

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Gulzar Ahmed

Mr. Justice Umar Ata Bandial

Civil Petitions No.423-K & 472-K of 2015

[On appeal against common Judgment dated 05.08.2015
passed by the High Court of Sindh, Karachi, in
Constitution Petitions No.D-4753 & D-4166 of 2013 etc]

Association for the Welfare of Owner & Staff of Qingqi (in C.P.No.423-K)
(Chingchi) Rickshaw, Sindh

All Karachi Qingqi Rickshaw Welfare Association through (in C.P.No.472-K)
its Finance Secretary, Karachi **Petitioner(s)**

VERSUS

Province of Sindh through Secretary Transport, (in C.P.No.423-K)
Government of Sindh, Karachi & others.

Ghulam Qadir Thebo and others. (in C.P.No.472-K)
Respondent(s)

For Petitioner(s) : Mr. Nasir Rizwan Khan, ASC
Mrs. Abida Parveen Channer, ASC
Dr. Raana Khan, AOR
Mr. Abdul Saeed Khan Gohri, AOR (Absent).

For Govt. of Sindh : Mr. Shehryar Qazi, Addl.A.G.
Manshad Ali, Secretary RTA.
Ijaz Ahmed Hashmi, S.P. Traffic, Karachi.
Dara Ghani, Excise & Taxation Department.

For Govt. of the Punjab : Mr. Razzaq A Mirza, Addl.A.G.
Muhammad Iqbal, Secretary Provincial
Transport Authority.

For Govt. of Balochistan : Mr. Muhammad Ayaz Khan Swati, Addl.A.G.

For Govt. of KPK : Mr. Abdul Lateef Yousafzai, A.G.
Mazhar Sajjad, Addl. Secretary Transport.

For Applicant(s)

(in CMA.759-K/2015) : Mr. Muhammad Munsif Jan, ASC
Mr. Mazhar Ali B. Chohan, AOR (Absent).

(in CMAs.1799 & 1800/2017) : Mr. Waqar A. Sheikh, ASC
Mr. Imtiaz A. Shoukat, AOR (Absent).

(in CMA.1805/2017) : Mr. Shahzada Mazhar, ASC
Ch. Akhtar Ali, AOR.

(in CMA.1007-K/2015) : Nemo.

Date of Hearing : 29.03.2017

ORDER

GULZAR AHMED, J.— By these Civil Petitions for Leave to Appeal, the petitioners have challenged common judgment dated 05.08.2015 passed by the learned High Court of Sindh at Karachi. The operative part of which is as follows: -

“Accordingly, the aforesaid petitions being C.P.Nos.D-4166/2013, 4184/2013 and 4753/2013, filed on behalf of Qingqi Rickshaw Owners Welfare Association, are hereby dismissed along with the listed applications with cost of Rs.10,000/- (Rupees ten thousand) each to be deposited in the account of High Court Clinic. Consequent to dismissal of above petitions, the petition being C.P.No.D-3974/2012 filed on behalf of United Human Rights Commission Pakistan is allowed, whereas official respondents i.e. respondents No.1 to 9 are directed to take immediate legal action against all such illegal Qingqi Motorcycle Rickshaws (three wheelers) which are plying on the roads with impunity and without any fitness certificate, route permit and registration certificate. Such action may include issuance of challans, imposing fine and also impounding of such illegal vehicles in accordance with law, rules and regulations. Thereafter, compliance report shall be submitted to this Court through MIT within two weeks from the date of this judgment. It is further directed that unless the petitioner(s) obtain the requisite fitness certificate, route permit and registration with the concerned authorities i.e. Transport Department and the Motor Vehicle Registration Wing, after complying with all the legal formalities, the respondents shall continue to take action against such delinquent vehicle owners in accordance with law and to submit further compliance report every month thereafter. However, it is clarified that such action shall be taken strictly in accordance with law, rules and regulations against such Qingqi Motorcycle Rickshaw (three wheelers) which do not comply with the Motor Vehicle Registration Ordinance, 1965, Motor Vehicle Rules, 1969 or any other law for the time being in force by any Federal or Provincial enactment relating to public vehicles”.

