* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve :15.12.2009
Date of decision: 10.02.2010

\+ **WP(C) No.4572/2007**

MANUSHI SANGTHAN, DELHI ..... Petitioner

Through : Mr. Prashant Bhushan with Ms. Indira Unininayar and Mr. Somesh Rattan, Advocates

versus

GOVT. OF DELHI & ORS. ..... Respondents

Through : Ms. Madhu Tewatia with Ms. Sidhi Arora, Advocate for MCD.
Ms. Meera Bhatia with Ms. Amita Arora, Advocates for Resp. Nos. 1, 4 & 5.
Mr. Vikram Nandrajog, Advocate for applicant in CM No.3702/09.
Mr. Vikas Pahwa, Advocate for Delhi Police.
Mr. Sanjeev Ralli, Advocate for intervenor.

WP(C) No. 8580/2009

INITIATIVE FOR TRANSPORTATION AND DEVELOPMENT PROGRAMMES ..... Petitioner

Through : Mr. Anand Nandan with Mr. Nalin Kumar Sinha, Petitioner in person.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS. ….. Respondents

Through : Ms. Madhu Tewatia with Ms. Sidhi Arora, Advocate for MCD.
Ms. Meera Bhatia with Ms. Amita Arora, Advocates for Resp. Nos. 1, 4 & 5.
Mr. Vikram Nandrajog, Advocate for applicant in CM No.3702/09.
Mr. Sanjeev Ralli, Advocate for intervenor.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.MURALIDHAR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes.

2. To be referred to Reporter or not? Yes.

3. Whether the judgment should be reported in the Digest? Yes.

MR. JUSTICE S.RAVINDRA BHAT,

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1. In these proceedings under Article 226 of the Constitution of India by way of public interest litigation, the writ petitioners (hereafter referred to as "Manushi" and "ITD" -short for Initiative Transportation and Development, which has instituted WP(C) No. 8580/2009) seek directions for declaring that the ceiling or limit, fixed by the respondent – Delhi Municipal Corporation (hereinafter referred to as "MCD") on the issuance of cycle rickshaw licenses is illegal and void. The petitioners also seek declaration under Rule 3(1) of the Delhi Municipal Corporation Cycle Rickshaw Bye-laws, 1960, (hereafter "the 1960 byelaws") to the extent it limits the grant of licenses to owner-pliers (of cycle rickshaws) is also unconstitutional and void. Other directions for quashing the policy of MCD enabling impounding, confiscating and destruction of cycle rickshaws, imposition of penalties and the *regime* of zoning mandated by MCD as well as the Delhi Police another respondent, in these proceedings have been sought. The petitioners urge that the respondents should be directed to ensure that separate lanes are created to facilitate smoother movement of cycle rickshaw and non-motorized vehicles in the city of Delhi.

Petitioners' Submissions

2. The writ petitioners claim to be public interest organizations. Manushi contends to being a welfare organization espousing the interest of various classes of weaker sections of the society including rickshaw pullers. According to the materials relied upon by it, its activities strengthen citizenship rights and civil liberties of the people highlight and focus on gender issues, combat corruption and campaigning for electoral reforms and *inter alia* undertaking public interest litigation. The other petitioners, the initiative for Transportation and Development likewise contends being an organization specializing in transport solutions; more specifically to having suggested improved versions of cycle rickshaws.

3. The petitioners urge that cycle rickshaw were introduced in 1940 in the city of Delhi as a less exploitative form of transport and an improvement over hand-pulled rickshaws. It is stated that from 1960 onwards the demand for and the number of plying rickshaws grew manifold. The number of cycle rickshaws plying on the roads of Delhi city was 20,000 in 1975, which increased to 4.5 lakhs in 1973 and had grown to 6-7 lakhs in 2006. The petitioners submit that cycle rickshaws are an instant source of employment for about 7 to 8 lakh people and involve low capital investment typically ranging from Rs.1200/- to Rs.4500/-. They are availed of by the least skilled and those with the least employment opportunity i.e. seasonal migrant workers. The petitioners submit that initial cap fixed by the MCD on the number of licenses which could be issued under the 1960 bye-laws was 750 but was increased to 20000 in 1975. This increase was based on reports of a survey conducted for the purpose. On the basis of another review the figure was again increased to 50,000 in 1993 even though at that stage the number of cycle rickshaw plying on the road were 4.5 lakhs. The petitioners assert that the last increase was by virtue of the policy decision of the MCD which took place in 1997 when the total number of licenses that could be issued was capped at 99,000.

4. The petitioners allude to a previous public interest litigation on the file of this Court i.e. WP(C) No. 3419/1999 and connected proceedings i.e. WP(C) Nos. 5340/2003, 1011-15/2006 and 8685/2006 (hereinafter, *"Hemraj"*) where they say, this Court issued certain directions that have been construed as mandatory and form

the basis of the MCD policy, capping the ceiling (on the number of rickshaw licences) at 99000. Copies of the orders of the Court issued by the Division Bench, dated 17.05.2006 and 26.07.2006, based on certain status reports are produced along with the writ petition.

5. The writ petitioners contend that the impugned ceiling on the number of licenses is unsustainable; and utterly arbitrary. They contend that singling out cycle rickshaws for such a cap on the license amounts to hostile discrimination. Learned counsel argued that there are no such quantitative restrictions on the number of licenses which can be issued to motor vehicles owners. It is pointed out that the city of Delhi has witnessed an unprecedented explosion in growth of motorized vehicles and as on date more than 5 million of them ply on the city roads. They contend that if the total number of vehicles (motorized as well as non-motorized) were to be considered, as well as the users, 85% of the general public depends on the public transportation. However, the figure of ownership would tell a revealing story, as ownership of 5 million or so motorized vehicles is amongst only 15-20% of the population. The petitioners highlight that the motorized vehicles are given undue prominence and at the cost of pedestrians and non-motorized vehicle users, i.e. those who ply and use cycle rickshaws or use bicycles.

6. It is submitted that the quantitative ceiling imposed by the MCD is utterly irrational if the need to de-congest the city roads is the ultimate objective. Elaborating on the theme it is urged that the absence of any such quantitative cap in regard to number of licenses to be issued to motorized vehicles implies unrestricted entry of such class of vehicles on to roads, for whose sake, apparently, the State wishes to push out other means of transport, which are cheaper, more efficacious, consumer friendly and most certainly environment friendly. It is argued that cycle rickshaws are the least expensive and most convenient form of transport especially for short distance commuters –for, they provide service during all hours of the day; they are road friendly in congested areas of the city; and they constitute convenient feeder service for public transport users and those accessing public transport service as well as main arterial roads in the city from far flung areas and outlying colonies. According to the

petitioners; rickshaw trolley service is most convenient for garbage collection as well as transport to wholesale markets etc.

7. Submitting that such quantitative restrictions on the number of licenses is irrational, it is argued that in this age, with growing awareness about the need to preserve ecology and ensure most environment friendly technologies and practices are adopted in almost every field of human activity, shrinking road space otherwise available to cycle rickshaw is an inevitable consequence due to restrictions impugned in this case, which results in burning of more fossil fuel and consequent rise in pollution levels. It is emphasized that, cycle rickshaws have been introduced in other places, notably in China, Malaysia, Indonesia and many metro cities of Europe and United States of America including London, New York etc. It is argued that this has been made possible by appropriately changing the design of such cycle rickshaws to the convenience of the plier as well as those who use the facility.

8. It s submitted that the impugned ban or cap imposed by the MCD is unsustainable because it flies on the face of the Delhi Master Plan 2021, which was notified on 07.02.2007. The petitioners contend that by virtue of Section 7 (2)(b) of the Delhi Development Act, 1957, the Master Plan is directed by the mandatory framework within zonal development programme, have to be conceded and implemented, the petitioners also rely upon the decision of the Supreme Court reported as *M.C. Mehta V. Union of India*, (2006) 3 SCC 399, where it was held that:

> *"the provisions of user may be regulatory, but all the same, they are mandatory and binding. In fact almost all the planning provisions are regulatory. Violations of the regulatory provisions on massive scale can result plan became merely scrape of papers..... none has any right to violate the law with immunity (SIC) and claim any right to create building for a purpose other than authorized."*

The petitioners also rely upon the earlier decision of the Supreme Court reported as *M.C. Mehta V. Union of India*, (1996) 4 SCC 351. The following extracts of the Master Plan 2021 in support of the submission that it (Master Plan) mandates, encouragement and pervasive use of non-motorized transport, is relied upon:

> *"12.0 TRANSPORTATION*

The period between 1981 and 2001 has seen a phenomenal increase in the growth of vehicles and traffic in Delhi. There has been a rise in per capita trip rate 9excluding walk trips) from 0.72 in 1981 to 0.87 in 2001. Keeping in view the population growth, this translates into an increase from 45 lakh trips to around 118 lakh trips. The population of motor vehicles has increased from 5.13 lakh in 1981 to 32.38 lakh in 2001, and the number of buses has increased from 8,600 to 41,483 during this period.

Besides the above, Delhi has developed as a borderless city and an urban continuum comprising of a number of rapidly growing urban towns in Haryana and UP. This has added to the flow and movement of traffic within Delhi.

Despite measures by way of increasing the length of the road network and road surface space through widening, construction of a large number of flyovers/ grade separators, and launching of the Metro, the traffic congestion has continued to increase unabated. This has its inevitable consequences in terms of accidents, pollution, commuting time, and wasteful energy/ fuel consumption.

Based on the increase in the number of trips between 1981 and 2001, it is estimated that the total trips would rise to 280 lakhs by the year 2021, including 257 lakh motorized trips and 23 lakh non-motorized trips. In this context, it needs to be noted that roads already occupy 21 per cent of the total area of the city, which clearly limits the potential for increase in road length.

Apart from the problems and requirements of transportation at the macro level, there are special problems in specific areas, particularly the old city, that deserve special attention. Special requirements will also arise from the mega events such as the Commonwealth Games.

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12.6 BICYCLE/CYCLE RICKSHAW

Bicycle/cycle rickshaw could be an important mode of travel, particularly with reference to be an important mode of travel, particularly with reference to short and medium trip lengths. To the extent that it meets individual or public transport requirements, it is a non-energy consuming and non-polluting mode of transport. However, there are several issues, which have to be kept in view while planning in respect of these modes.

With a mixed type of fast moving traffic on the roads, travel by bicycle and rickshaw is very unsafe.

In so far as rickshaws are concerned, apart from issues pertaining to the aspect of mixed traffic, this mode also provided employment to a very large number of unskilled workers residing in the city.

In view of the above, the following actions should be considered/taken:

i. On all arterial roads fully segregated cycle tracks should be provided with provisions for safe parking in park and ride lots.

ii. In urban extensions, cycle tracks should be provided at the sub-arterial and local level roads and streets.

In specific areas, like the Walled City/Chandni Chowk/Sadar Bazar/Karol Bagh/ Lajpat Nagar and Trans Yamuna Area, the use of cycles/rickshaw as a non-motorized mode of transport should be consciously planned along with pedestrianisation."

9. The petitioners attack the ceiling imposed on the number of licenses to be issued, contending that it has no correlation with the total number of vehicles plying on the roads or the actual number of cycle rickshaws. It is submitted that even according to the respondents, the number of cycle rickshaws plying on the roads of the city of Delhi are in excess of six lakhs. Such being the case, commuters and users of such cycle rickshaws obviously feel their need and avail of the services. In the absence of any study, based on scientific or rational principles, the Municipal Corporation of Delhi (MCD) cannot invoke its powers and arbitrarily inhibit itself with a policy that restricts the scope of the bye-laws. The petitioners submit that there is no material on the record to substantiate MCD's view that the ceiling is valid and non-arbitrary. It is urged that the cap of 99,000 licenses appears to be premised on the Division Bench order in *Hemraj*. The petitioners fault that order, complaining that it was issued without hearing all the affected parties, particularly, the cycle rickshaw pullers and owners.

10. The petitioners rely upon the view of members of the Committee constituted by the MCD, during the pendency of these cases. It is submitted that the said document placed on the record at the Court's behest discloses that the cap of the 99,000 licenses does not sub-serve public interest and that instead it provides ready instrument for exploitation and harassment of the rickshaw pullers. The petitioners also submit that the 4th Assessment Report of the year 2007 of the International Governmental Panel

on Climatic Change (IPCC) emphasized the need for policies that encourage use of more fuel-efficient vehicles, hybrid vehicles, non-motorized transport, (such as cycling and walking), and better land-use and transport planning, to minimize rising pollution levels. They also rely upon the 1997 Whitepaper on Pollution in Delhi, issued by the Ministry of Environment, which indicated that vehicular pollution contributes 67% of the total air pollution load in Delhi. It is argued that to relieve congestion levels, the report had advocated traffic management and emphasized the need to provide bicycle tracks in greater use of existing tracks, for which Traffic Police was given responsibility.

11. The second substantial relief claimed by the petitioners is a declaration that Bye-law 3(1) of the 1960 Bye-Laws is unconstitutional and void. The said Bye-Law reads as follows:

> *"No person shall keep or ply or hire a cycle-rickshaw in Delhi unless he himself is the owner thereof and holds a license granted in that behalf by the Commissioner on payment of the fee that may from time to time, be fixed under sub section (2) of Section 430."*

12. According to the petitioners, the impugned bye-law is arbitrary and discriminates against cycle rickshaw pliers. It is submitted that there is no such restriction limiting the number of licenses that can be owned by motor vehicle owners, such as taxis, cars, two-wheelers, auto-rickshaws etc. The petitioners say that the majority of cycle rickshaw pliers comprise impoverished, seasonal, unskilled migrants requiring means of livelihood soon after they arrive in the city. Most of them lack the resources to purchase a cycle rickshaw and even if they do, the vicissitudes of their fortune are such that at the time of their having to leave the city, they are unable to keep them securely. The impugned bye-law thus denies them the opportunity of earning their livelihood by renting rickshaws and violates their right to carry on a profession or occupation by holding valid cycle rickshaw licenses, which is an integral part of the Article 19 (1)(g) of the Constitution of India. It is submitted that there is no ban on the number of motor vehicles which can be owned by anyone or for that matter, whether they are commercial or not. Thus, for instance, an individual or company may own any number of vehicles, which can be licensed or registered for

use on the roads. Such choice is, however, denied to an individual whose right to expand his business – in case he is a rickshaw-plier, is restricted. In other words, even if a rickshaw owner prospers, (unless he falls in the excepted category, prescribed in the proviso to the impugned bye-law), he cannot own and use more than one cycle rickshaw. According to the petitioners, this bye-law virtually condemns such class of citizens who chose to ply cycle rickshaws for their livelihood to a marginal and impoverished existence. Such a result directly and substantially affects not only their livelihood but destroys the right to Equality and Equal Opportunity guaranteed under Article 14 of the Constitution. According to the petitioners, no public interest justifying such unreasonable restrictions has been disclosed by the respondents in this regard.

