
(2019) 03 UK CK 0026

In the Uttarakhand High Court

Case No : Writ Petition No. 3115 Of 2018 (M Of S)

Piaggio Vehicles Private Limited

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(g), 19(6), 48A, 246

Citation : (2019) 03 UK CK 0026

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Vipul Sharma, N.S. Pundir

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. Public health is an issue which falls under List II Entry 6 of the Seventh Schedule as framed under Article 246 of the Constitution of India which reads as under:-

"6. Public health and sanitation; hospitals and dispensaries."

2. So far as the environment and issues pertaining to the protection of environment, the responsibility to maintain the balance is concerned, it has been provided by the 42nd Amendment of the Constitution of 1976, which the insertion of Article 48A, which reads as under:-

"48A. Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

3. On a simplicitor interpretation of Article 48A contained in Part IV of the Constitution, the responsibility has been casted on the State to protect from depletion of environment and adopt all safeguard and measures as would aim to protect the environment, it rather castes a responsibility on State to protect the

environment, thus the impugned orders, under challenge in the writ petition, prohibiting the use of Auto Rickshaw/Three wheelers which are operated by use of petrol or diesel is being sought to be done away and replaced by three wheelers which are operated by battery or L.P.G., which are eco-friendly, thus the action/decision to stop issuing any permit or license to three wheelers operated by petrol or diesel w.e.f. 01.05.2018 cannot be classified to be arbitrary, so far it relates to the petitioner who is the manufacturer of three wheelers, with its unit situated at Pune.

4. The decision impugned in the writ petition dated 20.02.2018, will have no adverse bearing on the petitioner, hence no cause of action, to file the writ petition for the relief claimed, nor it would have any bearing or would there would be an infringement of any of its rights envisaged by the Constitution. The decision taken by the R.T.A. is rather in wider public interest, and it would prevail over the individual interest of the petitioner who is only the manufacturer of three wheelers who aims to ensure a market for sale of vehicle, produced by it. This Court is of the view that there is no prejudice caused to him rather the decision taken by State authorities, is an administrative and a policy decision to gradually weed out the vehicles contributing to the pollution from the roads of Dehradun, which could be a city more prone to pollution explosion being caused because of being the capital of State and population explosion, by the three wheelers operated by diesel or petrol hence it was decided to gradually weed them out from road, its not in violation of any public interest or the interest any individual right of the petitioner.

5. There is another aspect of the matter that the prerogative to regulate transport and to ensure that its appropriate facility is provided to the public is yet again a state subject under Entry 13 of List II of the Schedule 7, which reads as under:-

"13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles."

Entry 13 includes the surface transportation system also and regulating of mechanically propelled vehicles. Hence too the petitioner has no right against the decision of the State to weed out the three wheelers operated by diesel and petrol, to save pollution likely to be caused by them.

6. The argument of the learned counsel for the petitioner to the effect that the auto rickshaw manufactured by them complies with the Bharat Stage Emission Standards (BSES) and is complying Bharat State IV standards, which are the essential condition to be adhered by the manufacturer for manufacturing the vehicle, and its not meant for to ensure its sale in a definite area of choice in the country or state where state regulates transport, environment and public health and discharges its one of the basic responsibilities in the wider public interest.

7. The counsel for the petitioner has argued it from the prospective of petitioner rights of trade and business envisaged by Article 19(1)(g) of the Constitution, but the said provisions does not give an absolute freedom of business; it is always subject to reasonable restrictions provided by Article 19(6) of the Constitution, which deters making the right envisaged under Article 19 (i) (g) subject to restrictions.

"(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"

8. It cannot be lost sight of the fact that the directives of R.T.A-dated 20.02.2018 impugned in the writ petition, is in no manner prohibiting the manufacture of the Auto Rickshaws by petitioner, the decision is not creating any impediment in the act of manufacture by the petitioner.

9. In the case at hand, the Regional Transport Authority (RTA), Dehradun had taken a decision vide its Decision No. 35 dated 25.02.2018, whereby it has been held that, w.e.f. 01.05.2018, no diesel or petrol operated auto-rickshaws would be permitted to be plied in District Dehradun no license would be issued. This decision, taken by the Regional Transport Authority (RTA), Dehradun is absolutely in the public interest and to maintain the ecology of the District Dehradun.

10. In that view of the matter, the petitioner has got no legally enforceable right to challenge the decision as taken by the RTA, Dehradun restricting plying of particular type of polluting vehicles, which are operated by petrol or diesel. Thus, this writ petition lacks merits hence fails and is accordingly dismissed.