2. The matter has been coming up before this Court and from time to time the Court has been passing orders on the question of operation of Qingqi Rickshaws in the Province of Sindh and in particular at Karachi. On 03.09.2015 this Court has passed the following order when the question of operation of Qingqi Rickshaws was extended to all four Provinces of the country :

"The menace of plying of Qingqi Rickshaws, which are not specified, standardized and fit according to Motor Vehicle laws, rules and notifications, is not germane only to the Province of Sindh but to all Provinces of Pakistan. The High Court of Sindh at Karachi by the impugned judgment dated 05.08.2015 has given directions to the Government for taking action against the illegal plying/operation of Qingqi Rickshaws. The relevant portion of the impugned judgment is as follows: -

"8. Accordingly, the aforesaid petitions being C.P.Nos.D-4166/2013, 4184/2013 and 4753/2013 filed on behalf of Qingqi Rickshaw Owners Welfare Association, are hereby dismissed along with listed applications with cost of Rs.10,000/- (Rupees ten thousand) each, to be deposited in the account of High Court Clinic. Consequent to dismissal of above petitions, the petition being C.P.No.D-3974/2012 filed on behalf of United Human Rights Commission Pakistan is allowed. Whereas the official respondents i.e. respondent No.1 to 9 are directed to take immediate legal action against all such illegal Qingqi Motorcycle Rickshaws (three wheelers), which are plying on the roads with impunity and without any fitness certificate, route permit and registration certificate. Such action may include issuance of challans, imposing fine and also impounding of such illegal vehicles in accordance with law, rules and regulations. Thereafter, compliance report shall be submitted to this Court through MIT within two weeks from the date of this judgment. It is further directed that unless the petitioner(s) obtain the requisite fitness certificate, route permit and registration with the concerned authorities i.e. Transport Department and the Motor Vehicle Registration Wing, after complying with all

the legal formalities, the respondents shall continue to take action against such delinquent vehicle owners in accordance with law and to submit further compliance report every month thereafter. However, it is clarified that such action shall be taken strictly in accordance with law, rules and regulations against such Qingqi Motorcycle Rickshaw (three wheelers) which do not comply with the Motor Vehicle Ordinance, 1965, Motor Vehicle Rules, 1969 or any other law for the time being in force by any Federal or Provincial enactment relating to public vehicles.

9. *Let a copy of this Judgment be circulated to the Chief Secretary, Government of Sindh, Home Secretary, Government of Sindh, Secretary, Transport and Mass Transit Department, Government of Sindh, Commissioner/Administrator, Karachi, concerned DIG/SP (Traffic), who shall ensure that immediate legal action shall be taken against such illegal Qingqi Motorcycle Rickshaws which are plying on public roads and highways of Karachi and other big cities of province of Sindh, without any route permit, fitness certificate and registration, whereas, all possible assistance shall be provided by the law enforcing agencies, including Rangers, if so required by local or provincial administration in this regard."*

Against the above judgment, these petitions have been filed in this Court, in which on 03.09.2015 the following order was passed :-

"Reports have been filed by SSP Traffic District Malir, Karachi so also by the Secretary, Provincial Transport Authority, Sindh, Karachi. It appears that a meeting between Representative of Qingqi Operator Association and Provincial Transport Authority has taken place for resolving the issue of plying of Qingqi Rickshaws.

There seems to be some issues with regard to the structure of Qingqi Rickshaws and also its registration inasmuch as the Provincial Transport Authority's point of view is that Qingqi Rickshaws should meet the requirement of rules, specification and should not be for

more passengers than 4+1. They say that Qingqi Rickshaws carrying 9 or 12 passengers are not against the rules but they are dangerous vehicles and are cause of constant serious accident on the roads.

National Sales Manager of M/s Saigols Qingqi Motor Ltd. is in attendance, who claims that his company is only authorized manufacturer of Qingqi Rickshaws in Pakistan and that Qingqi Rickshaw, being manufactured by his company, is according to rules, specification and also meets all necessary standard as provided by various Government Departments.

In the circumstances we direct the Secretary, Transport, Government of Sindh to arrange a meeting with all stakeholders together including Authorized Representative of Qingqi Rickshaw Owners Association, Qingqi Rickshaw Manufacturing Company, AIG Traffic, Representative of Excise and Taxation Department, Representative from Pakistan Standard Quality Authority, Pakistan Engineering Council, Pakistan Engineering Board and Head of Department of Automotive Engineering of NED University, Karachi. All these persons will undertake the exercise of resolving the controversy on the structure and capacity of Qingqi Rickshaws and also on their fitness and registration for plying on the roads. The Secretary will ensure that issue is resolved as early as possible but positively within a period of two weeks and a report in this regard under his hand will be submitted to this Court for our examination in Chamber. Adjourned. To be fixed in the next session."

