

Man Singh And Ors vs State Of Punjab And Ors on 23 August, 1985

Equivalent citations: 1985 AIR 1737, 1985 SCR SUPL. (2) 662, AIR 1985 SUPREME COURT 1737, 1985 (4) SCC 146

Author: R.S. Pathak

Bench: R.S. Pathak, V.D. Tulzapurkar, Sabyasachi Mukharji

PETITIONER:
MAN SINGH AND ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT 23/08/1985

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
TULZAPURKAR, V.D.
MUKHARJI, SABYASACHI (J)

CITATION:
1985 AIR 1737 1985 SCR Supl. (2) 662
1985 SCC (4) 146 1985 SCALE (2) 367
CITATOR INFO :
R 1987 SC 648 (4,8)

ACT:
Constitution of India 1950, Articles 14, 19(1)(g) & 21.
Punjab Cycle Rickshaws (Regulation of licence) Act,
1976 Sections 3 & 5.
Cycle Rickshaw - Licence - Grant of - Vehicle to be
plied by owner himself - Whether - Valid - Constitutional.
Statutory Interpretation.
Validity of statute - Determination of - Duty of court
Consider the degree of encroachment of citizen's right -
Reasonableness can be determined on surrounding
circumstances and contemporaneous legislation.

HEADNOTE:

The Petitioners in the Writ Petition ply cycle rickshaws which they hire for the day from the owners of those vehicles. They carry on that activity for about eight months in the year and then return to the region to which they belong. For the hire of cycle rickshaws they pay the owners a certain sum for the day retaining the balance of the day's income to themselves. They are not in a position to purchase any cycle rickshaws. Unless they hire the vehicles they cannot carry on that activity. Oppressed by poverty this arrangement of cycle rickshaw hire has been resorted to with the owners who through such exploitation obtain an unduly handsome return on the paltry investment made in the purchase of the cycle rickshaws.

The Punjab Legislature, enacted the Punjab' Cycle Rickshaws(Regulation of Licence) Act, 1976 and 8. 3 thereof provided that no owner of a cycle rickshaw shall be granted any licence in respect of his cycle rickshaw nor his licence shall be renewed by any municipal authority after the commencement of the Act, unless the cycle-rickshaw is to be plied by such owner himself. Sec. 5

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of the Act provided for penal punishment of any person found to A be in possession of a cycle-rickshaw without a licence conforming to the provisions of the Act.

The constitutional validity of the Punjab Cycle Rickshaw (Regulation of Licence) Act, 1976 was challenged and this Court In M/S Azad Rickshaw Pullers Union v. State of Punjab, [1981] 1 S.C.R. 366, framed the following scheme:

(a) Every rickshaw puller in Amritsar or other municipality who had been a licence within one year of the coming into force of the Act shall be entitled to apply to the Municipal Commissioner for a certificate or other document to the effect that he had been a licence for rickshaw pulling.

(b) The Municipal Commissioner will verify the records and will grant the necessary certificate or other document within one month from the date of the application.

(c) On receipt of the Municipal certificate the rickshaw puller will apply to the Credit Guarantee Corporation of India (Small Loans) under the Guarantee scheme of 1971 for advance of a loan upto Rs. 900.

(d) The loan amount shall be repaid by the rickshaw puller in 15 monthly instalments. If there are delayed payments of instalments of loan, higher rate of interest will be recoverable.

(e) When the rickshaw pullers during the agricultural season go to work in their fields, they shall nominate other rickshaw pullers without employment to ply the rickshaws during that season. The Municipal Commissioner, if satisfied that the nomination made is bona fide will issue licence to such pullers, or nominees of the licensed rickshaw pullers, in the agricultural season.

The petitioners in their Writ Petitions contended that

the 1976 enactment resulted in making their conditions much worse, for whereas formerly they could at least ply the cycle rickshaws on hiring them from the owners for a sum, they were unable to do so now, especially as they did not have the funds, nor possessed the arrangements for obtaining a loan for the purpose, and as they were not permanent residents of Amritsar, no one was prepared to stand surety for the amount they sought to borrow from the Banks. It was further contended that this scheme of this

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Court in *M/S Azad Rickshaw Puller's Union v. State of Punjab* had not been implemented by the Amritsar Municipal Corporation and consequently the provisions of the Punjab Act of 1976 had continued to operate with unabated severity to their detriment, and that it be declared ultra vires as an unconstitutional violation of the fundamental right under sub-cl.(g) of cl.(1) of Article 19 of the Constitution to carry on occupation or business. As a similar restriction is not imposed on taxi drivers, cart load carriers, three wheeler auto rickshaw drivers and other vehicles plying for public hire the Punjab Act violates the fundamental rights guaranteed by Articles 14 and 16 of the Constitution, The scheme propounded by the Court has failed because the Municipal Administration did not make any real attempt to implement it.