13. The petitioners submit that the impugned bye-law, which mandates the "owner-plier policy" was undoubtedly approved by the Supreme Court in its previous ruling reported as *All India CRO Union v. Delhi Municipal Corporation*, AIR 1987 SC 648. However, there have been substantial changes in the circumstances and the ground realities 22 years later, which necessitate this Court declaring that such policy is no longer constitutional. It is argued that once the Court recognizes that there can be no quantitative restrictions on the number of licenses that can be issued, the need to favor only the owner-pliers is obviated, thus opening the possibility of co-existence of both categories – the owner-pliers as well as those rickshaw pliers who rent the cycle rickshaws. It is argued that the *All CRO Union* decision (supra) was premised on the MCD and state agencies pro-actively pursuing welfare schemes, including granting financial aid, to rickshaw pliers. The State failed to provide financial assistance/credit/loan to help rickshaw pullers buy their vehicle as directed by the Court. For this reason too, the decision cannot indefinitely be held as validating a discriminatory bye-law. It is argued that today, the bye-law is being flagrantly misused by authorities to exploit rather than help rickshaw pullers (especially the non-owner pullers). Most rickshaw pullers prefer to rent rickshaws, as they cannot afford to buy them. Their forced illegal status (due to the byelaw) is rampantly misused by the MCD and police as a tool for exploitation, and corruption and the bye-laws are used to contrary to interests and requirements of the cycle rickshaw pliers. The

petitioners rely on a report of the Central Vigilance Commission, in this respect, and submit that it has gone on record in 2001 stating that the level of corruption due to exploitation of hawkers and cycle rickshaw pullers in Delhi was to the tune of several crores per month, with estimates ranging from Rs.6-10 crores per month. It is stated that the authorities prefer to continue with the bye-law as it generates enormous incomes by way of illegal 'rentals', graft and bribes.

14. The petitioners argue that cycle rickshaws are *"destroyed, deformed and crushed"* under the pretext of the rickshaw pliers not having licenses, resulting in needless violence, erosion of self esteem due to the stigma of illegality, income losses, and constant tension from the fear of losing rickshaws and livelihood. They argue that the 2007 Policy issued after Hemraj and Byelaws 17 and 17A which enable such action is without authority of law, besides being contrary to Article 21 of the Constitution, and the right to freedom of carrying on business or profession. The petitioners submit that the Act does not permit such action; the MCD is therefore, acting *ultra vires* the enactment.

15. The petitioners submit that the former Prime Minister had in an official letter referred to the cycle rickshaw pliers' plight, and stated that:

> *"It is clear that a genuine policy reform is called for in the present licensing system for hawkers and cycle rickshaws. The policy reform must seek to eliminate the scope for rent-seeking and harassment by licencing and enforcement officials, recognize street hawking and cycle rickshaws as legitimate occupations which help reduce poverty, and facilitate their integration into the formal economy. Accordingly, I advise that the Government of National Capital Region of Delhi, addresses this take of policy reform urgently. A concept note outlining an alternative regulatory system for street hawkers and cycle rickshaws, embodying these objectives, prepared by my office is attached."*

It is submitted that the letter also stated that:

"the restrictive issue of licenses as a perversion of the SC judgment in Saudan Singh v. NDMC".

16. The petitioners contend that the Master Plan says *"On all arterial roads fully segregated cycle tracks should be provided with provision for safe parking in park and ride lots."* The MCD's inaction in not providing for lanes on all arterial roads of

Delhi would amount to a violation of the Master Plan. Here it is argued that world over, roads have cycling-tracks/lanes. Providing lanes is known to smoothen the flow of traffic by segregating slower moving from faster moving traffic, thereby reducing traffic congestion and improving road-safety. Not providing lanes violates Articles 14, 21 & 19(1)(d) – as it is arbitrary, and discriminatory *vis-à-vis* motorized vehicles, and makes it unsafe/dangerous for the user of cycle-rickshaws to use arterial roads and hinders seriously, the right of commuters to move freely in the territory of India. It is next submitted that the absence of separate lanes for cycle rickshaws reflects a failure of the Government to provide safe working conditions on the road by exposing the puller to risks of fatal accidents, thus hitting Articles 21 & 19(1)(g), and is discriminatory *vis-à-vis* motor vehicles and their drivers, as the latter get flyovers and fast lanes to drive on, hitting Article 14. The petitioners rely on the figures provided by the police admitting that most victims of fatal road accidents are pedestrians (52%), followed by two wheeler riders (28%), other motor vehicle users (13%) and cyclists (7%). The data is however used as a *rationale* to remove cycle-rickshaw pullers from the roads saying that it is unsafe for slower moving vehicles to use the roads, instead of the more rational, commonsensical and lawful solution of providing separate lanes for their safety. The petitioners say that the official mind-set that roads are primarily meant for motorized vehicles is arbitrary and discriminatory against pedestrians and users of non-motorized vehicles. The resultant acts of glaring omission by the authorities in not providing safe passage on roads to pedestrians are among the main causes of high fatality of pedestrians. In fact, to deny pedestrians the right to legitimate, safe space on roads carrying fast moving traffic, by not providing adequate footpaths/pavements and adequate provision for crossing (pelican/zebra crossings) is a gross violation of the pedestrians' right of road use. Likewise, to deny slower moving vehicles from using arterial roads, by not providing safe lanes, when express provisions have been made by law, is a glaring violation of the rights of cycle rickshaw users and pullers to use roads safely. It is submitted that ordering constitution of an Expert Committee with experience in this area of work with representation from the Ministry of Transport and Urban Development & Poverty Alleviation, Roads & Surface Transport, Urban/Town Planners who have already

designed such safe roads, experts on Roads and Road Safety, experts on Traffic Management, experts on Pollution-Control measures and Cycle lanes/track development, representatives from the trade and representatives from Manushi as the petitioner have spent decades understanding the problems faced by this sector, is necessary for this purpose. Here, it is argued that such committee may be directed to:

> (1) oversee the speedy and honest implementation of the Master Plan 2021 with regard to promotion and safe passage of non-motorized vehicles, as well as pedestrians.
>
> (2) provide a progress report to this Court every quarter. Such a measure is necessary considering that even during the proceedings of this case before this Court, the interim orders of this Court were violated by impounding even licensed rickshaws and imposing penalties far exceeding the legitimate amount of Rs.50/-. Copies of the challans have been provided to this Court on the last date of hearing, on 8th December 2009.

17. The petitioners submit that ordering the MCD and other respondents to provide parking/halting sites for 6-7 lakh cycle rickshaws in Delhi, including for "night rest" and repair yards, is essential, failing which they would be subjected to the mercies of local policemen who would continue to harass them. This is corollary to allowing cycle rickshaws to ply freely in Delhi. The submission also is that this is mandated under the Master Plan to provide for safe parking in park and ride lots on arterial roads. The absence of sufficient stands for parking, halting and safe-keeping hits Articles 21 (Right to Livelihood), 19(1)(g) (Right to Occupation) & 14 (discriminatory *vis-à-vis* motor vehicles); it also flouts the Supreme Court orders in *All Delhi CRO Union (supra)*, which directed the Delhi Administration to provide sufficient space for safekeeping of rickshaws within feasible limits.

18. The petitioners argue that the cycle rickshaw zoning regulations and prohibition on cycle rickshaw plying on arterial roads (according to notifications issued by Delhi Police) are unreasonable arbitrary, impractical declaration of large areas of the city as 'no-entry' areas for cycle rickshaws. This is because there are no

visible boundaries, between one municipal 'zone' and another. The petitioners say that crossovers from one zone to another are inevitable and necessary during the course of short distance travel from one colony to another, and often involve crossing arterial roads. Therefore, it is urged that such regulations are contrary to the right to life and livelihood, under Articles 21, besides their infraction of Article19(1)(g) and Article 14 and also violate the Supreme Court orders that no arbitrary bans/restrictions should be imposed on cycle rickshaws.

19. Initially, these petitions were being considered by a Division Bench. During the course of hearing on 19.03.2009, it was submitted on behalf of the respondents– primarily that the challenge to the cycle rickshaw bye-laws is baseless in view of the judgment of the Supreme Court, and more importantly, in view of the impugned cap imposed pursuant to the directions of the Division Bench of this Court on 26.07.2006 in *Hemraj*. The relevant part of the Division Bench's order is extracted as follows:

> *"XXXXXX XXXXXXX XXXXXX*
>
> *Status report has been filed by the MCD with regard to our direction passed on the last date of hearing, where we had pointed out that cycle rickshaws are not owned by poor rickshaw pullers but by mafias who are influential people and they exploit poor rickshaw pullers. From the perusal of the affidavit filed by the MCD apprehensions expressed by us in the last order are writ large as the total number of cycle rickshaws for which licences can be granted by the MCD is 99,000 out of which 89,429 licences have been granted in 12 zones against different colour schemes. The number of rickshaws are in lacs. No Action has been taken against unauthorized/unlicenced rickshaws.*
>
> *According to the Status report filed by the MCD, from 1st April 2005 to 30th June 2006 about 60,000 cycle rickshaws have been impounded by the MCD. It itself reflects that there is no monitoring system by the MCD to control the plying of unlicenced rickshaws on the road. The number of 60,000 comes almost 60% of the total licences which the MCD has issued till date. It is a very sorry state of affair. If the MCD cannot control unauthorized/unlicenced rickshaws how they can issue licence. The MCD should have a data as to when the licence for plying a particular rickshaw has been granted, to whom it has been granted, when the same has been renewed and on what basis the renewal is sought for. As per cycle rickshaw policy framed by the Corporation in the year 1997 there are four categories of persons who can be granted cycle rickshaw/puller licences. The whole mischief has been done*

pursuant to their policy which permits the owner who may not be a puller still can be awarded a licence for running a cycle rickshaw. Therefore, in the last order we had also expressed our opinion that grant of such licence in the name of the owner results in exploitation of the poor people by the owner of such licence. The MCD to evolve a policy so that owners who are not the pullers themselves cannot obtain a licence. Although, this Court feels that grant of rickshaw licence to a poor person is against human dignity. However, it is for the State keeping in view the need of the society to frame rules and guidelines so that it becomes need based and not greed based. The Committee to monitor as to what mechanism MCD evolve with regard to the cycle rickshaws which are unauthorized and unlicenced plying on the roads of Delhi.

In the status report MCD has also stated that instructions have been issued to the Deputy Commissioners of the Municipal Zones of the MCD to ensure that all the arterial roads of Delhi be prohibited for plying the cycle rickshaws. The Committee to have constant monitoring of the status report filed by the MCD in this regard. The policy so formulated in terms of our direction be also placed before this Court on the next date of hearing.

XXXXXX XXXXXXX XXXXXX"

On 06.09.2006, the MCD's status report was placed on the record and the Court observed as follows:-

"XXXXXX XXXXXXX XXXXXXX

The MCD has filed status report with regard to the policy of cycle rickshaw. Affidavit in this regard has been field. We appreciate the stand of the MCD as it has been stated in the affidavit that the MCD is evolving a new sophisticated tamperproof mechanism to ensure proper identification and registration of cycle rickshaw, which will not only facilitate MCD to have a better systematic data but will also enable MCD to check the plying of illegal/unlicensed cycle rickshaw. This was in terms of our observations in the last order that the MCD should have a data as to when the licence for plying a particular rickshaw has been granted, to whom it has been granted, when the same has been renewed and on what basis the renewal is sought for. We have expressed our reservation with regard to the grant of such licence in the name of the owner who was not a puller, which results in exploitation of the poor people by the owner of such licence. The policy of the State is to harmonize the need of the society and to frame rules and guidelines, so that it becomes need based and not greed based. We are happy to know that the MCD has filed the affidavit and has taken the stand that the category of the owner (who is not a puller) is being removed from the

scheme/policy for the purpose of granting cycle rickshaw license. The number of other steps detailed in the affidavit with regard to the installation of rickshaw sensor chip for tamperproof identification and registration of rickshaw, process of management standard procedure in all the zones, information on chip, information on I.D. Card will facilitate the maintaining proper record of the licences, its registration, renewal and other activities, etc. In the affidavit filed by the MCD it has also been stated that necessary instructions have been issued to the Deputy Commissioner of the Municipal Zones of the MCD to ensure that all the arterial roads on Delhi in MCD area be strictly prohibited from plying the cycle rickshaws and to take strict legal action against the violators under the Cycle Rickshaw Bye-laws of the MCD. In view of the stand of the MCD prohibiting the plying of cycle rickshaw on the arterial roads on Delhi in MCD area, on the one hand, MCD has to take stern action against violators, on the other hand, the Traffic Police is also directed to ensure smooth Passage for the commuters by buses or other vehicles on the arterial road so that no congestion take place. This will ensure safely for the passengers on the one hand and on the other hand will lead to decongestion of the roads for proper commutation by the commuters in public transport as well as private vehicles.

XXXXXX XXXXXXX XXXXXX"

20. In the light of the above orders of the Division Bench in *Hemraj*, the MCD issued a resolution approving its new cycle rickshaw policy. A copy of the same has been produced. The relevant part of the policy, which is challenged in this case (hereafter the impuged 2007 policy) reads as follows:

"XXXXXX XXXXXXX XXXXXXX

Item No.44:-Scientific Management of Rickshaws Using Rickshaws-New Cycle Rickshaw Policy and its Implementation.

(i) Commissioner's letter No.F.33/Hackney Carriage (HQ)/327/C&C dated 12-12-2007.

1. Resolution No.856, dated 26-2-2007 approved by MCD:

In pursuance of the orders dated 26-7-2006, in Civil Writ (Petition) No. 3419/1999 titled "Hemraj & Ors of Hon'ble High Court of Delhi. The Municipal Corporation had approved vide its Resolution No.856 dated 26-2-2007 the following issues:-

(i) Formulation of a new Policy/Scheme for cycle rickshaws/cycle rickshaw trollies and floating of open tenders to decide about awarding the work for identification/registration of cycle rickshaws/trollies using Rickshaw Sensor Chips on the lines of the aforesaid proposal received from M/s. INDIVELOP, 56, Hemkunt Colony, New Delhi-48 as well as for procurement of 12 portable Reader (one Portable Reader for each Municipal Zone) for the purposes of verification of coded license data on the Sensor Chips by the enforcement staff of MCD;

(ii) Finalization of the arterial roads for the purposes of prohibiting the plying of cycle rickshaws within Municipal jurisdiction and prosecuting the violators under Cycle Rickshaw Bye-Laws of the MCD;

(iii) Deletion/removal of category of Owners (who are not the pullers) for the purposes of granting cycle rickshaw licences.

