

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 17th September, 2012

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W.P.(C) No.2878/2011

SITARAM MEHTO & ORS.

..... Petitioners

Through: Mr. Praveen Agarwal with Mr. Rajesh
Ranjan Singh, Mr. Zahid Ali & Mr.
Anand Verdhana Maitreya, Advs.

Versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Najmi Waziri with Ms. Neha
Kapoor, Advs.

AND

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W.P.(C) No.3519/2011

PRAGATISHEEL AUTO RICKSHAW

DRIVERS UNION (REGD.) & ORS.

..... Petitioners

Through: Mr. R.P. Sharma, Adv.

Versus

THE SECRETARY TRANSPORT, GNCTD & ORS...Respondents

Through: Mr. Najmi Waziri with Ms. Neha
Kapoor, Advs. for GNCTD.

AND

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W.P.(C) No.3590/2011

OM SINGH & ORS.

..... Petitioners

Through: Mr. Praveen Agarwal with Mr. Rajesh
Ranjan Singh, Mr. Zahid Ali & Mr.
Anand Verdhan Maitreya, Advs.

Versus

GOVT. OF NCT OF DELHI

...Respondent

Through: Mr. Najmi Waziri with Ms. Neha
Kapoor, Advs. for GNCTD.

AND

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W.P.(C) No.6547/2011

OM PRAKASH TIWARI & ORS.

..... Petitioners

Through: Mr. Praveen Agarwal with Mr. Rajesh
Ranjan Singh, Mr. Zahid Ali & Mr.
Anand Verdhan Maitreya, Advs.

Versus

TRANSPORT DEPARTMENT OF DELHI

...Respondent

Through: Mr. Najmi Waziri with Ms. Neha
Kapoor, Advs. for GNCTD.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The challenge in all these petitions is to Paras No.24 and 26 of the
Public Notice No.F23(479)/Tpt/OPS/2010/66/185 dated 17.03.2011,

issued by the Government of National Capital Territory of Delhi (GNCTD), Auto Rickshaw Unit, Transport Department, Delhi, in exercise of powers vested in the State Transport Authority (STA), Delhi under Section 74 of the Motor Vehicles Act, 1988, prescribing the revised terms and conditions for grant of permit for auto rickshaws plying in NCT of Delhi. Paras No.24 and 26 under challenge deal with the provision of GPS / GPRS devices in auto rickshaws. While W.P.(C) No.2878/2011 has been preferred by 197 drivers and / or owners of auto rickshaws, W.P.(C) No.3519/2011 has been preferred by Trade Unions of Auto Rickshaw Permit Holders / Drivers of Delhi, W.P.(C) No.3590/2011 has been preferred by 241 drivers and / or owners of auto rickshaws and W.P.(C) No.6547/2011 has been filed though by another 10 drivers / owners of auto rickshaws, but as a Public Interest Litigation. Notices of the petitions were issued. Vide interim order dated 03.05.2011 in W.P.(C) No.2878/2011, coercive steps against the petitioners therein were restrained. Though the other writ petitions were pending before the learned Single Judges of this Court, but owing to the public interest litigation entailing the same question pending before this Bench, were

with the consent of the counsels, transferred to this Bench and the counsels have been heard.

2. The impugned revised conditions for grant of permit:

- (i) require the auto rickshaws to be fitted with GPS / GPRS, two way communication device, printer for printing of receipt and other equipment as may be authorized by the department through Delhi Integrated Multi-Model Transit System (DIMTS)
- (ii) make the permit holder / driver responsible for keeping the GPS / GPRS and receipt printing device and other equipments so installed in operational condition and to bear the cost of repair / replacement in the event of loss, willful / accidental damage, theft etc. and failure to do so, a violation of permit conditions;
- (iii) require making the auto rickshaws available for inspection / repair to the vendors, as authorized by DIMTS, within 24

hours of lodging of complaint regarding theft, loss, damage etc.;

