

(2007) 03 CAL CK 0054
In the Calcutta High Court
Case No : C.O. No. 2225 of 2006

New India Assurance Co. Ltd.

APPELLANT

Vs

Kutiswar Paramanik and Another

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 199, 2(11), 209F
Calcutta Police Act, 1866 — Section 3, 61A, 61A(1)
Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (2008) 1 CHN 44

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : Arunabha Ghosh, Soumya Majumder, Biswaroop Bhattacharjee and Arjun Ray Mukherjee, for the Appellant; S. Mukhopadhyay and Bhaskar Ghosh for State and Alok Ghosh and S.K. Debnath for Corporation, for the Respondent

Judgement

Tapan Kumar Dutt, J.—The first petitioner claims to be a Trade Union of owners and pullers of jin-rickshaws registered under the Trade Unions Act, 1926. The second petitioner claims to be its General Secretary while the third and the fourth petitioners claim to be a owner and a puller of jin-rickshaw respectively. They are aggrieved by the inaction of the Kolkata Municipal Corporation (hereafter the Corporation) and its authorities in renewing certificates of enlistment u/s 199 of the Kolkata Municipal Corporation Act, 1980 (hereafter the K.M.C. Act).

2. At the outset Mr. Mukhopadhyay, learned Junior Standing Counsel representing the State of West Bengal has raised a preliminary objection with regard to maintainability of the writ petition. According to him, an earlier writ petition filed by the first petitioner claiming similar relief is pending before this Court and hence the petitioners are disentitled to any relief in this petition.

3. Mr. Ghosh, Learned Counsel for the petitioners submitted that the issue raised in this writ petition is not directly and substantially in issue in the previously

instituted writ proceedings and, therefore, the objection is misconceived. According to him, the earlier petition was filed at a time when the provisions of the Calcutta Hackney-Carriage Act, 1919 (hereinafter the Act of 1919) governed plying of rickshaws on the city roads of Kolkata. Now that it has been amended by the Calcutta Hackney-Carriage (Amendment) Act, 2006 (hereafter the Act of 2006), there has been a change in the cause of action and there being no identity of issues, the writ petition would be maintainable.

4. In support of his submission, Mr. Ghosh invited the attention of this Court to the fact that on the basis of the proposed amendment and which was even to see the light of the day, the respondents were refusing to issue the necessary licences in respect of hand-pulled rickshaws and an order passed by the appropriate authority of the Corporation was stayed by this Court. However, presently with the introduction of the Act of 2006, the Corporation has not disposed of any of the applications made by the members of the first petitioner for renewal of the certificates of enlistment on the ground that paying of jin-rickshaws have been prohibited (not yet communicated) and has kept the same pending despite there being no amendments in the K.M.C. Act in relation to obtention of certificate of enlistment for jin-rickshaws u/s 199 of the Kolkata Municipal Corporation Act read with Schedule IV, Entry 36 thereof, and provision relating to payment of tax on carriages mandated by Section 209F thereof. He submitted that so long as the requirement of obtaining certificate of enlistment in respect of jin-rickshaw is done away with by amending the provisions of the K.M.C. Act, application for renewal of certificate of enlistment cannot be refused by the Corporation on the ground of introduction of the Act of 2006 which has excluded from the operation of the Act of 1919 plying of rickshaws in the city of Kolkata. Since rickshaws have been excluded, the owners and pullers thereof with the introduction of the amendment are no longer required to register the rickshaws, to obtain licence from the registering officer, to affix plates, etc. According to him, a rickshaw may now be plied without its registration by the registering officer and without a licence issued by such officer and that the respondents cannot, in the absence of a statutory prohibition in relation to plying of jin-rickshaws, refuse to grant renewal of certificate of enlistment as prayed for.

5. Having heard Mr. Ghosh on the merits of the writ petition and having perused copy of the petition said to be pending, this Court is of the considered view that the bar of Section 10 of the CPC is not attracted on facts and in the circumstances. Section 10 of the Code would have no application in a case where the subject-matter may be same but the cause of action for approaching the Court is not identical or if the cause of action is entirely new. The cause of action for moving the present petition is not identical and, hence, the preliminary objection raised by learned Junior Standing Counsel stands overruled.