2. *After approval of the Corporation, the scheme for the Scientific Management of Cycle Rickshaws/Cycle Rickshaw Trollies and Handcarts using Sensor Chips, Photo ID Cards and Number plates was examined by the Lt. Department and certain improvements/modifications were 'proposed for effective and better management of Cycle Rickshaws/Cycle Rickshaw Trolleys and Handcarts in Delhi. The comments of all Zonal Deputy Commissioners were taken on these improvements/modifications along with existing number of licenses and proposed ceiling/limit in respect of Cycle Rickshaws/Cycle Rickshaw Trolleys and Handcarts.*

3. *After approval of the Corporation, the scheme for the Scientific Management of On the basis of field experience with respect to plying of Cycle Rickshaws/Cycle Rickshaw Trolleys and Handcarts in Zones and from the point of view of I.T., the following improvements/modifications are proposed in the policy/scheme for the Scientific Management of Rickshaws, Cycle Rickshaw Trolleys and Handcarts in Delhi.*

4. *Policy/Scheme:*

(a) The plying of Cycle Rickshaws, Cycle Rickshaw Trolleys selling goods and Handcarts will be restricted to their respective Zones. No rickshaw, rickshaw trolley or handcart of one zone will be allowed to ply in other zone. However, the Cycle Rickshaw

Trolleys transporting goods will be allowed to ply from one zone to other subject to traffic notifications.

(b) The ceiling on the number of rickshaws in a zone will be strictly related to the rickshaw carrying capacity of the roads and lanes in a zone and will be revised as per requirement from time to time accordingly.

(c) Based on the latest requirement in respect of cycle rickshaw/cycle rickshaw trolley and handcarts provided by Zones and the fact that Cycle Rickshaw, Cycle Rickshaw Trolleys and handcarts have been banned on the major arterial roads of Delhi, the proposed licenses in Delhi have been revised as follows:-

Zones	*Cycle Rickshaw*		*Rickshaw Trolleys**		*Handcarts*		*Color*
	Current License	*Proposed Ceiling*	*Current License*	*Proposed Ceiling*	*Current License*	*Proposed Ceiling*	
Shahdara (North)	*17109*	*10,000*	*5370*	*2000*			*Pink*
Shahdara (South)	*16615*	*10,000*	*4400*	*2000*	*80*	*Nil*	*Yellow*
West Zone	*14000*	*10,000*	*--*	*1000*			*Violet*
Civil Line Zone	*10000*	*5,000*	*784*	*1000*	*336*	*200*	*Green*
Rohini Zone	*7854*	*5,000*	*--*	*1000*	*Nil*	*Nil*	*Cream*
Narela Zone	*3197*	*2,000*	*1009*	*1000*	*Nil*	*Nil*	*Indigo*
Najafgarh Zone	*7234*	*5,000*	*6352*	*2000*	*Nil*	*Nil*	*Light Grey*
City Zone	*2429*	*1500*	*500*	*100*	*100*	*100*	*Red*
Sadar Paharganj Zone	*2000*	*1000*	*--*	*100*	*4604*	*200*	*Black*
Karol Bagh Zone	*325*	*1000*	*--*	*500*	*Nil*	*Nil*	*Blue*

Central Zone	*1959*	*1000*	*2277*	*1000*	*104*	*150*	*White*
South Zone	*--*	*1000*	*--*	*500*	*--*	*100*	*Orange*

**Cycle Rickshaw Trolleys include both transporting and selling goods.*

(d) During implementation of the new policy, plying of existing rickshaws will be stopped altogether and in issuing new licenses, preference will be given to the existing owner-cum-pullers.

(e) The proposal for advertisement on cycle rickshaws as proposed in earlier scheme have been modified as given at point (b) under para 5.

(f) Any change in the owner-cum-puller of a rickshaw, cycle rickshaw trolley or handcart after its registration will be treated as new registration. The license issued will be non-transferable.

(g) No cycle rickshaw/rickshaw trolley or hand cart will be allowed to ply in the lanes with ROW less than 4.5 metres especially in the Walled City area.

(h) Every year, at the time of renewal of license, the owner-cum-puller will be required to undergo a medical check up at a Govt./Municipal Hospital or by a M.B.B.S. doctor.

(i) In order to ensure safety and convenience, the school children will be allowed only in specially designed cycle rickshaw buggies with licences issued to concerned schools. In usual cycle rickshaw, only two school children above 14 years of age will be allowed.

(j) The tamper proof Photo ID Card will also have a chip containing necessary details of the owner-cum-puller and his cycle rickshaw, cycle rickshaw trolley or handcart. All violations will be recorded in the chip. In case of handcarts, Photo ID cards will also be issued to maximum three helpers at a fee of Rs.100 each.

(k) Any unlicensed rickshaw or a licensed rickshaw driven by all unlicensed puller will be impounded forthwith and scrapped within 7 days with prior approval of Zonal Deputy Commissioner.

(l) For any other violation except unlicensed or driven by unlicensed puller, a fine of Rs.300 will be imposed by MCD. In case of seven violations in three months, the rickshaw license will be cancelled and rickshaw will, be impounded and scrapped. These violations will relate to traffic rules, parking, design, fitness or any other condition prescribed in Cycle Rickshaw bye laws under DMC Act.

(m) At the time of renewal every year, the cycle rickshaw will be required to clear the fitness test.

(n) Every owner-cum-puller will have to clear a cycle rickshaw driving and traffic rule test to be conducted by the agency before being granted a license.

(o) For granting licenses, first the existing licences will be considered and thereafter-new applicants will be considered on first-come-first serve basis subject to the prescribed ceiling.

(p) A licence will be issued/renewed and replaced only up to the ceiling limit on first come first serve basis subject to the rickshaw carrying capacity of a road assessed by the agency in consultation with MCD.

(q) In order to help bonafide persons, in addition to agency, the MCD will also facilitate the process of loans for buying Cycle Rickshaws, Cycle Rickshaw Trolleys, and Handcrafts through the Banks/Public Institutions.

(r) The license will be granted only to a person who has a valid ration card of vote ID card of Delhi and has been residing in Delhi for at least past one year. (This condition is necessary to discourage the people from obtaining rickshaw licence who come to Delhi for a short time and are not at all familiar with traffic rules of Delhi causing lot of inconvenience and hindrance to the smooth traffic flow. Besides, it will also help those who are genuine persons and prevent the unwanted social elements from obtaining the cycle rickshaw licence).

(s) As one of the conditions for the grant of cycle rickshaw license, the owner-cum-puller must have sufficient private space for parking. In case of non-availability of private space, the rickshaw will be parked at night at a designated parking place with a fee of Rs.10/- per rickshaw per night. No owner-cum-puller rickshaws/cycle rickshaw will be allowed to park this cycle rickshaws, cycle rickshaw trolley or handcart unauthorisedly on public land. Monthly parking charges will be Rs.250 per month with 50% sharing with MCD.

(t) The MCD will penalize any rickshaw owner-cum-puller who does not conform to the new system @ Rs.300/- per day for 7 days followed by impounding of the cycle rickshaw/cycle rickshaw trolley/handcart. The agency will assist in transporting the impounded rickshaws to the designated site in the zone for further necessary action. The agency will further assist in scrapping impounded cycle rickshaws/cycle rickshaw trolleys/handcarts. For plying of any cycle rickshaws/cycle rickshaw trolleys/handcarts

without registration number, ID Card or a sensor chip, the MCD will penalize the concerned agency.

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21. After hearing counsel for parties, the Court noted that since the policy was primarily founded on directions in *Hemraj's* case, it would be appropriate to refer the writ petition for considerations of decisions on merits, to a Full Bench. These petitioners were, therefore, referred to the Full Bench; the relevant extract of the reference order dated 19.03.2009 is as follows:

"XXXXXX XXXXXX XXXXXX

It was submitted by the respondents during the hearing that the challenge to the Cycle Rickshaw Byelaws is baseless and unfounded since they have been upheld by the Court in All India Cycle Rickshaw Operators Union vs. MCD & Others WP(C) No. 13688/1983 dated 7th January, 1987. It is claimed that the measures challenged are regulatory, such as zoning imposed upon plying of cycle rickshaw in arterial roads to enable unclogging of the roads. The MCD refers to its resolution No.613 dated 21st January, 2008, whereby the cycle rickshaw policy was approved. It claims that the policy is aimed at bettering the lot of the cycle rickshaw pullers and ensuring proper operation of such vehicles.

The MCD claims to have framed its policies, in view of the directions of Division Bench of this Court dated 26th July, 2006 in Hem Raj & Anr. v. Commissioner of Police, WP(C) No. 3419/1999.

The Order in Hem Raj (supra) had noted that the then existing MCD policy enabled plying of cycle rickshaw by persons other than owners, which in the opinion of the Court resulted in their exploitation. The MCD also relies upon orders in Hem Raj, (supra) to say that the Court had required imposition of cap on the number of licenses.

This Court had considered the orders in Hem Raj (supra) and given its anxious consideration to the contentions and submissions made by the parties. The petitioners challenge appear to be two fold vis-à-vis (1) the total number of licenses that can be issued and (2) the restriction placed on persons other than owners, from plying the vehicles. They complain arbitrariness and discriminatory treatment in this regard. They are also aggrieved by the zoning restrictions imposed by the MCD. The latter justifies these byelaws and restrictions inter alia by relying on certain directions that Division Bench of this Court in Hem Raj (supra). This Court cannot be unmindful of the fact that in Hem Raj, (supra) the

Division Bench did make certain observations with regard to conditions that can be imposed upon cycle rickshaw licenses. In these circumstances, it would not be appropriate for a Co-ordinate Bench to examine the contentions. The most suitable course which in the opinion of the Court is to refer these writ petitions for consideration and decision on merits to Full Bench. Accordingly, the writ petitions are referred to the Full Bench.

Be listed before the Full Bench on 17th April 2009.

XXXXXX XXXXXXX XXXXXX"

Contentions of respondents

22. The MCD argues that the challenge to the Bye-laws is untenable. It relies upon the decision of the Supreme Court in *All Delhi Cycle Rickshaw Operators Union case (supra),* which concludes the issue so far as the owner – plier policy is concerned. It is submitted that the 1960 Bye-laws were validly framed in lawful exercise of the power conferred upon the MCD under Section 481 of the Act. The ceiling of licenses as well as the need to issue licenses and the conditions for exercise of such powers have been conceived and enacted in the larger public interest. Since the Bye-laws were framed under authority of law to subserve the interest of the general public in regulating smooth flow of traffic upon the roads in Delhi, the challenge by the petitioners has to fail.

23. It is submitted that the ceiling brought about by Clause 4(c) of the impugned 2007 Policy is not arbitrary or unrealistic but based on over-all assessment of all relevant factors such as rickshaws carrying capacity of roads, lanes and zones that are highly congested as well as the unregulated flow of rickshaws, which disrupt the traffic movement. The MCD mentions that by a resolution dated 27.01.2008 it framed a cycle rickshaws policy containing sophisticated tamper proof mechanism to ensure identification and registration of cycle rickshaws. This is in the interest of rickshaw pliers and would regulate plying of such rickshaw within the MCD's jurisdiction. The MCD argues that its policy is aimed at achieving passenger safety. In view of the the observations in *Hemraj case (supra),* the petitioners' challenge to provisions of the policy and the practice of confiscation, impounding and destruction of unlicensed cycle rickshaws, according to the MCD, is unsound. It relies upon Section 481 and

says that such Bye-laws were framed in lawful exercise of that provision which includes, particularly Section 481 (1)(L)(5), which extends the licensing of cycle rickshaws. It is argued that under the Bye-law 3 (1), anyone desiring to ply a cycle rickshaw, it is obliged to obtain a licence. The breach of such Bye-law entails penalty under Section 482, which reads as follows:

> ***"482. Penalty for breaches of bye-laws.-****(1) Any bye-law made under this Act may provide that a contravention thereof shall be punishable-*
>
> *(a) with fine which may extent to five hundred rupees; or*
>
> *(b) with fine which may extend to five hundred rupees and in the case of a continuing contravention, with an additional fine which may extend to twenty rupees for every day during which such contravention continues after conviction for the first such contravention;*
>
> *(c) with fine which may extend to twenty rupees for every day during which the contravention continues, after the receipt of a notice from the Commissioner or any municipal officer duly authorized in that behalf, by the person contravening the bye-law requiring such person to discontinue such contravention;*
>
> *Provided that a contravention of any bye-law relating to the road transport services may be punishable with imprisonment which may extend to three months, or with fine which may extend to fifteen hundred rupees, or with both.*
>
> *(2) Any such bye-law may also provide that a person contravening the same shall be required to remedy so far as lies in his power, the mischief, if any, caused by such contravention."*

24. It is thus argued that the power of MCD to impose restrictions that extends to confiscation, impounding and destruction of unlicensed cycle rickshaws is lawful. Learned counsel also referred to Bye-laws 17 and 17A (the latter being introduced with effect from 22.06.1994). The same read as follows:

> ***"17. Penalty****- Whoever contravenes any provision of any of the bye-laws 3, 5, 6, 7, 8, 10, 11 or 13 shall be punishable:*
>
> *(a) With fine which may extend to fifty rupees;*
>
> *Or*
>
> *(b) With fine which may extend to fifty rupees and in the case of a continuing contravention with an additional fine which may extend*

to five rupees for every day during which such contravention continues after conviction for the first such contravention.

***[17-A** Any cycle rickshaw found plying for hire without a licence or found drived by a person not having proper licence as provided under bye-law 3(1) and (2) shall be liable to be seized by the Commissioner or a person duly authorized by him in his behalf. The cycle rickshaw, so seized shall be disposed off by public auction after dismantling, deformation of such process including smashing it into a scrap after a reasonable time, as may be decided by the Commissioner from time to time. The sale proceeds of the public auction after deducting the expenses of the auction and after departmental charges/dues, shall be distributed equally amongst the owners of the seized cycle rickshaws put to auction, who come forward within 30 days of the public auction. In case no owner comes forward for claiming amount then the sale proceeds to public auction shall be deemed to be the municipal funds and the same shall be deposited in the municipal treasury.*

Provided that if the licenced cycle rickshaw driven by an unlicenced puller is seized and the owner of the licenced cycle rickshaw applies for the release of the seized licenced cycle rickshaw with 48 hours of its seizure, the same shall be released after levying a penalty and recovering all the departmental charges/expenses incurred by the Corporation for the seizure of the vehicle and storage etc. at the rates as may be determined by the Commissioner from time to time which shall not be less than Rs.100 + Rs. 3 as storage charges per day per cycle rickshaw.]"

25. It is submitted that zoning provisions in the impugned resolution of 2007 are similarly conceived in the lager public interest. Without such requirement of zoning there would be traffic chaos and cycle rickshaws would clog-up congested areas of the city and also cause disruption in smooth movement of traffic in busy areas. Consequently if zoning regulations permitting plying of cycle rickshaws in certain areas at certain times and prohibiting them on the main or busy roads are made, there is nothing unreasonable or arbitrary as they are based on rationale and relevant considerations.

