

(1962) 07 CAL CK 0016
In the Calcutta High Court
Case No : Matter No. 85 of 1962

Hiralal Shah

APPELLANT

Vs

Commissioner of Police, Calcutta

RESPONDENT

Date of Decision : 20-07-1962

Acts Referred:

Calcutta Police Act, 1866 — Section 39(1)(b), 39(2), 61A, 62, 62(1)
Calcutta Suburban Police Act, 1866 — Section 38A, 39
Constitution of India, 1950 — Article 19(1)(a), 19(1)(g), 19(6)

Citation : 67 CWN 165

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : E.R. Meyer, for the Appellant;

Judgement

Banerjee, J.—The petitioners, who are seven in number, carry on business as owners of handcarts. As amongst them they own about 371 handcarts, which are said to be garaged at different places either at Upper Chitpur Road or at Sovaram Bysak Street or at Gangadhar Babu Lane or at Govinda Dhar Lane, all in the town of Calcutta. The handcarts are plied under licenses issued under the Calcutta Municipal Act and at the time when the petitioners obtained this Rule the handcarts were being run under valid licenses. On February 19, 1962, the respondent No. 1, Commissioner of Police, Calcutta, issued a Notification, u/s 62(1) (b) read with section 62(2) of the Calcutta Police Act 1866 and u/s 39(1) (b) read with section 39 (2) of the Calcutta Suburban Police Act, 1866, prohibiting, with effect from March 15, 1962, the plying of handcarts (and also of bullock and buffalo carts) between the hours 9 a.m. to 6 p.m. within the area bounded on the North by Vivekananda Road and Kalikrishna Street (the streets themselves being excluded), on the East-- by Chittaranjan Avenue and Chowringhee Road, on the South--by that portion of Lower Circular Road between Chowringhee Road and St. George's Gate Road and Strand Road (hereinafter referred to as the prohibited area). A copy of the said Notification is here in below set out:--

In exercise of the powers conferred by clause (b) of subsection (1), read with sub-section (2) of section 62 of the Calcutta Police Act, 1866 (Bengal Act IV of 1866) and clause (b) of subsection (1) read with sub-section (2) of section 39 of the Calcutta Suburban Police Act 1866 (Bengal Act II of 1866) and with the previous sanction of the State Government, the Commissioner of Police, Calcutta, makes the following amendments in the rules for the regulation of Traffic in the Streets, and public places of Calcutta and its suburbs, published with Calcutta Police Notification dated the 13th January, 1950, at pages 63-99 of Part I of the Calcutta Gazette of the 19th January, 1950, as subsequently amended (hereinafter referred to as the said rules) :--

Amendments.

1. In part II of the said rules-

after rule 4 insert the following rules namely:--

4A. Restrictions on Cart Traffic,--No, bullock, buffalo or handcart of any description shall proceed in the area or the roads or portions of roads specified below in the Table on all days between the hours of 9 a.m. and 6 p.m. with effect from 15th March, 1962.

THE TABLE.

1. Area above referred to The area bounded--

On the North by Vivekananda Road and Kali Krishna Tagore Street (the streets themselves being excluded); on the East by Chittaranjan Avenue and Chowringhee Road; On the South by that portion of Lower Circular Road between Chowringhee Road and St. Georges' Gate Road; and on the West by St. Georges' Gate Road and Strand Road.

II. Roads or portions of roads above referred to.

1. Tarak Paramanik Road (between Chittaranjan Avenue and Chorebagan Lane);
2. Muktaram Babu Street (Between Chittaranjan Avenue and Chorebagan Lane).
3. Mahatma Gandhi Road (between Chittaranjan Avenue and Nil Madhab Sen Lane).
4. Mechuabazar Street (between Chittaranjan Avenue and Krishna Behari Sen Street).
5. Colootolla Street (between Chittaranjan Avenue and Krishna Behari Sen Street).
6. Eden Hospital Road (between Chittaranjan Avenue and College Street).
7. Bowbazar Street (between Chittaranjan Avenue and College Street).
8. Ganesh Chandra Avenue (between Chittaranjan Avenue and Wellington Street).

