

(2010) 03 CAL CK 0063
In the Calcutta High Court
Case No : F.M.A. No. 1359 of 2009

Calcutta Howrah Auto Rickshaws Owners" Association and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 2(40), 66, 67, 68, 69
West Bengal Motor Vehicles Rules, 1989 — Rule 120, 120(1), 120(2), 120(3), 120(4)

Citation : AIR 2010 Cal 122

Hon'ble Judges : Mohit S. Shah, C.J.; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Kishore Dutta, Manas Kr. Ghosh and Sanat Kr. Biswas, for the Appellant; Balai Ch. Roy, Gen., Sandip Srimani and Dilip Kr. De, for the Respondent

Judgement

Mohit S. Shah, C.J.—This appeal is directed against judgment dated 7th May, 2009 of the learned single Judge dismissing the appellants' writ petition challenging the constitutional validity of Sub-rule (4) of Rule 120 of the West Bengal Motor Vehicles Rules, 1989.

It was stated in the affidavit-in-opposition filed on behalf of the respondent authorities that:

...I deny and dispute that auto rickshaws are fitted with metres for realization of fares from the passengers according] to distance. I say that very inception the maximum operators never used any metre in the auto rickshaw and charged fare according to the distance which was prevailing in that area. As such using metre in the auto rickshaw became redundant and the auto rickshaw have been plying always route basis.

I say further that on past experience it was found that metre fitted with auto rickshaw was not serving the purpose both to the commuters and the auto

rickshaw permit holders and most of the auto rickshaws been plying without metre without any complications. Thereafter the State Government decided that the auto rickshaw should ply in a specified route only in Kolkata and Howrah as per provision of Section 74(j)(a) of the Motor Vehicles Act. Accordingly notifications for limiting the number of Auto Rickshaw in particular routes were issued by the State Government after taking proper clearance from the Government of India. In this connection Notification No. 1443-WT/4M-23/25 dated 21-4-2003 and 986-WT/3M-90/2003 dated 5-3-04 were published in the official gazette in respect of Kolkata region and Howrah region for limiting the number of Auto Rickshaw in a specified route...

2. The facts giving rise to this appeal, broadly stated are as under:

2.1 Appellant No. 1 is the Calcutta Howrah Auto Rickshaw Owners' Association and the other appellants are owners of Auto Rickshaws and members of the said association. The auto rickshaws were introduced in the City of Calcutta in the year 1983-84 and from the very inception, permits for contract carriages were granted to the members of the appellant association. The permits stipulated that fare would be recovered on the basis of meter reading. The members of the appellant association were plying auto rickshaws within Calcutta on the basis of permanent contract carriage permits (auto rickshaw) within the area bounded by Vivekananda Bridge (Dakshineswar in the North West) Dunlop Bridge in the North, Dum Dum Airport in the West and Garia and Thakurpukur on Diamond Harbour Road in the South, Howrah Railway Station in the West.

2.2 The permit were renewable over five years and were being renewed from time to time without any change or violation of the terms and conditions of the permits. It appears that in the year 2003 the Regional Transport Authority (hereinafter referred to as RTA) was taking steps to convert the auto rickshaw permits (area on the basis with meters) into route permits (specific route without meter) and thereupon the association filed writ petition being W.P. No. 9423(W) of 2003. By judgment dated 31st July, 2003 a learned single Judge of this Court disposed of the writ petition by directing the RTA, Kolkata to consider the petitioners' application for renewal of permits in accordance with law without insisting on removal of meters so long as Rule 120 of the West Bengal Motor Vehicles Rules 1989 was not amended or deleted. The applications for renewal by the appellants were pending. Thereafter, the members of the appellant association also applied for replacement of existing auto rickshaw by the LPG mode auto rickshaw and their renewal applications were pending.