The Writ Petitions were contested by the Amritsar municipal Corporation. It was contended that the cost of a cycle rickshaw being about Rs.1200 a person with substantial financial resources would purchase a number of cycle rickshaws and hire them out to rickshaw pullers at Rs. 8 per day irrespective of the income earned by the rickshaw puller, thus earning over 150 per cent interest over his investment. To protect poor and needy rickshaw pullers from such exploitation, the Legislature enacted the Punjab Act of 1976 to enable rickshaw pullers to escape the clutches of middlemen. Between the enforcement of the Punjab Act and the formulation of the scheme in *Azad Rickshaw Puller's Union* the Corporation renewed more than nine thousand licences in favour of individual rickshaw pullers who were owners of the rickshaws plied by them. No limit on the number of cycle rickshaws to be plied had been imposed by the Municipal Corporation.

On the question: (1) Whether the Punjab Act of 1976 is an instance of incomplete legislation and cannot serve the purpose for which it was intended and because of the prohibitions and restraints incorporated in it, it constitutes an unreasonable restriction on the fundamental rights guaranteed under sub-cl.(g) of cl.(1) of Art. 19 of the constitution and also violates Articles 14 and 16 of the Constitution. (2) Whether the scheme framed by this Court in *Azad Rickshaw Puller's Union* is incapable of proper implementation, and therefore of no legal effect.

Dismissing the Writ Petitions,

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HELD: 1. (a) The Punjab Cycle Rickshaws (Regulation of Licence) Act 1976 cannot be regarded as an unreasonable restriction on the fundamental rights of the petitioners under Art. 21 read with sub-cl.(g) of clause (1) of Article 19 of the Constitution. [680 A]

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(b) The Punjab Cycle Rickshaws (Regulation of Licence) Act A of 1976 regulates the issue of licenses in respect of cycle rickshaws plying in any Municipal area in the State of Punjab. It essentially provides that no owner of a cycle rickshaw will be granted a license in respect of his cycle rickshaw unless the vehicle is plied by the owner himself. The intention of the statute is to ensure the plying of cycle rickshaws by rickshaw pullers who are owners of the vehicle thus eliminating the middleman who owns the vehicle. [675 E]

(c) The true test of the validity of a statute must be the effect and consequence of its operation on the fundamental right of the citizen. The object underlying the legislation embodies the intent of the legislature in enacting it, but in construing its validity in the context of a citizen's fundamental right the question before the Court always must be whether its impact on the fundamental right can be regarded as a reasonable restriction on the exercise of the right. The focal point during such examination is the fundamental right, and the duty of the Court must be to consider the quality and degree of the encroachment made by the operation of the statute on the citizen's exercise of that right. [676 D-E]

Maneka Gandhi v. Union of India, [1978] 2 S.C.R. 621, R.C. Cooper v. Union of India, [1970] 3 S.C.R.53C, referred to.

In the instant case, 8. 3 of the Punjab Act of 1976 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 him. No longer will he be obliged to pare with an appreciable portion of that income in favour of another who owns the vehicle. The Punjab Act is a 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. The legislation constitutes a reasonable restriction on the right of such rickshaw owners to carry on the business of hiring out cycle rickshaw inasmuch as the exercise of the right ld excluded by legislation designed for the economic and social welfare of rickshaw pullers, who constitute a significant sector of the people, a sector 80 pressed by poverty and straitened by the economic misery of their situation that the

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guarantee of their full day's wages to them seems amply justified. [676 F-677 B]

2.(a) The scheme framed by this Court in Azad Rickshaw Pullers Union is a good scheme, capable of implementation, and productive of the objective for which it was designed. If it has not been successfully implemented so far, it is in the main largely on account of circumstances which could have been avoided. Inherently there is no feature in the scheme which operates against its effectiveness. If the scheme has not succeeded as was intended by the Court, it is largely because appropriate action was not taken by the parties concerned to implement it. [680 D]

(b) It is permissible to judge the reasonableness of a law on the basis of the surrounding circumstances as well as of contemporaneous legislation enacted as part of a single scheme. [678 D]

The Lord Krishna Sugar Mills Ltd. & Anr. v. The Union of India & Anr. [1960] 1 S.C.R. 39, referred to.

