

RAJASTHAN HIGH COURT

Rajasthan Auto Chalak Union

Vs.

State of Rajasthan

Civil Writ Petn. No. 3279 of 2001

(Dr. B.S. Chauhan, J.)

24.01.2003

ORDER

Dr. B. S. Chauhan, J.

1. This writ petition has been filed for quashing the permit condition No. (5)(2) providing that Auto Rickshaw being plied within the Municipal Limits of Bikaner must be plied by permit holder himself.
2. The writ petition has been filed by the registered Union of Auto Rickshaw owners/drivers to quash the condition on the permit of plying the auto- rickshaw only by the permit holder by the respondent authorities on the ground that the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act, 1988') puts an embargo only that a owner or person in-charge of the vehicle shall not drive the vehicle in any public place without having any effective driving license. The condition imposed to the respondent authorities in the present case is without competence and contrary to the statutory provisions.
3. Sri Vyas, learned counsel for the petitioner has submitted that the said condition is arbitrary and unreasonable. Moreso, discriminatory as such a condition has not been put by the transport authorities while granting the permits under the Motor Vehicles Act, 1988 for stage carriage permit or for goods vehicles or for contract carriage permit. Even for having the national permits such a condition has not been imposed. Thus, putting such a condition only for the purpose of granting permit to Auto Rickshaw is not only discriminatory but arbitrary also. Moreso, there was a statutory provision of Motor Vehicles Act, 1988 providing that a person cannot have more than 5 permits of the vehicles which has subsequently been withdrawn. For Buses and goods vehicles thus there is no upper limit of permits, a person can have but putting

such a condition impliedly or indirectly comes to that a person cannot have the permit of more than one Auto Rickshaw which indirectly becomes discriminatory for persons of lower income group who cannot afford to have the permit of buses etc., therefore, this condition is liable to be struck down.

4. On the contrary Sri Dave, learned counsel for the respondents has submitted that as the condition has been imposed by the statutory authority/State Government in view of a policy decision, this is beyond the competence of writ Court to examine the issue as policy decision is not amenable to judicial review. The petition is liable to be dismissed.

5. I have considered the rival submissions of the learned counsel for the parties and perused the judgments cited in support thereof.

6. It is settled legal proposition that the policy decision taken by the State or its authorities/instrumentalities is beyond the purview of judicial review unless the same is found to be arbitrary, unreasonable or in contravention of the statutory provisions or violates the rights of individual's guaranteed under the statute. The policy decision cannot be in contravention of the statutory provisions for the reason that if Legislature in its wisdom provides for a particular right/guarantee/benefit etc., act, the authority taking a policy decision cannot nullify the same.

7. While examining a similar issue, in *Avinder Singh v. State of Punjab*, ¹ the Apex Court observed as under (para 25) :-

"While what constitutes an essential feature cannot be delineated in detail it certain cannot include a change of policy. The Legislature is the master of legislative policy and if the delegate is free to switch policy, it may be usurpation of legislative power itself."

(Emphasis added).

8. In *Tamil Nadu Education Deptt. Ministerial and General Subordinate Services Association v. State of Tamil Nadu*, ² the Hon'ble Supreme Court while examining the scope of interference by the Courts in public policy held that the Court cannot struck down a circular/Government order or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even inconsistency is not always a virtue. What is important is to know whether mala fides vitiates or irrationality and extraneous factors fouls. The Court held as under (para 17) :-

"Once the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however unhappy we be to see the seniors of yesterdays becoming the Juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands-off policy.

9. In *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumarsheth*,³ the Hon'ble Apex Court considered the scope of judicial review in a case of policy decision and held as under (para 16) :-

"The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be the policy evolved by the legislature and subordinate regulation making body. It may be wise policy, which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it *ultra vires* and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope of any interference by the Courts unless the particular provision impugned before it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution."

10. Similar view has been reiterated in *Delhi Science Forum v. Union of India*,⁴ *U. P. Kattha Factories Association v. State of U. P.*,⁵ *Collector v. B. Suresh*⁶ and *Rameshwar Prasad v. Managing Director, U. P. Rajkiya Nirman Nigam Ltd.*,⁷

11. In *Netaj Bag v. State of West Bengal*⁸ the Hon'ble Supreme Court held that violation of a statutory provision would not render the State action arbitrary or illegal in each and every case. Each individual case has to be examined in the light of the facts and circumstances thereof as the State is entitled to make pragmatic adjustments and policy decision which may be necessary or call for under the prevalent circumstances. The Court cannot be justified in striking down a policy decision taken by the State merely because it feels that another decision would have been

forthcoming or better or more scientific or logical while deciding the said case, the Court referred to and relied upon its earlier judgments in *State of Madhya Pradesh v. Nandlal Jaiswal* ⁹ and *Sachidanand Pandey v. State of West Bengal* ¹⁰ wherein the Court had held that judicial interference with policy decision is permissible only if the decision is shown to be patently arbitrary, discriminatory or mala fide.