- (iv) require auto rickshaws to have installed from DIMTS / authorized vendor a panic button near the passenger sitting area and providing communication with a Central Command Centre set up by the DIMTS and statutory authorities;
- (v) require the auto rickshaw driver to issue a receipt of payment of the fare to the customer through the equipment installed;
- (vi) require the permit holder to bear the cost of paper roll to be utilized in the printing system for issuance of fare receipt and make non issuance of receipt a violation of the permit condition;
- (vii) authorize collection of 50 paise per kilometer from the customers for setting up of a Control Centre Room for installing GPS / GPRS on the vehicle for better service, security and customer convenience;

- (viii) require the permit holders / drivers to deposit the amount so collected with the agency designated by the Government for that purpose at the time of fitness;
- (ix) require all owners / permit holders to deposit an amount of ₹15,000/- per year at the time of fitness; and
- (x) require all drivers to take the passenger to their destination through the shortest route.

3. The petitioners plead:

- (a) the conditions aforesaid to be violative of Articles 14 and 21 of the Constitution of India, being discriminatory, arbitrary and without having any nexus;
- (b) the imposition of the conditions aforesaid, to be beyond the competence and powers of the respondent STA as outlined in the Act;
- (c) the amount demanded being much more than the price of GPS / GPRS device available in the retail market; it is

pleaded that GPS / GPRS devices are available for less than ₹5,000/-, while an amount of ₹15,000/- per year is being claimed;

- (d) the direction for collection of 50 paise per kilometer also being beyond the entitlement of the respondent STA. It is pleaded that there are approximately 55,000 auto rickshaws providing a source of livelihood to approximately 1,00,000 auto rickshaw drivers, earning less than ₹6,000/- per month and the levy aforesaid would eat into their earnings and livelihood;
- (e) that the conditions aforesaid are without any reason and whimsical – it is pointed out that no such provisions have been made qua taxi or buses which like auto rickshaws also ferry passengers;
- (f) Rule 81 of the Central Motor Vehicles Rules, 1989 provides for payment of ₹200/- as annual fitness charges and

collection of ₹15,000/- per annum at the time of fitness is *ultra vires*; and

- (g) Section 74 of the Act does not empower the respondent STA to prescribe installation of GPS / GPRS devices.

4. The respondent STA in its counter affidavit has pleaded:

- (I) that the Ministry of Urban Development (Metro Rail Cell), Government of India, as a part of its decision to modernize the transport system in Delhi had suggested to the GNCTD to set up a Common Control Centre for automated computerized and GPS / GPRS based management of all taxis and auto rickshaws in the State;
- (II) that in furtherance to the above, the GNCTD has requested DIMTS to provide technical assistance in setting up of the proposed Common Control Centre;
- (III) that the rationale behind the said Policy is to monitor the movement of auto rickshaws and taxis for the purpose of

overall security and safety of the commuters particularly of ladies, children and the aged; the movement of the said vehicles through the satellite system will facilitate the tracing and apprehending of persons who may be in conflict with the law – the mechanism will also help in ensuring that the passengers / commuters are given a due receipt of the distance travelled;

- (IV) that the equipment required to be fitted in the auto rickshaws does not pose any financial burden on the permit holders of the said vehicles inasmuch as collection of 50 paise per kilometer has also been authorized – rather this fare is already being collected;
- (V) that the cost of installing GPS / GPRS devices and printing devices has been recalculated at ₹7,500/-; and
- (VI) that no financial burden has thus been placed on the permit holders / auto rickshaw drivers. Welfare measures such as insurance cover, free smartcards, refresher courses, pension,

educational loans for higher studies of their children and two sets of uniforms for authorized drivers out of the amount collected for forming a Welfare Board for auto rickshaw drivers are also proposed.