(c) The Punjab Act confers on the State Government by 8. 7, power to frame appropriate rules in support of and for the furtherance of the object of the Act. In the event of the scheme being altered or modified by its authors to a degree incompatible with the true operation and success of the Punjab Act, the situation can always be met by the State Government framing suitable rules under 8 7 of the Act. The State Government is not only empowered to do so; it is under an obligation to frame rules appropriate to the successful implementation of the legislative goal. [679 F]

(d) The Municipal Corporation should determine the maximum number of licenses which should be granted for plying cycle rickshaws within its jurisdictions limits, keeping in mind the needs of the travelling public on the one hand and the danger of uneconomic plying on the other. Every rickshaw puller proposing to take advantage of the scheme should apply to the Municipal Commissioner for a certificate, the period within which such applications may be filed being certified by the Municipal Corporation from time to time. All the applications will be considered, in the serial order in which they are received, for the grant of certificate on the basis of which the rickshaw puller may take further steps envisaged in the scheme for the grant of financial

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assistance enabling him to purchase a cycle rickshaw for plying A by him. The issue of the certificate shall be subject to the following conditions: [680 H-681 B]

1. Each certificate shall be granted in respect of one cycle rickshaw only. [681 C]

2. The number of certificates issued shall / t exceed the maximum, if any, fixed by the Municipal Corporation as the total strength of the cycle rickshaws allowed to ply within its jurisdictional limits. [681 D]

3. No person shall be granted more than one such certificate. [681 E]

4. Preference shall be given in the matter of granting certificates to those rickshaw pullers who had plied a cycle rickshaw for one year before the Punjab Act came into force. [681 E] D

JUDGMENT :

ORIGINAL JURISDICTION : Writ Petition (Civil) Nos. 57286308 of 1982.

(Under Article 32 of the Constitution of India) V.M. Tarkunde and S.M. Ashri for the Petitioners. Naunit Lal and S.K. Bagga for the Respondents. The Judgment of the Court was delivered by PATHAK, J. The petitioners in these writ petitions ply cycle rickshaws in Amritsar which they hire for the day from the owners of those vehicles. Most of the petitioners belong to other districts of Punjab and also come from the neighbouring States of Jammu and Kashmir, Himachal Pradesh and Uttar Pradesh. They carry on that activity for about eight months in the year and then return to the regions to which they belong. They observe this practice year after year. For the hire of cycle rickshaws they pay the owners a certain sum for the day, retaining the balance of the day's income to themselves. It is alleged by the petitioners that they are not in a position to purchase any cycle rickshaws and that unless they hire the vehicles they cannot carry on that activity.

Over the years there has been considerable agitation in the State of Punjab against the practice of the owners of cycle rickshaws hiring people of the poorest stratum in society to ply the cycle rickshaws for public passenger traffic and to charge them for each day's use of the vehicles. It is said that oppressed by their poverty the petitioners and those similarly placed are obliged to enter into this arrangement with cycle rickshaw owners, who through such exploitation are able quite often to obtain, an unduly handsome return on the paltry investment made in the purchase of the cycle rickshaws. The agitation led the State Government to consider measures for enabling the pullers of cycle rickshaws to extricate themselves from such exploitation, and it was thought desirable that the cycle rickshaw pullers should own their own vehicles, and the State Government should arrange interest free loans for them to enable them to purchase cycle rickshaws. With this object in mind, the Punjab Legislature enacted the Punjab Cycle Rickshaws (Regulation of Licence) Act. 1976.

S. 3 provided:

Licence for cycle-rickshaws.- (1) Notwithstanding anything contained to the contrary in the Punjab Municipal Act, 1911, or any rule or order or bye-law made thereunder or any other law for the time being in force, no owner of a cycle-rickshaw shall be granted any licence in respect of his cycle-rickshaw nor his licence shall be renewed by any municipal authority after the commencement of this Act unless the cycle-rickshaw is to be plied by such owner himself.' And s. 5 declared:-

"Penalties.- (1) Any person who is found to be, in possession of a cycle-rickshaw without a licence conforming to the provisions of this Act or plies or causes it to be plied by a person without a valid driver's licence issued under any law for the time being in force or plies or causes to be plied a cycle-rickshaw not meant to be plied for hire without painting the body thereof in yellow shall be punishable with imprisonment which may extend to three months.

The petitioners considered that the enactment had resulted in making their conditions much worse for whereas formerly they could at least ply the cycle-rickshaws or hiring them from the owners for a sum, they were unable to do so now, specially as they did not have the funds, nor possessed the arrangements for obtaining a loan for the purpose. It was pointed out that as the petitioners were not permanent residents of Amritsar, no one was prepared to stand surety for the amount which they sought to borrow from the Banks, that inasmuch as the Banks at Amritsar had been unable to recover about eighty per cent of the amount loaned by them they had decided to deny this facility to cycle-rickshaw pullers, and that, therefore, they were not in a position to purchase cycle-rickshaw. In the circumstances, a number of cycle rickshaw pullers filed Civil Writ Petition No. 563 of 1979 Nanak Chand & Ors. v. State of Punjab & Ors. and Writ Petition No. 839 of 1979 Azad Rickshaw Pullers Union (Regd.) Ch. Town Hall, Amritsar & Ors. v. The State of Punjab & Ors. [1981] 1 SCR 366.

