
(2010) 05 AHC CK 0105
In the Allahabad High Court

NOIDA Rickshaw Chalak Vikas Samiti and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 27-05-2010

Acts Referred:

Constitution of India, 1950 — Article 13, 19, 21, 243Q, 77

Citation : (2010) 5 AWC 4734

Hon'ble Judges : Virendra Singh, J;Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—The petitioner, a registered society consisting of rickshaw pullers of district Gautam Budh Nagar, challenges the decision of the respondents prohibiting cycle-rickshaw pulling in Sector-18 and six main roads of city of New Okhla Industrial Development Authority (NOIDA), district Gautam Budh Nagar.

2. We have heard Sri Dharam Pal Singh, learned Senior Advocate, assisted by Sri S. Niranjana for the petitioners and Sri R.B. Singhal, learned Senior Advocate, assisted by Sri Ramendra Pratap Singh for respondents No. 2 and 5. Learned Standing Counsel appears for State-respondents.

3. The brief facts, as emerge from the pleadings of the parties, are; the petitioner is a registered society under the Societies Registration Act, 1860 consisting of about 300 members who are rickshaw pullers (cycle-rickshaw) in the district Gautam Budh Nagar. The society has been constituted with the object of making all efforts for the welfare of rickshaw pullers. The petitioners' case in the writ petition is that since October, 2009 the interference is being caused by the respondents in the occupation of the rickshaw pullers by creating several restrictions. Reference of news item dated 6th December, 2009 published in Hindi Daily newspaper "Amar Ujala" has been made in which information regarding prohibition of running of rickshaw in several routes have been mentioned. The petitioner pleads that in the city of Delhi also the Delhi Municipal Committee has

taken decision to prohibit rickshaw pulling at several places, which was challenged before the Delhi High Court. The Delhi High Court took serious note of the actions of the respondents in the said writ petition. Reliance has also been placed on an interim order dated 21st October, 2009 passed in Writ Petition No. 54647 of 2009 (Mahesh Kumar and Ors. v. Regional Transport Authority and Ors.) in which writ petition the decision of the respondents banning seven seater CNG Tempo was stayed by this Court on 21st October, 2009. The petitioners claim to have submitted representations dated 2nd December, 2009 and 3rd December, 2009 to the District Magistrate as well as Chief Executive Officer of NOIDA protesting closure of several routes for running of the cycle-rickshaw. Reliance has been placed on the Full Bench judgment of the Delhi High Court in Writ Petition No. 4572 of 2007 (Manushi Sangthan, Delhi v. Government of Delhi) decided on 10th February, 2010.

4. Petitioners' case in the writ petition is that rickshaw pullers have no other source of livelihood except rickshaw pulling and restrictions on rickshaw pulling shall effect the livelihood of the members of the petitioners' society. The petitioner pleads that the action of the respondents is violative of Article 19(1)(g) of the Constitution of India. The respondents in the counter affidavit have brought on the record copy of the decision dated 1st September, 2009 taken in the meeting of the Traffic Management Cell presided over by the Chief Executive Officer of the NOIDA to completely prohibit cycle-rickshaw in Sector 18 and on six main roads of the NOIDA. The decision was taken on 1st September, 2009 for taking appropriate steps. Again in the meeting held on 30th September, 2009 of the Traffic Management Cell headed by Additional Chief Executive Officer, it was decided that with effect from 1st October, 2009 in six main roads of NOIDA and in Sector 18 cycle-rickshaw be prohibited. In the writ petition following reliefs have been claimed by the petitioners:

(i) issue a writ, order or direction in the nature of mandamus restraining the respondents from prohibiting or creating any hindrance in the rights of the rickshaw pullers from plying their rickshaws in any part of city of NOIDA (Gautam Budh Nagar).

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the rickshaw pullers, at least the members of the society (petitioner No. 1) from plying their rickshaws in the city of NOIDA (Gautam Budh Nagar).

5. Sri Dharam Pal Singh, learned Senior Advocate, in support of the writ petition raised various submissions. It is submitted that the members of the petitioners' society belong to poorest section of the society, who are dependent for their livelihood on rickshaw pulling and the restriction imposed by the respondents is undue restriction in their rights, which is guaranteed under Article 19(1)(g) of the Constitution of India. It is submitted that the members of petitioners' society have right to carry on their occupation of rickshaw pulling in all the roads of NOIDA city where they have been carrying on their business since long. It is

submitted that the restrictions imposed are unreasonable restrictions as the restriction on six main roads and Sector 18 make impossible for a rickshaw puller on several occasions to cross one sector. It is submitted that restrictions also cause inconvenience to the passengers and it is not practically possible to change the rickshaw on and off. It is submitted that cycle-rickshaws do not cause any pollution and are most environment friendly. It is submitted that no restriction has been imposed to motor vehicles which shall result in increase of environmental pollution. It is further submitted that the Traffic Management Cell headed by Chief Executive Officer was not competent to impose the impugned restrictions and at best it was Authority constituted u/s 3 of the U.P. Industrial Area Development Act, 1976 which was competent to impose any restriction.

6. Learned Counsel for the parties were heard in this writ petition and the judgment was reserved on 5th May, 2010. The parties were further heard on 14th May, 2010 on the question as to whether the restrictions, which have been imposed on the rights of the members of the petitioners' society to ply cycle-rickshaw on certain roads and Sector 18, can be said to be a restriction imposed by "Law" as contemplated by Article 19(6) of the Constitution of India.

7. Learned Counsel for the petitioners contended that decision to impose restriction has been taken in the meeting of the traffic management cell presided over by Chief Executive Officer, which is only an administrative decision and is not a "Law" within the meaning of Article 19(6) of the Constitution of India. It is submitted by learned Counsel for the petitioners that restriction on fundamental rights as guaranteed under Article 19(1)(g) of the Constitution can be imposed only by a "Law" as contemplated under Article 19(6) of the Constitution of India. The restriction on plying of rickshaw in Sector 18 and six main roads having not been imposed by a "Law", the said administrative decision is liable to be struck down as violative of rights guaranteed under Article 19(1)(g) of the Constitution of India.