9. Princep Street (between Chittaranjan Avenue and Chandni Chawk Street).
10. Madan Street and Mati Seal Street (between Chittaranjan Avenue and S.N. Banerjee Road).
11. Meredith Street (between Chittaranjan Avenue and Madan Street).
12. Chowringhee Square (between Chittaranjan Avenue and Madan Street).
13. Moti Seal Lane (between Chowringhee Road and Moti Seal Street).
14. S.N. Banerjee Road (between Chowringhee and Moti Seal Street).
15. Chowringhee Place (between Chowringhee and Bertram St.).
16. Lindsay Street (between Chowringhee Road and Bertram St.).
17. Kyd Street (between Chowringhee Road and Chowringhee Place).
18. Lower Circular Road (between Chowringhee Road and St. Georges" Gate Road).
19. Chowringhee Road.
20. Chittaranjan Avenue.
21. St. Georges" Gate Road and Strand Road.

2. In rule 5, after item (e) and the entry relating thereto add the following items and entries namely:--

(f) Vivekananda Road, (g) Kali Krishna Tagore Street, (h) Tarak Paramanik Road (i) Muktaram Babu Street, (j) Mahatma Gandhi Road, (k) Mechuabazar Street, (l) Colootolla Street, (m) Eden Hospital Road, (n) Bowbazar Street, (o) Ganesh Chandra Avenue, (p) Princep St, (q) Madan Street and Moti Seal Street, (r) Meredith Street, (s) Chowringhee Sq. (t) Moti Seal Lane, (u) S.N. Banerjee Road, (v) Chowringhee Place, (w) Lindsay Street, (x) Kyd Street, (y) Strand Road, (z) Lower Circular Road, (za) St. Georges" Gate Road, (zb) Chittaranjan Avenue, (zc) Chowringhee Road". The above mentioned restrictions will be in addition to the existing restrictions on Slow-moving vehicles on the roads of Calcutta and its suburbs.

Sd. U. Mukherji, 19-2-62, Commissioner of Police, Calcutta.

2. The petitioner allege that their business has been adversely affected by the said Notification and unless they are allowed to ply their carts within the prohibited areas and between the prohibited hours, their business will become totally extinct. In elaboration they further allege that within the prohibited area are located several booking offices of transportation concerns offices and godowns of bidi-leaf and tobacco merchants, of dealers in spices, food grains, vegetables, fruits, sugar, ghee, mustard oil, paper, glass, stationery goods, aluminium goods, machine and machinery parts, rope, cement, hide, steel wires,

iron goods, corrugated iron sheets, baskets and utensils, as also Katra type markets for wholesale dealers, for example, Raja Katra Market, Posta Market, as also godowns of important mercantile firms like Titagarh Paper Mills, Balmer Lawrie and Company and Martin Burn and Company and warehouses of the Port Commissioners and of Calcutta Jetties. They say that they carry goods to and from the aforementioned places. The godowns and warehouses abovementioned are kept open between 10 a.m. and 4 p.m., within which hours all transportation business there have to be transacted. They further say that transportation of goods to and from the business centres of dealers and merchants abovementioned have to be made between 9 a.m. and 7 p.m. The prohibition as to hours of plying of handcarts, they allege, has made it impossible for the petitioners to carry on business with any of the above centres of trade. They also allege that although Howrah and Sealdah Railway Stations are outside the prohibited area yet then goods have to be carried to and from the Railway stations through the prohibited area and that the prohibition has affected their business in the two railway stations as well. They further allege that their garages are situate within the prohibited area, and the prohibition has made it impossible for them to take their carts out of their garages during the prohibited hours, even for plying elsewhere. They say that their carts being immobilised during the all-important business hours, they are faced with total extinction of their business : so also are others who carry on similar business and the handcart pullers, numerous in number, are facing unemployment.

3. They demanded justice from the respondents by two letters, dated March 19 and March 27, 1962. calling upon the respondents to recall, cancel or withdraw the notification and to forbear from giving effect thereto. The respondents, however, did not concede to the demand.

4. Thereupon, the petitioners moved this Court, under Article 226 of the Constitution, praying for a Writ in the nature of Certiorari quashing the notification and for a Writ in the nature of mandamus directing the respondents to cancel or withdraw the notification and to forbear from giving effect thereto.