Pursuant to the above order, the Secretary to Government of Sindh, Transport Department, has filed a comprehensive report by way of CMA No.698-K of 2015. In the face of above report of the Secretary, it is essential that each and every Qingqi Rickshaw operating not only in the Province of Sindh but all over Pakistan should be inspected and verified by the respective Transport Departments of all the Provinces in order to bring them in conformity with the standard and specification, as laid down by the law, rules and notifications and only after they are declared and certified in all respect to be fit according to the law, rules and notifications, they be registered and permitted to

ply and operate that too on the specified/notified routes. All the Provincial Secretaries of Transport Departments shall ensure compliance of this order within a period of three months and a comprehensive compliance report, in this respect, shall be made available for our perusal in Chambers. The owners of Qingqi Rickshaws and their operators should be informed of the exercise of inspection and such be communicated to them through all modes of publicity including the electronic and print media. All those who are concerned with this exercise will provide full cooperation and assistance and the Government shall ensure that all Qingqi Rickshaws which are plying and operating on the roads have been declared and certified as specified, standardized and fit with registration and route permit and that the drivers of Qingqi Rickshaws are duly licensed. A copy of this order be sent to the Advocate Generals of all Provinces as well as to all the Provincial Secretaries of Transport Departments, for making strict compliance."

3. Subsequent to this order reports have been filed by the Government of the Punjab, Government of KPK and Government of Balochistan. Reports have already been filed and placed on record by the Government of Sindh. On 12.04.2016 the learned DAG has pointed out that in the Islamabad Capital Territory Qingqi Rickshaws are not operating, therefore, he may be exempted from submission of the report. Such statement of the learned DAG was taken on record. Today, this matter has extensively been argued before us. The learned Additional Advocate General, Punjab, has contended that in Province of the Punjab, Government has taken action of stopping operation and plying of illegal Qingqi Rickshaws on the roads and that only such Qingqi Rickshaws are allowed to ply on roads of the Province which are approved ones and manufactured by the registered and authorized manufacturers according to approved standard, specifications and declared fit in accordance with law to ply on the roads and the Qingqi Rickshaws which are not so are being impounded. He has further contended that Government of the Punjab has given its policy and has laid-down parameters for safety and security of the driver and passengers and that Qingqi Rickshaws are duly registered with the Excise & Taxation Department with proper fitness and roadworthy certificates and that their plying is restricted to

certain specified areas that too only with approved list of charges/fare from the passengers and additionally their drivers are armed with driving licence. The learned Advocate General KPK so also the Additional Advocate General, Balochistan have made similar submissions as that of the learned Additional Advocate General, Punjab and it seems that all these three Provinces in the matter of plying of Qingqi Rickshaws are on the same page.

4. As regards operation of Qingqi Rickshaws in the Province of Sindh including Karachi, it has been argued before us by the learned ASC for the petitioners and other Qingqi Rickshaw Operators that pursuant to the impugned judgment of the High Court and the orders passed by this Court, the petitioner and Qingqi Rickshaw Operators have conformed their Qingqi Rickshaws in accordance with the specifications and standards with all safety features, as laid down by the Government of Sindh, but the Government of Sindh is not allowing them to operate Qingqi Rickshaws although they have certification in this regard. The learned Additional Advocate General, Sindh, however, disputed that the petitioner and other Qingqi Rickshaw owners have conformed their Qingqi Rickshaws according to the Government specifications, standards and with safety measures and stated that almost all of the Qingqi Rickshaws which are plying on the roads of Province of Sindh have been stopped were not made by registered and authorized Qingqi Rickshaw manufacturers but rather were those which have been made by roadside vendors on different types of motorcycles and some of such motorcycles are even those which were stolen. He contended that conversion of motorcycles into Qingqi Rickshaws in the way the petitioner and other Qingqi Rickshaw owners have done is altogether illegal and is a great threat to the lives of not only the drivers and passengers of Qingqi Rickshaws but also to the pedestrians and others users of the roads. He has contended that the Province of Sindh also desires and has no objection to plying of Qingqi Rickshaws in the specified areas with approved charges/ fare but such Qingqi Rickshaws have to be those which are manufactured by registered and authorized manufacturers and they are also registered with the Excise & Taxation Department and have fitness and road worthy certificates. Thus, the position that emerges in the Province of Sindh including Karachi is that the Government of Sindh is willing to allow operation of Qingqi Rickshaws but on satisfaction of the

conditions, as are argued by the learned Additional Advocate General. The petitioner and the other Qingqi Rickshaw owners present in Court, agree to make compliance of such conditions prescribed by the Government of Sindh.