2.3 Rule 120 of the West Bengal Motor Vehicles Rules came to be amended by notification dated 12-12-2003 w.e.f. 16-12-2003. Rule 120, prior to its amendment applied uniform conditions to taxis and autorickshaws as title to Rule 120 indicated. Prior to amendment, Rule 120 (relevant portion) read as under:

120. (1) Special condition of permit in respect of taxis and autorickshaw;

In addition to the conditions prescribed under the Act and the Central Motor

Vehicles Rules, 1989 and these Rules, and following shall be treated as special conditions in all contract permits for taxis and autorickshaw.

(a) The driver shall not misbehave or be rude to the hirer or passenger in the event of any complaint of this nature, the permit will be liable to be cancelled suspended u/s 86 of the Act.

(b) The driver will only charge the approved fare at the rate as per meter attached and any complaint of over charging of the fare shall render the permit to be suspended/cancelled.

(c) The driver shall not refuse to carry any passenger, whenever the taxi or autorickshaw is empty and in a public place irrespective of whether the meter is down or in "for hire" condition, it shall be the burden of the owner or driver to prove that without adequate reasons he did not accept passenger.

(d) The driver shall not run the vehicle as a "Shuttle Service" and thus violate the very principle of Contract Carriage.

Explanation : "Shuttle Service" means plying of a vehicle in violation of principle of Contract Carriage, by carrying more than one individual under more than one contract written or implied, in a single journey by charging actual fair from such individual at the same rate or of different rates.

2.4 After amendment w.e.f. 16-12-2003, Sub-rules (1) to (3) of Rule 120 are applicable only to taxis, while Sub-rule (4) applies only to autorickshaws.

120. Special condition of permit in respect of metered taxis:

(1), (3)

(4) Special condition of permit in respect of autorickshaw:

(i) A contract carriage permit to be granted in respect of an auto-rickshaw on a specified or fixed route approved by the respective Regional Transport Authority subject to compliance of the provisions under the Motor Vehicles Act, 1988 and the rules framed thereunder.

(ii) No auto-rickshaw shall be allowed to ply in any route other than the specified or fixed route allotted to it by the respective Regional Transport Authorities, violation of which is punishable under the Motor Vehicles Act, 1988.

(iii) Fare for auto-rickshaw shall be fixed or determined by the State Government. Any complaint of overcharging of fare shall render the permit to be suspended/cancelled.

(iv) The driver of auto-rickshaw shall not misbehave or be rude to the passengers. In the event of any complaint of this nature, the permit will be liable to be cancelled/suspended u/s 86 of the Motor Vehicles Act, 1988.

(v) There shall be no metering system in the auto-rickshaw.

2.5 Aggrieved by the above amendment to the statutory rules, the appellants filed the writ petition challenging the legality of the above rule. The learned single Judge upheld legality and validity of the rule and dismissed the writ petition, hence this appeal.

3. Mr. Kishore Dutta, learned Counsel for the appellants reiterated the contentions raised before the learned single Judge and submitted as under:

The permit granted for the purpose of operating the contract carriage cannot be converted into a stage carriage permit. Reliance is placed on the decision of this Court in *Regional Transport Authority Darjeeling v. Brihattara Siliguri City Auto Operators' Association* 2009 (2) CHN 389.

On the basis of the provisions of Section 74(2)(viii) of the Motor Vehicles Act, 1988 it is contended that when the Act requires an auto-rickshaw (covered by the definition of motorcab) to install a taxi meter, the subordinate legislation cannot require that there shall be no metering system in the auto-rickshaw, especially when the parent law is a State legislation and the subordinate legislation is made by the State Government.

Sections 67 and 95 of the Motor Vehicles Act, 1988 do not permit or authorize the State Government to make the impugned amendment.

4. On the other hand, the Learned Advocate General appearing for the State authorities has opposed the petition and submitted that there is no attempt to convert contract carriage permit into stage carriage permit and that the conditions of permit in respect of auto-rickshaw as provided in amended Sub-rule (4) of Rule 120 are in conformity with the provisions of the Motor Vehicles Act, 1988, particularly Section 74.