5. Sri Upananda Mukherjee, who at the material time was the Commissioner of Police, has affirmed an affidavit-in-opposition, dated April 11, 1962, in which he says that the information regarding the proposed restrictions on cart traffic was published in the Calcutta Gazette and in certain local news papers in August 1961 and objections were invited thereto. Objections were received upto October 3, 1961 and thereafter interviews were given in the matter of the objections to several interested parties and after considering the objections the notification was made as aforesaid. He does not admit two of the allegations of fact made in the petition, (1) that the garage of the petitioners, handcart owners, are situate in the localities as alleged and (2) that there is any uniformity of business hours in the warehouses and go-downs as alleged. He, however, admits that the major part of the trade and commerce in the city is carried in the area specified in the notification, which he describes as "the Central business district of the city". He

also admits that the major portion of the mercantile offices in the city are located in this area. Nevertheless, he justifies the notification on the following grounds:

(i) there has been a tremendous growth of trade and population in the city of Calcutta, particularly after August 15, 1947. With the increase of industrial activities there has also been a growth of motorisation in the city, without corresponding increase in road mileage. The number of automobiles in the city has increased from 38,385 in 1947 to 77,515 in June, 1961 and the rate of yearly increase of automobiles is estimated at 2500. The number of handcarts and bullock carts is said to be 15,000. They are slow moving vehicles and considerably retard the progress of chasing motorised vehicles and occasion traffic problems.

(ii) Over 40 per cent, of the total number of registered vehicles of Calcutta pass through the area prohibited by the notification, during the hours 9 a.m. to 6 p.m. In addition to local traffic, considerable volume of inter-State and inter-regional traffic originates and culminates in the prohibited area. In most of the roads and junctions, within the prohibited area traffic operates beyond the desirable "capacity" during the restricted hours. (By the term "Capacity" he means the maximum number of vehicles that can pass a given point on a road-way or a designated lane-way during one hour, without traffic density being so great as to cause unreasonable delay, hazard or restriction to drivers' freedom of manoeuvre under the prevailing road way and traffic conditions).

(iii) Because of slow speed and lesser maneuverability handcarts, bullock-carts and buffalo-carts slow down or occasion stoppage of traffic flow or cause traffic jams, causing substantial loss of working hours and diminution of public convenience.

(iv) These carts occupy larger area of space while moving or remaining stationary and cause serious obstruction to the flow of traffic. Also because of irregular parking, while loading or unloading goods, they cause the same type of inconvenience.

(v) Handcart pullers and bullock and buffalo cart drivers are not required to pass driving tests or to take out any licence of competency and as such are ignorant of traffic rules. They increase risks of accidents and also cause traffic congestion.

6. He strongly relies on figures collected in a traffic census undertaken by the Police in 1961, showing intensity of volume of traffic within the prohibited area and also a traffic chart in Burrabazar area showing peak hours of traffic, in justification of the notification.

7. He says that for the aforesaid reasons it became necessary to regulate traffic, inter alia, of hand carts in the manner as done by the notification.

8. Mr. Meyer, learned Advocate for the petitioners, challenged the notification on 8 grounds mentioned in the petition. But as some of those grounds are covered by the decision of a Special Bench of this Court in Paschim Banga Malbahi Cycle

Mazdoor Union v. Commissioner of Police, Calcutta (1) (65 C.W.N. 213), adversely to his contention, and inasmuch as that decision is binding on me he did not re-argue these points before me but asked me to note that he did not give up any of those grounds so that he may argue those points, if necessary, before a Court on which the Special Bench decision may not be binding. In this Rule, however, he argued for my consideration the following points:--

(i) The word "regulation" in section 62(1) (b) does not authorise the Commissioner of Police to impose total restrictions on the plying of handcarts within a particular area and during particular hours.

(ii) Regulation may include some restriction but does not include total prohibition or virtual prohibition from a commercial point of view.

(iii) The notification was unreasonable and was no remedy for the evil which it purported to prevent because other equally slow-moving vehicles, for example rickshaws, were not regulated in similar manner.

9. In order to examine validity of the argument, it is necessary for me to examine the language of the material portion of section 62 of the Calcutta Police Act, 1866.

62(1) With the previous sanction of the State Government the Commissioner of Police may after previous publications, from time to time make rules:--

(a) * * * *

(b) regulating traffic of all kinds in streets and public places, and the use of streets and public places by persons" riding, or driving, leading or riding in vehicles, or leading or accompanying cattle, or walking so as to prevent danger, obstruction or inconvenience to the public;

(c) regulating the conditions under which vehicles may remain standing in streets and public places and the use of streets as halting places for vehicles or cattle;

(d) to (j) * *

(2) Any rules made under this section may, with the like sanction, be altered or rescinded by the Commissioner of Police after previous publication of the alteration or rescission.

