

ALL DELHI CYCLE RICKSHAW OPERATORS UNION ETC.

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v.

MUNICIPAL CORPORATION OF DELHI & ORS. ETC.

JANUARY 6, 1987

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[E.S. VENKATARAMIAH AND SABYASACHI MUKHARJI,
JJ.]

Delhi Municipal Corporation Act, 1957, section 481(1)(L)(5), scope of—Power to make bye law regulating the keeping or plying for hire a cycle rickshaw in Delhi—Whether, the Bye-law 3(1) of the Cycle Rickshaw Bye-laws, 1960 restricting the number of licence to only one and the grant only to the owner of a cycle rickshaw either to keep or to ply for hire, is within the scope of the power conferred on the authority—Whether the said bye-law is opposed to Article 19(1)(g) of the Constitution.

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Section 481(1) of the Delhi Municipal Corporation Act, 1957 empowers the Corporation to make additional bye-laws to the existing ones. Under the power so conferred the Corporation introduced Bye-law No.3(i) in the Cycle -Rickshaw Bye-laws, 1960, under which only an owner of the cycle rickshaw can obtain a licence to keep a cycle rickshaw or to ply for hire and only one such licence would be issued to a person. By necessary implication it excludes persons who own a number of cycle rickshaws from applying for licences and prohibits the hiring out of the cycle rickshaw by the owner in favour of a rickshaw puller against payment of consideration.

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The Writ Petitioners are owners of cycle rickshaws. Some of them own two or more cycle rickshaws which are hired out by them to rickshaw pullers under a contract under which the rickshaw pullers have to pay some amount to the owners of the cycle rickshaws at the end of the day out of their earnings during the day. Being aggrieved by the introduction of Bye-law No.3(i), they have moved the Supreme Court under Article 32 of the Constitution that the said Bye-law is opposed to Article 19(1)(g) of the Constitution and also outside the scope of section 481(1)L(5) of the Delhi Municipal Corporation Act, 1957.

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Dismissing the petitions, the Court,

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A HELD: 1.1 On a consideration of the language of clause (5) in section 481(1) L of the Delhi Municipal Corporation Act, 1957, it is clear that Bye-law 3(1) falls within the scope of the power conferred on the Corporation to frame bye-laws for the issue of licences in respect of cycle-rickshaws which are kept or used for plying in the Delhi Municipal Corporation area. While framing bye-laws under the above statutory provision it is permissible for the Corporation to restrict the issue of licences only to the owners of the rickshaws who themselves act as rickshaw pullers. This is apparently done to prevent exploitation of the rickshaw pullers by the owners of the cycle rickshaws. A licensing authority may impose any condition while issuing a licence which is in the interest of the general public unless it is either expressly or by necessary implication prohibited from imposing such a condition by the law which confers the power of licensing. The restriction imposed by the Corporation in the present case is in the interest of the general public. [910C-E]

D 1.2 The Bye-law No.3(1) cannot therefore be said to be either outside the scope of section 481 of the Corporation Act or opposed to the provisions of the Constitution. [911D]

E *Azad Rickshaw Pullers Union (Regd) Ch. Town Hall, Amritsar & Ors. etc. v. State of Punjba & Ors.*, [1981] 1 SCR 366 and *Nanhu & Ors. etc. v. Delhi Administration & Ors.*, [1981] 1 SCR 373, referred to.

Man Singh & Ors. v. State of Punjab & Ors., [1985] 4 SCC 146, followed.

F (The Court approved the two schemes of financial assistance, put forward, at its instance, by the Bank of Baroda and the State Bank of India and the willingness of the Credit Guarantee Corporation of India (Small Loans) to guarantee the repayment of the loans advanced to the rickshaw pullers and directed, accordingly, the several branches of the Punjab National Bank, the Bank of Baroda and the State Bank of India operating in Delhi to give financial assistance to rickshaw pullers who wish to own cycle rickshaws and ply them under licences issued by the Corporation subject to their producing the necessary eligibility certificate issued by the Corporation and satisfying the other terms of the Schemes, namely (i) the scheme for financial to cycle rickshaw pullers; and (ii) self employment programme for urban poor (SEPUP). The court also directed the Delhi Administration to comply with the directions issued in *Nanhu & Ors.*, [1981] 1 SCR 373.)

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ORIGINAL JURISDICTION: Writ Petition No. 13688 of 1983
etc.

Under Article 32 of the Constitution of India)

T.U. Mehta and S.M. Ashri for the Petitioners.

Dr. Y.S. Chitale, G.L. Sanghi, V.C. Mahajan, R.B. Datar, Miss Bina Tamta, S.K. Mehta, M.K. Dua, Aman Vachhar, H.S. Parihar, Vipin Chandra, G.D. Gupta, M.L. Kaicker and V.B. Saharya for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J: In these petitions the petitioners have questioned the validity of bye-law No. 3(1) of the Cycle-Rickshaw Bye-Laws, 1960 framed under section 481 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred as 'the Act'). Bye-law No. 3(1) reads as follows:

"3(1). No person shall keep or ply for the hire a cycle rickshaw in Delhi unless he himself is the owner thereof and holds a licence granted in that behalf by the Commissioner on payment of the fee that may, from time to time, be fixed under sub-section (2) of section 430.