The impugned rule is made in exercise of powers u/s 96 of the Motor Vehicles Act, 1988. The wide power conferred by Sub-section (1) of Section 96 is not controlled by the provisions of Sub-section (2) of Section 96.

The purpose of amending Sub-rule (4) of Rule 120 is to regulate a number of contract carriage permits and to restrict them to satisfy rules in the interest of the general public at large, i.e. for consumers of this system of public transport and such restrictions are permissible under the provisions of Section 74.

5. Before appreciating the rival submissions, it is necessary to refer to the relevant statutory provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder. Section 2(22) defines "maxicab" as any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;

Section 2(25) defines "motorcab" as any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;

Section 2(35) defines "public service vehicles" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and

includes a maxicab, a motorcab, contract carriage, and stage carriage;

Section 2(38) defines "route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another;

Section 2(40) defines "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

Section 2(7) defines "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum:

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another;

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes:

(i) a maxicab; and

(ii) a motorcab notwithstanding the separate fares are charged for its passengers;

Chapter V of the Act contains Sections 66 to 96 for Control of Transport Vehicles.

Section 72 provides for grant of stage carriage permit and empowers the RTO to attach to the permit, any one or more of the conditions specified in Sub-section (2). Some of which are as under:

72(2)(i) - that the vehicles shall be used only in a specified area, or on a specified route or routes;

(v) - that the stage carriage shall be operated within such margins of deviation from the approved time-table as the Regional Transport Authority may from time to time specify;

(vi) - that within municipal limits and such other areas and places as may be prescribed, passengers or goods shall not be taken up or set down except at specified points.

Section 73 and Section 74 in so far as are relevant read as under:

73. Application for contract carriage permit.- An application for a permit in respect of a contract carriage (in this Chapter referred to as a contract carriage permit) shall contain the following particulars, namely:

(a) the type and seating capacity of the vehicle;

- (b) the area for which the permit is required;
- (c) any other particulars which may be prescribed;

74. Grant of contract carriage permit.- (1) Subject to the provisions of Sub-section (3), a Regional Transport Authority may, on an application made to it u/s 73, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:

(i) that the vehicles shall be used only in a specified area or on a specified route or routes;

(ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract, may be entered into outside the specified area;

....

(v) that, in the case of motorcabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;

....

(viii) that, in the case of motorcabs. a taximeter shall be fitted and mentioned in proper working order, if prescribed:

(ix) that the Regional Transport Authority may, after giving notice of not less than one month,-

(a) vary the conditions of the permit;

(b) attach to the permit further conditions:

....

(xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused;

(xiii) any other conditions which may be prescribed.

(Emphasis supplied)

Section 95 empowers the State Government to make rules as to stage carriages and contract carriages. Section 96 empowers the State Government to make rules for the purposes of Chapter V for control of transport vehicle.

6. A perusal of the Clause (ii) of Sub-section (2) of Section 72 and Clause (i) of

Sub-section (2) of Section 74 dealing with stage carriage permit and contract carriage permit respectively, empower the RTO in respect of both the permits to impose a condition that the vehicle shall be used only in a specified area on a specified route or routes. In view of this, it is not possible to accept the appellants' contention that Sub-rule (4) of Rule 120 converts contract carriage permits into stage carriage permits. As defined by Clause (7) of Section 2 "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum.

The definition of contract carriage also contemplates that the motor vehicle having contract carriage may be authorized for the use of the vehicle from one point to another. The essence of the contract carriage is that the contract, whether expressed or implied, is for the use of the vehicle as a whole on a fixed or agreed rate of sum which may be on a time basis or from one point to another but without stopping to pick up or set down passengers not included in the contract. On the other hand, Section 2(40) defines "stage carriage" as a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. The amended Sub-rule (4) of Rule 120 does not, therefore, purport to change a contract carriage permit into a stage carriage permit.