10. Section 39(1) (b) and (c) and section 39(2) of the Calcutta Suburban Police Act, 1866 are couched in the same language as quoted above.

11. Mr. Meyer contrasted the above quoted-provisions of section 62 of the Calcutta Police Act and section 39 of the Calcutta Suburban Police Act respectively with the provisions of section 61A of the Calcutta Police Act and section 38A of the Calcutta Suburban Police Act, (which latter sections invest the Commissioner of Police with power to prohibit the use or the driving of certain types of vehicles in streets and public places) and contended that not having elected to use his powers either u/s 61A of the Calcutta Police Act or under 38A

of the Calcutta Suburban Police Act, the Commissioner of Police was not entitled virtually to prohibit or substantially to prohibit traffic in hand-carts in colourable exercise of his power of regulation u/s 62 of the Calcutta Police Act and section 39 of Calcutta Suburban Police Act.

12. The word "regulate" means to control or to adjust by rule. When a statute invests an authority with power to regulate, say for example, a trade, it does not invest the authority with power wholly to prohibit or to put a stop to the trade. This was the view that was taken by the Privy Council in the case of *Municipal Corporation of the City of Toronto v. Virgo*, (2) [(1896) A.C. 88, 93] in which Lord Davey observed as follows :

No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to space where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order. But their Lordships think there is marked distinction to be drawn between the prohibition and prevention of a trade and the regulation or the governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated and governed.

13. The same view was reiterated by Lord Watson in *Attorney General for Ontario v. Attorney General for the Dominion* (3) (1896 A.C. 348, 363) :--

A power to regulate, naturally, if not necessarily, assumes, unless it is enlarged by the context, the conservation of the thing which is to be made the subject of regulation. In that view, their Lordships are unable to regard the prohibitive enactments of the Canadian statute of 1886 as regulations of trade and commerce. They see no reason to modify the opinion which was recently expressed on their behalf by Lord Davey in *Municipal Corporation of the City of Toronto v. Virgo*, (2) (*supra*) in these terms: "Their Lordships think there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed.

14. About half a century later, lord Porter reminded himself of the distinction between regulation and prohibition in the case of *Commonwealth of Australia v. Bank of New South Wales* (4) (1950 A.C. 235 at 310-11), in the following language:--

Difficult as the application of these general propositions must be in the infinite variety of situations that in peace or in war confront a nation, it appears to their Lordships that this further guidance may be given. In the recent case of *Australian National Airways Proprietary Ltd. v. The Commonwealth* (5) (71 C.L.R. 29, 61), the learned Chief Justice used these words: "I venture to repeat what I said in the former case (*viz.* the "Milk case"-62 C.L.R. 116, 127) "One proposition which I regard to establish is that simple legislative prohibition

(Federal or State), as distinct from regulation, of inter-State trade and commerce is invalid. Further, a law which is "directed against" inter-State trade and commerce is invalid. Such a law does not regulate such trade, it merely prevents it. But a law prescribing rules as to the manner in which trade (including transport) is to be conducted is not a mere prohibition and may be valid in its application in inter-State trade, notwithstanding s. 92". With this statement, which both repeats the general proposition and precisely states that simple prohibition is not regulation, their Lordships agree.

15. The Supreme Court of India discussed with approval the observations of Lord Porter in the Commonwealth of Australia Case (supra) in The State of Bombay Vs. R.M.D. Chamarbaugwala, as here in below stated:--

Lord Porter delivering the judgment of the Judicial Committee pointed out that it was no longer arguable that freedom from customs or other monetary charges alone was secured by the section. Then after reviewing and explaining at some length the two cases of *James v. Cowan* (7) [L.R. (1932) A.C. 542] and *James v. The Commonwealth* (8) [L.R. (1936) A.C. 578, 627], his Lordship proceeded to make certain observations on the distinction between restrictions which are regulatory and do not offend against s. 92 and those which are something more than regulatory and do so offend. His Lordship deduced two general propositions from the decided cases, namely (1) that regulation of trade, commerce and intercourse among the States was compatible with absolute freedom and (2) that s. 92 was violated only when a legislative or executive act operated to restrict trade, commerce and intercourse directly and immediately as distinct from creating some indirect or consequential impediment which might fairly be regarded as remote. The problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, his Lordship pointed out, not so much legal as political, social or economic considerations. Referring to the case of *Australian National Airways Proprietary Ltd. v. The Commonwealth* (5) (supra) his Lordship expressed his agreement with the view that simple prohibition was not regulation. A little further down, however, his Lordship made a reservation that he did not intend to lay down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, or in some body, be justified and that every case must be judged on its own facts and in its own setting of time and circumstances, and that it might be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation, and that inter-State trade, commerce and intercourse thus prohibited and thus monopolised remained absolutely free. His Lordship further added that regulation of trade might clearly take the form of denying certain activities to persons by age or circumstances unfit to perform them or of excluding from passage across the frontier of a State creatures of things calculated to injure its citizens.

