

PETITIONER:

AZAD RICKHAW PULLERS UNION (REGD.) CH. TOWN HALL, AMRITSAR &

Vs.

RESPONDENT:

STATE OF PUNJAB & OTHERS

DATE OF JUDGMENT 05/08/1980

BENCH:

KRISHNAIYER, V.R.

BENCH:

KRISHNAIYER, V.R.

PATHAK, R.S.

REDDY, O. CHINNAPPA (J)

CITATION:

1981 AIR 14 1981 SCR (1) 366

CITATOR INFO :

R 1985 SC1737 (3,5,6,9,11,20,22)

E&D 1987 SC 648 (4)

ACT:

Constitution of India 1950, Articles 32 and 38 & The Punjab Cycle Rickshaws (Regulation of Rickshaws) Act, 1976-Court framing scheme for cycle rickshaw d rivers.

HEADNOTE:

The Punjab Cycle Rickshaws (Regulation of Rickshaws) Act, 1976 (Punjab Act 41 of 1975), was designed to regulate the issue of licenses to actual drivers of cycle rickshaws, plying within the municipal areas of the State.

The petitioners in their Writ Petitions challenged the Act.

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HELD: (Per Krishna Iyer & Chinnappa Reddy, JJ. Pathak J. agreeing with the scheme of directions framed).

A. The Court framed the following scheme:

- (a) Every rickshaw puller including every petitioner, who has been a licensee within one year of the coming into force of the Act shall be entitled to apply to the Municipal Commissioner for a certificate or other document to the effect that he has been a licensee for rickshaw pulling. [369 F]
- (b) The Municipal Commissioner will verify the records and will grant the necessary certificate or other document within one month from the date of the application. [369 G]
- (c) on receipt of the municipal certificate the rickshaw puller will apply to the Credit Guarantee Corporation of India (Small Loans) under the Guarantee Scheme of 1971 for advance of a loan upto Rs. 900. [369 H-370 A]
- (d) The loan amount shall be repaid by the rickshaw puller in 15 monthly instalments. If there are delayed payments of instalments of loan, higher rate of interest will be recoverable. [370 F]
- (e) When the rickshaw pullers during the agricultural season go to work in their

fields, they shall nominate other rickshaw pullers without employment to ply the rickshaws during that season. The Municipal Commissioner, if satisfied that the nomination made is bona fide will issue licence to such pullers or nominees of the licensed rickshaw pullers, in the agricultural season. [370 H-371 A]

B. (I) Under the Constitutional system courts are havens of refuge for the toiler, not the exploiter, for the weaker claimant of social justice, not the stronger pretender who seeks to sustain the status quo ante by judicial writ in the name of fundamental rights. - [367 E]

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(2) No higher duty or more solemn responsibility rests upon this Court A than to uphold every State measure that translates into living law the preambular promise of social justice reiterated in Article 38 of the Constitution. [F]

(3) The success of well-meant statutory schemes depends on the symbiosis of legislative embargo on exploitative working conditions and viable facilities or acceptable alternatives whereby shackles are shaken off and self-ownership substituted. Judicial engineering towards this goal is better social justice than dehumanised adjudication on the vires of legislation. [H-368 A]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 839 and 563 / 79.

(Under Article 32 of the Constitution)

V. M. Tarkunde and E. C. Agarwala for the Petitioner in W. P. No. 839/79.

R. S. Sharma and S. M. Ashri for the Petitioner in W.P. No. 563/ 79.

O. P. Sharma and R. C. Bhatia for the RR. No. 1 in WP Nos. 839 and 563.

Naunit Lal for RR 2 in WP Nos. 839 and 563.

The following Judgments were delivered:

KRISHNA IYER, J.-The challenge in these writ petitions compels to remind ourselves that under our constitutional system courts are havens of refuge for the toiler, not the exploiter, for the weaker claimant of social justice, not the stronger pretender who seeks to sustain the status quo ante by judicial writ in the name of fundamental right. No higher duty or more solemn responsibility rests upon this court than to uphold every State measure that translates into living law the preambular promise of social justice reiterated in Article 38 of the Constitution. We might have been called upon to examine from this angle of constitutionalised humanism, the vires of the Punjab Cycle Rickshaws (Regulation of Rickshaws) Act, 1976 (Punjab Act 41 of 1975) (the Act for short), designed to deliver the tragic tribe of rickshaw pullers, whose lot is sweat, toil, blood and tears, from the exploitative clutches of cycle rickshaw owners by a statutory ban on non-owner rickshaw drivers. But negative bans, without supportive schemes, can be a remedy aggravating the malady. For, the hungry human animal,

euphemistically called rickshaw puller, loses, in the name of mercy, even the opportunity to slave and live. So, the success of such well-meant statutory schemes depends on the symbiosis of legislative embargo on exploitative working conditions and viable facilities or acceptable alternatives whereby shackles are shaken off and

