

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

% Judgment reserved on : 07.08.2013  
Judgment pronounced on : 14.08.2013

+ W.P.(C) 5026/2013

DELHI AUTORIKSHAW SANGH & ORS. .... Petitioner

Through: Ms Rani Chhabra, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS. .... Respondents

Through: Ms Zubeda Begum and Ms Sana  
Ansari, Advs for GNCTD

**CORAM:**  
**HON'BLE MR. JUSTICE V.K. JAIN**

**V.K. JAIN, J.**

1. The issue involved in this writ petition is as to whether a vehicle found being driven without a permit or in contravention of the terms of a permit, can be subjected to impounding under Section 207 and cancellation or suspension of permit under Section 86 of M.V. Act, even where the owner and/or driver of the vehicle have been prosecuted under Section 66 read with Section 192A of the said Act.

2. The petitioners before this Court are some auto-rickshaw drivers and two associations of auto-rickshaw drivers in Delhi. Section 66 of Motor Vehicles Act, 1988, to the extent it is relevant for the purpose of this writ petition, provides that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods except in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority, authorising him the use of the vehicle in that place in the manner in which the vehicle is being used. Thus, holding a permit and complying with its conditions is mandatory for an auto-rickshaw driver. The contravention of Section 66 is punishable under Section 192A of the Act, which provides that the driver of a motor vehicle, using the said vehicle in contravention of the provisions of sub-section (1) of Section 66 or in contravention of any condition of a permit, relating to the purpose for which the vehicle may be used, as well as the owner, causing or allowing a motor vehicle to be used in the aforesaid manner, shall be liable to punishment, which for the first offence is a fine not exceeding Rs 5000/-, but not less than Rs 2,000/- and for any subsequent with

imprisonment, which may extend to one year, but shall not be less than three months or with fine which may extend to Rs 10,000/-, but shall not be less than Rs 5,000/- or with both. The Court, however, for the reasons to be recorded, may impose a lesser punishment.

3. Section 86 of Motor Vehicles Act, 1988, to the extent it is relevant, provides that the Transport Authority, which granted the permit, may cancel the same or suspend it for such period as it thinks fit, in the event of breach of any condition specified in Section 84 or of any condition contained in the permit or if the holder of a permit uses or causes or allows a vehicle to be used in any manner not authorized by the permit, or the holder of the permit ceases to own the vehicle covered by the permit. Section 84 prescribes the conditions which are necessarily attached to every permit and *inter alia* include (a) that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintained as to comply with the requirements of the Act and the rules made there under; (b) that the vehicle to which the permit relates is not driven at a speed exceeding the speed permitted under this Act; (c) that any prohibition or restriction imposed any fares or freight fixed by notification made under section 67 are observed in connection

with the vehicle to which the permit relates; (g) that the name and address of the operator are painted or otherwise firmly affixed to every vehicle to which the permit relates, on the exterior of the body of that vehicle on both sides thereof in a colour or colours vividly contrasting to the colour of the vehicle centered as high as practicable below the window line in bold letters.

However, no order for cancellation of suspension of permit can be passed, without giving opportunity, to its holder, to furnish his explanation. Where a Transport Authority cancels or suspends a permit, it is required to give to the holder, reasons in writing for the action taken by it. Any person aggrieved by revocation or suspension of the permit can prefer an appeal to the State Transport Appellate Tribunal in terms of Section 89(1) of the Act.

4. Section 207 (1) of the Act, to the extent it is relevant, provides that Any police officer or other person authorized in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used, without the permit required by sub- section (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the

vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle. The proviso to this sub-section 207(1) permits the officer, who finds a vehicle being used without permit required under sub-section (1) of Section 66 to seize the certificate of registration of the vehicle instead of seizing the vehicle itself. Sub-section (2) of Section 207 enables the owner or person in charge of the seized vehicle to apply to the Transport Authority or any officer authorized by the State Government in this behalf, for the release of the vehicle and such authority or officer may, after verification of relevant documents which the application is required to submit, order release of the vehicle and while releasing the vehicle, he may impose such conditions as are deemed appropriate in this regard.

5. The grievance of the petitioners before this Court, who are some auto-rickshaw drivers in Delhi and two Associations of Auto-Rickshaw Drivers is that when an auto-rickshaw is found being driven, without a permit or in violation of the conditions subject to which the permit has been granted, besides prosecuting the auto-rickshaw and/or its owner, the respondents are also taking actions under Section 86 of the Act for

cancelling and/or suspending the permit and under Section 207 for impounding the vehicle. Their contention is that once an auto-rickshaw driver or its owner is prosecuted under Section 66 of the Act and either he compounds the offence or suffers the sentence prescribed in Section 192A of the Act, it is not open to the respondents to take action under Section 86 and/or 207 of the Act.