26. It is argued that cycle rickshaws cannot be compared with motor vehicles and the Court cannot mandate a regime that would assure them exclusive or dedicated lanes in all the roads. The MCD argues that the Court's jurisdiction cannot extend to making of such policy choices as it lacks in expertise and more importantly is not in

possession of all the facts and data. If the Court were to indeed issue directions, the implications cannot be imagined, as too many variables and diverse interests are involved that are not before the Court. Besides says the MCD mandating such roads segregation that simplistic assumption of discrimination against cycle rickshaws pliers, would be impractical and would result in further causing congestion in the already choked roads of Delhi.

27. The Delhi Police in its submissions, as well as in the authorities, relies upon Section 20 and 28 of the Delhi Police Act, 1978, to say that its authorities including the Deputy Commissioner is empowered to restrict the plying of animal driven or hand pulled vehicles. The Delhi Police relies upon an order of the Supreme Court, dated 20.11.1997, which had directed certain traffic regulation measures to be taken. The relevant extract of such directions are as follows:

> "*Order*
>
> *After hearing learned counsel for the parties and learned Amicus Curiae, for reasons indicated separately, in exercise of the power of this Court under Article 32 read with Article 142 of the Constitution of India, we hereby give the following directions, namely :*
>
> *A. The Police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act and generally with the control of the traffic shall ensure the following :*
>
> *(a) No heavy and medium transport vehicles, and light goods vehicles being four wheelers would be permitted to operate on the roads of the NCR and NCT, Delhi, unless they are fitted with suitable speed control devices to ensure that they do not exceed the speed limit of 40 KHPH. This will not apply to transport vehicles operating on Inter-State permits and national goods permits. Such exempted vehicles would, however, be confined to such routes and such timings during day and night as the police/transport authorities may publish. It is made clear that no vehicle would be permitted on roads, other than the aforementioned exempted roads or during the times other than aforesaid time without a speed control device.*
>
> *(b) In our view the scheme of the Act necessarily implies an obligation to use the vehicle in a manner which does not imperil public safety. The authorities aforesaid should, therefore, ensure that the*

transport vehicles are not permitted to overtake any other four-wheel motorized vehicle.

(c) They will also ensure that wherever it exists, buses shall be confined to the bus lane and equally no other motorized vehicle is permitted to enter upon the bus lane. We direct the Municipal Corporation of Delhi, NDMC, PWD, Delhi Government and DDA, Union Government and the Delhi Cantt. Board to take steps to ensure that bus lanes are segregated and roads marking are provided on all such roads as may be directed by the police and transport authorities.

(d) They will ensure that buses halt only at bus stops designated for the purpose and within the marked area. In this connection also Municipal Corporation of Delhi, NDMC, PWD, Delhi Government, DDA and Union of India and Delhi Cantt. Board would take all steps to have appropriate bus stops constructed appropriate markings made, and `bus-bays' built at such places as maybe indicated by transport/police authorities.

(e) Any breach of the aforesaid directions by any person would, apart from entailing other legal consequences, be dealt with as contravention of the conditions of the permit which could entail suspension/cancellation of the permit and impounding of the vehicle.

(f) Every holder of a permit issued by any of the road transport authorities in the NCR and NCT, Delhi will within ten days from today, file with its RTA a list of drivers who are engaged by him together with suitable photographs and other particulars to establish the identity of such persons. Every vehicle shall carry a suitable photograph of the authorized driver, duly certified by the RTA. Any vehicle being driven by a person other than the authorized driver shall be treated as being used in contravention of the permit and the consequences would accordingly follows.

No bus belonging to or hired by an educational institution shall be driven by a driver who has

- *Less than ten years of experience;*
- *Been challaned more than twice for a minor traffic offence;*
- *Been charged for any offence relating to rash and negligent driving*

All such drivers would be dressed in a distinctive uniform, and all such buses shall carry a suitable inscription to indicate that they are in the duty of an educational institution.

(g) To enforce these directions, flying squads made up of inter-departmental teams headed by an SDM shall be constituted and they shall exercise powers under Section 207 as well as Section 84 of the Motor Vehicles Act.

The Government is directed to notify under Section 86 (4) the officers of the rank of Assistant Commissioners of Police or above so that these officers are also utilized for constituting the flying squads.

(h) We direct the police and the transport authorities to consider immediately the problems arising out of congestion caused by different kinds of motorized and non-motorised vehicles using the same roads. For this purpose, we direct the police and transport authorities to identify those roads which they consider appropriate to be confined only to motorized traffic including certain kind of motorized traffic and identify those roads which they consider unfit for use by motorized or certain kinds of motorized traffic and to issue suitable directions to exclude the undesirable form of traffic from those roads."

28. It is submitted that consequent to the above directions, as far as slow moving vehicles and cycle rickshaws are concerned, notifications were issued on 18.09.2001, 25.05.2006, 11.09.2006 and 02.06.2009 detailing the restrictions of movement as well as timing. The Delhi Police acknowledges that the Master Plan 2021 specifies that cycle rickshaws are an important mode of travel, in short and medium length trips but states that according to the Master Plan arterial roads are to contain fully segregated cycle tracks, the guidelines for which are to be implemented by the concerned civic road and local agencies. However, it argues that the present condition of arterial roads is such that they are reaching maximum capacity level and consequently cycle rickshaws should not be permitted without proper development of infrastructure. Besides reiterating the MCD's contention against free movement of cycle rickshaws on arterial roads, as the same will slow traffic generally, the Delhi Police submits that movement of emergency vehicles such as fire tenders, ambulance, police control vans would also be hindered and defeat the objective for which such services are provided.

29. The Delhi Police supports the MCD's move for cycle rickshaws' registration on zone basis and that total number of cycle rickshaws to be registered in a zone should be regulated by keeping certain controls such as stiff registration charges. Having regard to all relevant factors, it also submits that unlicenced cycle rickshaws should be impounded and dismantled. It must be mentioned here that in its written

submissions in the form of an affidavit dated 30.11.2009, the plea taken by Delhi Police is reproduced below:

> *"3(iv) With the passage of time traffic congestion, particularly in congested areas of Chandni Chowk, Walled City, Shahdara etc. has given rise to the number of cycle-rickshaws which penetrate deep into the lanes and because of their numbers being so large that the road network is unable to cope up for their movement and idle parking. Cycle-rickshaws not only add to the congestion on the roads and footpaths but also occupy space as the rickshaw puller is too poor to own a residence or dwelling. The rickshaw puller earns enough money which is more than what he would have earned in his home town or village therefore he continues to do this work. He lives on the pavement, rests in the rickshaw, eats and washes on the pavements which not only causes strain on the civic resources of the city but also encourages them in developing unauthorized colonies/Jhuggies giving rise to social problems in the city."*

When this Court expressed surprise at the obvious lack of sensitivity, reflected in the above statements, for the problems of the poor, later, Mr. Vikas Pahwa, learned counsel for the Delhi Police sought to make amends by stating that his clients should not be understood as having anything in particular against rickshaw pullers as a class. While we do not wish to comment further on this aspect, it would be important for public authorities, particularly law enforcement agencies, to display sensitivity, when exercising the coercive powers under various statutes, to the vulnerable situation in which the underprivileged populations, of which the rickshaw pullers form an integral part, are placed.

30. The Chandni Chowk Vypar Mandal in its submissions relies upon the status report filed in *Hemraj* case (supra) and mentions about the Central Road Research Institute Report Traffic Management Plan specially created for Delhi. It also states that Clause 12.7 of the Master Plan for Delhi speaks of transportation for special areas, which require introduction of vehicles such as battery operated buses etc.

<u>The questions for determination:</u>

31. From the above discussion, it is apparent that the contentions canvassed by the parties necessitate adjudication of the following questions:

1. The correctness and Constitutionality of the cap or quantitative restrictions imposed on the number of cycle rickshaw licenses that can be issued by the MCD in the context of the existing limit on licenses; and does the decision in *Hemraj*, therefore, require reconsideration?

2. Whether the owner/plier policy embedded in Bye-Law 3(1) is valid;

3. The legality and correctness of the 1960 Bye-Laws and the impugned 2007 policy and the action of the MCD in imposing penalties, directing confiscation of cycle rickshaw and their destruction;

4. The legality and correctness of the policy restricting or prohibiting plying of cycle rickshaws on the main arterial roads and zoning regulations;

5. Need to evolve a policy enabling cycle rickshaws and non-motorized vehicles assured road space.

Analysis and findings:

32. The 1960 Bye-Laws themselves do not place any restrictions or cap in the number of licenses that can be issued to cycle rickshaw owners and pliers. The power to do so stems from Bye-Law 15, which reads as follows:

> *"The number of cycle rickshaws to be licensed in a particular year – the number of cycle rickshaw licenses to be granted in a year shall be fixed by the Corporation in the beginning of each year, having regard to the desirability of eliminating cycle rickshaw plying for hire ultimately"*

It is not in dispute that the number of cycle rickshaw licenses that could be issued was fixed at 20,000, in 1975; that figure increased to 50,000 in 1993. In 1997 – as even *Hemraj's* case notes, the limit was increased to 99,000. The discussion in *Hemraj* reveals that the Court felt that plying of cycle rickshaw itself offends human dignity and also that any policy which enables rickshaw hiring by pliers leads to misuse by the mafia. This Court first proposes to deal with those assumptions.

33. The petitioners had argued that every activity that amounts to a profession, occupation or avocation, which is otherwise not prohibited, is guaranteed to every

citizen under Article 19(1)(g) of the Constitution. They had relied upon the decision of a Constitution Bench of the Supreme Court in *Sodan Singh v. New Delhi Municipal Committee,* 1989 (4) SCC 155. In that case, the Court was constrained with the restriction placed on hawking and vending on public streets. The municipal authorities had argued that no Fundamental Right to Livelihood or carrying-on profession of hawking and vending on public streets existed since they vested in the State or Municipal bodies. The Court negatived the contention, holding as follows in the main judgment:

> *"XXXXXX XXXXXX XXXXXX*
>
> *17. The provisions of the Municipal Acts should be construed in the light of the above proposition. In case of ambiguity, they should receive a beneficial interpretation, which may enable the municipalities to liberally exercise their authority both, in granting permission to individuals for making other uses of the pavements, and, for removal of any encroachment which may, in their opinion, .be constituting undesirable obstruction to the travelling public. The provisions of the Delhi Municipal Corporation Act, 1957, are clear and nobody disputes before us that the Municipal Corporation of Delhi has full authority to permit hawkers and squatters on the side walks where they consider it practical and convenient. In so far the Punjab Municipal Act 1911 applying to the New Delhi area is concerned, the bench constituted by three learned Judges observed in Pyare Lal's case (1967) 3 SCR 747 : (AIR 1968 SC 133) that the provisions did not authorise the municipality to permit stalls to be set up in the streets except temporarily on special occasions, like festivals, etc. and that the permission to the petitioner in that case had been wrongly granted initially. We do not agree with these observations, although it appears that in the light of the other circumstances, indicated in the judgment, the decision was a correct one. The provisions of both Ss. 173 and 188 should receive liberal construction, so that the New Delhi Municipal Committee may be in a position to exercise full authority. Indeed some of the documents on the records before us indicate that the Committee had been in the past actually permitting hawkers and squatters on pavements in certain areas.*
>
> *18. The controversy in the present cases. however, cannot be settled by what has been said earlier. The claim of the petitioners before us is much higher. They assert the right to occupy specific places on road pavements alleging that they have been so doing in the past. As has been stated earlier, the facts have been disputed and individual cases will be*

considered separately in the light of the present judgment. The argument, however, which has been pressed on behalf of the petitioners is that they have their fundamental rights guaranteed by Arts. 19 and 21 of the Constitution to occupy specific places demarcated on the pavements on a permanent basis for running their business. We do not think there is any question of application of Article 21 and we will be briefly indicating our reasons therefor later. But can there be at all a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trading business? We have no hesitation in answering the issue against the petitioners. The petitioners do have the fundamental right to carry on a trade or business of their choice, but not to do so on a particular place. The position can be appreciated better in the light of two decisions of this Court in Fertilizer Corporation Kamgar Union v. Union of India, (1981) 2 SCR 52: (AIR 1981 SC 344) and K. Rajendran v. State of Tamil Nadu (1982) 3 SCR 628: (AIR 1982 SC 1107)".

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In a concurring judgment Kuldip Singh, J stated as follows:

"XXXXXX XXXXXX XXXXXX

28. The guarantee under Article 19(1)(g) extends to practice any profession, or to carry on any occupation, trade or business. 'Profession' means an occupation carried on by a person by virtue of his personal and specialized qualifications, training or skill. The word 'occupation' has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. 'Trade' in its wider sense includes any bargain or sale, any occupation or business carried on for subsistence or profit, it is an act of buying and selling of goods and services. It may include any business carried on with a view to profit whether manual or mercantile. 'Business' is a very wide term and would include anything which occupies the time, attention and labour of a man for the purpose of profit. It may include in its form trade, profession,industrial and commercial operations, purchase and sale of goods, and would include anything which is an occupation as distinguished from pleasure. The object of using four analogous and overlapping words in Article 19(l)(g) is to

make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. In a nut-shell the guarantee takes into fold any activity carried on by a citizen of India to earn his living. The activity must of course be legitimate and not anti-social like gambling, trafficking in women and the like.

29. Street trading is an age-old vocation adopted by human beings to earn living. In the olden days the venue of trading and business has always been the public streets but, in the course of time fairs, markets, bazaars and more recently big shopping complexes and fashionable plazas have come up. In spite of this evolution in business and trade patterns the 'street trading' is accepted as one of the legitimate modes of earning livelihood even in the most affluent countries of the world. In England 'street trading' has been regulated by various Acts of Parliament. Paras 425 to 448 of Halsbury's Laws of England, Fourth edition, Volume 40 deal with this subject. Paras 427 to 430 pertain to 'street trading' in districts as regulated by the provisions of Local Government (Miscellaneous Provisions) Act, 1982. Paras 427 and 428 are reproduced as under:

"427-- Adoption of street trading code and designation of streets: A district council may resolve that the street trading code is to apply to its district as from a specified day.

Where it has done so, it may by resolution designate any street in its district as a 'prohibited street' in which street trading is prohibited, a 'licence street' in which street trading is prohibited without a licence granted by the district council, or a 'consent street' in which street trading is prohibited without its consent.

"428.--Street trading licences: Application for the grant or renewal of a street trading licence under the street trading code may be made by any person aged seventeen or over in writing to the district council. The council is under a duty to grant the application unless it considers that it ought to be refused on one or more of the following grounds:

(1) that there is not enough space for the applicant to trade without causing undue interference or inconvenience to street users;

(2) that there are already enough traders trading in the street from shops or otherwise in the particular goods;

(3) that the applicant desires to trade on fewer than the minimum number of days resolved on by the council;

(4) that by reason of some conviction or otherwise he is unsuitable;

(5) that he has been licensed by the council but has persistently refused or neglected to pay its fees or charges;

(6) that he has been granted a street trading consent by the council but has refused or neglected to pay its fees;

(7) that he has without reasonable excuse failed to avail himself to a reasonable extent of a previous licence.