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self-ownership substituted. Judicial engineering towards this goal is better social justice than dehumanised adjudication on the vires of legislation. Court and counsel agreed on this constructive approach and strove through several adjournments, to mould a scheme of acquisition of cycle rickshaws by licensed rickshaw pullers without financial hurdles, suretyship problems and, more than all, that heartless enemy, at the implementation level of all progressive projects best left unmentioned. Several adjournments, several formulae and several modi fictions resulted in reaching a hopefully workable proposal. In fairness to the State, we must mention that when the impugned legislation was enacted Government had such a supportive financial arrangement and many rickshaw-pullers had been baled out of their economic bondage. Some hitch somewhere prevented several desperate rickshaw drivers getting the benefit, which drove them to this Court. Anyway, all is well that ends well and judicial activism gets its highest bonus when its order wipes some tears from some eyes. Here, the bench and the bar have that reward.

These prefatory observations explain why a pronouncement of the validity of the Act is not called for, although prima facie, we see no constitutional sin in the statute as now framed. We now proceed to set out in our judgment the terms and conditions which will carry with them the implications and obligations of undertakings to the court so far as the parties to the case are concerned. Counsel for the State assures us that the Credit Guarantee Corporation of India (Small Loans) will also abide by the court's direction although not a party formally. So also, the Punjab National Bank which is the financing agency parties have agreed upon.

There is no dispute. that the purpose of the statute is obviously benign as is manifest from the Statement of objects and Reason which runs thus:

In order to eliminate the exploitation of rickshaw pullers by the middlemen and for giving a fillip to the scheme of the State Government for arranging interest-free loans for the actual pullers to enable them to purchase their own rickshaws, it is considered necessary to regulate the issue of licences in favour of the actual drivers of cycle-rickshaws, plying within the municipal areas of the State.

Section 3 which clamps down the impugned ban read thus:

3(1) Notwithstanding anything contained to the contrary in the Punjab Municipal Act, 1911, or any rule or order or bye-law made thereunder or any other law for the time being in force, no

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Owner of a cycle rickshaw shall be granted any licence in respect of his cycle rickshaw nor his licence shall be renewed by any municipal authority after the commencement of this Act unless the cycle rickshaw is to be plied by such owner himself;

(2) Every licence in respect of a cycle rickshaw granted or renewed prior to the commencement of this Act shall stand revoked, on the expiry of a period of thirty days after such commencement if it does not

conform to the provisions of this Act.

The State was alive to the need for positive rescue measures beyond blanket ban on licensing and so decided to provide interest-free loans to actual rickshaw pliers so that they could acquire their own rickshaws and free themselves from the coils of middlemen who preyed upon the little earnings from the toils of the pullers. Luckily, the nationalised banks collaborated in this socially oriented Scheme called the Credit Guarantee Corporation of India (Small Loans) Guarantee Scheme, 1971. And the Credit Corporation agreed to stand surety for the amounts to be advanced by banks to rickshaw pliers. Certainly, the Union of Rickshaw Pliers-the petitioner-readily accepted the conditions designed for their deliverance since they had nothing to lose except their chains.

Thus, we have all the factors ready to cooperate in effectuating the purpose of saving the rickshaw pullers and making them owners. All that we have to do is to set out a self-working, specific scheme which makes the statutory ban not a negative, self-defeating interdict, but a positive economic manumission. All the counsel have played a role in the dynamic process which has resulted in the judicial project we are giving effect to.

Every rickshaw plier, including every petitioner, who has been a licensee in the Amritsar or other municipality within one year of the coming into force of the Act will be entitled to apply to the Municipal Commissioner within one month from today for a certificate or other document to the effect that he has been a licensee for rickshaw pulling within the aforesaid period. The Municipal Commissioner will verify the records on receipt of such application and will grant the necessary certificate or other document within one month from the date of application. He shall not delay the issuance of the certificate. He shall not be over-strict, but shall be liberal in the exercise of the certificate issuing power. (Punctiliousness, especially with the weaker sections, is the path to harassment, corruption, dilatoriness and exasperation. Welfare measures often breed de-moralisation through heartless legalism and this very case is, to some extent, an illustration). On receipt of the municipal certificate, the rickshaw puller concerned

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will apply to the Credit Guarantee Corporation of India (Small Loans), under the Guarantee Scheme of 1971, praying to the said Corporation that it stand guarantee to the Punjab National Bank (or other schedule bank mutually agreed upon) for advance of a loan upto Rs. 900 (and in special cases for a larger sum if satisfied that the price of a cycle rickshaw is more than Rs. 900). The Punjab National Bank (or other scheduled bank mutually chosen) will receive a sum of Rs. 50 by way of deposit towards the loan to be advanced to the applicant. The rickshaw pliers shall make this initial deposit to be eligible for the bank loan. The balance of the loan shall be guaranteed by the Credit Guarantee Corporation of India (Small Loans) whereupon the concerned bank will advance the sum needed for the purchase of a cycle rickshaw to the manufacturer or vendor indicated by the applicant.

