
(1979) 04 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4263 of 1978

Gurbachan Singh and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 06-04-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 48

Citation : AIR 1979 P&H 223 : (1980) CriLJ 417 : (1980) 1 ILR (P&H) 26

Hon'ble Judges : S.S. Sandhawalia, C.J;G.C. Mital, J

Bench : Division Bench

Judgement

G.C. Mital, J.—In this writ petition, the vires of Section 3 of the Punjab Cycle-Rickshaw (Regulation of Licence) Act 41 of 1976 (hereinafter referred to as the Act), has been challenged being violative of Articles 14 and 19(1)(g) of the Constitution of India, inasmuch as cycle-rickshaw owners who used to give their cycle-rickshaws on hire for being plied by the hirers have been denied the right of carrying on their trade. and business and to earn their livelihood.

2. The six petitioners owned about 26 cycle-rickshaws for which they held licences for plying till 1976-77 and they used to give their cycle-rickshaws on hire for being plied by the hirers. The Act has been brought in force with effect from November 2, 1976, by the notification issued by the Punjab Government. The licences had to be renewed with effect from April 1, 1977, for the period ending March, 31 of the following year. The petitioners allege that their licences for the year 1976-77 have come to an end or stood revoked on the expiry of thirty days of the enforcement of the Act although the same were valid up to March 31, 1977. Under the impugned Act, they are not entitled either to have their licences renewed or to apply for fresh licences and, therefore, they are totally excluded from carrying on the trade and business of giving their cycle-rickshaws on hire and in this manner their trade and business has been completely stopped, which is not permissible under Article 19(1)(g) of the Constitution of India.

3. The challenge on the ground of violation of Article 14 of the Constitution is that under the Act some specified categories of persons are allowed to ply cycle-rickshaws whereas the petitioners are not allowed to own and run the cycle-rickshaws on hire which they were doing before the Act came into force and hence there is deprivation of equal protection guaranteed under Article 14 of the Constitution. We are not impressed with this argument as the Act has made reasonable classification. The classification is between cycle-rickshaw owners who want to ply the rickshaws themselves and those who just want to own and get them plied on hire through others. We are of the opinion that this is a reasonable classification and if there was any discrimination within the same class, then it could be said that it violates Article 14 of the Constitution. All rickshaw owners who want to ply themselves have been allowed to take licences for the rickshaws they own and which they want to ply. Similarly, each of the petitioners can get a licence for his rickshaw which he wants to ply himself. Hence within the same class there is no discrimination and we repel the contention of the learned counsel.

4. The other point canvassed by Mr. Sibal, is that Section 3 of the Act is violative of Article 19(1)(g) of the Constitution and is not saved by clause (6) of the Article. In elaborating his argument, he has mentioned that the carrying on of the business of cycle-rickshaws has not been found to be obnoxious or bad and once this is not done, then the plying of rickshaws will continue to be a legitimate business and as such Section 3 of the impugned Act, which prohibits the issue of licence to cycle-rickshaw owners for hire purposes, is violative of Article 19(1)(g) of the Constitution as they are being deprived of carrying on business of owning cycle-rickshaws for purposes of giving on hire to the rickshaw pliers and since it is a case of complete prohibition, therefore, the question of placing reasonable restriction does not arise. In support of the aforesaid, argument, he has relied on *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, (paras 46, 46-A and 56) for the proposition that the impairment of the right of individual is to be considered for testing the validity and constitutionality of the impugned Act and is not to be tested with regard to the object of the State in taking the impugned action. To concentrate merely on the power of the State and the object of the State action in exercising that power is to ignore the true intent of the Constitution. According to the learned counsel, this is not the true test, as held in the aforesaid decision. According to the learned counsel, the rule laid down therein is to be kept in view in considering the validity and constitutionality of the impugned provision. The other cases relied on behalf of the petitioners are *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, , *Pathumma and Others Vs. State of Kerala and Others*, , and *R.M. Seshadri Vs. The District Magistrate, Tanjore and Another*, .

5. Reliance has been placed on para 21 of *Mohd. Hanif Quereshi's* case (supra). That case relates to total banning of cow slaughter The matter was summarised in para 41 of the judgment and the conclusion was arrived at in para 44, the relevant passage of which is reproduced below:--

"So approaching and analysing the problem, we have reached the conclusion (i) that a total ban on the slaughter of cows of all ages and calves of cows and calves of she-buffaloes, male and female, is quite reasonable and valid and is in consonance with the directive principles laid down in Article 48; (ii) that a total ban on the slaughter of she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they are as milch or draught cattle is also reasonable and valid and (iii) that a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they cease to be capable of yielding milk or of breeding or working as draught animals cannot be supported as reasonable in the interest of the general public."