8. Sri R.B. Singhal, learned Senior Advocate, assisted by Sri Ramendra Pratap Singh, refuting the submissions of learned Counsel for the petitioners, contended that restrictions which are imposed on six main roads and Sector 18 are reasonable restrictions within the meaning of Article 19(6) of the Constitution of India. It is submitted that cycle-rickshaw is a slow moving vehicle which causes danger to the safety on the roads on which fast moving motor vehicles are passing. It is submitted that restrictions have been imposed for the safety of the public in general and the fast moving traffic. It is submitted that the Authority is fully competent to put restrictions on use of the roads and the restrictions have been imposed only on six main roads and Sector 18 and the cycle-rickshaw is not prohibited in other parts of NOIDA. The rickshaw pullers are free to move within the sectors or in the roads where there is no restriction. It is submitted that NOIDA is the main City of NCR (National Capital Region) and the smooth flow of traffic on its main roads have to be ensured by the Authority and the above steps have been taken by the NOIDA to improve public transport system. The said

decision has been taken on 1st September, 2009 in the meeting presided over by the Chief Executive Officer and on 30th September, 2009 it was decided in the meeting that from 1st October, 2009 there shall be complete prohibition of plying cycle-rickshaw on six main roads and in Sector 18. It is further submitted that Chief Executive Officer has been delegated with the power in the meeting dated 24th February, 1996 of the Authority and the Chief Executive Officer is fully entitled to exercise the jurisdiction of the Authority and the decisions taken on 1st September and 30th September, 2009 are fully within the jurisdiction of the Chief Executive Officer. A Traffic Management Cell has been constituted to solve the traffic problems, which consists of Senior Project Engineer, NOIDA, Superintendent of Police (Traffic), General Manager, RITES and Chief Town Planner NOIDA. The Traffic Management Cell looks after the problems which are faced by the people at large due to traffic jam and congestion of traffic. The Common Wealth Games are being held in Delhi and the decision has been taken with a view to remove traffic congestion for the Common Wealth Game and smooth flow of the traffic. Sector 18 is over crowded sector and being commercial sector prohibition on plying rickshaw has been made in Sector 18.

9. Learned Counsel for the parties have placed reliance on various judgments of the Apex Court and the High Courts, which shall be referred to while considering the submissions in detail.

10. From the pleadings of the parties and submissions made by learned Counsel for the parties, following issues arise for consideration:

(1) Whether the decisions taken in the meeting dated 1st September, 2009 and 30th September, 2009 placing restrictions on plying of cycle-rickshaw in Sector 18 and six main roads of NOIDA are the decision taken by authority competent in accordance with the provisions of the U.P. Industrial Area Development Act, 1976?

(2) Whether the cycle-rickshaw pullers have fundamental right under Article 19(1)(g) of the Constitution of India to ply rickshaw on roads of NOIDA?

(3) Whether the decisions dated 1st September, 2009 and 30th September, 2009 taken in the meeting of traffic cell presided by Chief Executive Officer, NOIDA putting restrictions on plying of the cycle-rickshaw is "Law" within the meaning of Article 19(6) of the Constitution of India.

(4) Whether the restriction imposed on plying of rickshaws in Sector 18 and six main roads of NOIDA are valid restrictions within the meaning of Article 19(6) of the Constitution of India?

11. Before we proceed to consider the above issues, it is relevant to have a look over the statutory provisions governing the field.

12. The Uttar Pradesh Industrial Area Development Act, 1976 (hereinafter referred to as the Act) has been enacted by State Legislature to provide for constitution of an Authority for the development of certain areas in the State into

industrial and urban township and for matters connected therewith. Section 3 of the Act provides that State Government by notification constitute, for the purposes of this Act, an Authority for any industrial development area. The New Okhla Industrial Development Authority (NOIDA) was constituted by notification dated 17th April, 1976 exercising the power under Sub-section (2) of Section 3 of the Act consisting of Secretary of the Government of Uttar Pradesh, Industries Department as ex-officio Chairman and other members including Chief Executive Officer as Member Secretary. The NOIDA thus is an industrial township and all functions, which are normally entrusted to a Municipality, are to be performed by the Authority. Article 243Q of the Constitution of India also contemplates creation of Industrial township for an industrial area for providing municipal services, which are being provided or proposed to be provided by a Municipality. Article 243Q of the Constitution of India is quoted as below:

243Q. (1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

13. The Chief Executive Officer is appointed by the State Government as a whole time officer of the Authority and is to exercise such power and perform such duties as delegated to him by the Authority. Section 4(3) of the Act is quoted as below:

4. Chief Executive Officer.-(1)

(2) ...

(3) The Chief Executive Officer shall exercise such power and perform such duties as may be specified in the regulations or delegated to him by the Authority.

14. Section 19 of the Act provides for power to make regulations by the authority. Section 19 is quoted below:

19. Power to make regulations.- (1) The Authority may with the previous approval of the State Government make regulation not inconsistent with the provisions of this Act or the rules made there under for the administration of the affairs of the Authority.

(2) In particular, and without prejudice to the generally of the foregoing power, such regulations may provide for all or any the following matters namely,-

(a) the summoning and holding of meetings of the Authority the time and place where such meetings are to be held the conduct of business at such meetings, and the number of members necessary to form a quorum there at;

(b) the power and duties of the Chief Executive Officer;

(c) the form of register of application for permission to erect a building;

(d) the management of properties of the Authority;

(e) fee to be levied in the discharge of its functions;

(f) such other matters as are to be provided for in regulation.

15. In exercise of power u/s 19 of the Act the New Okhla Industrial Development Area (Preparation and Finalisation of Plan) Regulation 1991 has been framed vide notification dated 12th April, 1991 published in U.P. Gazette dated 8th June, 1991.

16. Now the first issue, as to whether the decision dated 1st September, 2009 and 30th September, 2009 can be said to be a decision taken by the competent authority in accordance with the Act, is to be considered. Learned Counsel for the petitioners has submitted that for the decision contemplated under the Act with regard to functions u/s 6 of the Act, it is the Authority constituted u/s 3 of the Act which alone is empowered to take decision. Section 4(3) of the Act, as quoted above, provides that Chief Executive Officer shall exercise such power and perform such duties as may be specified in the regulations or delegated to him by the Authority. In the counter affidavit the respondents have brought on the record copy of the decision of the Board meeting dated 24th February, 1996 in which delegation of various functions to the Chief Executive Officer was approved. According to the resolution the Chief Executive Officer was delegated the powers of Authority under Sections 7, 8, 10, 11 and 12 under the control and guidance of the Authority. Thus the power of Authority is delegated to the Chief Executive Officer and the Chief Executive Officer can exercise the jurisdiction in that regard as delegated to him.

17. Learned Counsel for the petitioners after having seen the resolution of the Board did not pursue the point any further. In view of the above, we proceed on the premise that Chief Executive Officer is competent to take decision with regard to power delegated to him by the Authority.