5. In this behalf the legal provision dealing with the operation of motor vehicles are contained in the West Pakistan Motor Vehicle Ordinance, 1965. In 1975 this law was adopted by each of the Province of Balochistan, NWFP (now Khyber Pakhtunkhwa), Punjab and Sindh. This law comprehensively deals with the matters of registration, granting of fitness, granting of route permit etc to motor vehicles. In this regard Sections 23, 29 and 44 of the Ordinance are as follows: -

"23. Motor vehicle not be driven without registration..

(1) A person shall not drive a motor vehicle and the owner shall not cause a vehicle to be driven unless the vehicle is registered under this Chapter and the licence number plates are displayed on the motor vehicle in the prescribed manner and if the licence number plates have not been issued the registration mark is displayed on the motor vehicle in the prescribed manner.

(2) Nothing in this section shall apply to a motor vehicle while being driven within the limits of jurisdiction of a registering authority to or from the appropriate place of registration for the purpose of being registered under section 24, 26 or 40 or to a motor vehicle exempted from the provisions of this Chapter while in the possession of a dealer in motor vehicles.

29. Effectiveness of certificate of registration..

(1) Subject to the other provisions of this section, a motor vehicle registered by a competent authority in any part of Pakistan not included in the Province under the law relating to motor vehicle in force in such part, shall remain effective in the Province:

(2) The registration certificate of the vehicles registered in any part of Pakistan other than the Province shall conform to and substantially contain the same particulars as in the Form G as set forth in the First Schedule.

(3) If a registration certificate is issued by an authority specified in subsection (1) and it complies with the requirements of subsection (2), the certificate shall be effective throughout the

Province as if it is a certificate of registration issued under this Ordinance and the provisions of this Ordinance shall apply to such certificate.

(4) Nothing in this section shall apply to a motor vehicle previously registered in the Province if the certificate of registration of the vehicle is, for the time being, suspended or cancelled for any reasons other than permanent removal of the vehicle from the Province; and

44. Transport vehicle not to be used or driven without permit..

(1) No owner of a transport vehicle shall use or permit the use of, and no driver of a transport vehicle shall drive or cause or permit to be driven, the vehicle in any public place, save in accordance with the conditions of a permit authorise the use or driving of the vehicle in such place granted or counter-signed by a Regional or Provincial Transport Authority:

Provided that a stage-carriage permit shall, subject to any conditions that may be specified in the permit authorise the use of the vehicle as a contract carriage:

Provided further that a stage-carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods vehicle either when carrying passengers or not:

Provided also that a public carrier's permits shall, subject to any conditions that may be specified in the permit authorities the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) In determining, for the purposes of this Chapter, whether a transport vehicle is or is not used for the carriage of goods for hire or reward—

(a) The delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire purchase in the course of any trade or business carried on by him other than the trade or business of providing transport, or

(b) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subject to a process or treatment in the course of a trade or business carried on by him, or

(c) *the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes, shall not be deemed to constitute a carrying of the goods for hire or rewards; but the carriage in a transport vehicle of goods by a person not being a dealer in such goods who has acquired temporary ownership of the goods for the purpose of transporting them to another place and there relinquishing ownership shall be deemed to constitute a carrying of the goods for hire or reward.*

(3) *Sub-section (1) shall not apply: --*

(a) *to any transport vehicle owned by or on behalf of the Central or any Provincial government and used for public purposes unconnected with any commercial enterprise;*

(b) *to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleaning, watering or conservancy purposes;*

(c) *to any emergency vehicle;*

(d) *to any transport vehicle used for any other public purpose prescribed in this behalf;*

(f) *to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;*

(g) *to any school bus; or*

(h) *to any trailer used for any purpose other than the carriage of goods for hire or reward when drawn by a motor vehicle constructed for the carriage of not more than six passengers excluding the driver.*

(4) *Subject to the provisions of sub-section (3), sub-section (1) shall, if Government by rules made under section 69 so prescribes, apply to any motor vehicle adapted to carry more than nine passengers excluding the driver."*

Rules 197 and 197-A of the Motor Vehicles Rules, 1969 are as follows: -

197. Body Constructions.—(1) *The body of every public service and goods vehicle including trailer shall be so*

constructed and so fastened to the frame of the vehicle as to comply with such direction as may be issued by the Provincial Transport Authority from time to time.