Meanwhile, and to the same end, the Municipal Corporation of Delhi had amended the Cycle-rickshaw Bye-laws of 1960. After amendment, bye-law 3 read as follows:- "3 (1) No person shall keep or ply for hire a cycle rickshaw in Delhi unless he himself is the owner thereof and holds a 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 no person shall be granted more than one such licence- (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.

The bye-laws framed by the Delhi Municipal Corporation were challenged by cycle rickshaw pullers in Writ Petition No. 841 of 1980 Nanhu & Ors. v. Delhi Administration & Ors. [1981] 1 SCR 373.

The two Writ Petitions Nos. 563 and 839 of 1979 filed by the cycle rickshaw pullers of Amritsar were disposed of by this Court on August 5, 1980 by a judgement in which the Court decided not to enter into the question of the constitutional validity of the Punjab Act but, on the contrary, to frame a scheme in furtherance of the Act and for the purpose of giving effect to it. Likewise on the same day this Court disposed of Writ Petitions Nos. 841 of 1980 and 728 of 1980 pertaining to the cycle rickshaw pullers of Delhi, and the judgment proceeded on the same lines as in Amritsar Writ Petitions.

The scheme propounded by the Court in Azad Rickshaw puller Union (supra) was intended to be a self-working, specific scheme which makes the statutory ban not a negative, self-defeating interdict, but a positive economic manumission, and to apply to the entire State of Punjab. Its principle features may be set forth here.

1. Every rickshaw puller who had been a licensee in the Amritsar or other municipality within one year of the coming into force of the Punjab Act of 1976 would be entitled to apply to the Municipal Commissioner within one month from the date of the judgment (August 5, 1980) for a certificate testifying that he had held a licence for rickshaw pulling within that period. The Municipal Commissioner would, after verification from the records, grant the certificate within one / nth of the date of application, taking a liberal attitude in the matter of issuing the certificate.
2. On receipt of the certificate or other document the rickshaw puller could apply to the Credit Guarantee Corporation of India (Small Loans) under the Guarantee Scheme of 1971, requesting the Corporation to stand guarantee to the Punjab National Bank or other. mutually agreed upon schedule bank for advance of a loan upto Rs.900 (or for a larger sum if the price of a cycle rickshaw was more than Rs.900).
3. The rickshaw puller would deposit a sum of Rs.50 with the Bank as a condition of eligibility for obtaining the loan, and the balance of the loan would be guaranteed by the aforesaid Corporation. Upon fulfillment of those conditions, the Bank would advance the sum required for the purchase of a cycle rickshaw to the manufacturer or vendor indicated by the rickshaw puller.
4. Upon taking delivery of the cycle rickshaw and producing before the Bank the voucher evidencing purchase and delivery along with the rickshaw, if needed, for physical verification within one week of taking such delivery, and thereafter whenever directed, the rickshaw puller would execute the necessary documents required by the Bank in order to hypothecate the vehicle in favour of the Bank.
5. The rate of interest payable by the rickshaw puller to the Bank would be governed by the Scheme framed by the State Government for loans to rickshaw pullers.
6. The loan would be repaid by the rickshaw puller in 15 monthly instalments. If payment of the instalments is delay-ed, higher rates of interest would be recoverable in accordance with the 1971 scheme. In the event of the instalment being duly paid, the Government would reimburse the rickshaw puller with the total amount of interest.
7. Some further facilities for the rickshaw pullers would be included within the Scheme. For example: (1) The Rickshaw Puller Union would be permitted by the Municipality to set up and run a workshop for repair and allied work and a service station for the cycle rickshaws. Sufficient place would be allowed in suitable places for rickshaw stands and for the safe keeping of rickshaws subject to moderate charges. (2) Where during the agricultural season and rickshaw puller nominated other unemployed persons to ply the rickshaws during that season the Municipal Commissioner, on satisfaction that the nomination was made bona fide, would issue licences to the nominees for the duration of the agricultural season.

8. If group insurance of the life of the rickshaw pullers and of their rickshaws was feasible the Municipal Commissioner would prepare a scheme in that behalf in consultation with the Rickshaw Puller Unions.

9. Likewise, the Municipal Commissioner would also draw up a project whereby cycle rickshaws would be replaced by scooters in successive phases so that the rickshaw pullers could ultimately become scooter drivers owning their own scooters.

The scheme formulated by the Court in *Nanhu & Ors.* (supra) for the Delhi Cycle Rickshaw pullers contained the same features. The Delhi Administration had imposed a ceiling on the total number of cycle rickshaws permissible on the road within its territory, and the Court directed the Delhi Administration to consider applications by rickshaw pullers for licenses on their merits, including consideration of the period during which the applicants had carried on such activity.