16. Basing his argument on the aforesaid authorities, Mr. Mayer contended that the power to regulate traffic in streets and public places, vested in the Commissioner of Police u/s 62(1) (b) of the Calcutta Police Act and the corresponding provisions in the Calcutta Suburban Police Act, did not authorise him virtually to prohibit plying of vehicles, which was intended to be done under the impugned notification. Faced with the problem that the impugned notification did not totally stop the plying of handcarts but merely restricted the plying thereof during stated hours of the day, within a prohibited area, Mr. Meyer contended that the nature of restriction was such that it brought about a total prohibition of the business of the handcart owners in a commercial sense and that was virtual prohibition under the colour of restriction or regulation and this also fell outside the statutory power of the Commissioner of Police. In support of his contention Mr. Meyer relied on the following observation of the Supreme Court in Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, :-

Learned counsel, however, contends -- and we think with considerable force and cogency--that although, in form, there is no prohibition against carrying on any wholesale business by anybody, in effect and in substance the bye-laws have brought about a total stoppage of the wholesale dealers' business in a commercial sense. The wholesale dealers, who will have to pay the prescribed fee to the contractor appointed by auction, will necessarily have to charge the growers of vegetables and fruits something over and above the prescribed fee so as to keep a margin of profit for themselves but in such circumstances no grower of vegetables and fruits will have his produce sold to or auctioned by the wholesale dealers at a higher rate of commission but all of them will flock to the contractor who will only-charge them the prescribed commission. On the other hand, if the wholesale dealers charge the growers of vegetables and fruits only the commission prescribed by the bye-laws they will have to make over the whole of it to the contractor without keeping any profit themselves. In other words, the wholesale dealers will be converted into mere tax collectors for the contractor or the respondent Committee without any remuneration from either of them. In effect, therefore, the bye-laws, it is said have brought about a total prohibition of the business of the wholesale dealers in a commercial sense and from a practical point of view. We are not of opinion that this contention is unsound or untenable.

17. Mr. Meyer sought to distinguish the Special Bench decision of this Court in Umesh Chandra Pal Vs. The King, on the ground that the aforesaid decision was concerned with the power of the Commissioner of Police to prohibit the use or driving of certain types of vehicles in streets or public places, u/s 61A of the Calcutta Police Act and its corresponding provision in the Calcutta Suburban Police Act and had nothing to do with the power of regulation vested in the Commissioner of Police u/s 62 of the Calcutta Police Act and its corresponding provision under the Calcutta Suburban Police Act. He contended that under the latter sections the Commissioner of Police had no power virtually to prohibit the

plying of a particular type of vehicle under the colour of regulation or restriction, when there was no necessity for prohibition of its user on the road.

18. In elaboration of his last argument Mr. Meyer contended that if the object of the notification was to safeguard against obstructions to fast-moving vehicles, during peak traffic hours, by slow-moving vehicles like handcarts and to prevent traffic jams and street accidents, the notification was unreasonable for a two-fold reason, firstly, because other slow-moving vehicles like rickshaws were left free to ply within the prohibited area during the alleged peak traffic hours and secondly, because the hours of prohibition, chosen by the Commissioner of Police were not all peak hours of traffic. Mr. Meyer further contended that by the impugned notification the petitioners' right to carry on business was being affected. The restrictions imposed by the notification, he contended, must have to pass the test of reasonableness under Article 19(6) of the Constitution, which test the restrictions, imposed by the notification, did not survive in the facts and circumstances disclosed.