5. The counsels for the petitioners have argued that the respondent STA in exercise of powers under Section 74(2) can impose conditions for grant of permit only by framing a Rule and not in the manner done; that the conditions can be only in terms of Clauses (i) and (xii) of Section 74(2) and neither of which provide for GPS / GPRS or the printing devices; that the residuary Clause (xiii) cannot be used to prescribe any new condition and has to be read *ejusdem generis*; that Rule 62 of the Central Motor Vehicles Rules, 1989 dealing with the Certificate of Fitness also does not provide for GPS / GPRS or printing device; that fitness cannot be refused for non installation of GPS/GPRS; that while a permit is issued for five years, the Certificate of Fitness has to be obtained every year; that Rule 81 prescribes the fee which could be charged and no fee beyond that as is purported to be done can be charged. With reference to Article 265 of the Constitution of India, it is contended

that no tax can be levied or calculated except by authority of law and it is argued that the amounts sought to be recovered under the revised Permit Conditions are without authority of law. To justify that the same amounts to taxation, attention is invited to Article 366 (28) defining “taxation” as including imposition of any impost. Reliance is placed on:

- (i) ***Commissioner of Central Excise, Lucknow, U.P. Vs. M/s Chhata Sugar Co. Ltd.*** (2004) 3 SCC 466.
- (ii) ***LaLa Hari Chand Sarda Vs. Mizo District Council*** AIR 1967 SC 829
- (iii) ***AIR India Vs. Nergesh Meerza*** (1981) 4 SCC 335

It is yet further argued that if Section 74(2) is read as enabling the respondent STA to levy any new conditions un-relatable to those specified in Clauses (i) to (xii) of Section 74(2) of the Act, it would be hit by the doctrine of excessive delegation; that the Executive power of the Government under Article 73 of the Constitution of India cannot extend beyond the Legislative powers; that the new conditions under the residuary Clause (xiii) can only be as prescribed under the Rules and not

otherwise; if the residuary Clause has to be read as enabling the respondent STA to levy any condition then the same would make description in Clauses (i) to (xii) by the Legislature otiose; that attachment of further conditions to the permit under Section 74(2)(ix)(b) of the Act can also be in terms of the Rules and not otherwise. Reliance in this regard is placed on *Mohammad Hussain Gulam Mohammad Vs. The State of Bombay* AIR 1962 SC 97. With reference to Rule 66 of the Delhi Motor Vehicles Rules, 1993, it is contended that even a provision for fire extinguishers in every public service vehicle has been made through the Rule making power and thus no provision for GPS / GPRS and printing devices can be made without a Rule in this regard. Reliance in this regard is placed on *State of Uttar Pradesh Vs. Singhara Singh* AIR 1964 SC 358. Further relying on *Consumer Online Foundation etc. Vs. Union of India* (2011) 5 SCC 360, it is contended that the imposition aforesaid is a tax.

6. On the contrary, the counsel for the respondents has contended that Section 67 of the Act empowers the State Government to issue necessary directions to the respondent STA; that Section 74 of the Act is only an

enabling provision and the conditions mentioned therein, which can be attached to the permit, are only illustrative; that there is no tax or cess element in the charge for GPS/GPRS which is compensated by permitting the auto rickshaws to charge 50 paise per kilometer built up in the fare itself.

7. The counsels for the petitioners in rejoinder have contended that Section 67 of the Act empowers the State Government regarding fare only and does not empower the State Government to build in a surcharge as by providing for 50 paise per kilometer, has been done.