Provided that no person will be granted more than one such licence.

No person shall drive a cycle rickshaw for hire unless he holds a driving licence granted in that behalf by the Commissioner on payment of the fee that may, from time to time be fixed under sub-section (2) of section 430."

The petitioners are owners of cycle rickshaws. Some of them own two or more cycle rickshaws which are hired out by them to rickshaw pullers under a contract under which the rickshaw pullers have to pay some amount to the owners of the cycle rickshaws at the end of the day out of their earnings during the day. In order to eliminate the exploitation of rickshaw pullers by the owners of the cycle rickshaws the Delhi Municipal Corporation amended the Cycle-Rickshaw Bye-laws, 1960 by introducing bye-law No.3. Under that bye-law only the owner of the cycle rickshaw can obtain a licence to keep a cycle rickshaw or to ply

A for hire and only one such licence would be issued to a person. By necessary implication it excludes persons who own a number of cycle rickshaws from applying for licences and prohibits the hiring out of the cycle rickshaw by the owner in favour of a rickshaw puller against payment of consideration. The contention of the petitioners is mainly dependent upon section 481(1)L(5) of the Act which reads thus:

B “481(1). Subject to the provisions of this Act the Corporation may, in addition to any bye-laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters, namely:-

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L. Bye-laws relating to miscellaneous matters—

D (5). the rendering necessary of licences—

(a) for the proprietors or drivers of hackney-carriages; cycle rickshaws, *thelas* and *rehries* kept or plying for hire or used for hawking articles;

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F It is argued on behalf of the petitioners that the above provision in the Act does not permit the Corporation to make a bye-law which prohibits the issue of licences to the owners of cycle-rickshaws who are not themselves rickshaw-pullers. It is also urged that the bye-law is violative of Article 19(1)(g) of the Constitution. The respondent-Corporation contends that the impugned bye-law No. 3, is within the scope of the authority conferred on it by the Act to make the bye-law in question and that it is not opposed to Article 19(1)(g).

G The constitutional validity of a similar provision in the Punjab Cycle-Rickshaws (Regulation of Licence) Act, 1976 (Punjab Act 41 of 1975) came up for consideration before this Court in *Azad Rickshaw Pullers Union (Regd) Ch. Town Hall, Amritsar & Ors., etc. v. State of Punjab & Others*, [1981] 1 SCR 366. In the course of its judgment the Court approved a scheme framed for providing financial

H assistance to the richshaw-pullers for acquiring cycle rickshaws. The

provision of the Act which was impugned in that petition was, however, left untouched. On the same date this Court pronounced another judgment in *Nanhu & Ors., etc. v. Delhi Administration & Ors.*, [1981] 1 SCR 373 in which the very same bye-law with which we are concerned in these cases came up for consideration. That case was disposed of by this Court by a short order which reads thus:

“We have disposed of today applications from cycle rickshaw pliers of Amritsar Municipality where a scheme has been worked out to help them become owners of cycle rickshaws. A similar scheme, says the Solicitor-General appearing for the Delhi Administration, will be extended to the Delhi territory. We, therefore, annex a copy of the judgment in Writ Petitions Nos. 839 of 1979 and 563 of 1979—*Azad Rickshaw Pullers Union, Amritsar and others v. State of Punjab & Others* and *Nanak Chand and Others v. State of Punjab and Others*, respectively to this judgment.

There is another problem which arises in these two cases and that is that the Delhi Administration has put a ceiling on the total number of cycle rickshaws permissible to be plied within its territory perhaps—we do not know for certain—this number may not accommodate all the applicants for cycle rickshaws plying licences. We are told that apart from the applicants in this Court under Article 32 of the Constitution, there are numerous petitioners who have approached the High Court of Delhi under Article 226 of the Constitution and yet others who have filed suits in civil courts for the same relief. All that we can do is to accept the suggestion made by the learned Solicitor-General that the Delhi Administration will effectively publicize and notify applications for licences for plying of cycle rickshaws and all those who apply will be considered on their merits including length of service as cycle rickshaw pliers. The criteria that the Delhi Administration will adopt must be reasonable and relevant; otherwise it will be open to the aggrieved parties to challenge the selection. Likewise we do not want to fetter the rights of parties aggrieved if the ceiling upon the total number of rickshaws permissible within the Delhi territory is arbitrary.

On the basis of reasonable criteria the Delhi Administra-

A tion will direct the concerned Municipal authorities to grant licences for plying rickshaws and if the applicants so chosen are not owners themselves all the facilities we have indicated in the Amritsar order will be extended to such cycle rickshaw pliers fixing reasonable time limits. With these directions we dispose of the applications. Until fresh
 B licences are issued by the Delhi Administration and the Municipal authorities the present petitioners will be allowed to ply their cycle rickshaws."