In 1982 the present writ petitions were filed by a number of rickshaw pullers of Amritsar, who complained that the scheme propounded by this Court had not been implemented by the Amritsar Municipal Corporation and in the result the provisions of the Punjab Act of 1976 had continued to operate with unabated severity to their detriment. They pray that the Punjab Act be declared ultra vires as an unconstitutional violation of their fundamental right under sub-cl. (g) of cl. (1) of Article 19 of the constitution to carry on their occupation or business. They also contend that as a similar restriction is not imposed on taxi drivers, cart load carriers, three wheeler auto-rickshaw drivers and other vehicles plying for public hire the Punjab Act violates the fundamental rights of the petitioners guaranteed by Articles 14 and 16 of the constitution. In this connection they also point out that 20,000 cycle rickshaws are being allowed to ply in Ahmedabad, Agra, Kanpur, Varanasi, Patna, Calcutta and Nagpur, cities with a population not less than that of Amritsar, by rickshaw pullers who do not own the vehicles plied by them. The petitioners say that the Scheme propounded by the court has failed because the Municipal Administration did not make any real attempt to implement it.

In opposing the writ petitions the Amritsar Municipal Corporation affirms that the cost of a cycle rickshaws being about Rs.1200 a person with substantial financial resources would purchase a number of cycle rickshaws and hire them out to rickshaw pullers at Rs.8 per day irrespective of the income earned by the rickshaw puller, thus earning over 150 per cent interest over his investment after taking into account expenditure incurred in petty repairs. To protect poor and needy rickshaw pullers from such exploitation the Punjab Legislature 'had enacted the aforesaid Punjab Act of 1976 to enable rickshaw pullers to escape from the clutches Of such middle-men. It was asserted that with the Punjab Act coming into force a large number of rickshaw pullers had taken advantage of the Act and purchased their own cycle rickshaws under the Punjab Government Scheme by securing loans from the Banks. It seems that between the enforcement of the Punjab Act and the formulation of the scheme by this Court in *Azad Rickshaw Pullers Union* (supra) the Amritsar Municipal Corporation had already renewed more than nine thousand licences in favour of individual rickshaw pullers, who were owners of the rickshaws plied by them. No limit on the number of cycle rickshaws to be plied had been imposed by the Municipal Corporation. According to the Amritsar Municipal Corporation the individual rickshaw pullers failed to apply to the Municipal Corporation for the requisite certificates enabling them under the Scheme to apply to a schedule Banks for a loan. It transpires,

however, that the Azad Rickshaw Pullers Union deposited 1170 applications, purporting to be from individual rickshaw pullers, with the Amritsar Municipal Corporation for certificates in accordance with the terms of the Scheme and this, it was said, was done between the first week of August, 1980 and the first week of September, 1980. It is alleged by the petitioner that these applications have remained pending with the Municipal Corporation ever since and no certificate has yet been issued pursuant to any of those applications. The material on the record, however, discloses that on September 16, 1980 the Municipal Corporation wrote to the Azad Rickshaw Pullers Union asking it to direct the individual applicants to furnish the license numbers of the previous rickshaw driving licenses issued within one year of the coming into force of the Punjab Act of 1976 in order to enable the Municipal Corporation to verify from its records that the respective applicants were entitled to the certificate. The Municipal Corporation has stated on affidavit that the names and addresses of the applicants set forth in many of the applications were illegible, some of them were not even signed or bore the impression of the applicant's thumb mark, that some of the applications had been submitted in duplicate or triplicate in order to obtain more than one certificate for the same applicant, that all the applications were made on the printed form of the Azad Rickshaw Pullers Union, and in the circumstances it became necessary for the Municipal Corporation to ask that Union to direct the applicants to furnish the license numbers of their rickshaw driving licenses so that the certificates could be issued without delay. It is pointed out that the said Union wrote back on October 3, 1980 that as it had not been possible for the rickshaw pullers to preserve the old licenses they could only make a statement that they had been plying rickshaws in the past and the Municipal Corporation should verify from its records whether the applications were in order. It is stated that none of the applicants presented himself nor produced any licenses or License number thereafter. The Municipal Corporation wrote on December 1, 1980 again to the said Union for the information required from the applicants so that further action could be taken in the matter. It is said that the thing was done by the applicants or by the said Union and ultimately the Municipal Corporation, after waiting for a considerable time for a response from the applicants, decided to attempt to trace out the names of the applicants from its old records. The task, it appears, took a considerable time, and according to the Municipal Corporation it was hampered by the fact that the names and addresses of the applicants were not clearly legible on the applications and in some cases the addresses were incomplete. The Municipal Corporation affirm that notwithstanding the lack of cooperation from the applicants it was able to prepare as many as 785 certificates by November 22, 1983 and a letter was written by the Municipal Corporation to the said Union asking the applicants to collect their certificates. It is alleged that none of the applicants turned up. According to the Municipal Corporation the applicants are merely pawns in the hands of the previous owners of the cycle rickshaws and are being manipulated by them.

