

(2012) 08 CAL CK 0029

In the Calcutta High Court

Case No : C.A.N. No. 4318 of 2012 in Writ Petition No. 9098 (W) of 2011

Phoolbagan Karunamoyee Auto Rickshaw Operators Union
and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 74(3), 74(3)(a)

Citation : (2012) 08 CAL CK 0029

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : R.P. Motilal, for the Appellant; Pantu Deb Roy, S. Ruj, Advocates for the State. Mr. Subhabrata Datta, Sankar Dalapati Advocates, for the Fifth Respondent, Mr. Sanatan Panja, Advocate for the Sixth and Seventh Respondents, Mr. N.I. Khan and Mr. Sk. Nizamuddin, Advocates for the Private Respondent., for the Respondent

Judgement

Hon"ble Mr. Justice Jayanta Kumar Biswas

1. The CAN has been filed for restoration of the WP under art. 226. By an order dated April 26, 2012 the WP was dismissed for non-appearance of the petitioners. After considering the case stated in the CAN and hearing Mr. Motilal appearing for the petitioners, Mr. Deb Roy for the State and Mr. Khan for the private respondent, I am of the view that the CAN should be allowed and the WP should be restored to file. Since I have determination to take up the WP for final disposal, I have invited Mr. Motilal, Mr. Deb Roy and Mr. Khan to argue; and they have, accordingly, argued the case.

2. The petitioners are questioning the validity of a Notification No. 2027-WT/4M 23/95 dated April 9, 2010 (WP p.56) issued by the State Government in exercise of power conferred by s. 74(3)(a) of the Motor Vehicles Act, 1988. By the notification the State Government modified a previous Notification No. 1443-

WT/4M-23/95 dated April 21, 2003 (WP p.50) issued by it. The notification dated April 21, 2003 was issued under s. 74(3)(a) of the Motor Vehicles Act, 1988 pursuant to a direction of the Central Government given by an SO No. 700E dated September 12, 1990.

3. The Central Government directed the State Government to limit the number of autorickshaws operating in various city routes in towns within the jurisdiction of Kolkata Police and Lake Town and Salt Lake police stations. Accordingly, the State Government issued the notification dated April 21, 2003 limiting the number of autorickshaws operating on the routes mentioned in the notification. For routes Phoolbagan-Salt Lake Tank No. 13 the number was limited to fifty-five and for the route Phoolbagan- Karunamoyee via Salt lake Tank No. 13 the number was limited to thirty.

4. The petitioners other than the first petitioner claim that they have been operating their respective autorickshaws on the routes Phoolbagan-Salt Lake via Salt Lake Tank No. 13. Their further claim is that the first petitioner is a union of autorickshaw operators, and that they are members of the union. Their case is that by the impugned notification dated April 9, 2010 the State Government has wrongfully increased the numbers of autorickshaws operating on the two routes in which they are interested.

5. Their contention is that the numbers have been increased without obtaining the Central Government's sanction, a mandatory requirement of the provisions of s. 74(3) of the Motor Vehicles Act, 1988. Mr. Motilal has strenuously argued that once the numbers were limited by the Central Government, the State Government could not issue the notification usurping the power to alter or add the numbers of autorickshaws on the routes.

6. There is no reason to proceed on the basis that by the SO dated September 12, 1990 the Central Government limited the numbers of autorickshaws operating on the two routes in question. From the notification dated April 21, 2003 issued by the State Government it appears that the numbers were fixed by the State Government that reserved to itself the power to alter or add the numbers subsequently.

7. By the impugned notification the numbers of autorickshaws operating on the two routes have been increased and this has made the petitioners aggrieved, presumably, because they want to monopolize the operating right on the routes. In my considered opinion, the contention of the petitioners that the State Government could not increase the numbers of the autorickshaws operating on the two routes without obtaining sanction of the Central Government has no merit. No law required the State Government to obtain any prior sanction from the Central Government. For these reasons, I allow the CAN, restore the WP to file and dismiss it on merits. No costs. Certified xerox.