7. Reliance on the decision in the case of Transport Authority Darjeeling (*supra*) is misconceived. In that case, the learned single Judge had disposed of the writ petition in terms of the following order:

This writ petition is disposed of with a direction that if the writ petition has a valid permit, namely, either contract carriage permit or stage carriage permit, the writ petitioner should be allowed to operate on the basis thereof and there should not be any unnecessary or illegal interference or obstruction to the petitioners' right of operation whose vehicle is covered by a valid permit.

Mr. Banerjee submits that the authority concerned has already converted the contract carriage permit into a stage carriage permit. It is directed that the authority concerned should make the necessary endorsement on the permit and on the certificate of registration of the vehicle concerned or issue a stage carriage permit following the procedure, if such conversion has not already taken place within a reasonable time and in any event within a period of four weeks from the date of communication of this order.

After considering the provisions of the Motor Vehicles Act, 1988, a Division Bench of this Court held that there was no statutory provision for converting a contract carriage permit into a stage carriage permit. In the present case, however, we

have already indicated hereinabove that neither the authority has purported to convert contract carriage permits into stage carriage permits, nor has the learned single Judge given any such direction. Since Section 72(2)(ii) and Section 74(2)(i) themselves empower the RTO to impose a condition that the vehicle shall be used only in a specified area or on a specified route or routes, there is no question of any conversion, merely because the authority has imposed a condition in a contract carriage permit which could also have been imposed u/s 72(2)(ii) in a stage carriage permit.

8. As indicated above, since Sub-section 2(i) of Section 74 specifically empowers the RTO to attach to the permit the condition that the vehicle shall be used only in a specified area or on a specified route or routes, there is no substance in the grievance that the authorities are not justified in specifying the route on which the autorickshaws will ply.

9. Learned Counsel for the appellants vehemently submitted that the permits for the auto rickshaws should allow the auto-rickshaws to ply in the entire city or in a specified area but not confine the permit to a specified route. Since Sub-section (2)(i) of Section 74 providing for grant of contract carriage permit specifically empowers the RTA to impose the condition that the vehicle should be used only on a specified route or routes, no room is left for doubt about the power of the RTA to grant permit to the auto rickshaws in question for a specified route only.

10. As regards the petitioners' contention is that the State Government had no power to make the amendment as the provisions of Section 96(2) do not empower the State Government to make the amendment in Rule 120, we also find considerable substance in the submission made by the Learned Advocate General that Sub-section (1) of Section 96 is wide enough to empower the State Government to make the Rules for the purpose of carrying into effect the provisions of Chapter V of the Act regarding control of transport vehicles. As per the settled legal principle enunciated by Their Lordships of the Privy Council as far back as in 1945 in AIR 1945 156 (Privy Council) and reiterated by the Supreme Court in several decisions including the decision in Shri Sudarshan Mineral Co. Ltd. Bhilwara Vs. Union of India (UOI) and Another, . The clauses in Sub-section (2) of Section 96 giving instances of the situations for which the State Government may make rules are without prejudice to the generality of the power of the State Government under Sub-section (1) of Section 96 to make rules for the purpose of carrying into effect provisions of Chapter V regarding control of transport vehicles.

11. Coming to the last contention that Clause (v) of Sub-rule (4) is in violation of or inconsistent with the provisions of Clause (xi) of Sub-section (2) of Section 74, it is required to be noted that Section 74(2)(viii) requires the owner of the motorcabs to have such a taxi meter fitted on the motorcab, if prescribed. The words "if prescribed" in Clause (viii) of Sub-section (4) of Section 74 make it clear that installation of a taxi meter would be mandatory only if the Rules so

provide. Hence, it is open to the rule making authority to mention in Rule 120 that there shall be no metering system in the auto rickshaw.