It also appears that the Municipal Corporation received a letter dated September 1, 1980 from the Azad Rickshaw Pullers Union for permission to use the rickshaw stand already situate at the General Bus Stand, Amritsar as a rickshaw repairing workshop. There was a further letter dated September 17, 1980 from the Azad Rickshaw Puller Union for allotment of land for rickshaw sheds and rickshaw stands to enable the rickshaw pullers to keep their rickshaws in safe custody during their leisure hours and during the night. The allotment of land was requested in five different localities of the city so that a corresponding number of sheds could be raised, the land required for each shed being 10,000 square meters. On October 4, 1980 the Municipal Corporation replied that there was

no vacant land at the places mentioned by the said Union and that land at some other suitable places may be suggested. By a letter dated December 1, 1980 the Municipal Corporation reminded the said Union that it should suggest alternative places for providing sheds for the rickshaws. It is alleged that thereafter there was no reply. There are other affidavits on the records, some of them having been filed by other rickshaw puller Unions of Amritsar alleging that some rickshaw pullers had already availed of the benefit of the Scheme propounded by this Court and were plying rickshaws on loans taken from the Banks. Then there are applications for intervention by Rickshaw Pullers Union belonging to other Municipalities in Punjab which suggest that the Municipal Committee concerned, purporting to act under the Scheme propounded by this Court, have entered upon a course of rampant corruption, granting a number of certificates to a single applicant behind whom stand the old rickshaw owners who are thus perverting the scheme for their own greedy ends. In other words, the original rickshaw owners are attempting, through false applications made in the name of fictitious persons, to secure certificates enabling them to put a number of vehicles on the road. Further affidavits have been filed in support of the writ petition testifying to the difficulty in obtaining certificates from the Municipal Corporation and there after loans from the Banks and to the impossibility of plying Rickshaws without proper arrangements for safely parking them for the night. There are allegations on both sides, the petitioners being accused of having been set up by the original owners of the vehicles in order to have the Punjab Act of 1976 struck down by the Court and on the other side the Municipal Corporation being accused of unwillingness to work the Scheme propounded by the Court.

Two questions arise before us. The first is whether the Punjab Act of 1976 is an instance of incomplete legislation and cannot serve the purpose for which it was intended and in the circumstances, because of the prohibitions and restraints incorporated in it, it constitutes an unreasonable restriction on the fundamental rights of the petitioners guaranteed under sub-cl.(g) of cl.(1) of Art.19 of the Constitution and also violates Articles 14 and 16 of the Constitution. The second question is whether the scheme framed by this Court in Azad Rickshaw Pullers Union (supra) is incapable of proper implementation, and therefore of no legal effect.

The Punjab Act of 1976 regulates the issue of licenses in respect of cycle rickshaws plying in any municipal area in the State of Punjab. It contains very few provisions, and essentially provides that no owner of a cycle rickshaw will be granted a license in respect Of his cycle rickshaw unless the vehicle is plied by the owner himself. The intention of the statute is to ensure the plying of cycle rickshaws by rickshaw pullers who are owners of the vehicle, thus eliminating the middlemen who owns the vehicle.

The petitioners contend that 8.3 of the Punjab Act constitutes an unreasonable restriction on their fundamental right under sub-cl.(g) of clause (1) of Article 19 of the Constitution to carry on their occupation of plying cycle rickshaws because the exercise of that right has been made dependent upon their owning the cycle rickshaws plied by them. It is urged that the constitutional validity of the impugned legislation cannot be sustained on the basis of an administrative scheme which has not been sanctioned by it, and there is nothing in the Punjab Act itself which enables rickshaw pullers to acquire proprietary rights in cycle rickshaws plied by them. It is urged that while the object of the statute has been expressed in 8.3 of the Punjab Act, there is nothing in the Act which

provides the machinery for achieving that object. It is not sufficient, it is said, to provide that the rickshaw puller should own the cycle rickshaw which he plies. The statute should have provided the mechanics of a system which would have enabled rickshaw pullers, in their abject poverty, to become the owners of such vehicles. No such provision having been made in the statute, it is submitted, the Act represents at best a declaration of policy and nothing more. Our attention has been invited to the observations of this Court in *Maneka Gandhi v. Union of India* [1978] 2 S.C.R. 621, where it has been elaborately explained that Article 21 must be read with Article 19 in adjudging the constitutional validity of an Act, and in doing so the consequences brought about by the impugned legislation, and of the action under it, on the citizen must constitute the test of its validity rather than the object of the Legislature or the form of action. Reference was made in this connection to the law laid down in *B.C. Cooper v. Union of India* [1970] 3 S.C.R. 530, and other cases. It cannot be disputed, it seems to us, that the true test of the validity of a statute must be the effect and consequence of its operation on the fundamental right of the citizen. The object underlying the legislation embodies the intent of the Legislature in enacting it, but in construing its validity in the context of a citizen's fundamental right the question before the Court always must be whether its impact on that fundamental right can be regarded as a reasonable restriction on the exercise of the right. The focal point during such examination is the fundamental right, and the duty of the Court must be to consider the quality and degree of the encroachment made by the operation of the statute on the citizen's exercise of that right.