It is clear from the above order that this Court did not say anything about the constitutional validity of bye-law No. 3. We, however, find on a consideration of the language of clause (5) in section 481(1)L
 C of the Act that the bye-law falls within the scope of the power conferred on the Corporation to frame bye-laws for the issue of licences in respect of cycle-rickshaws which are kept or used for plying in the Delhi Municipal Corporation area. While framing bye-laws under the above statutory provision it is permissible for the Corporation to restrict the issue of licences only to the owners of the rickshaws who themselves act as rickshaw pullers. This is apparently done to prevent exploitation of the rickshaw pullers by the owners of the cycle rickshaws. A licensing authority may impose any condition while issuing a licence which is in the interest of the general public unless it is either expressly or by necessary implication prohibited from imposing such a
 D condition by the law which confers the power of licensing. The restriction imposed by the Corporation in the present case is according to us in the interest of the general public. In *Man Singh and Others v. State of Punjab and Others*, [1985] 4 SCC 146 the petitioners contended that the provision in the Punjab Cycle Rickshaw (Regulation of Licence) Act, 1976 was violative of Articles 19(1)(g) and 21 of the Constitution as also Articles 14 and 16 of the Constitution. This Court negating the said contention observed thus:
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G "In the instant case, section 3 of the Punjab Act has the effect of making it possible for the rickshaw puller to ply the rickshaw as owner of the vehicle and thereby to be the full owner of the income earned by him. No longer will he be obliged to part with an appreciable portion of that income in favour of another who owns the vehicle. The Punjab Act is beneficial legislation bringing directly home to the rickshaw puller the entire fruit of his daily toil. The enactment is intended as a social welfare measure against
 H the exploitation of the poor and unemployed by rapacious

cycle rickshaw owners who by reason of their superior financial resources fatten their wealth from the sweated toil of rickshaw pullers. Even if we look at the impugned legislation from the point of view of its impact on the fundamental right of rickshaw owners who give them on hire to rickshaw pullers for plying, it is plain that the legislation constitutes a reasonable restriction on the right of such rickshaw owners to carry on the business of hiring out cycle rickshaws inasmuch as the exercise of the right is excluded by legislation designed for the economic and social welfare of rickshaw pullers, who constitute a significant sector of the people, a sector so pressed by poverty and straitened by the economic misery of their situation that the guarantee of their full day's wages to them seems amply justified."

We do not, therefore, find any ground to set aside the bye-law in question either on the ground that it is outside the scope of section 481 of the Act or on the ground that it is opposed to the provisions of the Constitution. The above contentions, therefore, fail.

During the pendency of these proceedings the Court issued notices to the Punjab National Bank, the Bank of Baroda and the State Bank of India and also the Credit Guarantee Corporation of India (Small Loans) to ascertain whether the banks are willing to extend financial assistance to the rickshaw pullers to acquire the ownership of cycle rickshaws and to ply them within the Corporation area and also to ascertain whether the Credit Guarantee Corporation of India Small (Loans) would guarantee the loans advanced to the rickshaw pullers. The learned counsel for these banks and the Credit Guarantee Corporation of India (Small Loans) have submitted that the banks are willing to advance upto Rs.2,000 by way of loan at reasonable rate of interest to the rickshaw pullers on the security of the cycle rickshaws owned by them in order to assist the rickshaw pullers to acquire the cycle rickshaws. The banks have put forward before the Court two schemes: (1) the scheme for finance to cycle rickshaw pullers, and (2) Self-employment programme for urban poor (SEPUP) under which it is possible for them to give financial assistance to the rickshaw pullers. The Credit Guarantee Cooperation of India (Small Loans) is agreeable to guarantee the repayment of loans advanced to the rickshaw pullers. The Corporation authorities are agreeable to issue necessary eligibility certificates to the rickshaw pullers to obtain the loan.

- A In view of the above submissions, we direct the several branches of the Punjab National Bank, the Bank of Baroda and the State Bank of India operating in Delhi to give financial assistance to rickshaw pullers who wish to own cycle rickshaws and ply them under licences issued by the Corporation subject to their producing the necessary eligibility certificate issued by the Corporation and satisfying the other terms of the Schemes referred to above. We also direct the Delhi Administration to comply with the directions issued by this Court in *Nanhu & Others* (supra).
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- C In the course of the argument the learned counsel for the petitioners incidentally made a complaint about the seizure of cycle rickshaws by the Corporation officers without issuing an acknowledgment to the owners whenever they found that the cycle rickshaws were being used on the roads contrary to the rules. The learned counsel for the Corporation stated that whenever the cycle rickshaws are seized written acknowledgments will be issued to the owner if he is found near the cycle rickshaw at the time of its seizure. We record the above statement made on behalf of the Corporation.
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These petitiones are accordingly disposed of. No costs.

S.R.

Petitions disposed of.