19. I propose to examine the arguments made by Mr. Meyer, in the order they were advanced. The power of the regulation of traffic implies imposition of restriction thereon. Mr. Meyer does not dispute that it must necessarily be so. He, however, contends that the degree of such restriction must not be so high as to impose total prohibition, either in the actual sense or in the virtual sense. In the instant case there has not been a total restriction or prohibition imposed on the plying of handcarts in the prohibited area. After the prohibited hours handcarts may ply within the prohibited area as freely as before. Mr. Meyer, however, contends that the permitted hours are inconsequential hours from commercial point of view, and the restriction imposed has virtually brought the handcart business to a standstill. This is, however, denied in the affidavit-in-opposition affirmed by Sri Upananda Mukherjee, on April 11, 1962. He says that the restriction only applies to some of the areas of the city and even in the said areas the restriction applies during particular hours only. He further says that the petitioners are not prohibited from transporting goods in handcarts in the prohibited area after the prohibited hours and outside the prohibited area during all hours. He says also that even after March 15, 1962, the handcart pullers were found plying their carts outside the prohibited area and within the said area outside the prohibited hours. This last statement in the affidavit-in-opposition is not disputed by Mr. Meyer. That being so, it is difficult to uphold Mr. Meyer's contention that the handcarts business of the petitioners has virtually or totally come to a stand-still. Mr. Meyer, no doubt, very strongly emphasised on the inconvenience caused to the petitioners by the restrictions, clamped on the plying of the handcarts, during the all important business hours within the all important business area. The notification must have caused some inconvenience to the petitioners. Any regulation or restriction is likely to cause some curtailment of freedom and consequentially cause a degree of inconvenience. The question for my consideration, however, is whether the degree of inconvenience is such as may have rendered this handcart business commercially valueless to

the petitioners. On the materials disclosed in the petition and also in the affidavit-in-opposition, I am unable to hold that the permissible hours of plying are of no commercial importance to the petitioners. The fact that they are plying their handcarts during the permissible hours only goes to show that they find it worth their while to do so and this negatives their contentions that the restrictions have rendered the handcart business commercially of no value. Ultimately the inconvenience may be remedied by adjustment of business hours between hirers of handcarts and handcart owners and by such adjustment the owners of handcarts may possibly regain their old business. There is nothing to show that this is impossible. In this connection it may be worthwhile to be reminded of the observations of the Supreme Court in *Virendra v. The State of Punjab*, (10) (1958 S.C.R. 317; AIR 1957 S.C. 896, 899) on which the learned Advocate-General strongly relied. In that case in exercise of the powers under the Punjab Special Powers (Press) Act, 1956, the Home Secretary of the Government of Punjab imposed a twofold restriction on a newspaper known as *The Daily Pratap* firstly, by prohibiting the newspaper from printing and publishing any articles, report, news item, letter or any other material or character whatsoever relating to or connected with "Save Hindi agitation" and, secondly, by prohibiting it from bringing into the State of Punjab the said newspaper. On the restrictions being challenged as unreasonable restrictions on the rights guaranteed under Article 19(1) (a) and 19(1) (g) of the Constitution, because of their total restrictive nature, the Supreme Court observed as follows:--

The restrictions, so far as they extend, are certainly complete but whether they amount to a total prohibition of the exercise of the fundamental rights must be judged by reference to the ambit of the rights and, so judged, there can be no question that the entire rights under Arts. 19 (1) (a) and 19(1) (g) have not been completely taken away, but restrictions have been imposed upon the exercise of those rights with reference to the publication of only articles etc. relating to a particular topic and with reference to the circulation of the papers only in a particular territory and, therefore, it is not right to say that these sections have imposed a total prohibition upon the exercise of those fundamental rights.

20. For the reason aforesaid I am of the opinion that the handcart business of the petitioner cannot be said to have been totally prohibited under the impugned notification and that their constitutional rights have not been unreasonably curtailed.

21. The Commissioner of Police is reasonable for regulation of traffic. It is his duty to see that public safety and public convenience be not jeopardised by unrestricted plying of all types of vehicles during all hours. Handcarts are an archaic type of vehicle and are more or less anachronistic amidst fast moving vehicles in streets teaming with pedestrian traffic. The Commissioner of Police says in his affidavit-in-opposition that the existence of handcarts on the streets and their plying during the peak traffic hours cause traffic inconvenience and

retard flow of traffic. It is his undoubted duty to try to prevent both these things on the road. By restricting the plying of handcarts during the prohibited hours he has tried to achieve these objects. This is not outside the powers vested in him u/s 62 of the Calcutta Police Act and I do not think that the notification is on the face of it bad or beyond the powers of the Police Commissioner to make it or a colourable exercise of power by him, whereby he sought virtually to prohibit handcart traffic under the pretext of regulation.