8. We have given our anxious consideration to the matter which as aforesaid is also been raised by way of Public Interest Litigation. Ordinarily, the challenge to a **step** taken in public interest as the impugned steps undoubtedly are, cannot be the subject matter of a public interest litigation especially when the step has been taken for a much wider cross section of the public and the challenge thereto is for the benefit and interest of a comparatively smaller cross section. The Apex Court in *M.C. Mehta Vs. Union of India* (1997) 8 SCC 770 in the context of Motor Vehicles Act itself held that the claim of any right by an

individual or even a few persons cannot override and must be subordinate to the larger public interest and this is how all provisions conferring any individual right have to be construed. The existing provisions of the Act were held sufficient to clothe the transport authorities with ample powers to control and regulate the traffic so that no vehicle being used in a public place poses any danger to the public in any form. It was further held that the Road Transport Authorities have to ensure that the motor vehicles do not endanger the public. Accordingly, the Road Transport Authority (RTA) was held entitled to require the fitting of the speed governors in the motor vehicles. However, since other petitions have been filed by the affected persons as well, the matter has been considered on merits.

9. We first take up the challenge to the very power of the respondent STA to mandatorily require the auto rickshaws to install GPS / GPRS and printing devices. We are unable to accept the contention that the imposition of conditions under Section 74(2) of the Act can only be through a Rule. Section 74(2) reads as under:

“(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may

be made under this Act, attach to the permit any one or more of the following conditions, namely:-”

The only requirement is that the conditions to be imposed and as mentioned therein are subject to any Rule; the conditions which the STA is empowered to attach to the grant of a permit cannot thus be contrary to or inconsistent with any Rule; the power to impose such conditions, can also be restricted by the Rule; however the language does not suggest that for imposing any conditions the rule making power has to be invoked. Reliance in this regard can be placed on ***Jantia Hill Truck Owners Association Vs. Shailang Area Coal Dealer & Truck Owner Association*** (2009) 8 SCC 492, ***Surinder Singh Vs. Central Government*** (1986) 4 SCC 667, ***The Printers (Mysore) Ltd. Vs. M.A. Rasheed*** (2004) 4 SCC 460.

10. Admittedly the conditions mentioned in Clauses (i) to (xii) under Section 74(2) of the Act do not include imposition of impugned conditions. The only question thus is whether the same can be imposed under the following clauses of Section 74(2):-

- “(ix) that the Regional Transport Authority may, after giving notice of not less than one month, -*
- (a) vary the conditions of the permit;*
 - (b) attach to the permit further conditions;*
- (xiii) any other conditions which may be prescribed”.*

11. While Clause (ix) supra permits the Transport Authority to vary or attach further conditions qua a permit already issued, Clause (xiii) is a residuary Clause for attaching conditions to the permit other than those specified in Clauses (i) to (xii) of Section 74(2) of the Act. The public notice aforesaid specifies that the conditions mentioned therein shall come into force after 30 days from the publication thereof in the newspaper. The said conditions are thus to apply to existing as well as new permits.

12. We are unable to accept other arguments of the petitioners, that the other or further conditions can only be as prescribed in the Rules or that the said residuary Clauses are to be read *ejusdem generis*. The expression “which may be prescribed” cannot be read as prescribed in the Rules. The rule making powers under the various provisions of the Act are vested in the Government and not in the respondent STA. The Delhi

Motor Vehicles Rules, 1993 to which reference is made has been enacted in exercise of the said powers. When the respondent STA has not been empowered to make Rules, the Clauses aforesaid cannot be read as enabling the State Authority to impose conditions only by invoking the rule making power.

13. The Act and the Rules deal with motor vehicles qua which there has been scientific and technological development / advancements by leaps and bounds over the years. The vehicles are now powered by modern technology with much higher power, speed and gadgetry than could have ever been imagined. We are of the view that the residuary powers under Section 74 of the Act were granted to enable the respondent STA to deal with the said advancement in technology and to impose conditions in relation thereto and the said power of the respondent STA cannot be restricted by holding that the conditions to be imposed under the residuary clauses have to be *ejusdem generis* to the conditions specified. Supreme Court in ***Suresh Jindal Vs. BSES Rajdhani Power Ltd.*** (2008) 1 SCC 341 in the context of the Indian Electricity Act, 1910 held that, a statutory authority even under the General Clauses Act, while

exercising statutory power is entitled to do all things which are necessary for giving effect thereto and in the absence of any provisions in the statute precluding or prohibiting the statutory authority from giving effect to benefit of new technological development, no such restriction can be read.