12. At this stage we must also indicate that we find considerable substance in the submission of Learned Advocate General that it is open to the State Government to require a motorcab not to be installed with a taxi meter, that it was after a proper consideration of the relevant factors that the State Government has decided for the last many years to give contract carriage permits to ply auto rickshaws only on specified routes and not to permit them to drive the auto rickshaws in all areas of the city or on all routes and, therefore, when the contract carriage permit is restricted to a specified route, there is no need to require the auto rickshaw to have a taxi meter. The legislature has left it to the discretion of RTA to decide as to which condition may be attached to the contract carriage permit. Learned Advocate General has produced on record various notifications indicating the specified routes for which the maximum number of auto rickshaws are permitted to be granted contract carriage permits and on each route different number of auto rickshaws are permitted to ply depending upon the requirement of the area. The notifications such as April 30, 2003 appear to be in consonance with the conditions which the RTA is permitted to impose additional conditions as permitted by Section 74(2)(xiii) of the Motor Vehicles Act, 1988. After all, it is for the concerned authority to decide whether the auto rickshaws should be permitted to ply only on a specified route or in a specified area within the entire city of Kolkata. In exercise of the discretionary writ jurisdiction under Article 226 of the Constitution, this Court would not sit in appeal over such exercise of quasi-legislative power of the administrative authorities, while exercising the power of judicial review.

13. The learned Counsel for the appellants also had relied upon the decision of the Apex Court in Commissioner of Income Tax Vs. Hindustan Bulk Carriers, for the purpose of relying on the rules for interpretation of statutes, especially, the rule of the harmonious construction. Since, we do not find any conflict between any particular provision of the Motor Vehicles Act, 1988 and another provision of the said Act, nor do we find any conflict between the provisions of the said Act and provisions of Rule 120 of the West Bengal Motor Vehicles Rules, 1989. No discussion is called for on the principles enunciated in the aforesaid decision of the Apex Court.

14. We also find considerable substance in the submission made by the learned Advocate General that if the auto rickshaws are permitted to ply on any route in the city or within a particular area and if the auto rickshaws are allowed to install meters, there would be a possibility of the auto rickshaws drivers declining to enter into a contract carriage arrangement with passengers who want to travel only short distance. Auto rickshaws demand higher rates in the absence of fixed fare and demand high rates from needy and gullible passengers. When the Government grants permits for specified routes, and the specific amount of fare is to be charged by the auto rickshaws, the consumers i.e. the customers of the

auto rickshaws find it convenient to pay fixed fare for travelling on a specified route rather than leave it to be determined as per a taximeter. Hence, taximeter is not to be installed on autorickshaws which are granted control carriage permits for specific routes.

15. We, therefore, do not find substance in submissions of appellant-writ petitioners. The appeal is, therefore, dismissed.

16. While dismissing the appeal as without substance in any of the contentions urged on merits of the controversy, we do accept the submission made by the learned Counsel for the appellants that the endeavour made by the appellant-writ petitioners in challenging the vires of Rule 120(4) cannot be castigated as mala fide as observed in the penultimate paragraph of the judgment under appeal. The appellants relied upon the Rules prevailing in the year 2003 for the purpose of challenging the stand of the respondent authorities. Accepting the merit in the legal contention of the writ petitioners, the State Government has amended Rule 120(4) to overcome the legal contention raised on behalf of the Auto Rickshaws Owners' Association. The Association has, therefore, challenged the amendment to the rule which cannot be considered as mala fide. Hence, the observations made by the learned single Judge to the effect that challenge to the amendment is mala fide, are deleted.

17. Subject to the above, the appeal is dismissed.

Pinaki Chandra Ghose, J.

18. I agree.

(LATER)

19. At this stage Learned Counsel for the appellants submits that the applications of members of the appellant-Association for renewal of the contract carriage permit have remained pending on account of the litigation and the State authorities may be directed to decide the said applications expeditiously.

20. We have no doubt that the respondent authorities shall decide the pending applications for renewal of permits of the members of the appellant-Association in accordance with law as expeditiously as possible and preferably within a period of one month from today.

21. Photostat certified copy of this order, if applied for, be supplied on priority basis.