6. Mr. Ghosh, Learned Counsel appearing for the Corporation, however, opposed the writ petition on an entirely different ground. He referred to the statements and objects of the Act of 2006 to contend that the same was introduced with the

object of obliterating the inhuman practice of hand-pulled rickshaws and palanquins as vehicles of public conveyance and to ease, to some extent, traffic congestion caused by such slow moving vehicles on the busy streets of Kolkata. He contended that since hand-pulled rickshaw is no longer a recognized system of conveyance, the same cannot be plied on the city roads and mere omission on the part of the legislature to amend the corresponding provisions of the K.M.C. Act would not entitle the petitioners to claim relief in the shape of directions on the respondents to allow rickshaws to be plied. He further submitted that so long plying of rickshaws is not recognized as a system of conveyance, obtaining of certificate of enlistment from the Corporation would not enure to the benefit of either the owners or pullers of the rickshaws. He, accordingly, prayed for dismissal of the writ petition.

7. In course of argument, learned Junior Standing Counsel was requested by this Court to obtain instruction as to whether apart from amendment of the Act of 1919, any statutory prohibition had been imposed by the State on plying of rickshaws or not. Learned Counsel very fairly brought to the notice of the Court the provisions contained in Section 61A of the Calcutta Police Act but at the same time submitted that no notification in the Official Gazette had yet been issued by the Commissioner of Police prescribing the types of vehicles which shall not be driven or used in streets and public places in terms thereof. He, however, placed certain orders issued by the Transport Department whereby plying of rickshaws on certain streets mentioned in the respective schedules of the orders have been prohibited.

8. Having heard Learned Counsel for the parties, it appears that the only issue which arises for determination is whether the Corporation is justified in not disposing of the applications for renewal of certificates of enlistment in view of the Amendment Act of 2006.

9. Be it recorded that since a pure question of law is involved in the present petition, Learned Counsel for the parties agreed to disposal of the writ petition in the "Court Application" stage.

10. In view of the present determination conferred on this Court by the roster framed by the Hon'ble the Chief Justice, it would not be competent for this Court to decide as to whether rickshaws can be plied on city roads or not. However, for the purpose of deciding the issue involved herein, i.e. whether the Corporation is justified in not deciding the applications for renewal of certificate of enlistment, it may be necessary for this Court to make certain observations which might affect the issue in the petition preceding before the other Court. It is recorded that the observations to be made hereunder being intended to support the order which this Court proposes to pass ultimately, the same may not be construed as an authoritative pronouncement on the point which would bind the respondents in the other petition.

11. It is a cardinal rule of interpretation that objects and reasons of/for a statute

are not to be looked into if the legislative intent is clear from the language used in the statute. When by clear and unambiguous words a statute itself declares the legislative intent, one need not look for the intent of the legislature in the objects and reasons. It is only when the language used in the statute is obscure or ambiguous that as an extrinsic aid, the objects and reasons may be looked into for finding out the legislative intent. A perusal of the Act of 2006 clears the position that the requirements of registration, obtaining licences, affixation of plates, etc. in respect of rickshaws have been obliterated. One would, therefore, be under no obligation to follow the provisions in relation to plying of rickshaws hitherto before existing. Since the language of the Act of 2006 is clear, this Court finds no reason to look into the objects and reasons therefor.

12. One may now look into Section 61A of the Calcutta Police Act. It authorizes the Commissioner of Police to prohibit use of certain types of vehicles in streets or public places in the manner specified therein and the consequences for non-compliance of directives issued under Sub-section (1) thereof.