18. The second issue is as to whether the cycle-rickshaw pullers have

fundamental right under Article 19(1)(g) of the Constitution of India to ply rickshaw on roads of NOIDA. Article 19(1) of the Constitution of India protects certain rights of all citizen including right to practice any profession or to carry on any occupation, trade or business. Article 19(2) to 19(6) of the Constitution enumerate conditions empowering the State to make "Law" imposing, in the interest of general public, reasonable restrictions on the exercise of rights conferred by different sub-clauses in Article 19(1). Article 19(1)(g) and 19(6) of the Constitution of India are quoted below:

19. (1) All citizens shall have the right-

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(g) to practise any profession, or to carry on any occupation, trade or business.

...

19(6). Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub- clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

19. The Constitution makers by enacting Part-III of the Constitution inscribed in the Constitution certain basic rights which inhere in every human being and which are essential for the unfolding and development of his full personality. The fundamental rights are those rights which the State enforces against itself. The guarantee under Article 19(1)(g) extends to practise any profession, or to carry on any occupation, trade or business. The word "occupation" has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which the individual is engaged. The word "occupation, in wider sense includes any vocation which engages one"s time, profession, trade or business. The rickshaw pullers are engaged in occupation of carrying on passengers to and fro for gain. The cycle-rickshaws are plied on the roads, streets, by-lane etc. in a city. The question as to whether a motor vehicle owner,

who is running his motor vehicle on roads, has right to use the road for carrying passengers and whether the person running the motor vehicle for hire has a right under Article 19(1)(g) came for consideration before the Apex Court in *Saghir Ahmad Vs. The State of U.P. and Others*, *Saghir Ahmad v. the State of U.P. and others*. In the said case the Apex Court considered the right of using road/streets by public and for all category of vehicles. The Apex Court made following observations in the said judgment:

The fact that the members of the public have a right of passing and repassing over a highway does not mean however that all highways could be legitimately used as foot passages only and that any other user is possible only with the permission or suffereance of the State. It is from the nature of the user that the extent of the right of passage has to be inferred and the settled principle is that the right extends to all forms of traffic and also to all which are reasonably similar and incidental therto. (Ibid page 35). The law has thus been stated in Halsbury's Laws of England (Vide Vol. 16, p. 185):

Where a highway originates in an inferred dedication, it is a question of fact what kind of traffic it was so dedicated for, having regard to the character of the way and the nature of the user prior to the date at which they infer dedication; and a right of passage once acquired will extend to more modern forms of traffic reasonably similar to those for which the highway was originally dedicated, so long as they do not impose a substantially greater burden on the owner of the soil.

20. The Apex Court in the said judgment further held that right of contract carriers as well as the common carriers is protected under Article 19(1)(g) of the Constitution which can be controlled by appropriate regulations under Clause (6) of the Article 19. Following was laid down by the Apex Court in the said judgment:

...Under the Indian Constitution the contract carriers as well as the common carriers would occupy the same position so far as the guaranteed right under Article 19(1)(g) is concerned and both are liable to be controlled by appropriate regulations under Clause (6) of that Article. The law on the point, as it stands at present, has been thus summed up by the learned Judge:

The true position, then is, that all public streets and roads vest in the State, but that the State holds them as trustees on behalf of the public. The members of public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally; but subject to such limitations the right of a citizen to carry on business in transport vehicles on public pathways cannot be denied to him on the ground that the State owns the highways.

We are in entire agreement with the statement of law made in these passages.

Within the limits imposed by State regulations any member of the public can ply motor vehicle on a public road. To the extent he can also carry on the business of transporting passengers with the aid of the vehicles. It is to this carrying on of the trade or business that the guarantee in Article 19(1)(g) is attracted and a citizen can legitimately complain if any legislation takes away or curtails that right any more than is permissible under Clause (6) of that article.

21. The Apex Court had occasion to consider the right of street hawkers in the case of *Sodan Singh and Others Vs. New Delhi Municipal Committee and Others*, and it was held that pavement hawkers have a right to carry on trade on pavements of roads which is protected under Article 19(1)(g) of the Constitution. Explaining the extent of Article 19(1)(g) of the Constitution following was laid down by the Apex Court in paragraph 28 of the said judgment:

28. The guarantee under Article 19(1)(g) extends to practice any profession, or to carry on any occupation, trade or business. "Profession means an occupation carried on by, a person by virtue of his personal and specialised qualifications, training or skill . The word "occupation" has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. "Trade" in its wider sense includes any bargain or sale, any occupation or business carried on for subsistence or profit, it is an act of buying and selling of goods and services. it may include any business carried on with a view to profit whether manual or mercantile. "Business" is a very wide term and would include anything which occupies the time, attention and labour of a man for the purpose of profit. It may include in its form trade, profession, industrial and commercial operations, purchase and sale of goods, and would include anything which is an occupation as distinguished from pleasure. The object of using four analogous and overlapping words in Article 19(1)(g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. In a nut-shell the guarantee takes into its fold any activity carried on by a citizen of India to earn his living. The activity must of course be legitimate and not anti-social like gambling, trafficking in women and the like.

22. The Apex Court in *Sodan Singh's* case (*supra*) had laid down that citizen cannot be denied their right to earn livelihood by using the public streets. The public streets are primarily to be used by the public generally as pathways for passing and repassing but there are other ancillary purposes for which the public streets can be used as of right. Following was laid down in paragraphs 31 and 32 of the said judgment:

31. Mr. Tarkunde contended that street-trading, being a common law right, has to be treated as a fundamental right under Article 19(1)(g) of the Constitution of India. It is not necessary to examine the matter from this aspect. Once street-trading is accepted as legitimate trade, business or occupation it automatically comes within the protection guaranteed under Article 19(1)(g) of the Constitution of India. There is no dispute that public streets are primarily to be

used by the public generally as pathways for passing and repassing but there are other ancillary purposes for which the public streets can be used as of right. In AIR 1925 36 (Privy Council) the Privy council held as under:

In India, there is a right to conduct a religious procession with its appropriate observances through a public street so that it does not interfere with the ordinary use of the street by the public, and subject to lawful directions by the magistrates. A civil suit for a declaration lies against those who interfere with a religious procession or its appropriate observance.

32. In *Saghir Ahmad Vs. The State of U.P. and Others*, this Court held that a business of transporting passengers with the aid of vehicles was a trade or business and as such was guaranteed under Article 19(1)(g) of the Constitution of India. In *Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another*, this Court held that right to hold a public meeting on a public street is a fundamental right under Article 19(1)(a) and (b) of the Constitution. of India and the same cannot be arbitrarily denied. There is thus no justification to deny the citizens of their right to earn livelihood by using the public streets for the purpose of trade and business.