In the instant case, s.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 him. 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.

On the question whether the Punjab Act is incomplete in itself and, as it stands, has the effect of disabling rickshaw pullers from carrying on the occupation of plying cycle rickshaws because of the condition of ownership in the cycle rickshaws, the Court is entitled to consider the factual matrix in which the Punjab Act was enacted for the purpose of determining its validity. The record of the case discloses that for several years a powerful movement has raged aimed at freeing the rickshaw pullers from exploitation by cycle rickshaw owners. The owner is usually a person of sufficient wealth enabling him to acquire a number of cycle rickshaws. The rickshaw puller, on the contrary, is a needy person, beaten by poverty and compelled to ply the rickshaw on terms dictated by the owner,

who taking advantage of the desperate plight of the rickshaw puller is in a position to demand a wholly disproportionate hire charge for the use of the vehicles The labour and toil, and the sweat and strain, involved in pulling the cycle rickshaw works, in a few years, serious injury to the health and stamina and life-span of the rickshaw puller. He must toil the whole day long in order to earn a small income, most of which he must hand over to the owner in payment of the hire charge. In the circumstances, the Government prepared a scheme as early as 1970 to enable the rickshaw puller to extricate himself from the shackles of a system which, for several decades, had debased and condemned him to a lamentable existence. The object was to assure him a life where the entire fruit of his labour and industry would accrue to his own benefit. We have on the record before us a circular No. RMJ/1734/73 dated August 6, 1973 issued by the Jullunder Circle of the Punjab National Bank. From the very beginning, the scheme extended a number of concessions to rickshaw pullers, and as it stood in 1973 it provided for loans by the Banks to rickshaw pullers. The loans were intended for such individuals who did not already own any rickshaw and who had been issued a certificate to ply a rickshaw by the municipal authority. The loan was intended for the purchase of a new cycle rickshaw and extended to 90% of the total cost of rickshaw or Rs.700 whichever was lower. The rickshaw purchased with the loan was to be hypothecated to the bank and registered with the municipal authority in the name of the borrower as owner and the bank as financier. The advances would be covered by a guarantee extended under the Credit Guarantee Corporation of India (Small Loans) Guarantee Scheme, 1971. The scheme contained further details relating to payment of interest, the documentation required, the mode of disbursement, the terms of repayment of the loan and so on. It was in this factual context and in order to give statutory recognition to the object underlying the scheme that the Punjab Act in 1976 was enacted.

But learned counsel for the petitioners contends that the validity of s.3 of the Punjab Act cannot be sustained on the basis of a scheme which can be varied it will by the authors of the scheme during the operation of the Punjab Act. The scheme, it is said, may be altered to a degree where it cease to be identifiable with the object of the impugned legislation. Reliance is placed by learned counsel on *The Lord Krishna Sugar Mills Ltd. & Anr. v. The Union of India & Anr.* [1960] 1 S.C.R. 39. In that case, the Court laid down that it was permissible to judge the reasonableness of a law on the basis of the surrounding circumstances as well as of contemporaneous legislation enacted as part of a single scheme. But it also laid down the limitations circumscribing that principle. Subba Rao, J said:

"But I am clear in my mind that the validity of an Act shall not be made to depend upon another Act unconnected with the impugned Act or power conferred thereunder, which might, if properly exercised, off-set the evil tendency or the vice of the impugned Act. If the validity of an Act is made to depend upon such a foundation, a super-structure will have been built on shifting sands. To do that is to destroy the stability of legislation and to introduce an uncertain element therein. If two or more Acts were parts of the same scheme of plan, to Implement the same or common objective, or if the impugned Act, though it was not originally conceived at the time when the earlier Act was passed, was only as extension or a further step by the legislature for implementing the object of the earlier Act or if the legislature by express reference incorporated in the Impugned Act the provisions of the earlier Act, it would be permissible to rely upon the said provisions of the earlier Act, not because

they formed part of the prevailing conditions but because either the earlier Act, formed part of the impugned Act by reference or both of them formed part of the same legislative plan But to go beyond this is to destroy the stability of legislation and to introduce an uncertain element. To go further and to depend upon a notification of a transitory nature issued under an unconnected Act is to place the statute in a fluid state. In such a situation its validity would depend upon a statutory order of temporary duration; it would change colour with the changing attitudes of an authority empowered to issue the order."