On the aforesaid three principles laid down, the Supreme Court upheld the constitutionality of the Bihar Preservation and Improvement of Animals Act (2 of 1956), the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (1 of 1956) and the M. P. Acts 23 of 1951 and 10 of 1956, amending the C. P. and Berar Animal Preservation Act (52 of 1949), which regard to the total prohibition of cow slaughter on the first and second conclusions but declared them void with regard to the ban on the third conclusion.

6. The decision of the Supreme Court in *Pathumma v. State of Kerala* (supra), relates to the constitutional validity of the Kerala Agriculturists Debt Relief Act, 1970, which was held to be constitutionally valid by the Supreme Court. Reliance was placed on the following guidelines laid down by the Supreme Court in determining the question of reasonableness of "restriction":

(1) that, in judging the reasonableness of the restrictions imposed by clause (5) of Article 19, the Court has to bear in mind the Directive Principles of State Policy:

(2) that restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public:

(3) that in order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case:

(4) that a just balance has to be struck between the restriction imposed and the social control envisaged by clause (6) of Article 19:

(5) that there must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. In other words, the Court has to see whether by virtue of the restriction imposed on the right of the citizen the object of the statute is really fulfilled or frustrated;

(6) that Court must see the prevailing social values whose needs are satisfied by restrictions meant to protect social welfare:

(7) that so far as the nature of reasonableness is concerned, it has to be viewed not only from the point of view of the citizen but the problem before legislature and the object which is sought to be achieved by the statute. In other words, the

Courts must see whether the social control envisaged in clause (6) of Article 19 is being effectuated by the restrictions imposed on the fundamental right.

7. The other case relied on is *R. M. Seshadri v. Dist. Magistrate, Tanjore* (supra), in which the notifications issued by the State of Madras were challenged as being hit by Article 19(1)(g) of the Constitution. The impugned conditions of the notifications which were sought to be challenged were:--

"4 (a) The licensee shall exhibit at each performance one or more approved films of such length and for such length of time, as the Provincial Government or the Central Government may, by general or special order, direct.

(b) The licensee shall comply with such directions as the Provincial Government may by general or special order give as to the manner in which approved films shall be exhibited in the course of any performance.

Explanation: "Approved Films" means a cinematograph film approved for the purpose of this condition by the Provincial Government or the Central Government.

Special condition 3: The licensee should exhibit at commencement of each performance not less than 2,000 feet of one or more approved films."

While considering the constitutionality, the Supreme Court came to the conclusion that the length of the time for which the approved films may be shown is unspecified and the Government may compel a licensee to exhibit an approved film, say for an hour and a half or even two hours when the exhibition of a film generally takes two hours and a quarter and in this manner whole of the time may be utilised in exhibiting the approved films. Taking this consideration with other considerations, condition 4(a) and special condition 3 were held to be violative of Article 19(1)(g) of the Constitution and were struck down.

8. Keeping the aforesaid principles laid down by the Supreme Court in view, let us see the provisions of the impugned Act. The statement of objects and reasons of the Act reads as under:--

"In order to eliminate the exploitation of rickshaw pullers by the middlemen and for the giving a fillip to the scheme of the State Government for arranging interest free loans for the actual pullers to enable them to purchase their own rickshaws, it is considered necessary to regulate the issue of licences in favour of the actual drivers of cycle-rickshaws plying within the municipal area in the State."

The definition of "'cycle-rickshaw'" as contained in the Act is as follows:--

"2(a) "cycle-rickshaw" means a three-wheeled cycle-rickshaw driven by manual labour and includes all its components and accessories."

Section 3 of the Act deals with grant of licence for cycle-rickshaws which is reproduced below:--

"3. Licence for cycle-rickshaws.-

(1) Notwithstanding anything contained to the contrary in the Punjab Municipal Act, 1911, or any rule or order or bye-law made thereunder or any other law for the time being in force, no owner of a cycle rickshaw shall be granted any licence in respect of his cycle-rickshaw nor his licence shall be renewed by any municipal authority after the commencement of this Act unless the cycle-rickshaw is to be plied by such owner himself.

(2) every licence in respect of a cycle-rickshaw granted or renewed prior to the commencement of this Act shall stand revoked on the expiry of a period of thirty days after such commencement if it does not conform to the provisions of this Act."

Section 4 of the Act deals with exemptions which is reproduced below:--

"4. Exemption:--(1) Notwithstanding anything contained in this Act, a licence in respect of a cycle-rickshaw may be granted to a widow or to a disabled person to be plied by another person if this is the only source of her or his livelihood and in such a case it shall be lawful for the municipal authority to grant a driving licence to a person other than the owner of the cycle-rickshaw, giving full particulars of the owner and the driver engaged to ply it with a photograph of the driver.