12. Similar view has been reiterated in *Union of India v. Dinesh Engineering Corporation* ¹¹ In *Ugar Sugar Works Ltd. v. Delhi Administration* ¹² it has been held that in exercise of their power of judicial review, the Courts do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed arbitrariness, irrationality, perversity and *mala fide* render the policy unconstitutional. However, if the policy cannot be touched on any of these grounds, the mere fact that it may affect business interests of a party does not justify invalidating the policy.

13. Similarly, in *State of Himachal Pradesh v. Padma Dev* ¹³ the Court held that unless a policy decision is demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any statute or the constitution cannot be a subject of judicial interference under the provisions of Articles 32, 226 and 136 of the Constitution. Similar view has been reiterated in *State of Rajasthan v. Lata Arun* ¹⁴

14. The Hon'ble Supreme Court in *Kailash Chandra Sharma v. State of Rajasthan* ¹⁵ upheld the Full Bench judgment of this Court in *Deepak Kumar Suthar v. State*, ¹⁶ wherein this Court had struck down the policy decision of granting bonus marks on the ground of residence in public employment being unconstitutional and *ultra vires* of the provisions of Articles 14 and 16 of the Constitution. The Hon'ble Apex Court held that policy decision giving weight age to the candidates in public employment on the ground of residence was impermissible in view of the constitutional provisions, therefore, the policy decision was bad.

15. In view of the above settled legal proposition, the law emerges that the policy decision should not lightly be interfered by the Courts unless it is found to be arbitrary, discriminatory, unreasonable or violative of any provisions of the Constitution or any other statute.

16. Policy cannot be adopted in contravention of the statutory provisions, rather statutory provisions require strict adherence by the authorities. Section 3 of the Act, 1988 deals with the necessity for a driving license and mandates that no person shall drive a vehicle in any public place without holding an effective driving license issued

by the authority, that also include the vehicle hired or for his personal use or rented under any scheme. Section 4 thereof provides for age and other eligibility for having a driving license. Section 5 of the Act, 1988 provides for responsibility of owners of vehicles in contravention of provisions of Sections 3 and 4 and its requirement is that the owner of the vehicle shall not handover the vehicle to a person not having a valid driving license. Section 6 of the Act provides for restrictions on holding the driving license as it deals with other eligibility conditions for having a permit and also prohibits its use by any other person i.e. license not been transferable. Sections 7 and 8 deal with the grant of learners' driving license. Section 9 deals with the grant of driving license. Section 10 deals with the forms and contents of license to drive.

17. Therefore, the Legislature in its wisdom has given a very comprehensive scheme providing for a driving license explaining its necessity and responsibility of the owner in case he hands over the vehicle to a person, who is not having a valid driving license. Sri Dave, learned counsel for the respondents could not point out any rule framed under the Act, 1988 conferring the competence upon the transport authority to impose such a condition.

18. Thus, the condition impugned itself is without jurisdiction and cannot be sustained in the eyes of law.

19. There is no bar under the statute to apply for grant of permit by a handicapped person, however under the impugned condition that such a person has to drive its own vehicle would be depriving him of his source of livelihood. Likewise, a woman would not be able to drive in odd hours in night or beyond particular distances. Further, if a person having the permit of autorikshaw dies and the widow of the permit holder succeeds the possession of the vehicle and ask for transfer of the permit under the statutory provisions, her application would automatically be rejected, if she is not in a position to drive or does not have a valid driving license, under the impugned condition.

20. Such a condition deprives a person to have permits of more than one Auto-Rickshaw which has not been the intention of the Legislature. Moreover, it is discriminatory as no such treatment has been given to the permit-holders of other vehicles like buses and goods vehicles. In case of death of the permit-holder, person in possession of the vehicle may not be able to get the permit transferred in his name for want of driving license which is also not in consonance with the statutory requirement.

21. In view of the fact that the policy decision taken by the R.T.A., Bikaner is unreasonable and unworkable and also discriminatory *qua* higher income group who can afford to have any number of vehicles on many routes or having buses, the policy decision does not stand on the judicial scrutiny and is liable to be struck down.

22. Accordingly, the petition succeeds and is allowed only to the extent that permit condition No. (5) (2) providing that Autorikshaws being plied within the Municipal Limits of Bikaner must be plied by permit holder himself, is quashed. There shall, however, be no order as to costs.

Petition party allowed.

Cases Referred.

1. AIR 1979 SC 321
2. AIR 1980 SC 379
3. AIR 1984 SC 1543
4. AIR 1996 SC 1356
5. (1996) 2 SCC 97: (AIR 1997 SC 1997)
6. (1999) 5 SCC 612: (1999 AIR SCW 4809)
7. (1999) 8 SCC 381: (AIR 1999 SC 3443)
8. (2000) 8 SCC 262: (AIR 2000 SC 3313)
9. AIR 1987 SC 251
10. AIR 1987 SC 1109
11. (2001) 8 SCC 491: (AIR 2001 SC 3887)
12. (2001) 3 SCC 635: (AIR 2001 SC 1447)
13. (2002) 4 SCC 510: (AIR 2002 SC 2477)
14. (2002) 6 SCC 252: (AIR 2002 SC 2642)
15. (2002) 5 JT (SC) 591: (AIR 2002 SC 2877)
16. 2000 Lab IC 1 (Raj) (FB)