23. In recent Full Bench judgment of Delhi High Court in the case of *Manushi Sangthan, Delhi v. Government of Delhi and Ors.* (Writ Petition No. 4572 of 2007, decided on 10th February, 2010) the right of rickshaw pullers, who had been running their rickshaw within the Delhi Municipal Corporation, came for consideration. Referring to the judgment of the Apex Court in *Sodan Singh's* case (supra), the Full Bench of Delhi High Court laid down following in paragraph 34 of the said judgment:

The above judgment clearly articulates that unless the profession or trade or occupation is inherently noxious or is termed as *res extra commercium* and thereby excluded from the guarantee under Article 19(1)(g) - such occupation or activity being dangerous and inimical to general public, such as liquor trade, dealing with drugs, dangerous substances etc. - every other activity which is capable of yielding profit, and affording livelihood to an individual or body of persons is deemed legitimate and is protected as a guaranteed Fundamental right. The State, of course, is within its rights to regulate such activity, having regard to relevant considerations and the restrictions it can reasonably place upon individuals who carry-on that trade, under Article 19(6). Therefore, the right of an individual or citizen to ply cycle rickshaw or other forms of transport falls within the legitimate exercise of his freedom guaranteed under Article 19(1)(g).

24. In view of the foregoing discussions, it is held that cycle- rickshaw pullers have fundamental right to carry on their occupation of plying rickshaws on the road of NOIDA. However, reasonable restriction on exercise of such right can be imposed by "Law" as contemplated under Article 19(6) of the Constitution of India.

25. Now Issue No. 3 is to be considered. As observed above, reasonable restrictions can be imposed by "Law" as contemplated under Article 19(6) of the Constitution with regard to a right guaranteed under Article 19(1)(g) of the Constitution. The question is as to whether the restrictions, which have been imposed on plying of cycle-rickshaw in Sector 18 of the NOIDA and six main roads, are restrictions, which have been put by "Law". The Apex Court in the case of *Kharak Singh Vs. The State of U.P. and Others*, had occasion to consider Article 19(1)(d) and the nature of restrictions as contemplated under Clauses (2) to (6) of Article 19 with regard to a fundamental right protected under Article 19(1)(d). The U.P. Police Regulations contained certain restrictions on the rights guaranteed to a citizen by Article 19(1)(d) of the Constitution. The State tried to defend those regulations on the basis that restrictions have been framed in the interest of general public and they are reasonable restrictions. Repelling the submissions, the Apex Court laid down that restriction on a fundamental right could be defended only by reference to a valid law i.e. statutory rules or statutory regulations. The U.P. Police Regulations only contain administrative instructions and was not a Statute. Following was laid down in paragraph 5 of the said judgment:

5. Before entering on the details of these regulations it is necessary to point out that the defence of the state in support of their validity is two - fold: (1) that the impugned regulations do not constitute an infringement of any of the freedoms guaranteed by part III of the Constitution which are invoked by the petitioner, and (2) that even if they were, they have been framed "in the interests of the general public and public order" and to enable the police to discharge its duties in a more efficient manner and were therefore "reasonable restrictions" on that freedom. Pausing here it is necessary to point out that the second point urged is without any legal basis for if the petitioner were able to establish that the impugned regulations constitute an infringement of any of the freedoms guaranteed to him by the Constitution then the only manner in which this violation of the fundamental right could be defended would be by justifying the impugned action by reference to a valid law, i.e., be it a statute, a statutory rule or a statutory regulation. Though learned Counsel for the respondent started by attempting such a justification by invoking S. 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Ch. XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be "a law" which the state is entitled to make under the relevant Clause (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1), nor would the same be "a procedure established by law" within Article 21. The position therefore is that if the action of the police which is the arm of the executive of the state is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the state from taking action under the regulations.

26. In the case of *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, the Apex Court had occasion to consider restrictions imposed on a right guaranteed under Article 19(1)(a) of the Constitution by executive instructions. Following was laid down in paragraph 16 of the said judgment:

16. We have referred to Article 19(1)(a) which guarantees to all citizens freedom of speech and expression and to Article 19(2) which provides that nothing in Article 19(1)(a) shall prevent a State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. The law is now well settled that any law which may be made under Clause (2) to (6) of Article 19 to regulate the exercise of the right to the freedoms guaranteed by Article 19(1)(a) to (e) and (g) must be "a law" having statutory force and not a mere executive or departmental instruction. In *Kharak Singh Vs. The State of U.P. and Others*, the question arose whether a police regulation which was a mere departmental instruction, having no statutory basis could be said to be a law for the purpose of Article 19(2) to (6)

27. The Apex Court in the case of *Union of India (UOI) Vs. Naveen Jindal and Another*, had occasion to consider the restrictions imposed on the right guaranteed under Article 19(1)(a) by Flag Code containing executive instructions of the Central Government. The Apex Court held that executive instructions cannot be held to be "law" within the meaning of Article 13(3)(a) of the Constitution and by such executive instructions, no restrictions can be read in the fundamental right. Following was laid down in paragraphs 28 and 29 of the said judgment:

28. Before we proceed further, it is necessary to deal with the question, whether Flag Code is "law"? Flag Code concededly contains the executive instructions of the Central Government. It is stated that the Ministry of Home Affairs, which is competent to issue the instructions contained in the Flag Code and all matters relating thereto are one of the items of business allocated to the said Ministry by the President under the Government of India (Allocation of Business) Rules, 1961 framed in terms of Article 77 of the Constitution of India. The question, however, is as to whether the said executive instruction is "law" within the meaning of Article 13 of the Constitution of India. Article 13(3)(a) of the Constitution of India reads thus:

13. (3)(a) "Law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.

29. A bare perusal of the said provision would clearly go to show that executive instructions would not fall within the aforementioned category. Such executive instructions may have the force of law for some other purposes; as for example those instructions which are issued as a supplement to the legislative power in

terms of Clause (1) of Article 77 of the Constitution of India. The necessity as regard determination of the said question has arisen as the Parliament has not chosen to enact a statute which would confer at least a statutory right upon a citizen of India to fly a National Flag. An executive instruction issued by the appellant herein can any time be replaced by another set of executive instructions and thus deprive Indian citizens from flying National Flag. Furthermore, such a question will also arise in the event if it be held that right to fly the National Flag is a fundamental or a natural right within the meaning of Article 19 of the Constitution of India; as for the purpose of regulating the exercise of right of freedom guaranteed under Article 19(1)(a) to (e) and (g) a law must be made.