(2) A licence in respect of a cycle-rickshaw may also be granted or renewed by a municipal authority to an institution to be plied through any other person, if the institution has to ply it not for hire but to meet its own requirements of conveyance and transportation and in such a case it shall be lawful for the municipal authority to grant a driving licence to a person other than the owner of the cycle-rickshaw giving full particulars of the owner and the driver engaged to ply it with a photograph of the driver. The body of such a cycle-rickshaw will be painted yellow."

Ss. 5 and 6 of the Act deal with penalties to be imposed on violation of any of the provisions of the Act and forfeiture of the cycle-rickshaw in respect whereof the offence is committed respectively, and the last S. 7 deals with the power to make rules.

9. A reading of the aforesaid provisions would show that what the Legislature has intended to do is not to totally prohibit the plying of cycle-rickshaws but has tried to regulate it by granting a licence only to an owner of a cycle-rickshaw who is prepared to ply it himself and to exclude any middle-man who may own a cycle-rickshaw but may not like to ply it himself. In this manner, the exploitation of rickshaw pullers by the middle-men has been obviated by giving facility to the actual rickshaw pullers to own their rickshaws either by arranging loans from the State Government, which may be interest free, or by purchasing their own rickshaws from their own resources. The whole underlying idea of the impugned Act is to favour grant of licences to such actual pliers of cycle-rickshaws who own the cycle-rickshaws and not to those who are prepared to ply rickshaws on hire.

In this manner, the Legislature has made a classification for the grant of licences under the Act.

10. The argument of Mr. Sibal is that there is total bar on his clients to obtain licences for plying their rickshaws on hire and as such the impugned Act is hit by Art. 19(1)(g) of the Constitution. If we look at the impugned Act from this angle, of course, there is a total bar for obtaining licences by rickshaw owners who want to ply the same on hire and not ply themselves. But, such a bar does not amount to violation of Art. 19(1)(g) by itself as the restriction which has been placed is to be seen, whether it is reasonable or not. If it is reasonable, then the Act is valid and if it is not, then the Act has to be struck down. Now, once again, reference may be made to M. H. Qaureshi's case (supra), where total ban on cow slaughter was upheld on the first and second conclusions, reproduced above. On the third conclusion, it was stated that the total ban on the slaughter after they cease to be capable of yielding milk or of breeding or working as draught animals cannot be supported as reasonable in the interest of general public. Therefore, the question which required to be determined is whether the restriction is reasonable or not, which will be answered a little later. R. M. Seshadri's case (supra) is of no assistance either way in deciding the validity of the impugned Act as the same was decided on the wording of a peculiar notification which was under challenge in that case. So far as Pathumma's case (supra) is concerned, it has laid down seven guidelines which are of great help in deciding the reasonableness of restriction imposed in the present case, which would be considered a little later after we have considered the arguments of Mr. I. S. Tiwana, the learned Additional Advocate General, Punjab, and the rulings cited by him.

11. The learned Additional Advocate General, in reply to the argument of the learned counsel for the petitioners, has placed reliance on Narendra Kumar and Others Vs. The Union of India (UOI) and Others, , Rustom Cavasjee Cooper's case (supra) and the principles laid down in Pathumma's case (supra), for his submissions that total prohibition of the kind in dispute on the cycle-rickshaw owners who do not want to ply themselves and want to give on hire is permissible in law and in any case is a reasonable restriction under Art. 19(6) of the Constitution and as such the impugned Act is a valid piece of legislation. In Narendra Kumar's case (supra) the Government of India issued an Order called the "non-ferrous Metal Control Order, 1958", in exercise of its powers under S. 3 of the Essential Commodities Act. Cls. 3 and 4 of the Order were sought to be challenged as violative of Arts. 14, 19(1) (f) and (g) of the Constitution. For facility of reference, these clauses are reproduced below:-

"3.(i) No person shall sell or offer to sell any non-ferrous metal at a price which exceeds the amount represented by an addition of 34 p. c. to its landed cost,

(ii) no person shall purchase or offer to purchase from any person non-ferrous metal at A price higher than at which it is permissible for that other person to sell to him under sub-clause (i).

4. No person shall acquire or agree to acquire any non-ferrous metal except under and in accordance with a permit issued in this behalf by the Controller in accordance with such principles as the Central Government may from time to time specify."

The constitutional validity of the aforesaid clauses was upheld and the relevant part of the Supreme Court decision is given in paras 23 and 24, which is reproduced below:--

"23. It must, therefore, he held that Clause 3 of the Order even though it results in the elimination of the dealer from the trade is a reasonable restriction in the interests of the general public. Clause 4 read with the principles specified must also be held for the same reason to be a reasonable restriction:

24. It was next urged that these principles are discriminatory as between manufacturers and dealers and so violate Art. 14 of the Constitution. Quite clearly the dealers and manufacturers are by these principles placed in different classes and while some manufacturers are eligible for permits dealers are not. It is equally clear however from what has already been said above that the differentia which distinguish dealers as a class from manufacturers placed in the other class have a reasonable connection with the object of the legislation. There is therefore no substance in the contention that the specification of the principles violates Art. 14 of the Constitution."