- (2) No body shall be fastened to a public service or goods vehicle which has not been constructed by a person holding a motor vehicle body-builder's licence from the Provincial Transport Authority in Form B.B.L.*
- (3) Application for a motor vehicle body-builder's licence shall be made in Form B.B.L.A and shall be addressed to the Provincial Transport Authority at its office.*
- (4) On receipt of an application in Form B.B.L.A the Provincial Transport Authority, after such enquiry as it may in any case deem necessary, either reject the application or grant a licence in Form B.B.L on the conditions specified therein.*
- (5) A licence granted under the preceding sub-rule may be cancelled by the Provincial Transport Authority at any time for any breach of its conditions.*
- (6) The Provincial Transport Authority may, by an order in writing, authorise the Chairman of Provincial Transport Authority or the Chairman of any Regional Transport Authority to grant and renew the body-builder's licence under this rule.*

197-A. Grant of manufacturing/assembling licence of motor cab rickshaw/motor cycle rickshaw.—

- (1) The Provincial Transport Authority may grant a licence for manufacturing or assembling of engine or chassis of the motor cab rickshaw/motor cycle rickshaw to the registered Firm or a Company having a sufficient space for the purpose under a specified registered trade mark.*
- (2) The licence referred in the preceding sub-rule shall be subject to the conditions/standard specifications prescribed by the Provincial Transport Authority.*
- (3) The Motor Vehicles Examiner shall be authorized to check and to issue a certificate regarding confirmation of standards specified by the Provincial Transport Authority.*
- (4) The grant of licence for the assembling or manufacturing or engine or chassis of a motor cab rickshaw/motor cycle rickshaw may remain valid for one year subject to deposit of fee of Rs.20,000.*

(5) *The renewal fee of the above-referred licence for one year shall be Rs. 15,000.*

6. Obviously, there are penalty provisions both in the Ordinance and the Rules. Reading of the above provisions of the Ordinance and the Rules rests upon the Provincial Transport Authority mandatory duty to ensure that Qingqi Rickshaws in order they are allowed to ply on the roads comply with all the above conditions and further ensure that their driver is a duly licensed person and has posted on the Qingqi Rickshaws rate of charges/fare that will be charged from the passengers. Rule 197, as noted above, specifically provides that a person who constructs the body of a public service vehicle shall be duly licensed one from the Provincial Transport Authority and Rule 197-A provides that the Provincial Transport Authority will grant licence for manufacturing or assembling of engine or chassis of the motor cab rickshaw/motor cycle rickshaw to the registered firm or company having sufficient space for the purpose under a specified registered trade mark. At the same time, it is the bounden duty of the State to protect the life or liberty of its citizen as has been so provided in Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 that no person shall be deprived of life or liberty. The State is required to ensure that none of its citizen through its act or neglect or in failing to comply the relevant laws jeopardize life or liberty of its citizen. Thus, the State is required to ensure as its bounden duty that all public transport vehicles including Qingqi Rickshaws are those which are constructed and manufactured by duly authorized constructors and manufacturers according to the legally specified design, specifications and standards and further ensure that they are fit to ply on roads and are registered with the sanctioned route permit with specified route driven by duly licensed driver. This is the most basic requirement of the law which has to be followed in all respects by the Provincial Transport Authorities and other Government functionaries dealing with plying of the Qingqi Rickshaws on the roads.

7. After having heard the parties and examined the relevant provisions of the law and as agreed, we direct as follows :

1. That all Provincial Transport Authorities of the four Provinces of country shall ensure plying of only those

Qingqi Rickshaws which are constructed and manufactured by duly registered and authorized constructors and manufacturers, according to the legally approved design, specifications and standards ensuring safety and convenience of not only the driver but also of its passengers;

2. That all such Qingqi Rickshaws shall obtain certificate of fitness so also certificate of road worthiness from the concerned authorities which shall be displayed on each of the Qingqi Rickshaws prior to their plying on the roads;
3. That all such Qingqi Rickshaws shall be duly registered with the relevant Excise & Taxation Department and their registration number shall be displaced on it;
4. That the approved rate of charges/fare for specified routes shall be displayed on all such Qingqi Rickshaws, prior to their plying on such routes; and
5. That the seating capacity of Qingqi Rickshaws, allowed to be plied on roads, shall not be more than four passengers excluding its driver;
6. The Qingqi Rickshaw Drivers shall have valid driving licence while driving Qingqi Rickshaws; and
7. All four Provinces of the country shall ensure that the above conditions are fulfilled in every respect and they continue to do so for permitting plying of Qingqi Rickshaws on the roads. In case, any of the Qingqi Rickshaw is found to be plying on roads without fulfilling the above conditions, the official(s) of the relevant Department(s) shall be proceeded against not only departmentally but also on criminal side.

8. On compliance of the above conditions/directions the Qingqi Rickshaws are allowed to be plied on the roads that too on specified routes. These petitions, in the above terms, stand disposed of.

Bench-V
Islamabad
29.03.2017
APPROVED FOR REPORTING
Hashmi

JUDGE

JUDGE