22. The next question for my consideration is whether the notification is in excess of the need for relieving traffic congestion and traffic accidents and therefore unreasonable. It is well settled that there cannot be any abstract standard or general pattern of reasonableness. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time must all have to be considered together in order to find out whether the restrictions are in excess of the requirement and therefore, unreasonable (vide the observations of Ayyanger, J. in *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, Mr. Meyer made the grievance that while traffic in handcarts and buffalo and bullock carts was totally restricted in the prohibited area during the prohibited hours, the restriction was not made applicable to equally slow-moving vehicles like rickshaws. I find little substance in this grievance. Rickshaws are not as large in size as handcarts or buffalo carts or bullock carts. Rickshaws have also greater maneuverability compared to handcarts, bullock carts and buffalo carts. That being so, they may not be the cause of equal inconvenience on the road. On the materials on record it is impossible for me to hold that the notification makes an unreasonable discrimination in favour of rickshaws. The other grievance made by Mr. Meyer was that the period from 9 a.m. to 6 p.m. was not throughout the peak traffic period. He relied on a chart of volume of road traffic in Burrabazar area, annexed to the affidavit by Panchu Gopal Mukherjee, affirmed on May 7, 1962 and used on behalf of the respondents, which no doubt supports the contention that the height of traffic is not uniform during the entirety of the prohibited period. Basing his arguments on the aforesaid material Mr. Meyer contended that it was not necessary wholly to prohibit handcart traffic during the entire period. This argument is not very well-conceived. Regulation of traffic is a complex problem. It may not be possible to allow the handcarts to ply within the prohibited area in one hour and to take them off the road in the very next. Once the handcarts enter the prohibited area they may not be able to go out of it for several hours. If the Commissioner of Police in his wisdom and experience has thought it proper to restrict the plying of handcarts for several hours together within the prohibited area, it cannot be said that he has done so unreasonably. To have directed otherwise might have frustrated the entire purpose of the notification. I am, therefore, not satisfied with the last branch of Mr. Meyer's argument that the restrictions are in excess of the requirement and therefore unreasonable.

23. The learned Advocate-General rightly contended that the Police Commissioner came to his conclusion as to the necessity of the regulation on proper materials and bonafide exercised his power to regulate traffic in public interest. The bonafides of the Commissioner of Police are not disputed by the petitioners. The criticism directed against the notification partakes of the character of criticism as to want of jurisdiction and error of judgment. I have already held that the Commissioner of Police possessed the necessary jurisdiction to make the notification. I also hold that the Police Commissioner did not fall a victim to an error of judgment in making the impugned notification because, in my opinion, he was right in his conclusion that the plying of handcars, within the prohibited area, which is the busiest commercial area in the city, during peak traffic hours, was a source of traffic impediment, traffic obstruction, traffic jam, road accidents, and impediment to pedestrian traffic. The extent and urgency of the evil sought to be remedied by the notification justifies the making of it and the restriction imposed is not disproportionate to the remedy sought to be achieved.

24. Before I close this judgment I have to deal with a small point of inconvenience on which also Mr. Meyer emphasised. He contended that the garages of the petitioners were located within the prohibited area and that the notification rendered it impossible for the petitioners to take out their handcars during the prohibited hours even for plying elsewhere. The location of the petitioners' garages within the prohibited area is not admitted by the Commissioner of Police. It is therefore difficult for me to decide that the petitioners really suffer from that type of inconvenience. Even if their grievance is factually true, even then this is a remediable grievance and I do not attach much importance to it. The petitioners may take out their carts earlier than the prohibited hours or may shift their garages elsewhere, and thus remedy inconvenience caused to them by the notification.

25. I have also to notice, in this judgment, another grievance somewhat faintly argued by Mr. Meyer. He argued that the Police Census of traffic gave the figures of the volume of traffic for twenty four hours together and did not supply any break-up figures for the hours 9 a.m. to 6 p.m. This argument is not of any consequence. It is conceded that the prohibited hours are the most important hours of traffic. Therefore, even without any break-up figures, it is reasonable to assume that the greater portion of the daily volume of traffic is ascribable to the prohibited hours.

26. All the arguments advanced by Mr. Meyer, therefore, fail and this Rule is discharged. I make no order as to costs.