This clearly shows that Clause 3 of the Order which totally eliminated a dealer from the trade was held to be a reasonable restriction in the interest of general public and for the same reason clause 4 was also held to be placing a reasonable restriction. it was further found that there was no discrimination or violation of Art. 14 of the Constitution although dealers and manufacturers were placed in two different classes.

12. The learned Additional Advocate General placed reliance on para 45 of the decision of the Supreme Court in *R. C. Cooper's case* (supra), for the proposition that limitations under Articles 19(5) and 31 are not generically different, for the law authorising the exercise of the power to take the property of an individual for a public purpose or to ensure the well-being of the community, and the law authorising the imposition of reasonable restrictions under Art. 19(5) are intended to advance the larger public interest. According to him, the same would be the position with regard to Art. 19(6). According to him, reasonable restrictions have been provided by the impugned section to do away with the monopoly of the cycle-rickshaw owners who do not ply the same themselves and give them on hire and instead to eliminate the exploitation of the rickshaw pullers by the middle-men and for giving a fillip to the scheme of the State Government for arranging interest-free loans for the actual pullers to enable them to purchase their own rickshaws for plying in the municipal area after obtaining licences. According to the learned Additional Advocate General, this is a reasonable restriction within the meaning of Art. 19(6) and as such the

impugned section is valid and intra vires.

13. The learned Additional Advocate General, while relying on Pathumma's case (supra), has stressed on guidelines 4 to 7 contained in that judgment and reproduced above, and has argued that all the tests laid down above have been fulfilled in the impugned legislation. According to him, the object of the legislature was to give licences to actual rickshaw pullers and to eliminate the exploitation of the rickshaw pullers by the middle-men and this object has been achieved by the impugned legislation and that there is a direct and proximate nexus or reasonable connection between the restrictions imposed and the object which is sought to be achieved.

14. Mr. Tiwana goes on to argue and has stated that there is an exemption clause also in S. 4 where a licence in respect of a cycle-rickshaw may be granted to a widow or to a disabled person to be plied by another person if that is the only source of her or his livelihood and in such a case it shall be lawful for the municipal authority to grant a driving licence to such persons. There is yet another exemption clause where licence in respect of a cycle-rickshaw can also be granted or renewed by a municipal authority to an institution to be plied through any other person if the institution has to ply it not for hire but to meet its own requirements of conveyance and transportation. So, according to the learned counsel for the State, enough safeguard has been provided in the impugned legislation and the right of widows, disabled persons and of institutions to have the rickshaws plied through other persons has been protected and in this manner it is a beneficial legislation enacted taking into consideration the prevailing social values and to protect social welfare of the persons who are really engaged in actually plying the rickshaws for their benefit except for the exemptions which have been specified in the Act.

15. After taking into consideration the arguments of both the sides and the rulings cited by them, we are of the opinion that S. 3 of the Act is a valid piece of legislation and is not hit by Art. 19(1)(g) as the restriction placed is a reasonable restriction covered under Art. 19(6) of the Constitution. The scheme of the Act which has been reproduced above clearly shows that the classification which has been made is reasonable and only the middle-men have been excluded. The licences are to be granted only to actual rickshaw pullers and not to those who want to give the rickshaws on hire. So far as the total prohibition of rickshaw owners like the petitioners, who want to ply the same on hire, is concerned, it is justified in view of the decision of the Supreme Court in Narendra Kumar v. Union of India and M. H. Quareshi v. State of Bihar (supra), relevant passages (from which) have been quoted while adverting to them. In Narendra Kumar's case (supra), the Supreme Court clearly held that though clause 3 of the Order results in elimination of the dealers from the trade yet is a reasonable restriction in the interest of general public. Similarly, in M. H. Quareshi's case (supra), total ban on cow slaughter was upheld as justified and constitutionally valid and it only struck down the total ban on the slaughter of such cattle which had ceased to be

capable of yielding milk or of breeding or working. Therefore, on reading the scheme of the Act, the statement of objects and reasons and keeping in view the principles a law laid down by the Supreme Court in the aforesaid judgments, we are satisfied that the restriction placed on the grant of licences to such rickshaw owners who are prepared to ply the same and to exclude the middle-men is a reasonable restriction within the meaning of Art. 19(6) of the Constitution as there is a proximate nexus and reasonable connection between the restriction imposed and the object which is sought to be achieved. Moreover, it is based on sound public policy.

16. For the reasons recorded above, we find no merit in this writ petition and the same is dismissed. However, we leave the parties to bear their own costs as constitutional validity was involved.

S.S. Sandhawalia, C.J.

17. I agree.

18. Petition dismissed.