28. Now the question to be answered is as to whether the restrictions, which have been imposed by decisions dated 1st September, 2009 and 30th September, 2009 in the meeting of the traffic management cell presided over by Chief Executive Officer of the NOIDA is "Law" within the meaning of Article 13(3) (a) of the Constitution since the restriction on fundamental rights can be imposed only by "Law". The copy of the resolution passed in the aforesaid meetings have been filed along with the counter affidavit as Annexures CA-1 and CA-2. The Agenda of the meeting dated 1st September, 2009 has been filed as Annexure-5 to the supplementary counter affidavit, which stated that for brining improvement in traffic management and to stop encroachment on public places a meeting of the traffic management cell shall be held on 1st September, 2009. Similar Agenda was issued for the meeting dated 30th September, 2009. In the said meetings decision was taken to prohibit running of cycle-rickshaw in Sector 18 and six main roads of the NOIDA.

29. The submission of counsel for the petitioners is that the said decisions dated 1st September, 2009 and 30th September, 2009 were administrative decisions taken in the meeting of the traffic management cell presided over by the Chief Executive Officer and cannot be said to be a "Law" as contemplated by Article 19(6) of the Constitution of India.

30. Sri R.B. Singhal, learned Senior Advocate, appearing for the NOIDA, has submitted that the said decisions have been taken by the Chief Executive Officer who is delegated the authority by NOIDA and the said decisions are referable to statutory power conferred on Authority u/s 8 of the Act. He submits that power to issue instructions u/s 8 of the Act, which is vested in the authority having been delegated to the Chief Executive Officer, the Chief Executive Officer was entitled to issue statutory directions, which have statutory force and the said decisions are "Law" within the meaning of Article 13(3)(a). Learned Counsel for the respondents submits that the decisions taken on 1st September, 2009 and 30th September, 2009 are decisions pertaining to "maintenance of amenities", which is specifically contemplated u/s 8(1) of the Act. Learned Counsel for the respondents further submits that running of cycle-rickshaw is included in the definition of "amenities" as defined u/s 2(a) of the Act.

31. Before considering the above submission of learned Counsel for the parties, it is necessary to look into the scheme of the Act and the regulations framed there under. Section 2(a) defines the word "amenities", which is quoted as below:

2.(a) "Amenities" include roads, water supply, street lighting and power supply, sewerage, drainage, collection treatment and disposal of industrial waste and town refuse and such other community facilities, services or conveniences as the State Government may, by notification, specify to be an amenity for the purposes of this Act:

32. Section 6 of the Act provides functions of the Authority, which is quoted as below:

6. Functions of the Authority.- (1) The object of the Authority shall be to secure the planned development of the industrial development area.

(2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions:-

(b) to prepare a plan for the development of the industrial development area;

(c) to demarcate and develop sites for industrial, commercial and residential purpose according to the plan;

(d) to provide infrastructure for industrial, commercial and residential purposes;

(e) to provide amenities;

(f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;

(g) to regulate the erection of buildings and setting up of industries: and

(h) to lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area.

33. Section 7 provides for power to the authority in respect of transfer of land and Section 8 of the Act provides for power to issue directions in respect of erection of building. Section 9 enumerates ban on erection of buildings in contravention of regulations. Section 10 provides for power to require proper maintenance of site or building. Section 11 deals with levy of tax. Sections 7, 8, 9, 10 and 11 of the Act are quoted as below:

7. The power of the Authority in respect of transfer of land.- The authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under this Act think fit to impose.

8. Power to issue directions in respect of erection of building.- (1) For the

purposes of proper planning and development of the industrial development area, the authority may issue such direction as it may consider necessary, regarding.

- (a) architectural features of the elevation or frontage of any building;
- (b) the alignment of buildings on any site;
- (c) the restrictions and conditions in regard to open spaces to be maintained in and around buildings and height and character of buildings;
- (d) the number of residential buildings that may be erected on any site;
- (e) Regulations of erections of shops, workshops, warehouses, factories or buildings;
- (f) maintenance of height and position of walls, fences, hedges or any other structure or architecture constructions;
- (g) maintenance of amenities;
- (h) restrictions of use of any site for a purpose other than that for which it has been allocated;
- (i) the means to be provided for proper
- (i) drainage of waste water
- (ii) disposal of industrial waste, and
- (iii) disposal of town refuse.

(2) Every transferee shall comply with the directions issued under Sub-section (1) and shall as expeditiously as possible erect and building or take such other steps as may be necessary to comply with such directions.

9. Ban on erection of buildings in contravention of regulations.- (1) No person shall erect or occupy any building in the industrial development area in contravention of any building regulation made under Sub-section (2).

(2) The Authority may by notification and with prior approval of the State Government make regulations to regulate the erection of buildings and such regulations may provide for all or any of the following matters, namely,-

- (a) The materials to be used for external and partition walls, roofs, floors and other parts of a buildings and their position or location or the method of construction;
- (b) Lay out plan of the building whether industrial, commercial or residential;
- (c) the height and slope of the roofs and floors of any building which is intended to be used for residential or cooking purposes;
- (d) the ventilation in, or the space to be left about any building or part there of

to secure circulation of air or for the prevention of fire;

(e) the number and height of the storeys of any building;

(f) the means to be provided for the ingress and egress to and from any building;

(g) the minimum dimensions of rooms intended for use as living rooms or sleeping rooms and the provisions of ventilation;

(h) any other matter in furtherance of the proper regulation of erection, completion and occupation of buildings and

(i) the certificates necessary and incidental to the submission of plans amended plans and completion reports.

10. Power to require proper maintenance of site or building.- If it appears to the Authority that the condition or use of any site or building is prejudicially affecting or is likely to affect the proper planning of, or the amenities in any part of the industrial development area of the interests of the general public there, it may serve on the transferee or occupier of that site or building a notice requiring him to take such steps and within such period as may be specified in the notice and thereafter to maintain in it in such manner as may be specified therein and in case such transferee or occupier fails to take such steps or to maintain it thereafter the Authority may itself take such steps or maintain it, and realize the cost incurred on it from such transferee or occupier.

11. Levy of tax. -(1) For the purposes of providing, maintaining, or continuing any amenities in the industrial development area, the Authority may with the previous approval of the State Government, levy such taxes as it may consider necessary in respect of any site or building on the transferee or occupier thereof, provided that the total incidence of such tax shall not exceed twenty five per cent of the annual value of such site or building.

34. The word "amenities" has been defined in Advanced Law Lexicon, (3rd Edition., 2005 at Page 237) as follows:

IN REAL PROPERTY LAW, such circumstances, in regard to situation, view, location, access to a water course, or the like, as enhance the pleasantness or desirability of the property for purposes of residence, or contribute to the pleasure and enjoyment of the occupants, rather than to their indispensable needs. Extras or intangible items often associated with property. They may be tangible. Often amenities in a condominium include swimming pools, landscaping, and tennis court.

