
(1981) 11 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3540 of 1981

Bhaiyalal and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-11-1981

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226

Citation : AIR 1982 Patna 116 : (1982) 30 BLJR 180 : (1982) PLJR 218

Hon'ble Judges : P.S. Sahay, J;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : Shyama Prasad Mukherjee, Arvind Kumar Singh and Shanti Pratap, for the Appellant; R.B. Mahto, A.A.G. and C.K. Sinha Govt. Pleader No. 4, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners, who are the owners of cycle-rickshaws, have questioned the validity of the directions issued by the State Government and the Executive Officer, Sasaram Municipality in purported exercise of the powers conferred on them by the Bihar Cycle-Rickshaw (Regulation of Licence) Act, 1979 (Bihar Act VI of 1979), hereinafter to be referred to as "the Act". By the impugned communications and notices steps have been taken for transfer of the cycle-rickshaws from the owners thereof to the pullers thereof, pursuant to coming into force of the aforesaid Act and the Rickshaw Pullers Welfare Scheme framed by the State Government. A letter dated 6-9-1981 was issued by the Director, Department of Urban Development addressed to all District Magistrates requesting them to issue necessary direction to the (Executive Officers for transfer of cycle-rickshaws from the owners thereof to the persons who are actually plying those rickshaws. A copy of this letter is Annexure 1 to the writ application. The Executive Officer, Sasaram Municipality, perhaps, in view of the aforesaid direction of the State Government issued notices to the petitioners on 20-9-1981 directing them to be present before him on 29-9-1981 along with

their cycle-rickshaws and the persons who are plying them. The said notice further states that on that day the petitioners will have to transfer their rickshaws to such persons who actually ply them for which reasonable compensation shall be paid to the petitioners. The notice warns the petitioners that if they did not comply with the aforesaid order, their cycle-rickshaws shall be forfeited and other legal proceeding shall be initiated against them. A copy of this notice is Annexure 3 to the writ application. According to the petitioners, the direction of the State Government as well as the notice issued by the Executive Officer of the respondent-Municipality is without any authority in law and not sanctioned by the provisions of the aforesaid Act.

2. Learned Additional Advocate General appeared on behalf of the respondents at the stage of admission itself and both parties were heard at length and by the consent of the parties this writ application is being disposed of at the time of admission itself.

3. Initially the Bihar Cycle-Rickshaw (Regulation of Licence) Ordinance, 1976 was promulgated which was ultimately replaced by the Act aforesaid. The preamble of the Act says that it is to regulate the issue of licences to the owners and drivers of Cycle-Rickshaws plying in any Municipal area in the State of Bihar for their better management. The provisions of the Ordinance and the Act are virtually identical. Section 3 of the Act is as follows:

"(i) Notwithstanding anything contained to the contrary in the Bihar and Orissa Municipal Act, 1922 or the Patna Municipal Corporation Act, 1951 or any rule or order or bye-laws made thereunder or any other laws for the time being in force, no owner of a cycle-rickshaw shall be granted any certificate of registration nor his certificate shall be renewed by any municipal authority after the commencement of this Act unless the rickshaw is to be plied by such owner by himself.

(ii) A certificate of registration granted or renewed prior to the commencement of this Act shall stand revoked if it does not conform to the provisions of this Act."

In view of this section no owner of cycle-rickshaw shall be granted certificate of registration unless such rickshaw is to be plied by such owner himself and any certificate already granted shall stand revoked if he does not ply it himself. Section 4 prescribes some exemption in respect of a widow or a disable person from the restrictions contained u/s 3. Section 5 is the penal provision which is as follows:--

"(i) Any person who is found to be in possession of a cycle-rickshaw without a certificate of registration conforming to the provisions of this Act or plies or causes it to be plied by a person without a valid driver's licence issued under any law for the time being in force or plies or causes to be plied a rickshaw not meant to be plied for hire without painting the body thereof in yellow shall be punishable with imprisonment which may extend to three months.

(ii) Notwithstanding anything contained to the contrary in the Code of Criminal Procedure, 1973 (Act II of 1974), the offences under this Act shall be cognizable."

In view of Section 5, a person found to be in possession of a cycle rickshaw without a certificate of registration is liable to be punished with imprisonment which may extend to three months. This section also makes the offence in question a cognizable one. Section 6 is the provision regarding forfeiture of the rickshaw, which is as follows:--

"(i) If any person is convicted of an offence in respect of a cycle-rickshaw the court shall declare such cycle-rickshaw to be forfeited to the State Government.