The petitioners are accordingly seeking the following directions in this writ petition:-

“a) Pass an order, direction and/or any other appropriate writ declaring the action of the respondents in challaning the vehicles of the Petitioners under section 66/192A and further initiating proceedings under section 86 of the Motor Vehicles Act as illegal, unjustified, contrary to the provisions of the Act and also in violation of the fundamental rights guaranteed to the Petitioners under Articles 14 and 19 of the Constitution;

b) Pass an order, direction and/or any other appropriate writ directing the respondents, their officials, representatives, nominees, assignees not to take action against the Petitioners contrary to the provisions of the Motor vehicles Act”

6. The learned counsel for the respondents, who appears on advance notice, opposes the petition and submits that the Act permits them not only to prosecute the auto-rickshaw driver and/or its owner under Section

66 read with Section 192A, but also to revoke and/or suspend the permit under Section 86 and impound the vehicle under Section 207 of the Act.

7. I have carefully perused the provisions of Section 86 of the Act and I find nothing in the said provision which would preclude the respondents from permitting or suspending the vehicle in case the driver and/or owner of the vehicle is prosecuted under Section 66 read with Section 192A of the Act. Section 66 treats the driving of a vehicle or allowing it to be driven, without permit or in contravention of the terms of a permit as a criminal offence, which is punishable under Section 192A of the Act. Section 86 of the Act, on the other hand, is a civil consequence which follows when a vehicle is found being driven in contravention of the conditions of the permit granted to the owner of the vehicle. As noted earlier, one of the conditions necessarily attached to a permit is that the vehicle shall not be driven at a speed prescribed for such a vehicle. If the driver of a vehicle is prosecuted for driving at a higher than the permitted speed and the matter rests at prosecuting him and/or the owner of the vehicle under Section 66 read with 192A of the Act, nothing prevents him from continuing to drive the vehicle at more than the prescribed limit, thereby continuing to violate an important condition attached to the

permit. If, however, the permit is cancelled, it will not be possible for the vehicle to be driven at higher than the prescribed limit. If the permit is suspended, that would work as a deterrence for the future since it will not be possible to drive the vehicle for the period during which the permit is suspended. Another necessary condition attached to every vehicle is that there will be no violation of the restrictions imposed with respect to fare and freight fixed by way of notification under Section 67 of the Act. If the driver of a auto-rickshaw charges higher than the prescribed fare or freight and no action other than prosecution under Section 66 read with Section 192A is taken, that may not deter him from continuing to charge higher fare and/or freight, considering that it is only rarely that such complaints are made by the passengers, who are made to pay more than the prescribed fare and/or freight. On the other hand, if the auto-rickshaw driver and its owner in case the owner is different from the driver, know that driving at more than the prescribed speed and/or charging more than the prescribed fare and/or freight entail serious consequences such as cancellation and suspension of permit and impounding of the vehicle, the rickshaw driver would think more than once before exceeding the prescribed speed and/or demanding more than the prescribed fare and/or

freight. The provisions for cancellation and suspension of permit and impounding of the vehicle therefore serve a salutary purpose of ensuring strict compliance with the terms of the permit besides ensuring that no vehicle is driven, without a permit in this regard. There are various other conditions attached to a permit, some of them for the benefit of auto-rickshaw drivers such as limiting the hours of work for them. If the provisions of Section 86 of the Act are not invoked, the owners of the auto-rickshaw, who hire auto-rickshaw drivers on monthly wages, may compel them to ply the auto-rickshaw for more than the prescribed hours. Such treatment of the auto-rickshaw drivers besides being risky to their own health and safety may also jeopardize the safety of the passengers since a tired driver who has already plied the auto-rickshaw for prescribed hours, may not be in a position to drive it safely and that may result in the vehicle getting involved in some accident, causing injuries not only to the passengers, but also to the auto-rickshaw driver. In any case, as noted earlier, the provisions of Section 86 being independent of the provisions of Section 86, there is nothing in the Act to suggest that prosecution under Section 66 read with Section 192A precludes the

respondent from initiating action for cancellation and suspension of permit under Section 86 of the Act.

8. As regards impounding of vehicles under Section 207 of the Act, again, there is nothing in the provision to suggest that the power to detain vehicle cannot be exercised if the driver and/or owner has been prosecuted under Section 66/192A of the Act. The purpose of detaining the vehicle being driven, without permit or in contravention of the permit, is to ensure that it does not continue to be plied, without permit or in case there is a permit already issued, the driver of the vehicle does not continue to ply the vehicle in contravention of the terms subject to which the permit has been granted. Though the provisions contained in Section 86 for cancellation and suspension of permit and the provisions contained in Section 207 of the Act for detaining the vehicle are aimed at achieving the same objective, i.e., a vehicle should not be driven, without permit or in contravention of the conditions of a permit, action under Section 86 of the Act would not be sufficient because such an action cannot be taken immediately, if the vehicle is found being driven in violation of the conditions of a permit. Unless the vehicle is detained under Section 207 of the Act, it would be possible for the driver of the vehicle to continue to

ply it till the time the permit is suspended taking recourse of the provisions of Section 86 of the Act. Moreover, the power under Section 207 of the Act can be exercised not only where a vehicle is driven in contravention of the terms of the permit, but also in a case where it is being driven without any permit at all, whereas, Section 86 of the Act applies only to the case where permit has been issued, but the vehicle is being driven in contravention of the conditions attached to the permit. In any case, the powers under Section 207 of the Act are independent of the power to prosecute under Section 66 read with Section 192A of the Act.

9. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. There shall be no order as to costs.

**V.K.JAIN, J**

**AUGUST 14, 2013**

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