35. The word "amenities" as contained in Section 2(a) of the Act is an inclusive definition, which includes roads, water supply, street lighting and power supply, sewerage, drainage, collection, treatment and disposal of industrial waste and town refuse and other community facilities, services or conveniences as the State Government may by notification specify to be an amenity for the purposes of this Act. The Authority is obliged to provide for amenities to secure plan development

of the industrial development area. The definition of the word "amenities" also includes the words "services or conveniences" but it is relevant to note that the underlined portion of the definition 2(a), as above, requires a notification by the State Government for including in the definition of "amenities" other community facilities, services or conveniences for the purposes of the Act. No notification of the State Government has been brought on the record to substantiate the plea of the respondents that running of cycle-rickshaw is included in the amenities notified by the State Government. The amenities are those amenities which Authority is obliged to provide, which definition is although inclusive and may include the several services and conveniences but unless notification is issued with regard to any particular service or conveniences it cannot be accepted that running of cycle-rickshaw is an amenity provided by the authority.

36. The Apex Court in the case of Municipal Corporation Chandigarh and Others Etc. Vs. Shantikunj Investment Pvt. Ltd. Etc., had occasion to consider Section 2(b) of the Capital of Punjab (Development and Regulation) Act, 1952, which defined the word "amenity". The question for consideration before the Apex Court was that as to whether an allottee is entitled not to pay lease amount on the ground that all the amenities have not been provided, hence there is no obligation to pay instalment, interest and penalty. In the said judgment the Apex Court held that providing for amenity is a statutory obligation but is not a condition precedent as contended. Following was laid down in paragraphs 26 and 27 of the said judgment:

26. We have bestowed our best of the attention to the provisions of the Act and the Rules. On a plain reading of the definition "amenities" read with Rule 11(2) and Rule 12, it cannot be construed to mean that the allottees could take upon themselves not to pay the lease amount and take recourse to say that since all the facilities were not provided, therefore, they are not under any obligation to pay the instalment, interest and penalty, if any, as provided under the Act and the Rules. It is not possible to accept a sweeping proposition that if all the facilities or amenities are not provided, then the allottees/ lessees can take upon themselves not to pay the lease amount, interest and penalty would be going too far. It has never been the condition precedent. It is true that in order to fully enjoy the allotment, proper linkage is necessary. But to say that this is a condition precedent, that is not the correct approach in the matter. "Amenity" has been defined u/s 2(b) of the Act which includes roads, water-supply, street lighting, drainage, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh. That is a statutory obligation but it is not a condition precedent as contended by learned Counsel for the respondents

27. Therefore, the term amenity in the context of real estate is to mean the facilities as provided u/s 2(b) of the Act but it can never be treated to mean that this is a condition precedent. It is for the better use of the allotted piece of land but that does not mean that it should be provided first as a condition precedent

in the matter in the present case. Learned Counsel invited our attention to the expression , " enjoy" as per the Webster's Dictionary, which means as follows:

to have, possess, and use with satisfaction; to have, hold, or occupy, as a good or profitable thing, or as something desirable; as, we enjoy many privileges.

37. Now we come to Section 8 of the Act which empowers the Authority to issue direction in respect of erection of building. The submission of the learned Counsel for the respondent is that since u/s 8(1)(g) of the Act maintenance of amenities is one of the subject where direction can be issued, the Chief Executive Officer has rightly issued direction with regard to amenities. As observed above, providing for running of cycle-rickshaw as one of the services and conveniences can be accepted when it has been so notified by the State Government. However, the scheme of Section 8 of the Act also does not support the contention of the respondents that the decisions dated 1st September, 2009 and 30th September, 2009 can be saved u/s 8(1)(g). The heading of Section 8 of the Act is "Power to issue directions in respect of erection of building". Sub-section (1) contains various items with regard to which authority may issue directions whereas Sub-section (2) provides that every transferee shall comply with the directions issued under Sub-section (1). Thus the directions issued under Sub-section (1) are contemplated to be directions which are to be complied by a transferee. The directions under Sub-section (1) of Section 8 are directions in respect of erection of building. The words "maintenance of amenities" as contained in Sub-clause (g) of Section 8 cannot be read de-hors the scheme of the section.

38. The principles of statutory interpretation of heading of a section are well settled. Although heading does not control meaning of plain words but the heading gives key to open the mind of the draftsman of the clauses arranged therein. While considering the principles of statutory interpretation of heading, the Apex Court in the case of Raichurmatham Prabhakar and Another Vs. Rawatmal Dugar, , laid down following in paragraph 14:

14. The view is now settled that the Headings or Titles pre-fixed to sections or group of sections can be referred to in construing an Act of the Legislature. But conflicting opinions have been expressed on the question as to what weight should be attached to the Headings or Titles. According to one view, the Headings might be treated as preambles to the provisions following them so as to be regarded as giving the key to opening the mind of the draftsman of the clauses arranged there under. According to the other view, resort to Heading can only be taken when the enacting words are ambiguous. They cannot control the meaning of plain words but they may explain ambiguities. (See: Principles of Statutory Interpretation by Justice G. P. Singh, Ninth Edition, 2004, pp. 152, 155). In our opinion, it is permissible to assign the heading or Title of a section a limited role to play in the construction of statutes. They may be taken as very broad and general indicators of the nature of the subject-matter dealt with there under. The Heading or Title may also be taken as a condensed name assigned to indicate collectively the characteristics of the subject-matter dealt with by the

enactment underneath; though the name would always be brief having its own limitations. In case of conflict between the plain language of the provision and the meaning of the Heading or Title, the Heading or title would not control the meaning which is clearly and plainly discernible from the language of the provision there under.

39. In view of the principles of statutory interpretation as laid down above, we are of the view that all directions as mentioned in Sub-section (1) of Section 8 have to be directions in respect of erection of building and the words "maintenance of amenities" as used in Clause (g) of Section 8 of the Act has to be also read accordingly. Even for argument sake if the respondents' submission is accepted that running of cycle-rickshaw is one of the amenities, the directions pertaining to running of cycle-rickshaw cannot be justified u/s 8(1). It is also to be noticed that the road is also included in the definition of amenities and the direction can very well be issued u/s 8(1)(g) of the Act with regard to maintenance of roads but the decision in issues does not relate to maintenance of roads.