13. The word "vehicle" in terms of Section 3 of the Calcutta Police Act would include a carriage or other wheeled conveyance of any description capable of being used on the streets. None can dispute that a rickshaw is a wheeled conveyance. Also, in terms of Section 2(11) of the K.M.C. Act, carriage means any wheeled vehicle which is ordinarily used for the conveyance of human beings and includes a jin-rickshaw. Jin-rickshaw according to Chambers 20th Century Dictionary means a small, two wheeled, hooded carriage drawn by a man or men. It is, therefore, a vehicle within the meaning of the Calcutta Police Act and no prohibition of the nature contemplated in Section 61A thereof having been introduced by the Commissioner in the manner specified therein, using of a jin-rickshaw which fits in within the meaning of "vehicle" cannot be arbitrarily stopped on the basis of a misinterpretation and/or misunderstanding of the extant laws.

14. Mr. Ghosh for the petitioners seems to be correct in his submission that whether or not a rickshaw may be allowed to be used or plied on a city road or in public place is a different question altogether but so long the provisions of the K.M.C. Act are not amended, the authorities of the Corporation cannot refuse to renew the certificate of enlistment by referring to the Act of 2006.

15. Section 199 of the K.M.C. Act provides that certificate of enlistment has to be obtained by a person engaged in any profession, trade or calling as mentioned in Schedule IV and to get the same renewed annually from the Municipal Commissioner upon presentation of an application in such form as may be specified by the Municipal Commissioner together with such application fee as may be determined by the Corporation. After making necessary enquiry the Municipal Commissioner is mandated, within 30 days of receipt of the application, to grant the certificate if it is in order or he may reject it if it is not in order. The scope of scrutiny of an application for issuance of a certificate of enlistment or its renewal is thus limited. It can be refused if the application is not

in order. If it is in order, grant is the rule. Once Section 199 read with Schedule IV, Entry 36 of the K.M.C. Act, requires a person to obtain a certificate of enlistment for engaging in the trade of using or plying jin-rickshaws, and such statutory provision is still in vogue, the application for renewal has to be considered by the Corporation according to the terms of the statute and consideration thereof cannot be withheld on grounds which are extraneous. In this connection one may note the decisions of this Court reported in Abdul Rashid Vs. Calcutta Municipal Corporation and others, .

16. Learned Counsel for the Corporation has placed before this Court the specified application form for obtaining certificate of enlistment which at Sl. No. 12 thereof requires that number of rickshaws has to be specified. Such form for application bearing Sl. No. L/391285, which shall be retained with the records of this case duly countersigned by the concerned Court Officer, appears to have been issued on 5.10.07 and therefore, the conclusion is irresistible that even on 5.10.07 the Corporation had been issuing forms in respect of application for obtaining certificate of enlistment. If applications made by the members of the first petitioner are in order, perhaps the Corporation would have no other option but to grant the renewal as prayed for.

17. The Corporation is created by the K.M.C. Act and therefore is bound to abide by it. Attention of this Court has not been invited to any provision of any statute that overrides the K.M.C. Act insofar as the requirement of obtaining certificate of enlistment for jin-rickshaw is concerned. So long as amendments are not effected in the K.M.C. Act with regard to jin-rickshaws, certificate of enlistment cannot be withheld on the specious ground of amendment of the Act of 1919.

18. Accordingly, this Court declares that the action of the Corporation in not considering and disposing of the applications for renewal of certificates of enlistment received by it from members of the first petitioner, either by granting or refusing it, to be unjustified, and wrongful and harassing acts. As has been noted above, the decision on the applications filed has not been given on extraneous grounds. The Corporation is directed to proceed to consider only those applications received by it in accordance with law and in the light of the observations contained above and to pass appropriate orders on all the applications as early as possible but positively within six weeks from date of receipt of a copy of this Judgment and order. The writ petition succeeds to the extent indicated above. However, there shall be no order for costs.

Urgent Photostat certified copy of this judgment, if applied for, be furnished to the applicant within 3 days from date of putting in requisites therefor.

Later:

Let a signed xerox copy of the operative part of the judgment/order be given to the learned Advocates for the parties on the usual undertaking.

Dipankar Datta, J.