14. We even otherwise do not see anything wrong in requiring the auto rickshaws to be GPS/GPRS and printer fitted. The same is in consonance with what is happening in the rest of the world. Any inhabitant of Delhi would vouch for the infamy of the auto rickshaw drivers. They are not only known to overcharge but also to take longer rather than direct routes for their own benefit and to the detriment of their patrons / consumers. Installation of GPS / GPRS would create a proof / evidence of the route taken by the auto rickshaw driver. As far as explanation given by the respondent STA of the revised conditions being in the interest of security is concerned, the ***Ranga and Billa*** case, in which the auto rickshaw / taxi driver had driven two siblings, barely of age, to a lone spot and attempted to outrage the modesty of the girl and upon resistance killed them still sends shivers in the spine of Delhiites. Children and girls hesitate from

travelling in an auto rickshaw for the fear of being placed under the control of the auto rickshaw driver. We do not find anything wrong in the decision of the respondent STA in this scenario to provide for fitting each auto rickshaw with the GPS / GPRS and printing devices so as to regulate their plying thereof. Though the provision for fire extinguishers may have been made through the exercise of rule making power, but merely because for making of one provision rule making power has been invoked, is not indicative of the respondent STA being incapacitated from imposing conditions without invoking the rule making power, if otherwise found entitled to.

15. For the aforesaid reasons, the revised conditions cannot be said to be arbitrary or whimsical. As far as the ground of the same being a financial burden on the auto rickshaw owners / drivers is concerned, the respondents in their counter affidavits, by treating each auto rickshaw to on an average ply for 100 kilometers in a day, demonstrated that the amount of ₹15,000/- imposed for installation of GPS / GPRS or printing devices would be recovered within a month's time from the additional charge of 50 paise per kilometer which the auto rickshaw owners / drivers

have been empowered in the Notification to collect. Now, in any case the respondent STA has reduced the said amount to ₹7,500/-. There is thus no burden on the petitioners from the expenditure required to be incurred on the installation of the equipment or operation thereof. We may even otherwise state that whenever a new measure is introduced, certain hit and trial in best implementation thereof is implicit and merely because the respondents are not in a position to arrive at the amount with mathematical precision, is no reason for striking down the provision if otherwise found *intra vires*. We may notice that no member of the public using auto rickshaws has come forward protesting against levy of such charge and it is not for the auto rickshaw permit holders / drivers to protest thereagainst. We also do not find the conditions imposed to be in excess of or in abuse of the powers conferred on the STA. Mention may also be made of the Division Bench judgment of the Calcutta High Court in ***Calcutta Howrah Auto Rickshaws Owners Association Vs. State of West Bengal*** AIR 2010 Cal 122 holding the Regional Transport Authority to be entitled to impose additional conditions as permitted by section 74(2) (xiii) of the Act and the Court in exercise of powers under

Article 226 of the Constitution being not competent to sit in appeal over exercise of such quasi-legislative powers of the administrative authorities.

16. This Court speaking through one of us (Acting CJ) in ***Court on its Own Motion Vs. State of NCT of Delhi*** MANU/DE/0758/2011 has held that the Executive within the framework of the Motor Vehicles Act is empowered to frame any Scheme which subserves the common good, welfare of the public at large and their safety concerns. A reliance was placed on ***Netai Bag Vs. The State of West Bengal*** (2008) SCC 262 laying down that the Government is entitled to make pragmatic adjustments and policy decisions which may be necessary or called for under the prevalent peculiar circumstances and the Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would be fairer, wiser or more scientific or logical.

17. We therefore do not find any merit in these petitions and dismiss the same.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

SEPTEMBER 17, 2012/‘gsr’