40. In view of the foregoing discussions, we are of the considered opinion that the decision dated 1st September, 2009 and 30th September, 2009 are only administrative decisions which cannot be regarded as "Law" within the definition of Article 13(3)(a) of the Constitution of India, hence by such decisions no restriction on the rights of cycle-rickshaw pullers to ply cycle-rickshaw in Sector 18 and six main roads of the NOIDA can be justified. There cannot be any dispute that restrictions can be imposed on the running of cycle-rickshaw in the interest of general public which include safety and running of smooth traffic on the roads but the restrictions have to be by "Law".

41. Learned Counsel for both the parties have placed reliance on Full Bench judgment of the Delhi High Court in Manushi Sangathan's case (supra). In the said case the Delhi Municipal Corporation Cycle Rickshaw Bye-Laws, 1960 were under challenge including the decision taken by Delhi Municipal Corporation by Policy 2007 framed under the directions of the Division Bench of Delhi High Court in an earlier case of Hemraj. One of the questions, which was for consideration before the Full Bench, was "the legality and correctness of the policy restricting or prohibiting plying of cycle rickshaws on the main arterial roads and zoning regulations". The Full Bench of the Delhi High Court after considering the submissions, laid down following on the above issue:

64. This aspect pertains to the zoning provisions in the impugned policy, which mandate a licensing regime, whereby the MCD would entertain and grant licenses to cycle rickshaw owner pliers (i.e. applicants) on zone wise basis. The MCD has divided the city into 12 zones, and indicated, in its policy, the number of licenses, which can be granted in each zone; the cycle rickshaws holding such licenses are entitled to operate only in the concerned zone. The MCD has also resorted to colour coding of the cycle rickshaws, based on such zoning. In addition, restriction on movement of such cycle rickshaws on arterial roads has

been mandated. This is achieved through MCD's impugned policy, as well as notifications issued by the Delhi Police. The latter notifications also additionally impose restrictions on movement of rickshaws, in terms of timing, etc., on various roads and localities in the city. The petitioners argue that the zoning regime and restrictions on movement in arterial roads is discriminatory, as it is aimed at elimination of cycle rickshaws, and that no such restrictions have been imposed in relation to private motorized vehicles, which carry commuters. They also argue that such restrictions hinder the exercise of the freedom to movement, guaranteed under Article 19(1)(d) of the Constitution of India.

65. There can be no controversy about the state or the municipalities' concern to regulate the use of road; that would fall within the sphere of legitimate regulatory power, under Article 19(5) and (6) of the Constitution. The judgments in *Bombay Hawkers' Union and Others Vs. Bombay Municipal Corporation and Others*, and *Sodan Singh (supra)* have ruled that public roads and highways are essentially meant for use by pedestrians and traffic. The State and municipal authorities, who own the roads, have a legitimate concern in regulating its use. However, while exercising that regulatory power, the balancing act performed by such regulatory agencies has to accommodate, as far as possible, all the viewpoints, and concerns, of the stakeholders.

67. The respondents were unable to point out whether there is any restriction on the movement of such motorized private -especially private commercial vehicles, on arterial roads. The restrictions through the notifications issued by the Delhi Police, all pertain specifically to slow moving traffic. However, where private passenger commuters' motor vehicles are concerned, no such restrictions - at least in terms of zoning are apparent. The figures of number of vehicles and their impact on pollution levels in Delhi, as well as the dictates of the Delhi Master Plan are such that all agencies have to explore the optimum methods of minimizing environmental damage, WP(C) Nos. 4572/07 & 8580/09 Page 57 and ensuring that best practices that protect the ecology are adopted. From this view point, even while the MCD's regulatory regime of issuing zone wise licenses cannot be faulted, there are certain issues which have to be addressed, especially from the commuters' perspective. Even if the cycle rickshaws are acknowledged to cater to short distance travel, the fact remains that the zoning regime presently in position, prohibits plying of cycle rickshaws of one zone in another. This can lead to practical problems; for instance commuters cannot be compelled to change from one cycle rickshaw to another, since the destination place is located in a different zone than the one where they hired the first cycle rickshaw from. Such restrictions can affect poor commuters and travelers the hardest, particularly if they have to commute from inter state bus termini, railway stations, etc., with heavy luggage. Likewise, in the absence of rational cross-over points, where arterial roads divide zones, or even act as boundaries, commuters can face considerable hardship. However, this Court would not hold that such zoning restrictions, or ban on the use of arterial roads, by cycle rickshaws, invalid, because the number of such vehicles that would become

available as a result of removal of the cap, and their use by classes of pliers, other than owners, is unknown. Also, there is lack of empirical data about road usage and scientific basis for concluding one way or the other that placing such restrictions do not impede smooth movement of traffic, particularly on main and arterial roads. This Court therefore, does not hold that such restrictions are void or discriminatory, but would require the authorities to study all the relevant factors, and take such remedial measures as are necessary in the light of the previous discussion.

42. The Full Bench of Delhi High Court thus laid down that restrictions cannot be held to be void or discriminatory but before imposing restrictions authorities are required to study all the relevant factors, and take such remedial measures as are necessary in the light of the previous discussion.

43. The question may arise as to what is the procedure or manner for imposing restriction on running of cycle-rickshaw in different sectors and different roads as contemplated under the Act or the regulations framed there under. For answering the aforesaid, we have to again revert back to the provisions of the Act and the regulations framed there under. As noticed above, Section 19 of the Act empowers the Authority to make regulations with the previous approval of the State Government. A regulation has been framed in exercise of power u/s 19 of the Act, namely, The New Okhla Industrial Development Area (Preparation and Finalisation of Plan) Regulations, 1991 published in the U.P. Gazette dated 8th June, 1991 (hereinafter referred to as 1991 Regulation). Regulation 2, which is a definition clause, defines "traffic and transportation use" in Clause (m), which is quoted as below:

Traffic and Transportation use" means use of any land or building or part thereof for the purposes of transportation of human beings, goods services and such other uses incidental to transportation uses;

44. Regulation 3 provides for town planning and civic surveys form and contents of plan. Sub-regulation (2) of Regulation 3 provides that draft plan shall indicate the existing and proposed national highways, arterial and primary and secondary roads and the existing and proposed other lines of transportation and communication including railways and airport. Regulation 3 is quoted below:

3. Town Planning and Civic Surveys form and contents of Plan.- (1) The Authority shall as soon as possible carry out town planning and civic survey and prepare Draft Plan for the industrial development area;

(2) The Draft Plan shall

(a) define the various sectors into which the area falling within the proposed urbanisable limit is to be divided;

(b) allocate the area of land for land use;

(c) indicate, define and provide for

(i) the existing and proposed National Highways, arterial and primary and secondary roads:

(ii) the existing and proposed other lines of transportation and communication including railways and airport.

