

(2004) 09 CAL CK 0008

Calcutta High Court

Case No: M.A.T. No. 2623 of 2004

Howrah Auto-Rickshaw
Association and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Sept. 20, 2004

Acts Referred:

- Motor Vehicles Act, 1988 - Section 2(3), 74, 74(1), 74(2), 74(3)

Citation: (2005) 3 CHN 465

Hon'ble Judges: Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench: Division Bench

Advocate: B.B. Giri and Arun Kanti Bera, for the Appellant; Dilip Kumar Dey and T.N. Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Seth, J.

In re : CAN 6627 of 2004.

1. The Notification No. 988-WT/3M-90/2003 dated 5th March, 2004 was the subject-matter of challenge in the writ petition. The learned Single Judge had held that the said notification was well within the jurisdiction of the authority issuing the same in exercise of power u/s 74(3)(a) of the Motor Vehicles Act, 1988 and dismissed the writ petition. The present appeal has since been filed against the said order dated 7th July, 2004 in W.P. No. 10955 (W) of 2004.

2. Mr. Giri, learned Counsel for the appellant, while submitting in support of the application for interim order had addressed the Court on the merits of the appeal; similarly the learned Counsel for the State Transport Authority Mr. Dey had addressed the Court on the merits of the appeal. Therefore, along with the application, we also treat the appeal by consent of parties as on day's list for

hearing and dispose of the same in the following manner.

3. Mr. Giri had contended that the permit that was granted to his client was a contract carriage permit operative in an area stipulated without any particular route with a meter. By virtue of a notification, the character of the permit is being altered, it is being confined in a route with the fair structure determined. This is wholly outside the purview of Section 74(3) of the Motor Vehicles Act. The Auto-Rickshaw as defined in Section 2(3) of the Motor Vehicles Act having three wheels constructed or adapted and used to carry not more than three passengers excluding the driver. He also refers to the relevant rules for use of meters. As such the said notification is invalid so far as its restriction in operation in the area under the permit and the fair structure is concerned.

4. Mr. Dey, learned Counsel for the State respondent, on the other hand, points out that a contract carriage permit is granted u/s 74 of the 1988 Act upon an application with such modification as it deems fit or in accordance with the application or may refuse grant of such permit. At the same time, Sub-section (3) provides the limitation of the number of permits to be granted in a particular route in city having population of 5 lakhs and above on the direction of the Central Government. Referring to Sub-section (2), Mr. Dey contends that authority can decide to attach to the permit such conditions as specified in Clauses (i) to (xiii). Clause (i) provides for specification of a particular route. Therefore, according to him, the notification dated 5th March, 2004 is well within the jurisdiction of the State Government when issued under the direction of the Central Government.

5. After having heard the learned Counsel for the parties, the only question that falls for our determination is as to the validity of the notification dated 5th March, 2004. Admittedly, Section 74 governs the grant of contract carriage permit. An Auto-Rickshaw operates admittedly under a contract carriage permit. Contract carriage permit had already been granted with the limitation of area with meter. But such permits are always subject to such conditions as might be determined by the authority concerned and also subject to Sub-section (3) of Section 74. Inasmuch as Section 74(1) opens with the condition of the permit being subject to Sub-section (3). Therefore, any condition that might be attached in the permit shall always be subject to Sub-section (3). In case any area is specified based on Sub-section (1) or (2), such area would include the conditions attached to the permit within the confines of the notification issued under Sub-section (3). It would not amount to altering conditions of permit. On the other hand, a permit is always subject to Sub-section (3). That apart under Sub-section (2) the authority is empowered to impose such conditions including use of the vehicle in specific area or on a specific route or routes. If by reason of a notification under Sub-section (3) issued pursuant to the direction of the Central Government, the operation of a permit already issued is restricted to routes or routes instead of the area mentioned in the permit in city of population above 5 lakhs, such notification cannot be held to be invalid or without

jurisdiction. It is also open to the authority to frame fare structure when it directs operation of the permit in a particular route or routes despite meter being attached to it.

6. In the circumstances, we do not think that there is any reason to differ with the view taken by the learned Single Judge and agree with Mr. Giri that it had affected the right to carry on the business otherwise protected under Article 19(1)(g) subject to the conditions statutorily circumscribed, inasmuch as the right to carry on business is always circumscribed by law and can be restricted reasonably since the permit is always subject to statutory restrictions.

7. In the circumstances, the order of the learned Single Judge is hereby affirmed. The appeal is dismissed. The application also stands dismissed. No order as to costs.

R.N. Sinha, J.

I agree.