(ii) If the owner of a cycle-rickshaw cannot be traced, the court before whom the cycle-rickshaw is produced shall declare it to be forfeited to the State Government,

(iii) The State Government may hand over any cycle-rickshaw forfeited under Sub-section (i) or Sub-section (ii) to the municipal authority within whose area the offence was committed."

On a plain reading it is clear that only after conviction for an offence u/s 5, court can declare such cycle-rickshaw to be forfeited to the State Government. The remaining Sections 7 and 8 deal with powers to make rules and conditions and provisions regarding repeal and saving.

4. From the aforesaid provisions of the Act it appears that after coming into force of the Act no owner of a cycle-rickshaw is to get certificate of registration unless he plies the cycle-rickshaw himself, and any such certificate of registration already granted shall stand revoked unless the case in question is covered by the exemptions. After revocation or in absence of a certificate of registration, if some person is found to be getting a cycle-rickshaw driven by some other person, he is liable to be prosecuted for an offence u/s 5. No power has been vested in the State Government or in any other executive authority by the said Act to forfeit or seize the rickshaws for purpose of transfer to the persons who are plying them. We have already pointed out that the provision regarding forfeiture as contained in Section 6 comes into operation only when a person charged for an offence u/s 5, is convicted and court declares the cycle-rickshaw in question to be forfeited to the State Government.

5. Learned Additional Advocate-General appearing on behalf of the respondent-State submitted that offence u/s 5 being a cognizable one, cycle-rickshaws which are being plied in contravention of the provisions of Sections 3 and 5 of the Act can be seized in accordance with the provisions of the Code of Criminal Procedure. Under the Code of Criminal Procedure power has been vested in the Police to seize certain articles during investigation which have to be produced before the court and courts are vested with powers to pass any appropriate order in respect of custody of such articles during the trial or after the conclusion of the trial. If the Police in connection with an offence u/s 5 of the Act had seized the

cycle-rickshaws of the petitioners, perhaps, the petitioners could not have made any grievance as the matter would have been different. But, in the instant case admittedly no case has been lodged against the petitioners but the petitioners have been directed to surrender their cycle-rickshaws before the Executive Officer of the respondent-Municipality so that they may be transferred to persons who are plying them. In our view, such directions are not permissible under the provisions of the Act.

6. Learned Additional Advocate-General further pointed out that the owners of such cycle-rickshaws are to get some reasonable compensation for the transfer of their cycle-rickshaws. If some of the owners willingly accept compensation and transfer their rickshaws to the persons who actually ply them, the matter will be different, but there is no provision under the Act under which they can be compelled to part with their cycle-rickshaws, although they themselves in view of Sections 3 and 5 of the Act neither possess such cycle-rickshaws without a certificate of registration nor allow them to be driven by others.

7. No doubt, the actions of the respondents may be laudable and in good-faith, but once they are challenged and tested in the light of the provisions made in respect thereof, this Court has got no option but to hold that the directions as contained in Annexure 1 and the notice issued by the Executive Officer of the respondent-Municipality, as contained in Annexure 3, amount to exercise of power without any authority in law, and they have to be quashed.

8. Accordingly, this writ application is allowed and the impugned communication and notices aforesaid (Annexures 1 and 3) are quashed. In the circumstances, there will be no order as to costs.

9. Before we part with the judgment we consider it proper to mention that the petitioners have also challenged the vires of the Act itself saying that the provisions thereof amount to unreasonable restrictions on the freedom of trade and business as guaranteed under Article 19 of the Constitution. A Bench of this Court in the case of Devendra Prasad v. State of Bihar 1977 PLJR 194 : AIR 1977 Pat 114 has considered identical provisions of the Ordinance which was then in force prior to the Act, and has held that the provisions of the Ordinance were not ultra vires. It was pointed out in the aforesaid judgment that provisions have been made in order to remedy and reduce, if not to eliminate, the problem of the rickshaw drivers who have to work under great strain; as such, the provisions were in public interest and cannot be held to be unreasonable restrictions on the right of the owners of cycle-rickshaws. We are in respectable agreement with the aforesaid view and we do not consider it necessary to refer this case to a larger Bench for reconsideration of the questions raised in respect of the validity of the Act itself.