefer an appeal after obtaining a leave from this court. Leave can only be granted if the Court is satisfied that a stranger, even though he had been a party, is seriously affected by the order and that the order would have binding effect upon the stranger in the instant case. The order does not affect the right

of the association nor the association is affected by the order.

31. According to me, the ratio of the Judgment is Inapplicable herein specially because it affects very much the members of the association directly and being so, they made this writ petition in respect of the right and interest of the members of the association. It is well-known that an association, a body corporate, a trust, idol, a partnership, a company, a statutory body cannot run suo motu but by the process of action of the human being who are part and parcel of it. Therefore, it is to be remembered that whether the members behind this association are really aggrieved and affected or not. If they are aggrieved and affected, then Court has no power, under the writ Jurisdiction, to throw them out taking a prima facie hypertechnical point of maintainability. Therefore, such technicality cannot be an absolute rule of law in this respect when the petitioners' association is really aggrieved through their members.

32. Apart therefrom it is a factual position that grievances were raised by the association before the authority concerned and correspondences were exchanged by or between the Office-bearers of the association and authority concerned. Therefore, under these circumstances too, the very foundation of the question of technicality as agitated by the respondent Is, in fact, not sustainable. Therefore, this Court is unable to accept such contention of the maintainability as agitated by the respondent herein, in this respect it is also pertinent to mention that this is not the first writ petition before the court but. under similar circumstances a writ petition was moved by the petitioners in the earlier occasion before this Hon'ble Court and upon hearing the parties such writ petition being W.P. No. 3262 of 1998 was disposed of directing the Deputy Commissioner of Police, respondent No.3 to consider the contentions thereon after giving the opportunity to the petitioners of being heard. Learned counsel cited a Judgment reported in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, and relying upon the paragraph 9 therein made the similar submission which need not reiterated by this Court to avoid the prolixity.

33. Now, let us confine to the observation of the Deputy Commissioner of Police, Traffic Department, being annexure "F" to the petition being the Impugned order under challenge as already discussed.

34. The next point, as he agitated about interference of the Court with the policy decision. On that score, he relied upon a judgment reported in Krishnan Kakkanth Vs. Government of Kerala and others, and relying upon head note 5 therein contended that assertion of unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out of wisdom in the policy decision of the State Government. It is Immaterial if a better or more comprehensive policy decision would have been taken. It is clearly Immaterial if it can be demonstrated that the policy decision is otherwise or is gradually to defeat the purpose for which such decision has been taken unless the policy decision is demonstratively capricious or arbitrary and not informed by a reason whatsoever or it suffers from the vice of

discrimination or infringes any Statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid embarking on uncharted ocean of public policy.

35. According to me there is no law without any proviso. Similarly, according to me, there is no policy decision without any embargo. As to why this Court is observing so, it is apparent from the plain reading of the earlier paragraph. It is specifically contended therein that policy decision cannot be interfered with unless it is-

- (a) demonstratively capricious,
- (b) arbitrary and not informed by any reason whatsoever,
- (c) It suffers from the vice of discrimination,
- (d) infringes any Statute,
- (e) Infringes provisions of the Constitution.

Can it be said that the policy decision, if any, in this respect does not infringe the Statute, i.e. the Calcutta Hackney-Carriage Act, 1919 (Act No.1 of 1919) made by the State itself? Can it be stated that without repealing such Act, livelihood of the earning persons can be taken and cannot be hit by Article 19(1)(g)?

My answer with aforesaid all observation Is "No".

36. Under these circumstances, annexure "F" to the petition is set aside. These rickshaws which are running under the appropriate licence will not be seized till the completion of the direction given by this Court. The State authority is directed to form an appropriate high powered Committee in this respect for the purpose of fruitful result on the basis of the judgment and guidelines given under the order of this Court to adjust the goal of socialism which is expected from the Government. The committee will be formed within a period of two weeks from date, will call upon the associations for the purpose of prima facie discussion and for the purpose of formation of cell and, thereafter, a cell will be formed within a period of two weeks to conclude the course of action within a period of another eight weeks from the date of formation of the cell, on the following guidelines:--

(a) All Bengal Rickshaw Union, petitioner No.1 herein will be directed by the cell to furnish names and particulars of the rickshaw pullers or the owners of such rickshaw under a prescribed format to be supplied by the cell when the association will make an identification and verification about the authenticity and place such names with particulars under the format with their recommendations for the purpose of consideration by the cell.

(b) Consideration will be made by the cell basically on the following lines:

(i) A proposal will be made to such rickshaw pullers or owners as to whether they

are inclined to go back to their home-state, if they come from other state or states, and, in such circumstances, the cell will certify them about tenure of work, financial condition, priority etc for the purpose of their rehabilitation there and negotiate with their counterpart of such state or states so that the same may be sympathetically considered by the authorities or the state or states for their appropriate rehabilitation therein on the basis of such certificate giving priority over others;

(ii) A fresh proposal will be made to all of them for the purpose of rehabilitation and financial assistance in the nature of loan or certification of loan by other agencies with recommendation for the purpose of purchasing auto-rickshaw or for doing business similar in nature.

(iii) By allowing the movement of rickshaw pullers in the restricted manner for the sake of tourism in the market area or in the area nationally declared as heritage or tourist zone of Calcutta and fixing the appropriate rate for the livelihood to keep the symbol of "CITY OF JOY" alive.

This writ petition is, thus, disposed of. No order is passed as to costs.

Urgent xeroxed certified copy is allowed to be given to the parties within a period of seven days from the date of putting requisition.

37. Petition disposed of