The licence specifies the street in which, days on which and times between which, and describes the articles in which, the licence holder is permitted to trade, and may contain such subsidiary terms as the council thinks reasonable. Unless previously revoked or surrendered, it remains valid for twelve months or such period as is specified in it, although if the council resolves that the street be designated a prohibited street the licence ceases to be valid when the resolution takes effect. The council may at any time revoke a licence on grounds similar to heads (1), (4), (5) and (7) above, and the licence holder may at any time surrender his licence to the council.

On receiving an application for the grant or renewal of a licence, the council must within a reasonable time either grant the licence as applied for, or serve on the applicant a notice specifying, with its grounds, its proposal to refuse the application, to grant a licence on different principal terms, to grant a licence limited to a particular place in a street, to vary the principal terms or to revoke a licence, and stating that within seven days of receiving the notice the applicant may by written notice require the council to give him the opportunity of making representations. In this case the council may not determine the matter until either the applicant has made representations, or the time for doing so has elapsed, or the applicant has failed to make the representations which he required the council to allow him to make.

A person aggrieved by certain refusals or decisions of a council may appeal to a magistrates' court, and appeal from the magistrates' decision lies to the Crown Court. The council must give effect to the court's decision.

If a licence holder applies for the renewal of a licence before it expires, the old licence remains valid until a new licence is granted or during the time for appealing or whilst an appeal is pending, and where a council decides to vary the principal terms of a licence or to revoke it, the variation or revocation does not take effect during the time for appealing or whilst an appeal is pending.

A licence holder may employ assistants without any further licence being required."

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34. The above judgment clearly articulates that unless the profession or trade or occupation is inherently noxious or is termed as *res extra commercium* and thereby excluded from the guarantee under Article 19(1)(g) – such occupation or activity being dangerous and inimical to general public, such as liquor trade, dealing with drugs, dangerous substances etc. – every other activity which is capable of yielding profit, and affording livelihood to an individual or body of persons is deemed legitimate and is protected as a guaranteed Fundamental right. The State, of course, is within its rights to regulate such activity, having regard to relevant considerations and the restrictions it can reasonably place upon individuals who carry-on that trade, under Article 19(6). Therefore, the right of an individual or citizen to ply cycle rickshaw or other forms of transport falls within the legitimate exercise of his freedom guaranteed under Article 19(1)(g).

35. The observations in *Hemraj* apparently were premised on an understanding that cycle rickshaw plying hurts or offends human dignity and that the State should eventually eliminate the trade altogether. We are afraid that no such material exists on the record in support of the reasoning. Our country is vast with an ever-growing population, alarming numbers of whom continue to swell the list of the unemployed. Educating and skilling such vast masses of people is a major challenge to the State and its agencies. Vast budgetary resources are allocated and considerable public money is spent to achieve that end. Yet, illiteracy and lack of meaningful education is all pervasive. The natural corollary to the phenomenon is unemployment and ever growing numbers of unskilled and unemployed. In these circumstances, any opportunity towards gainful employment, howsoever slight (not from the point of view of those who are educated, trained, skilled or with the ability to make choices) is worth exploring – it may be part-time employment or full-time, it may be seasonal or regional. In fact, State policies recognize this and welfare measures such as "100-day Employment Guarantee Scheme, Food for Work" programme and the entire underlying assumption of the National Rural Employment Guarantee Act is the attainment of such object. If these are recognized as legitimate, the conclusion that cycle rickshaw plying is offensive to human dignity and needs to be eliminated altogether – as appears to be also the underlying theme of Bye-Law 15 – cannot be

understood at all. It is one thing to say that cycle rickshaw plying, like other activities, having regard to road conditions, congestion etc., needs to be regulated. That is undoubtedly a legitimate concern for the State since scientific and rational road management is an everyday challenge which is faced by Municipal and police authorities in view of the expansion of vehicular traffic in metropolises and big cities. However, to say that a segment of such vehicles – primarily non-motorized have to be eliminated altogether, or drastically reduced, there has to be something more than a mere assumption. In the opinion of this Court, that decision has to be based on permissible heads of restrictions, which can be placed under Article 19(6) of the Constitution; "public interest" is certainly not one of them. Nor can it be said that to further public order, the cycle rickshaws plying on the roads in Delhi are to be either eliminated altogether, or reduced drastically. One cannot help but recollect the Constitution Bench judgment of Supreme Court in *State of Madras v. V.G. Row* AIR 1952 SC 196 – in the context of what factors constitute "reasonable restrictions", as follows:

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>
> *……It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposing of the restrictions, considered them to be reasonable.*
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> *XXXXXX XXXXXXX XXXXXX"*

For the above reasons, this Court concludes that the assumption in *Hemraj* that the cycle rickshaw plying by individuals or citizens offends human dignity and perhaps requires to be eliminated or drastically controlled, is contrary to the freedom guaranteed under Article 19(1)(g). As far as the other assumption, i.e. that cycle rickshaw pliers are the victims of mafia is concerned, here too the opinion is apparently based on Court's own understanding of the ground reality. This Court proposes to deal with that part of *Hemraj's* case while discussing the second question formulated for consideration.

36. It would be worth noticing, however, that the Courts should desist from mandating legislative or executive policy in exercise of their powers under Article 226 of the Constitution (refer to *Kan Singh Kalu Singh Thakore v. Rabari Magan Bhai Vashrambhai*, 2006 (12) SCC 360. As far as the fixation of licenses by the MCD, impugned in the proceeding is concerned, it is worth noticing that the motorized vehicular population in the city of Delhi as on 30.06.2009 was 60,84,072 [18,81,002 two wheelers (pvt.), 38,55,055 four wheelers (pvt.), 45,817 buses (LPV, MPV, HPV), 76,090 TSR (auto rickshaw), 30,809 taxis (local, tourist, radio), 1,73,232 goods carrier (LGV,MGV, HGV), 22,067 others (Ambulances, tractors etc.)] [http://www.delhi.gov.in/wps/wcm/connect/doit_transport/Transport/Home/General+Information/Few+Interesting+Statistics]. The total population of Delhi as per the last census (in 2001) was 1,38,50,507 persons [http://www.delhi.gov.in/wps/wcm/connect/doit_des/DES/Home/Statistics+of+Delhi+at+a+glance/]. This Court had noticed on 08.05.2009 that the Commissioner MCD had constituted a Committee to critically examine the 1960 Bye-Laws and study its impact *vis-à-vis* welfare of the rickshaw pullers and owners, and make reasonable recommendations with regard to the number of cycle rickshaws required in the city etc. Apparently, the deliberations of the Committee took place; it included a representative of Manushi also. Pursuant to this Court's directions on 28.10.2009 to file the summary of issue-wise views of members of the Committee, an affidavit was filed on 05.11.2009. According to the report, Delhi has a population of around 180

lakhs, which includes 4-5% migratory population. Delhi has 567 unauthorized/regularized colonies and 1639 unauthorized colonies, 46 resettlement colonies and 27 slums/tenement settlements. It recognized that majority of the migrants/unskilled, who come to the city after harvesting season return after 5-6 months of their stay. It, however, states that emission is forcing planners to develop modern metro systems and planned road management. Crucially, the report states in Section I(b) as follows:

"XXXXXX XXXXXX XXXXXX

(b) There should be no ceiling as to the number of rickshaws/trolleys which may be owned by a person. The cycle rickshaws/trolleys can be owned or hired or self-driven. Any person can get license by a simple act of registration of each of his/her vehicles with the office of the Deputy Commissioner of the municipal zone in which the said rickshaw owner resides or the area in which he operates his rickshaw yard.

(c) There should be no quota limiting the numbers of cycle rickshaws that can be registered, or the number of cycle rickshaw puller licenses issued. These numbers should be solely determined by the public demand for the services of rickshaws.

All other Members of the Committee were on consensus on not putting any ceiling or restricting the number of CR/CRT except the Jt. Commissioner of Police (Traffic), who was however of the view that there should be a quota on the number of CR/CRT in the City as other motorized vehicle have also been restricted to some number with regulating/restricting their plying on roads. JCP(T) is of the opinion that the cap on the registration of rickshaws should be determined on traffic parameters such as road carrying capacity, availability of parking, halting facilities, general traffic condition and safety scenario. JCP(T) also expressed his views that there should be limit on number of licenses to be granted to an individual for each zone. CR is a commercial vehicle and should be subject to same conditions as being laid on other motorized commercial vehicles where by there numbers have also being restricted and stringent provisions have been made with regard to their plying on roads. If the ceiling on CR is lifted it should result in travel delays and traffic congestion. Adequate infra structure facilities should be developed by the MCD for provisions of lanes, parking etc. so as to ensure better discipline among them. The role of RUPA is to be properly specified by MCD for proper understanding.

The Committee considered the view of JCP(T) and Committee has found that every citizen of India has a legal right under the

provisions of articles 300A and 301 of the Constitution of India which gives them the right to possess property and freedom of trade, commerce etc. Furthermore CR/CRT are prime, environment friendly, pollution-free as well as cheaper and instant means of livelihood for the poorest section of the society. Whenever the number of CR/CRT is capped or ceiled it would always create chances of extortions and exploitation of the weakest section of our society. Further more the detail background and introductory note envisaged in the initial pages of this report are more than sufficient to make us understood regarding the ceiling of numbers of CR/CRT.

In addition to the above cited reasons it is also note worthy that CR/CRT is a non-motorized mean of transport, which is eco friendly, pollution free & which generates employments to the poor unemployed, unskilled manpower of unorganized sector of our economy. So it should not be compared with the motorized means of transport like car, taxi and auto etc. There is no restriction on the total number of cars/other private motorized means of transport like motorcycle, scooter etc. in Delhi. Although the number of automobiles in Delhi is almost 7-8 times (approx. 55 lacs) in comparison of total number of CR/CRTs which is not more than 7 lacs, so there should also not be any ceiling for the CR/CRT so that poor people of unorganized sector can also earn their livelihood, the right they have been given under the provisions of article 14 19(1)(g), 21,38, 39 (a)-(c) of the constitution of India.

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This Court, in view of the contentions made and also since no final decision is communicated by the respondents, has to decide the issue.

37. Every State action – be it legislative or executive or actions of State agencies, even in the contractual field, are to be non-discriminatory and only by reason. Article 14 mandates that every person is entitled to the Right to equality and equal opportunity before law. All along, – the Supreme Court has held that Article 14 permits classification between disparate individuals or objects, provided there is an "intelligible" or rational *differentia* between the two and importantly such *differentia* must bear a rational nexus or link with the object sought to be achieved by the legislation or executive policy. A new dimension to the right to equality was recognized in the law declared in *Maneka Gandhi v. Union of India,* AIR 1978 SC 597, when it was held that no State policy or law can be arbitrary as that is anti-thetical to equality. This formulation has been applied in numerous decision rendered

at later points of time. Thus, for instance, in *Anuj Garg v. Hotel Association of India*, 2003 (3) SCC 1, a restriction on employment of persons below 25 years, and women altogether, was held to be arbitrary.

38. The decisions of the Supreme Court have consistently ruled that the mere existence of power, either in law or in executive policy, is insufficient to answer a challenge to state action, on the ground of arbitrariness; the executive agency has to satisfy that the decision is not based on whim or caprice, but was taken after a consideration of all factors relevant in that regard. (Ref. *Shrilekha Vidyarthi v. State of U.P.*, (1991) 1 SCC 212; *M.I. Builders v. Radhey Shyam Sahu.*, 1999 (6) SCC 464; *Larsen and Toubro v. State of Gujarat*, 1998 (4) SCC 387; *Food Corporation v. Om Prakash Sharma*, 1998 (7) SCC 676). This principle was explained in *Srilekha Vidyarthi*, in the following terms:

> *"If the State is unable to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged"*

39. In the decision reported as *Union of India v. International Trading Co.*, (2003) 5 SCC 437, it was held that:

> *"14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.*
>
> *15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.*

16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary."

In the present case, the *rationale* for the limit fixed by the impugned notification, i.e. 99,000 licenses, is not disclosed. There is no objective material to remotely justify imposition of such cap. On the other hand, there is ample material by way of relevant factors, disclosing that the authorities have been periodically reviewing the need for upward revision of such limits – in the past 50 years or so, at least on 4 occasions upward revision of such limit, has taken place. In the circumstances, it is held that the limit of 99,000 placed on the number of licenses which can be issued by the MCD is held to be arbitrary and hereby set aside.

Point No.2

40. This concerns the validity of bye-law 3(1), which puts in position the "Owner/Plier Policy". The entire bye-law reads as follows:

"3.(1) No person shall keep or ply for a hire a cycle rickshaw in Delhi unless he himself is the owner thereof and holds a licence granted in that behalf by the Commission on payment of the fee that may, from time to time be fixed under sub-section (2) of Section 430.

Provided that no person will be granted more than one such licence.

{Provided further that Commissioner may grant more than one licences to a widow or a handicapped subject to the maximum of five licences}.

{(2) No person shall drive a cycle rickshaw for hire unless he holds a driving licence granted in that behalf by the Commissioner on payment of the fee that may, from time to time be fixed under sub-section (2) of Section 430.

Provided that the licences granted to the pullers shall be valid only for a period of three years.}"

41. It would be apparent from the reading of the above Bye-law that it provides for the following :

(a) It prohibits anyone from keeping or ply(ing) for a hire cycle rickshaw in Delhi.

(b) The prohibition is relieved if the plier is also owner of the cycle rickshaw.

(C) However, such person (owner/plier) has to hold a license granted in that behalf by the MCD on payment of the prescribed fee.

(d) No one can be granted more than one "such licence" (proviso to Bye-law 3(i)).

(e) The prohibition or cap of not more one licence does not apply in the case of widows or handicapped persons, who can apply and secure upto a maximum of five licenses (second proviso to Bye-law 3(1));.

(f) The owner/plier also has to apply and be granted "driving licence"; (Bye-law 3(2),

(g) Such driving licenses are valid for three years (proviso to Bye-law 3(2).

42. The MCD's affidavit justifying the owner/plier policy relies upon the Division Bench order in *Hemraj,* stating that the existing policy permits licences in favour of owners who may not be plying the cycle rickshaws. The Division Bench had expressed the view that such policy can result in exploitation of the cycle rickshaw pliers, and that there is a cycle rickshaw mafia controlling the tra

de. The MCD's affidavit, in paragraph 5 states that it was framed after taking into account objections received from various cycle rickshaw associations and after taking into account "relevant factors " including deliberations with the Traffic Police. The MCD states that the policy endeavours to minimize the exploitation of the rickshaw pullers by owners since the Bye-laws permit licenses to be granted to rickshaw pullers also. However, in support of the affidavit (filed on 07.04.2008), the MCD has not placed on record any material or document evidencing consultation with such cycle rickshaw associations. There is no instance of exploitation of the rickshaw pullers cited by it on the basis of objective study or analyses based on any survey conducted etc. Interestingly the issue wise summary filed along with the affidavit of the Additional Deputy Commissioner of MCD on 05.11.2009 has done a volte face in that, the position now indicated is as follows:

(II) New Registration Procedures for Rickshaw Pullers

A person who does not own his or her rickshaw may apply to be registered as puller in any of the 12 municipal zones of the MCD. This registration should be valid for plying a rickshaw in any of the 12 zones in Delhi.