These are valuable dicta, valid whenever the constitutionality of a statute falls to be examined in the context of contemporaneous legislation. In the present case, however, the Punjab Act was enacted with an eye to a scheme already existing and in operation. The scheme supplied the mechanics for the operation of the Punjab Act. The two were not unconnected. They were closely connected and, indeed, constituted an integrated plan. The apprehension that the validity of the Act is dependent on the continued operation of the scheme which was open to subsequent modification at the will of its authors has no foundation. The consequences of such modification can be taken care of. The Punjab Act confers on the State Government, by R.7, power to frame appropriate rules in support of and-for the furtherance of the object of the Act. In the event of the scheme being altered or modified by its authors to a degree incompatible with the true operation and success of the Punjab Act, the situation can always be met by the State Government framing suitable rules under 8.7 of the Act. The State Government is not only empowered to do so; it is under an obligation to frame rules appropriate to the successful implementation of the legislative goal. It seems to us that in a situation which calls for adjustment from time to time in view of varying economic and social factors, a sufficient degree of flexibility is needed, and consequently it was appropriate for the Legislature to leave the measure of control to the rule making power of the State Government. That in truth is one of the primary reasons for delegated legislation. So long as the rules made serve the object of the Act and fall within the limitations implied thereby no fault can be found with them.

In our judgment, the impugned legislation cannot be regarded as an unreasonable restriction on the fundamental rights of the petitioner under Article 21 read with sub.cl.(g) of clause 1 of Article 19 of the Constitution.

An attempt was made by learned counsel for the petitioners to show that 8.3 of the Punjab Act created an invidious distinction between rickshaw pullers and those who carried on the occupation of plying other vehicle, such as taxi-cabs, on hire. We see / comparison. The pathetic conditions in which rickshaw pullers pursue their burdensome vocation places them in a class apart from others in their right to ameliorative and protective treatment from the State. This challenge must also fail.

Towards the end, we wish to express the view that the scheme framed by this Court in Azad Rickshaw Pullers Union (supra) is a good scheme, capable of implementation, and productive of the object for which it was designed. If it has not been successfully implemented so far, it is in the main largely on account of circumstances which could have been avoided. Inherently, we see no feature in the scheme which operates against its effectiveness. If the scheme has not succeeded as was intended By the Court, it is largely because appropriate action was not taken by the parties

concerned to implement it. A large number of applications were made through the Azad Rickshaw Pullers Union to the Municipal Corporation for the grant of certificates enabling the rickshaw pullers to obtain loans from the Banks. The Municipal Corporation was anxious to ensure that fraud was not practised on the scheme by existing- rickshaw owners who could be tempted to apply for certificates in fictitious names and secure benefits which should have been confined to rickshaw pullers as owners of the vehicles. The 1170 applications made through the Azad Rickshaw Pullers Union could not be related immediately to bona fide individual rickshaw pullers, and in the absence of the further material sought by the Municipal Corporation from the rickshaw pullers it would naturally have taken considerable time to take action on those applications. It seems to US that a fresh opportunity should be provided to rickshaw pullers to avail of the scheme formulated by this Court. A fundamental condition for benefiting from the scheme is that a rickshaw puller should have been a licensee in the Amritsar or other municipality within one year of the coming into force of the Punjab Act. We think that the range of eligibility should / t be confined by that limitation. We think it desirable that the Municipal Corporation should determine the maximum number of licenses which should be granted for plying cycle rickshaws within its jurisdictional limits, keeping in mind the needs of the travelling public on the one hand and the danger of uneconomic plying on the other. Every rickshaw puller proposing to take advantage of the scheme should apply to the Municipal Commissioner for a certificate, the period within which such applications may be filed being notified by the Municipal Corporation from time to time as the need arises. All the application will be considered, in the serial order in which they are received, for the grant of a certificate on the basis of which rickshaw puller may take further steps envisaged in the scheme for the grant of financial assistance enabling him to purchase 8 cycle rickshaw for plying by him. The ISSUE of such certificate shall be subject to the following conditions:

1. Each certificate shall be granted in respect of one cycle rickshaw only.
2. The number of certificates issued shall not exceed the maximum, if any, fixed by the Municipal Corporation as the total strength of the cycle rickshaws allowed to ply within its jurisdictional limits.
3. No person shall be granted more than one such certificate.
4. Preference shall be given in the matter of granting certificates to those rickshaw pullers who have plied a cycle rickshaw for one year before the Punjab Act came into force.

On receipt of the certificates, the rickshaw pullers may take further steps for the purpose of securing financial ASSISTANCE in accordance with the terms of the scheme.

We are unable to hold that the Punjab Act of 1976 is ultra vires and that the scheme propounded by this 'Court in Azad Rickshaw Pullers Union (supra) is unworkable and ineffective. We believe that given appropriate compliance the scheme will provide adequate relief to the rickshaw pullers and constitute an effective supplementary code fulfilling the object of the Punjab Act.

In the CIRCUMSTANCES, we dismiss these writ petitions, but without any order as to costs.

N.V.K.

Petitions dismissed.