Thereupon, the applicant (rickshaw puller) will take delivery of the cycle rickshaw and produce the voucher evidencing purchase and delivery of the rickshaw and, if needed, produce the rickshaw for physical verification by the bank's officials within one week of taking such delivery. and thereafter whenever directed. He will also sign the necessary forms and undertakings required by the

bank so as to hypothecate the cycle rickshaw in favour of the bank. So far as the payment of interest to the bank is concerned, both sides agree that it will be governed by the Scheme for advance to the cycle rickshaw pullers framed by the State Government. The bank shall advance 95% by way of loan towards the purchase of the cycle rickshaw. The sum of Rs. 50 to be deposited initially by the rickshaw puller is expected to cover the remaining 5%. The loan amount shall be repaid by the rickshaw puller concerned in 15 monthly instalments or in weekly or daily instalments so that by the end of each month 1/15th of the amount is cleared). If there are delayed payments of instalments of loans, higher rates of interest will be recoverable from the loanee (the rickshaw pliers) as per the 1971 scheme. The amount of interest, in case instalments are paid duly, will be met by the Government as an act of relief for the rickshaw pliers. The rickshaw pliers shall, on purchase, hypothecate the vehicles to the bank which advances the loan and this will be an undertaking to the court.

The petitioner union will be permitted by the Municipality to set up and run a workshop for repair and allied types of work and a service station for the cycle-rickshaws. Sufficient space will be allowed in suitable places for rickshaw stands and safe keeping of rickshaw within the limitations of availability and subject to moderate charges.

A realistic understanding of the life-style of rickshaw pliers in Amritsar indicates that during the agricultural season many of them

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go to work nominating other rickshaw pliers without employment to ply the rickshaws during that season. The Municipal Commissioner, if satisfied that the nomination made is bona fide, will issue licences to such surrogates or nominees of the licensed rickshaw pliers for the agricultural season.

The bank which advances the loan and the Credit Guarantee Corporation which guarantees the repayment will, at all reasonable times, be entitled to have physical verification of the vehicles, without interference with the occupation of the rickshaw pliers.

If group insurance of rickshaws and of the life of the rickshaw pliers is feasible, the Municipal Commissioner will work out a scheme in this behalf in consultation with the unions in the field. Likewise, any project whereby cycle rickshaws can be replaced by scooters by stages, will also be considered so that the rickshaw pullers of today may become scooter drivers of tomorrow owning the vehicles themselves. It is a notorious fact that rickshaw pullers have an occupational hazard and suffer from pulmonary tuberculosis and so, the State must be deeply concerned progressively to replace rickshaw pulling with mechanical propulsion. It would appear that short of scooters there are mechanised cycle rickshaws which are fairly inexpensive and which are being experimented with. Such vehicles may be a boon to the miserable who now torture themselves to keep body and soul together. After all, the quality of life of the weakest in society is the true measure of social justice.

The conditions and directions we have incorporated in this judgment shall be implemented in its true spirit and import by the State, the Municipal Corporation, the Credit Guarantee Corporation, the nationalised banks and the Union and its members.

We are happy to record our appreciation of the role of

counsel and of the parties in bringing about this solution. The State by exercising its legislative power alone, could not produce justice until this formula was hammered out. The Court with its process of justice alone could not produce a viable project. But now, justice and power have come together and, hopefully, we have fulfilled the words of Blaise Pascal,

"Justice without power is inefficient; power without justice is tyranny. Justice and power must, therefore, be brought together, so that whatever is just may be powerful, and whatever is powerful may be just."

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Until fresh licences are granted to the cycle-rickshaw pliers under the scheme we have incorporated in the order the present petitioners will be allowed to ply their cycle-rickshaws.

The writ petitions are disposed of on the above lines.

PATHAK, J.-I agree with the entire scheme of directions framed by my learned brother for the purpose of enabling the rickshaw pliers to acquire and own cycle rickshaws including the financial arrangements envisaged in the scheme, and also the making of provision for the repairs and maintenance of the cycle rickshaws. I need add nothing more.

N.V.K.

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