The puller's registrations should be valid for pulling a passenger rickshaw as well as a trolley rickshaw for carting goods.

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JCP (T) i.e. Joint Commissioner of Police (Traffic) viewed that registration for rickshaw pullers should be done zone wise and MCD should clearly specify and earmark space for creating traffic Training Park. The Committee considered this view and found that in no other system of licensing for drivers there is any restriction of zone or area ……"

43. During the arguments it was pointed out that the correctness of the owner/plier policy cannot be looked into since the Supreme Court had upheld it in *All Delhi Cycle Rickshaw Operators Union v. MCD & Others,* AIR 1987 SC 648. In that case too cycle rickshaw owners had challenged owner/plier policy. The Supreme Court had noticed its earlier decision in *Azad Rickshaw Pullers Union v. State of Punjab,* AIR 1981 SC 14 which had approved a scheme for providing financial assistance to rickshaw pullers to acquire cycle rickshaw. The Court noticed that the owner/plier policy in Bye-laws, however, had not been commented upon. The Court then noticed that the policy decision in *Nanhu v. Delhi Administration,* 1981 1 SCR 373 where Bye-law 3 had been considered. The Court in Paras 5-7 of *All Delhi Cycle Rickshaw Operators Union* stated as follows:

"5. It is clear from the above order that this Court did not say anything about the constitutional validity of bye-law No.3. We, however, find on a consideration of the language of clause (50 in section 481 (1) L of the act that the bye-law falls within the scope of the power conferred on the Corporation to frame bye-laws for the issue of licences in respect of cycle-rickshaws which are kept or used for plying in the Delhi Municipal Corporation area. While framing bye-laws under the above statutory provision it is permissible for the Corporation to restrict the issue of licences only to the owners of the rickshaws who themselves act as rickshaw pullers. This is apparently done to prevent exploitation of the rickshaw pullers by the owners of the cycle rickshaws. A licensing authority may impose any condition while issuing a licence which is in the interest of the general public unless it is either expressly or by necessary im0plication prohibited from imposing such a condition by the law which confers the power of licensing. The restriction imposed by the Corporation in

the present case is according to us in the interest of the general Public. In Man Singh v. State of Punjab (1985) 4 SCC 146 (AIR 1985 SC 1737) the petitioners contended that the provision in the Punjab Cycle Rickshaw Regulation of Licence Act, 1976 was violative of Articles 19(i)(g) and 21 of the Constitution as also Articles 14 and 16 of the Constitution. This Court negativing the said contention observed thus:

"In the instant case, section 3 of the Punjab Act has the effect of making it possible for the rickshaw puller to ply the rickshaw as owner of the vehicle and thereby to be the full owner of the income earned by hm. No longer will he be obliged to part with an appreciable portion of that income in favour of another who owns the vehicle. The Punjab Act is beneficial legislation bringing directly home to the rickshaw puller the entire fruit of his daily toil. The enactment is intended as a social welfare measure against the exploitation of the poor and unemployed by rapacious cycle rickshaw owners who by reason of their superior financial resources fatten their wealth from the sweated toil of rickshaw pullers. Even if we look at the impugned legislation from the point of view of its impact on the fundamental right of rickshaw owners who give them on hire to rickshaw pullers for plying, it is plain that the legislation constitutes a reasonable restriction on the right of such rickshaw owners to carry on the business of hiring out cycle rickshaws inasmuch as the exercise of the right is excluded by legislation designed for the economic and social welfare of rickshaw pullers, who constitute a significant sector of the people, a sector so pressed by poverty and straitened by the economic misery of their situation that the guarantee of their full day's wages to them seems amply justified."

6. We do not, therefore, find any ground to set aside the bye-law in question either on the ground that it is outside the scope of Section 481 of the Act or on the ground that it is opposed to the provisions of the Constitution. The above contentions therefore fail.

7. During the pendency of these proceedings the Court issued notices to the Punjab National Bank, the Bank of Baroda and the State Bank of India and also the Credit Guarantee Corporation of India (Small loans) to ascertain whether the banks are willing to extend financial assistance to the rickshaw pullers to acquire the ownership of cycle rickshaws and to ply them within the Corporation area and also to ascertain whether the Credit Guarantee Corporation s of India (Small Loans) would guarantee the loans advanced to the rickshaw pullers. The learned counsel for these banks and the Credit Guarantee Corporation of India (Small Loans) have submitted that the banks are willing to advance up to R.2,000/- by way of loan at a reasonable rate of interest to the rickshaw pullers on the security of the cycle rickshaws owned by them in order to assist the rickshaw pullers to acquire the cycle rickshaws. The banks have put forward before the court two schemes(i) the scheme for finance to cycle rickshaw pullers and (2) Self-employment programme for urban poor `Sepup' under which it is possible for them to give financial assistance to the

rickshaw pullers. The Credit Guarantee Corporation of India(Small Loans) is agreeable to guarantee the repayment of loans advanced to the rickshaw pullers. The Corporation authorities are agreeable to issue necessary eligibility certificates to the rickshaw pullers to obtain the loan."

44. The petitioners had argued that there has been a sea change in ground realities, these last more than two decades or so. They referred to the Central Government's conscious policy to promote non-motorized transport as pro-active measure for protecting the environment; they also attack the owner/plier policy as discriminatory since no such restriction is imposed on other modes of transport particularly cars that ply on the road and occupy the greatest share of road space. The petitioners further state that Delhi Master Plan 2021 as well as the Prime Minister's directive mandate a re-thinking on this issue and that judgments of the Supreme Court indicate that what has been considered, as constitutionally permissible and valid at one point of time can be successfully attacked subsequently if it is shown that the circumstances have undergone radical change. It is argued that once the ceiling or cap on the number of licences that can be issued by the MCD is removed, a larger number of cycle rickshaw licenses would be available permitting both classes - owners who do not ply the cycle rickshaws as well as those who do, to fairly share the number of licenses that can be issued.

45. A facial reading of judgments in *Nanhu v. Delhi Administration (supra) and All Cycle Rickshaw Operators Union* no doubt indicate that in the latter decision the Supreme Court rejected the challenge to validity of Bye-law 3(1). The rationale for rejection of the challenge was that permitting rickshaws to be hired from the owners by the pliers would result in exploitation situation, as far as the latter are concerned. The decision in *Nanhu* (supra) concededly did not deal with the owner/plier policy; however, the *All India Operators Union* case decision did so. The Supreme Court relied upon another judgment in *Man Singh v. State of Punjab (supra)* where a similar restriction had been challenged but the petition was rejected on identical grounds.

46. In this Court's opinion, a careful reading of the Supreme Court's decision would show that even while rejecting the challenge to the owner/plier policy embodied in Bye-law 3(1) the Court was alive to what had been challenged In *Nanhu* (supra) as well as *All India Cycle Rickshaw Operators Union* the Supreme Court had required local and municipal agencies to formulate welfare schemes for the betterment of cycle rickshaws pliers so that they could become owners, thus liberating them from the possibility of exploitation. In a sense, the decisions pertaining to the correctness of the owner/plier rule were also premised on the assumption that a benevolent State would step in to provide aid to those class of citizens who are eking out a marginal difference as it is clear from the directions contained in para 7 of the *All Delhi Cycle Rickshaw Operators Union* judgment.

47. The two judgments of the Supreme Court in *M.C. Mehta* of the year 1996 and 2006 have categorically ruled that the Master Plans have the force of law. This is also apparent from a reading of Sections 10, 11 and 29 of the Delhi Development Act, 1957. The reason for such logic is obvious. Imperatives of town planning dictate that local and specialized authorities coordinate their efforts to meet the challenges of an expanding metropolis like Delhi, with an ever-growing population. This challenge takes within its fold certain constants and a number of variables. These variables are socio-economic challenges resultant upon prevailing executive policies which might promote or prioritize certain sectors of the economy, which in turn could generate or significantly impact on employment and livelihood. From the mid 1990s, Delhi has witnessed an explosive growth in population and expansion of infrastructure. It would not be inaccurate to say that physical transformation of the city in terms of the number of colonies that have sprung-up, as well as growth of high-rise buildings and mega colonies with a large concentration of such high-rise structures is unprecedented. Such colonies, in turn, are surrounded by existing colonies. Many such colonies and localities are clustered and located in such manner that access is through one arterial road. The compulsions of travelling in such outlying areas are such that residents – who depend on public transport for their mobility within the city are unable to commute freely; they have to travel some distance for such access. The linkage provided by non-motorized transport, such as cycle rickshaws is invaluable. Similarly,

such far-flung and outlying areas are serviced in regard to supply of some essential items, such as fresh vegetables, daily household items, which are delivered to retail vendors etc. through rickshaw trolleys. There is no empirical study made by any local agency on the impact of the existing policies under the bye-laws, either in regard to the cap of licenses or in regard to the inherent restrictions on the number of licenses flowing from the owner-puller policy. In the opinion of the Court, the Delhi Master Plan 2021 accommodates all these viewpoints when it recognizes the urgent need to promote non-motorized transport, particularly, cycle rickshaws, as well as use of bicycles. This is an important circumstance as the Delhi Master Plan is a subsequent event, which not only has the force of law but also is part of a Central enactment, i.e the Delhi Development Act. This circumstance was obviously absent, when All Cycle Rickshaw Owners Union decision upholding the owner-plier policy was delivered by the Supreme Court.

48. The second important circumstance, in the opinion of this Court, is that with the removal of the ceiling or cap on the number of licenses that can be issued, the logic of keeping in position the owner-plier policy breaks down consequent to the finding on the first aspect and depending on if at all the respondents choose to impose a cap on some rational basis, the number of license that would become varied categories - owners, pliers and owner-pliers respectively, a fair share of the available licenses.

49. The third aspect and an important one at that is that there was really no answer to the petitioners' submission that rickshaw pliers are hostilely discriminated by the owner-plier policy, which condemns them to an impoverished existence. Neither the State agencies – including the police nor the intervenors were able to justify why the right of a plier to hire a rickshaw on rent for eking out his livelihood requires complete prohibition – barring the excepted category under the proviso to Bye-law 3(1). That such prohibition is inherent in Bye-law 3(1) was not disputed. The prohibition (of cycle rickshaw pliers) from hiring rickshaws (in the absence of their ownership) is relieved to an extent in only two category of cases, i.e. widows and disabled owners. In their cases, the owner can have upto five licenses and need not ply the cycle

rickshaw but can hire it out on rent. However, in all other instances, the individual who plies also has to own the vehicles; he, no doubt, has to possess two licenses – one, the ownership license and the other, the "vehicle" license. Yet, the policy of Bye-law 3(1) dictates handing of two licenses in one individual, i.e. the owner-plier.

50. It has been recognized that the State power extends to complete prohibition of a commercial activity in the legitimate exercise of imposing reasonable restrictions under Article 19(6). The law declared by the Supreme Court in these last fifty years speaks uniformly in that- it is the rights, which are fundamental and not the restrictions and that any legislative or executive measure that has the effect of totally prohibiting an individual from exercising his freedom to trade and carry-on any profession under Article 19(1)(g) should be imposed in rare and exceptional circumstances and classes of cases. Thus, in *Narender Kumar and Others v. Union of India,* AIR 1960 SC 430, the Supreme Court, while interpreting whether the complete prohibition of a commercial or professional activity amounted to reasonable restriction, held that the expression "restriction" included cases of prohibition on such activity. This view was applied in the *State of Madras v. Mumbai Upnagar Gramodhyog Sangh,* AIR 1970 SC 1157; *Har Shankar & Others. v. The Deputy Excise & Taxation Commissioner & Others,* AIR 1975 SC 1121 etc. The correct approach of the Court in deciding whether a complete prohibition amounted to a reasonable or unreasonable restriction, was indicated by the Supreme Court in *Municipal Corporation of the City of Ahmedabad v. Jan Mohd. Usman Bhai and Anr.,* AIR 1986 SC 1205, as follows:

> *"15. Before proceeding to deal with the points urged on behalf of the appellants it will be appropriate to refer to the well-established principles in the construction of the constitutional provisions. When the validity of a law placing restriction on the exercise of a fundamental right in Article 19(1)(g) is challenged, the onus of proving to the satisfaction of the Court that the restriction is reasonable lies upon the State. If the law requires that an act which is inherently dangerous, noxious or injurious to the public interest, health or safety or is likely to prove a nuisance to the community shall be done under a permit or a licence of an executive authority, it is not per se unreasonable and no person may claim a licence or a permit to do that act as of right. Where the law providing for grant of a licence or permit confers a discretion upon an administrative authority regulated by rules or principles,*

express or implied, and exerciseable in consonance with the rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or licence in its uncontrolled discretion the law ex facie infringes the fundamental right under Article 19(1)(g). Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition. But when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of the interest of general public lies heavily upon the State. In this background of legal position the appellants have to establish that the restriction put on the fundamental right of the respondents to carry on their trade or business in beef was a reasonable one. The Court must in considering the validity of the impugned law imposing prohibition on the carrying on of a business or a profession attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency, national or local, or the necessity to maintain necessary supplies or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that a case for imposing restriction is made out or a less drastic restriction may ensure the object intended to be achieved.

20. The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in judging their validity, courts must approach the problem from the point of view of furthering the social interest which it is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve its problems and furthering the moral and material progress of the community as a whole. (See Joti Prasad v. Union Territory of Delhi 1961 S.C.R. 1601 If the expression 'in the interest of general public' is of wide import comprising public order, public security and public morals, it cannot be said that the standing orders closing the slaughter houses on seven days is not in the interest of general public."