(3) The Draft plan may indicate, define and provide or,-

(a) existing and proposed public buildings; and

(b) all or any of the matters specified in Regulation 4.

(4) The Draft Plan shall consist of such maps, diagrams, charts, reports and other written matter of any explanatory or descriptive nature as pertain to the development of the whole or any part of Industrial Development Area.

(5) Written matter forming part of Draft Plan shall include such summary of the main proposals and such descriptive matter as the Authority may consider necessary to illustrate or explain the proposals indicated by maps, charts, diagrams and others documents;

(6) A plan of land use shall also form a part of the Draft Plan proposing most desirable utilisation of land for purposes mentioned in Clause (b) or sub-regulation (3).

45. Regulation 4 provides that the plan may include various factors including traffic and transportation, plan consisting of proposal for road, railway and air transportation system, ecological plan proposing effective regulatory and planning measures to maintain the desired urban ecological system etc. Regulations 4(1) (a), (c) and (f) are quoted below:

4.(1) The Plan may include:

(a) Sector Plans showing various sectors into which the industrial development area or part thereof may be divided for the purpose of development.

...

(c) Traffic and transportation plan consisting of proposals for road, railway and air transportation system.

...

(f) Ecological Plan proposing effective regulatory and planning measures to maintain the desired urban ecological system.

46. Regulation 5 lays down procedure for finalisation of plan which provides for public notice regarding preparation of plan. Regulation 7 provides for hearing. The Committee after hearing the affected persons is to submit its recommendation to the Chief Executive Officer. The Chief Executive Officer after considering the report, submit his report along with recommendation to the Committee and thereafter the plan is finalised. Regulation 11 provides for

amendment of the plan. The 1991 Regulations uses two concepts apart from others, namely, "traffic and transportation use" and "traffic and transportation plan". Several matters, which may be part of town plan and civic surveys, the traffic and transportation plan is also one of the factor which may be included in the plan. There is a detail procedure for making such plan by public notice, giving opportunity to the objectors and consideration of relevant factors. There is a purpose and object for laying down a detail procedure in the regulations for making regulation with regard to subject of traffic and transportation plan. The traffic and transportation plan is a wide word, which can include all kind of plans including plan for permitting use of particular roads for cycle and rickshaw and other means of transport, it may include plan for laying down separate lane or by-lane for cycle-rickshaw, it may contain plans for giving underpasses or facility to cross over by the cycle-rickshaw certain roads and junctions. In the event a transportation plan is prepared by the Authority in accordance with the 1991 Regulations, which is contemplated after due opportunity, the grievances of all affected persons may be properly met and considered. The statutory scheme thus contemplates making of regulations by which fundamental rights guaranteed under Article 19(1)(g) can be reasonably restricted.

47. The New Okhla Industrial Development Area Building Regulations and Directions, 2006 have been framed in exercise of power under Sub-section (2) of Section 9 of the Act, which in great detail, provides for every minute requirement with regard to erection of building and other connected matter therein.

48. The scheme thus suggest framing of appropriate regulations for preparing traffic and transportation plan. In any view of the matter, for the purposes of the present case, since the restrictions imposed by the decisions dated 1st September, 2009 and 30th September, 2009, are restrictions not enforced by "Law", it is not necessary for us to dwell any further with regard to manner and procedure under which such restrictions can be imposed. Thus it is held that the decisions dated 1st September, 2009 and 30th September, 2009 imposing prohibition for running of cycle-rickshaw in Sector 18 and six main roads cannot be saved under Clause (6) of Article 19 of the Constitution of India they being not covered with the definition of "Law" as contained in Article 13(3)(a) of the Constitution of India.

49. Now comes the last issue, as to whether restrictions on plying cycle-rickshaw are valid restrictions within the meaning of Article 19(6) of the Constitution of India. We having taken the view that restrictions imposed by decisions dated 1st September, 2009 and 30th September, 2009 are not restrictions, which are saved by Clause (6) of Article 19 of the Constitution of India, it is not necessary for us to further dwell the matter, however, one aspect of the matter in this regard is necessary to be noted. The cycle- rickshaw pullers are one of the poorest section of the society. A sizeable section of persons carry on their livelihood since they have no better means of earning employment. At present restriction in one sector of the NOIDA, i.e., sector 18 has been imposed and if the respondents are

permitted to impose restrictions in the manner as has been done in the present case, tomorrow the restriction may be imposed in majority of the sector for running cycle-rickshaw, which shall have affect on the rights guaranteed to large number of persons under Article 19(1)(g) of the Constitution of India, who are engaged in occupation of cycle-rickshaw pulling. The 1991 Regulations contemplate a process in which opportunity is given to the affected persons before making any regulation pertaining to traffic and transportation plan. The public in general, who uses the cycle-rickshaw as most frequent and cheap means of transport may also be put to inconvenience by restrictions unless their convenience and facility is also taken into consideration. The decisions, which have been taken by the traffic management cell, are decisions taken in a meeting presided over by Chief Executive Officer which contained only officers of the administration and of the Authority. The views of cycle-rickshaw pullers and public in general were not obtained nor taken into consideration. In Annexure SCA-3 to the supplementary counter affidavit the proceedings of meeting dated 26th December, 2007 headed by Chief Executive Officer has been brought on the record. It has been noted in the proceedings that detail discussion was made regarding traffic management. It was noted that at certain places for managing the traffic changes were made but due to strong opposition of the resident, the said changes were withdrawn.

50. As observed above, restrictions can be imposed in the interest of public on a right given under Article 19(1)(g) of the Constitution of India but all aspect of the matter has to be looked into by the authorities imposing restriction. The Full Bench of Delhi High Court in Manushi Sangthan's case has also held that zoning restrictions or ban on use of cycle-rickshaw cannot be held to be illegal or unjustified, however, the matter requires thorough review and consideration of all aspect. The Full Bench of Delhi High Court directed for constituting special task force to explore all the questions pertaining to road traffic in Delhi. Thus we are of the view that the restrictions imposed by the decisions dated 1st September, 2009 and 30th September, 2009 needs a thorough review. As observed above, the restrictions can be imposed on running of cycle-rickshaw on different roads but the said restrictions have to be imposed by "Law" in accordance with the procedure prescribed.

51. In the result, the writ petition is allowed. A writ of mandamus is issued directing the respondents not to create any hindrance in the rights of the rickshaw pullers from plying their rickshaws in any part of the city of NOIDA. However, it shall be open for the respondents to impose reasonable restrictions in the interest of general public by "Law" in accordance with the procedure prescribed.

52. Parties shall bear their own costs.