51. All the above decisions were applied in the ruling in the judgment reported as *Indian Handicrafts Emporium v. Union of India,* 2003 (7) SCC 589. The Court indicated that a greater latitude is permitted to the State in regulating what are considered inherently dangerous activities or those which might pose a threat to the general public, as, for instance, liquor trade, trade and commerce in fire arms and explosives; drug trade and activity that could be harmful or injurious to the

environment generally, such as commerce in animal skins and products, ivory etc. However, outside of such exceptional categories, a total prohibition of the right to carry-on business, is generally regarded as an unreasonable restriction (refer to *Assistant Controller of Customs v. Charan Das Malhotra*, 1977 (1) SCC 697 and *Manick Chand Paul v. Union of India,* 1984 (3) SCC 65) where correct approach of the Court was indicated as a strict one, as *"...greater the restriction, the more the need for strict scrutiny by the Courts."*

52. The general approach of the Court in regard to deciding whether a restriction is reasonable, has been indicated in that classic passage in *State of Madras v. V.G. Row,* AIR 1952 SC 196. In a recent judgment, the factors relevant for upholding a legislative or executive measure as a reasonable restriction were restated in *MRF Limited v. Inspector, Kerala Government & Ors.,* AIR 1999 SC 188 as follows:

> *"14. On a conspectus of various decisions of this Court, the following principles are clearly discernible:*
>
> *(1) While considering the reasonableness of the restrictions, the Court has to keep in mind the Directive Principles of State Policy.*
>
> *(2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.*
>
> *(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.*
>
> *(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Clause (6) of Article 19.*
>
> *(5) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind. (See: State of U.P. v. Kaushailiya, [1964]4SCR1002)*
>
> *(6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise. (See: Kavalappara Kottarathil Kochuni @ Moopil Nayar v. States of Madras and Kerala, [1960]3SCR887 and O.K. Ghosh v. E.X. Joseph, (1962)IILLJ615SC)"*

53. This Court is of the opinion that the above aspect, i.e. the complete prohibition of those class of citizens who cannot or do not wish to own rickshaws due to compulsions of temporary or seasonal residence in Delhi, was not present or considered at the time when the *All Delhi C.R.O.* decision was rendered. The views of members of the committee formed by the MCD have highlighted these aspects.

54. One established principle of Constitutional law is that a legislation or regulation if once held valid, can be successfully challenged if there is a significant change in circumstances. This principle was articulated in *Satyawati Sharma v. Union of India*, (2008) 5 SCC 287, in the following manner:

> *"…legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent. In State of M.P. v. Bhopal Sugar Industries Ltd. this Court while dealing with a question whether geographical classification due to historical reasons could be sustained for all times observed:*
>
> *"6. … Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not, therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared."*

55. In *Motor and General Traders v. State of Andhra Pradesh,* 1984 (1) SCC 222, it was held that a law, which earlier had *"the garb of constitutionality"* may *"become worn out and its unconstitutionality is now brought to a successful challenge."* The same view was followed in *Malpe Vishwanath Acharya v. State of Maharastra,* 1998 (2) SCC 1.

56. This Court is of opinion that the complete change in ground realities, such as phenomenal growth of Delhi's population in the last 22 years; the unprecedented rise in motor vehicular population (60 lakhs), the increase in number of new colonies, high

rise buildings, growth in employment and livelihood potential in Delhi, elaborated in the earlier part of this judgment, in answer to Point No. 1, are all features which were absent at the time of the Supreme Court decision. An added circumstance is the incremental and negative impact of pollution levels in the environment and the city generally. All these were recognized by the Delhi Master Plan, which mandates the promotion of non-motorized traffic or services, like cycle rickshaws. Coupled with the fact that prohibiting a class of impoverished persons, altogether of the chance of livelihood in a category of non-noxious or non-dangerous commercial activity, i.e. hiring cycle rickshaws for plying cannot be supported as a "reasonable restriction". Taken together, the Court holds that the owner-plier policy even though was valid, 22 years ago, cannot be regarded as non-discriminatory and valid, now. It is arbitrary.

57. The owner-plier policy is embodied in the proviso to Bye-law 3(1). The second proviso – which prescribes an exception to proviso to Bye law 3(1) was to mitigate the policy. The policy is held to be arbitrary and unreasonable; therefore, the (first) proviso to Bye-law is unsustainable in law. The doctrine of severability (of a law) has been explained as the Court' ability to mould the relief in the given facts of a case, and uphold the parts of a law which are valid (Ref. *20th Century Finance Corporation v. State of Maharastra,* 2000 (6) SCC 12; *Lohara Steel Industries v. State of AP,* 1997 (2) SCC 37; and *State of Kerala v. T.M. Peter,* 1980 (3) SCC 554). As the impunged proviso to Bye-law 3(1) is severable from Bye-law 3(1), this Court holds that the same (first proviso to Bye-law 3(1) is unconstitutional and void. The same is severable from Bye-law 3(1). Since the second proviso was introduced only as an exception to Bye-law 3(1) first proviso, the same too, requires to be severed, as it would not only serve no purpose, but add a restriction (of no more than 5 licenses) to widows and handicapped persons. Consequently, both provisos to Bye-law 3(1) are hereby set aside.

Point No. 3

58. This part concerns the legality and correctness of the 1960 Bye-Laws and the action of the MCD in imposing penalties, directing confiscation of unlicensed cycle rickshaws and their destruction. The petitioners contend that in absence of any

specific provision of law in the parent act (in this case, the MCD Act) the agencies cannot exercise such powers and any such exercise of powers is *ultra vires* the enactment. The act of *"impounding, deforming and crushing"* the cycle rickshaws is also challenged as being contrary to Article 21 of the Constitution, and the right to freedom of carrying on business or profession.

59. The respondents, on the other hand, state that the new cycle rickshaw policy (discussed in para 20 of this judgment), which provided for penalizing, impounding and scrapping of unlicensed cycle rickshaws was framed pursuant to the observations in *Hemraj case* (as discussed in para 19 of this judgment). Reliance is also placed upon section 481, more specifically section 481(1)(L)(5) (which extends the licensing of cycle rickshaws) of the MCD Act, to say that such Bye-laws were framed in lawful exercise of powers of that provision. The penalty for breach of such bye-law is provided under section 482.

60. The decision on this part requires analysis of two aspects, namely (1) validity of clauses 4 (k) and (l) of the New Cycle Rickshaw Policy, affirmed by Resolution number 856, dated 26.02.2007; and (2) legality and correctness of clauses 17(b) and 17A of the 1960 bye-laws. It is seen that section 481(1)(L)(5) of the Delhi Municipal Corporation Act, 1957, no doubt, empowers the MCD to frame bye-laws rendering necessary licensing of cycle rickshaws and MCD framed the 1960 bye-laws in rightful exercise of its powers. Section 482 of the 1957 Act also provides specifically for penalty in case of breach of the bye-laws; these relevant sections have been extracted in above part of this judgment. The right to property, although no longer a fundamental right, is still a human right and a constitutional right guaranteed under article 300A of the Constitution of India, which provides that *"no person shall be deprived of his property save by authority of law."* In *Bishambhar Dayal Chandra Mohan and Ors. v. State of Uttar Pradesh and Ors.,* AIR 1982 SC 33 it was observed that:

> *"The word 'law' in the context of Article 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order; having the force of law, that is positive or State made law."*

It has been held by the Supreme Court that a statute, which seeks to take away a person's right in property deserves strict construction (*Mrs. Jyoti Harshad Mehta v. The Custodian and Ors.*, (2009) 10 SCC 564). The Supreme Court in the same decision also observed that- "*However, it is also well settled that the courts are required to give purposive construction to a statute to see that the purpose and object thereof is fully attained.*"

61. In the decision reported as *Hindustan Times Ltd v. State of U.P.*, AIR 2003 SC 250, the Supreme Court had to deal with a challenge to the State's practice of deducting a certain percentage from the bills payable for advertisements carried by the petitioner in its newspaper on its (the State's) behalf. There was no authority in law, even though the State argued that the purpose for such deduction was for the welfare of journalists. The Court held that such deduction amounted to confiscation, and resulted in deprivation of property; as it was not rooted in enacted law, the Court declared the action as Unconstitutional.

62. In the present case, there are specific provisions in the Act, authorizing the MCD to exercise confiscation and seizure powers (of immovable and movable property). These are Sections 156, 157 (Distress) and 158. Section 158 (8) even prescribes that in the event of disposal of such property, seized or distrained, for recovery of specified municipal dues, if some surplus remains, the property owner is entitled to such amount. Section 161 specifically prescribes for seizure of vehicles and animals, in case of non-payment of tax. There is no such power to seize, confiscate and destroy cycle rickshaws. Therefore, the bye-laws, and impugned resolutions, to the extent they authorize the exercise of such power are arbitrary as well as *ultra vires* (the parent Act).

63. As far as the penalty prescribed by clause 4 of the impugned policy, and Bye-law 17 (b) is concerned, this Court notices that the only provision dealing with penalty in such cases, is Section 482, concerning with penalty for breach of bye laws. The provision of Rs. 300/- as penalty in a compulsive manner (by the policy) and Rs. 50/- per day for continuing offence, is clearly in excess of the said provision of the Act. It was held in *Khemka Agencies & Co. v. Union of India*, AIR 1975 SC 1549, that

express authorization by law is necessary for imposing a penalty. With this Court declaring clauses 4(k) and (l) of the policy and bye-laws 17(b), and 17A to be unconstitutional, there is no power in the MCD, much less the Delhi Police, to seize and either sell in auction or destroy a rickshaw even where it is found to be driven without a licence or by a person not having a proper licence. We are not unmindful of the manner in which these wide powers were being exercised with cycle rickshaws being easy targets for unleashing the lathi of a traffic policeman. It is hoped that the Delhi Police will, consistent with this judgment, instruct its personnel to treat rickshaw pullers with sensitivity.

In view of this discussion, it is held that clause 4 (k) and (l) and Bye-law 17 (b) 17A are illegal and void; they are so declared.

Point No. 4

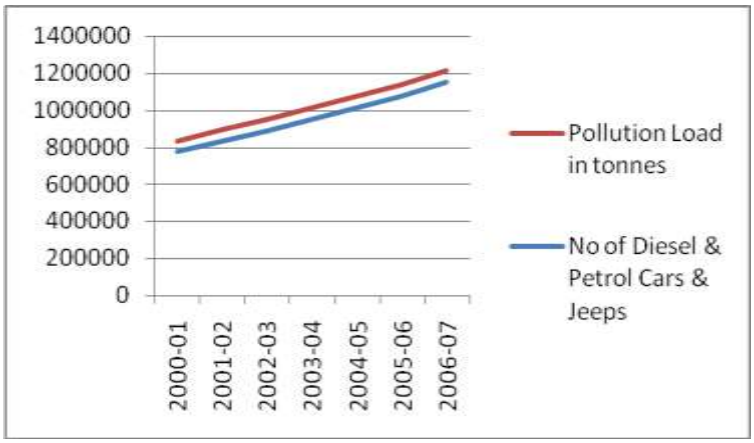
64. This aspect pertains to the zoning provisions in the impugned policy, which mandate a licensing *regime,* whereby the MCD would entertain and grant licenses to cycle rickshaw owner pliers (i.e. applicants) on zone wise basis. The MCD has divided the city into 12 zones, and indicated, in its policy, the number of licenses, which can be granted in each zone; the cycle rickshaws holding such licenses are entitled to operate only in the concerned zone. The MCD has also resorted to colour coding of the cycle rickshaws, based on such zoning. In addition, restriction on movement of such cycle rickshaws on arterial roads has been mandated. This is achieved through MCD's impugned policy, as well as notifications issued by the Delhi Police. The latter notifications also additionally impose restrictions on movement of rickshaws, in terms of timing, etc., on various roads and localities in the city. The petitioners argue that the zoning *regime* and restrictions on movement in arterial roads is discriminatory, as it is aimed at elimination of cycle rickshaws, and that no such restrictions have been imposed in relation to private motorized vehicles, which carry commuters. They also argue that such restrictions hinder the exercise of the freedom to movement, guaranteed under Article 19 (1)(d) of the Constitution of India.

65. There can be no controversy about the state or the municipalities' concern to regulate the use of road; that would fall within the sphere of legitimate regulatory power, under Article 19 (5) and (6) of the Constitution. The judgments in *Bombay Hawkers Union v. Bombay Municipal Corporation*, 1985 (3) SCC 528, and *Sodan Singh* (supra) have ruled that public roads and highways are essentially meant for use by pedestrians and traffic. The State and municipal authorities, who own the roads, have a legitimate concern in regulating its use. However, while exercising that regulatory power, the balancing act performed by such regulatory agencies has to accommodate, as far as possible, all the viewpoints, and concerns, of the stakeholders.

66. The material presented before the Court have shown that the city of Delhi has grown exponentially. At the same time, vehicular and motor traffic has also increased phenomenally. The Environment Protection Control Authority's recent report, on vehicular pollution in Delhi, reads as follows:

> *"3.1. Checking the growth of private vehicles in the city*
> *Delhi has more than four million registered vehicles. Currently, the city adds 1000 new personal vehicles each day on its roads. This is double what was added in the city in pre-CNG days.*
>
> *Recent analysis also shows that clean technology gains will be lost if the numbers of vehicles increase in the city. Between 2000 and 2007, the number of personal cars in Delhi increased by 1.47 times and their exhaust emissions have increased by 1.16 times. This is despite the fact that emissions of petrol and diesel new generation vehicles have improved by over 50-60 per cent of the pre-2000 levels.*

Impact of exponential growth of personal cars on the air quality



Why target vehicles for increasing pollution levels?

What or who is responsible for Delhi's increasing pollution?

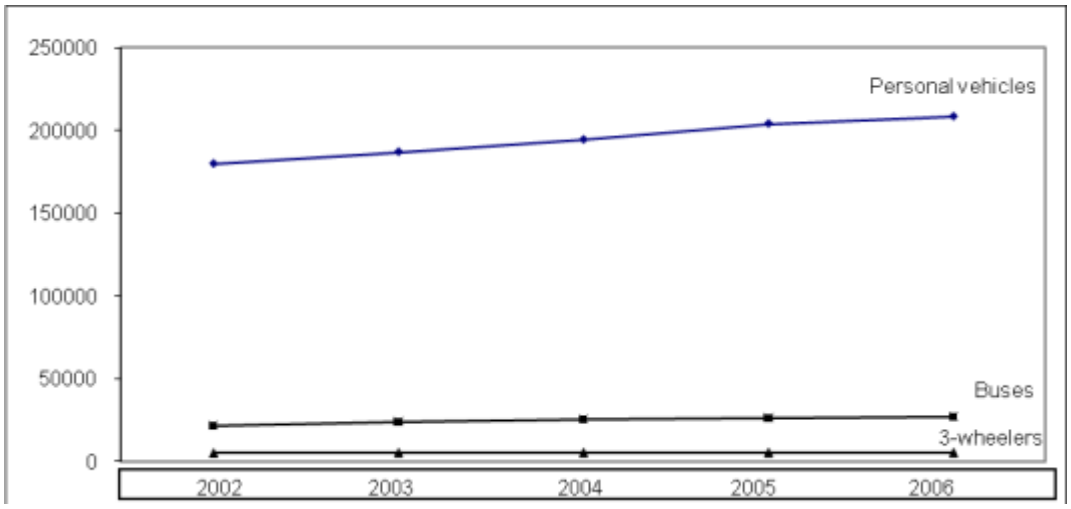
There are three answers to this question. First, while there is no detailed inventory, which would 'scientifically' pinpoint the contribution from each pollution source in the city, the role of vehicles in air pollution has been established. In 1994, the Central Pollution Control Board had estimated that vehicles contribute roughly 64 per cent to the city's pollution load; by 2000 the Delhi pollution control committee revised upward to 70 per cent. Secondly, it is clear that the city has already invested into first generation reforms, under which action against different sources of pollution has already been initiated. It can be argued that these actions need to be more stringently enforced and that now the big challenge is the growth of vehicles. Thirdly, and most importantly, analysis based on the quantum of pollutants each vehicle emits, makes it clear that the contribution of toxins from exploding fleets of private vehicles are adding to the city's pollution woes.

In 2007, under a scientific committee of a Ministry of Environment and Forests (MoEF), project finalized emission factors – the pollution of different vehicle types and of different vintage. These factors were developed on the basis of emission tests done by Automotive Research Association of India (ARAI) and provide the first estimation of real time pollution from vehicles on the road.

The emission factor provides measurement (average and estimated) of the quantum of pollution from different vehicle types. To estimate the pollution load, the study takes data from the state transport department on the age of vehicles in the city. The database provides information on the number of vehicles registered each year. This database is matched with information on information on the distance that different types of vehicles – cars, two-

wheelers, buses and trucks – cover each day. For instance, based on a recent RITES report buses cover 210 km; cars 35 km and two-wheelers 25 km each day. The information on the distance travelled is based on surveys done in the city, which provides an average estimation, used to calculate pollution load.

Fig: 4 Total emissions: All vehicle types



It is important to note that individual buses have higher emissions than cars or two-wheelers and buses travel a lot more than private vehicles. But the sheer number of private vehicles – older two-wheelers and newer cars -- on the road makes their impact much higher."

The figures of registered motor vehicles are in excess of 60 lakhs, as per the Govt. of NCT website; of these, as many as 38,55,055 are private cars (four wheelers) and only 45,817 buses ply on the city's roads. As far as private commercial vehicles, catering to the commuter public are concerned, there are 76,090 TSRs (auto rickshaws) and 30,809 taxis (local, tourist, radio) on the road. Thus, there is a felt need for non-motorized road transportation, which the cycle rickshaws offer.

67. The respondents were unable to point out whether there is any restriction on the movement of such motorized private –especially private commercial vehicles, on arterial roads. The restrictions through the notifications issued by the Delhi Police, all pertain specifically to slow moving traffic. However, where private passenger commuters' motor vehicles are concerned, no such restrictions – at least in terms of zoning are apparent. The figures of number of vehicles and their impact on pollution levels in Delhi, as well as the dictates of the Delhi Master Plan are such that all agencies have to explore the optimum methods of minimizing environmental damage,

and ensuring that best practices that protect the ecology are adopted. From this view point, even while the MCD's regulatory regime of issuing zone wise licenses cannot be faulted, there are certain issues which have to be addressed, especially from the commuters' perspective. Even if the cycle rickshaws are acknowledged to cater to short distance travel, the fact remains that the zoning *regime* presently in position, prohibits plying of cycle rickshaws of one zone in another. This can lead to practical problems; for instance commuters cannot be compelled to change from one cycle rickshaw to another, since the destination place is located in a different zone than the one where they hired the first cycle rickshaw from. Such restrictions can affect poor commuters and travelers the hardest, particularly if they have to commute from inter state bus termini, railway stations, etc., with heavy luggage. Likewise, in the absence of rational cross-over points, where arterial roads divide zones, or even act as boundaries, commuters can face considerable hardship. However, this Court would not hold that such zoning restrictions, or ban on the use of arterial roads, by cycle rickshaws, invalid, because the number of such vehicles that would become available as a result of removal of the cap, and their use by classes of pliers, other than owners, is unknown. Also, there is lack of empirical data about road usage and scientific basis for concluding one way or the other that placing such restrictions do not impede smooth movement of traffic, particularly on main and arterial roads. This Court therefore, does not hold that such restrictions are void or discriminatory, but would require the authorities to study all the relevant factors, and take such remedial measures as are necessary in the light of the previous discussion.

Point No. 5

68. The petitioners argue that the MCD is, on the one hand, not granting sufficient number of licenses to rickshaw pliers, and following a policy of confiscation of unlicensed rickshaws; and on the other, it is not making any places available for such rickshaws to be parked, or kept securely. This, say the petitioners, leads to tremendous hardship, as the rickshaw-pliers are always at the mercy of the police and other authorities, who arbitrarily impound and impose penalties. They also argue that the provisions of the Master Plan dictate that there should be a rational apportionment of

the roads, so that non-motorized vehicles ply, and are assured minimum space, which would ensure equitable sharing and access to public roads.

69. So far as the question of parking spaces is concerned, the petitioners appear to have a genuine problem. If clear spaces are not earmarked for rickshaw parking, the pliers would be forced to park them at the place most convenient to him; usually on some stretch of the main road. This can lead to unhappy and undesirable situations, where the rickshaw plier's livelihood is threatened on a daily basis, as the possibility of rickshaws being damaged, or taken away looms large. Besides, such a position would always expose the rickshaw plier to threat from the police and municipal authorities, who can object to the practice, saying that public roads or public property cannot be utilized for parking cycle rickshaws. Either way, the problem is not caused by the plier; he is a hapless victim. It cannot also be lost sight of that there is no requirement that other class of vehicle owners must possess any such parking space. Bus, trucks and car owners are not subjected to any such condition. Imposing such restrictions on rickshaw pliers and owners is therefore, discriminatory. Now, there is no dispute that the Delhi Master Plan does visualize that parking lots have to be provided, as there is no clear demarcated area, for keeping such cycle rickshaws safely, or even during the time when they are not hired. In these circumstances, the City authorities, particularly the MCD should endeavor, as part of their obligation, to provide safe park and ride lots.

70. The petitioners' important argument was that there should be a direction by the Court to the respondents, to create or carve out a dedicated non-motorized cycle/cycle rickshaw lane, because in its absence such non-polluting form of transport is elbowed out of the road, and would vanish. It is argued that the recent experience of BRT corridor in Delhi has shown that where people choose public transport, in the long run, they benefit, as the travel time is shorter; on the other hand, those who prefer to go by their private mode of transport, have to spend more time on the road. This is because, on those stretches of the public road, there is road segregation. It is submitted that the Master Plan indeed mandates such road segregation,

71. The EPCA report quoted previously says that on an average, buses traverse 210 kilometres daily, whereas private cars travel 35 km, and two wheelers travel 25 km. according to the same study, 100 new cars are added daily to the roads, and that after 2000, the increase in the number of such cars has been 47%. The report further says that:

> *"Recent analysis also shows that clean technology gains will be lost if the numbers of vehicles increase in the city. Between 2000 and 2007, the number of personal cars in Delhi increased by 1.47 times and their exhaust emissions have increased by 1.16 times."*

Road space, as noted in the Master Plan, is about 21% of the land in the city. Gains achieved on account of insistence on the use of efficient automobile technologies to minimize carbon emissions appear to be completely offset by the unimpeded and unrestricted growth and use of such private vehicles. While the freedom to use such personal vehicles, and the aspirational value that they have for the people is undeniable, the respondent authorities, in the opinion of the Court, have an obligation to ensure that such use of public road, which will continue to choke traffic, and slow it down (sometimes even bringing everything to a standstill) has to be regulated, just as in the case of restrictions on heavy vehicles, trucks, movement restrictions on commercial vehicles in residential colonies, restrictions on slow moving vehicles, cycle rickshaws, horse carts, etc. Road space cannot be appropriated or monopolized by one mode of transport, particularly when the bulk of the population depends on public transport. The various figures discussed in the earlier portion of the judgment would reveal that there is a crying and urgent need to increase and augment public transport – be it increase in the number of buses, the Delhi Metro or any other mode. Also, the respondents have to consider all options, including imposing stringent restrictions on the use and movement of private cars, in certain congested areas of the City, and also limit their use. Delhi will not be unique, if such measures are actively pursued and implemented; for instance, in metropolises like London, a stiff "congestion" fee is levied on private vehicles enter some parts of the City, as a deterrent to the use of private cars, etc. Similarly, other cities have implemented car

movement restrictions, based on registration number or colour of vehicles. Other innovative ideas to achieve the purpose can be thought of, and considered.

72. In the present case too, the Delhi Police agree that the Master Plan dictates that roads should be segregated show that separate bicycle tracks are provided. The City Government has implemented Bus corridors in certain areas. These measures when implemented, or replicated in a large scale, would perhaps cause hardship, and generate controversy. Yet there are two aspects, which cannot be forgotten. One, Planet Earth seems to be running out of options unless "unorthodox" and sometimes unpopular policies are pursued. Whatever be the nuances about the technical soundness of the exact extent of global warming, the signs are self evident- erratic weather patterns, drying rivers and a depleting water table, food insecurity, retreating glaciers, drastically reducing forest cover. Each succeeding generation of humans perhaps has opportunity to see less greenery, less fresh water bodies, vastly reduced plant and animal species. Greens of yesteryears are replaced by greys and browns. Every little bit contributed by each human being- in such a circumstance- (states and state agencies only being aggregations of human beings, and representing their interests) would promote environment conservation. Two, road management cannot mean prioritization of access to only one class of vehicles, particularly when there is a significant body of evidence that such class contributes to clogging of roads. Though public transport users apparently contribute the bulk of the city's commuters (i.e. buses travel 210 kms. each day, on an average, in Delhi- which, if it means three round trips, translates on an average to use of about 22,000 (out of 45,000 odd registered buses) by 600 persons, which in turn works out to one crore commuter trips. However, the 32 lakh odd cars – even if the usage is 60% each day, by two persons, would result in fewer trips. The propensity of those cars however, is to appropriate a lion's share of the road space available in Delhi.

73. We are of the opinion, in view of the above discussion, that even while not disturbing the zoning restrictions and the ban (on cycle rickshaws in arterial roads) this is a fit case where the authorities should explore all options to reduce road congestion, and consider all proposals, from an overall, or holistic perspective. These

proceedings are in the nature of public litigation. The Supreme Court has stressed the need for courts to adopt new approaches and innovate, while dealing with such public issues, when moulding the relief, in a given case. One such relief is "continuing mandamus" – an innovation first commented upon in *Vineet Narain v. Union of India,* 1998 (1) SCC 226. While adopting such a course, the courts issue declaratory judgments and at the same time, having regard to the subject matter, give operative directions, which also ensure oversight that guides implementation of its orders. In the circumstances of this case, we are of the opinion that these cases are instances where such continuing *mandamus* has to be issued.

74. In the light of the above discussion, it is held that:

A (a) The restriction or cap imposed by the MCD in respect of cycle rickshaws licenses which can be issued, is held to be arbitrary, and the impugned 2007 policy particularly clause 4(c) is hereby set aside to that extent; The decision dated 26.07.2006 of this Court in *Hemraj's* case in W.P.(C) 3419/1999 is hereby overruled.

(b) The "owner-plier" policy embodied in Bye-law 3(1) provisos, is hereby declared as arbitrary and void, and the said provisos, being severable, are quashed;

(c) Clauses 4 (k) and (l) of the impugned policy of 2007 and Bye-laws 17 (b) and 17-A of the 1960 Bye-laws to the extent they permit confiscation, and scrapping of cycle rickshaws, and mandate a continuing offence, prescribing specific sanctions, are without authority of law, and contrary to the Delhi Municipal Corporation Act, 1957;

(d) The Court does not, in the present circumstances hold that the zoning restrictions, or the ban on the use of cycle rickshaws on arterial roads, is illegal or unjustified. However, it is of the opinion that the matter requires thorough review and consideration of all aspects.

(e) This Court is of opinion that reasonable provision for parking of cycle rickshaws should be made, or in the alternative, the authorities should examine the options available to them to ensure that the rickshaw pliers and licensees are not harassed. As far as providing separate tracks on roads is concerned, the Court

proposes to deal with the aspects – along with others, in the directions to be made, hereafter.

B This Court, in the light of the above findings, and observations, issues the following directions:

(i) The Govt. of NCT of Delhi, the MCD, the Delhi Development Authority, the Delhi Police, shall constitute a special task force to explore all the questions pertaining to road traffic in Delhi, with the objective of minimizing congestion, reducing pollution levels of motor vehicles, and ensuring equitable access to all classes of vehicles that ply on the roads, including non-motorized transport such as bicycles and cycle rickshaws. The Government of NCT of Delhi shall issue a Notification within 6 weeks, for this purpose, and also accord adequate budgetary support for this purpose.

(ii) The above Task Force shall be constituted by the Chief Secretary. Its membership shall comprise of a traffic expert, to be nominated by the Govt. of NCT of Delhi; a nominee of the Commissioner of Police, Delhi, with at least five years experience in traffic management, and not below the rank of Deputy Commissioner of Police; a town planning expert nominated by the Delhi Development Authority, with experience, and familiarity in respect of road management aspects pertaining to planning; two nominees from the private sector, or drawn from autonomous institutions, with experience and expertise in road management and traffic flows in large metropolises; a nominee with expertise in air pollution control, drawn from a voluntary agency or non-government organization, and a nominee from a non-government organization with experience in the field of environment and urban livelihood. The Principal Secretary, Transport of the Govt. of NCT of Delhi, shall be the member-Secretary of the Task Force;

(iii) The Task force shall review all aspects pertaining to traffic flow, registration of vehicles, restrictions in respect of vehicular movement (of all classes of vehicles – heavy, light, private, non-motorized,) which would include review and consideration of all existing policies, and regulatory measures, and make such recommendations, as would promote the objectives of ensuring equitable access to all kinds of vehicles, minimizing harmful impact on the environment, smoothening the flow of traffic, and

at the same time accommodate the concerns of all interests. The Task Force may also make interim reports, and recommend pilot projects, to consider feasibility of any new practice or policy.

(iv) The Task Force shall consider the views of all those interested in presenting them, with a view to take a broader perspective. To achieve this end, the Force shall place its viewpoints on the public domain, and invite comments or objections on its proposals, which it shall duly consider, and in the process, may also hear any interested party or parties.

(v) Any proposal which the Government of NCT or the MCD, or any other local authority or agencies wishes to implement shall be notified to the general public for information (and comments and views, objections or suggestions, as the case may be). After duly considering such views, the proposals shall be implemented, provided however, that some reasonable transition time is granted to all concerned persons, including commuters, vehicle owners, licensees, etc.

(vi) The first Meeting of the Task Force shall be held in eight weeks from today.

(vii) These Petitions shall be listed on 7th April, 2010 before a Division Bench, to monitor the progress of implementation of this judgment, and thereafter the matter shall be so listed on the 2nd Wednesday of each month.

(viii) This Court issues a continuing *mandamus*, for the above purpose.

(S.RAVINDRA BHAT)
JUDGE

(CHIEF JUSTICE)

(S.MURALIDHAR)
JUDGE

10th February, 2010