

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

% Judgment delivered on: 09.09.2014

+ **W.P. (C) 5764/2013 & CM No.10017/2014**

SHANAWAZ KHAN ... Petitioner

versus

**MUNICIPAL CORPORATION OF
DELHI & OTHERS** ... Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr Sugriva Dubey
For the Respondent/MCD : Ms Madhu Tewatia, Mr Gautam Kumar and
Ms Sidhi Arora
For the Respondent/UoI &
GNCTD : Ms Pinky Anand, ASG with Mr Balendu Shekhar and
Mr S.N. Parashar.
For the Respondent No.3 : Ms Zubeda Begum with Ms Sana Ansari.
For the Respondent No.4 : Mr R.K. Kapoor and Ms S. Rama
For the Respondent No.5 : Mr Anuj Narula
Dr Satbir Bedi, Principal Secretary.
Mr Gyanesh Bharti, Secretary-cum-Commissioner,
Transport.
Mr Rejender Soni, ACP.
Mr Satish Mathur, Special Commissioner, Transport.
Mr Manish Garg, Addl. Commissioner Transport.
Mr S. Roy Biswas, Deputy Commissioner, Transport.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

BADAR DURREZ AHMED, J.

1. In this writ petition, which has been filed in public interest, the petitioner prays for a direction to the respondents to stop the plying of e-rickshaws in the area falling under the Government of National Capital

Territory of Delhi as the said e-rickshaws have not been registered, they are not insured and do not have fitness certificates. A seemingly alternative prayer has been made that the e-rickshaws may not be allowed to carry more than 2 to 3 passengers in view of the safety of passengers.

2. Notice was issued on this petition on 11.09.2013. On the returnable date (i.e., 08.01.2014), the respondents were directed to file their counter affidavits within four weeks. On 19.02.2014, the predecessor bench (Pradeep Nandrajog and Jayant Nath JJ.) took note of the fact that the writ petition had raised issues of public concern pertaining to an alleged policy decision of the Government of NCT of Delhi (hereinafter referred to as ‘the Delhi Government’) which apparently envisaged e-rickshaws not to be treated as motor vehicles under The Motor Vehicles Act, 1988 or the Central Motor Vehicles Rules, 1989 or the Delhi Motor Vehicles Rules, 1993 (hereinafter referred to ‘the said Act’, ‘the CMV Rules’, and ‘the DMV Rules’, respectively). The consequence of this would be that e-rickshaws would not require registration nor would they require compliance with the other rigours prescribed under the said Act and the said Rules in relation to motor vehicles. The said bench, however, observed that *prima facie* the ‘policy’ had been introduced “*without proper application of mind*”. The court noted that, despite issuance of notice on the petition on 11.09.2013, the counter affidavits had not been filed addressing the issues raised in the writ petition and directed the Delhi Government to file a response “*to its policy permitting unregistered e-rickshaws to ply on roads in Delhi*”.

3. On the next date of hearing (19.03.2014), this court expressed its dismay on the conduct of the respondents in the following manner:-

“W.P.C. 5764/2013

1. There appears to be a chaos in the Municipal Corporation of Delhi and Government of NCT of Delhi on plying of e-Rickshaws. Under what policy are e-Rickshaws plying in Delhi? There is no answer forthcoming. What are the contours of the policy? No answer is forthcoming.
2. We would require respondents No. 1 and 2 to file counter affidavits. Needful shall be done within four weeks. Copy of counter affidavit would be supplied not only to counsel for the petitioner but even to respondent No. 4.
3. Renotify for May 21, 2014.

PRADEEP
NANDRAJOG, J.
JAYANT NATH, J.

MARCH 19, 2014”

4. On the same day (19.03.2014), the court had also allowed the impleadment application (CM No. 3777/2014) on behalf of the “Battery Rickshaw Welfare Association (Registered)” and the association was impleaded as respondent no. 4. On 31.03.2014, CM No. 4285/2014 which was another impleadment application was allowed and the “Delhi Rickshaw Owner/Driver Sangarsh Association” was added as respondent no. 5.

5. On 12.05.2014, a counter affidavit of one Smt Sangeeta Bansal, ADC (HCD), was filed on behalf of the North Delhi Municipal Corporation. The stand taken by the said respondent was that it “*cannot regulate or take any action until e-rickshaws are designated as non-motorized vehicles by the Government of NCT of Delhi and appropriate legislation is enacted in this regard*”. This is evident from the following extract of the said affidavit:-

“1. PRELIMINARY SUBMISSION/S

1. That the issue/s raised in the present petition squarely relates to the Department of Transport under the Ministry of Transport and Traffic Police Department Government of National Capital Territory of Delhi and does not relate to the Municipal Corporation. In this regard it is to state as under –

Under the provisions of the DMC Act 1957 R/w the Cycle Rickshaw Bye Laws 1994 & Thela Bye Laws 1960, the Municipal Corporation has the power to regulate the plying of non-motorized vehicles only i.e. Cycle Rickshaws / *Thelis* / etc within its jurisdiction in accordance with the Act and the Bye Laws which *inter alia* include licensing and other rules regarding non-motorized vehicles. The Municipal Corporation has got no jurisdiction over the motorized vehicles as defined in the Delhi Motor Vehicles Act and Rules framed there under.

The vehicles in Delhi are divided into two categories being non-motorized vehicles [NMV] and motorized vehicles (MVs). The Government of Delhi has complete power and authority to formally declare a vehicle as motorized or non-motorized. However till date the Government of Delhi has not yet taken any decision on the

issues raised in the present petition. The NCTD has not yet classified the battery operated Cycle Rickshaws as non-motorised vehicles or motorized vehicle in which view of the matter – as of now the present matter does not fall within the ambit of powers and jurisdiction vested in the Municipal Corporations under the provisions of the DMC Act 1957 R/w the relevant Bye Laws framed there under. The present matter is thus beyond the purview of powers of the respondent.

It is submitted that the e-Rickshaws have not yet been designed as non-motorized vehicle (NMVs). The DMC Act or the Bye Laws framed there under are not applicable and the NDMC is not vested with the power or jurisdiction to take any qua the e-rickshaws as alleged. Respondent No.1 therefore cannot regulate or take any action until the e-rickshaws are designated as non-motorized vehicles by the Government of NCT of Delhi and appropriate legislation is enacted in this regard.”

6. The Delhi Government filed its reply on 19.05.2014 supported by an affidavit of the same date of Shri Saumyaketu Mishra, Deputy Commissioner, Department of Transport, Government of NCT of Delhi. The provisions of section 2(28) of the said Act, Rules 2(u) and 126 of the CMV Rules were referred to in the said reply and then it was stated as under:-

“As none of the e-rickshaws plying on Delhi roads has taken any type approval from the designated agencies nor they are found having power less than 0.25 kw thus making them ineligible for exemption under Rule 2(u) of CMV Rules, 1989. Their operation is totally unauthorised and illegal.

In addition, it is submitted that vide recent notification dated 24.04.2014, Ministry of Road Transport has withdrawn *exemption* in favour of all battery operated vehicles except two wheel vehicles, irrespective of its power move on less than 0.25 kw. A copy of the said notification is annexed herewith and marked as Annexure R 1.”

7. From the reply filed by the Delhi Government it is evident that the Delhi Government (through a letter dated 30.08.2013 issued by the Additional Commissioner (Transport)) commissioned The Energy and Resources Institute (TERI) to conduct a study on electric cycle rickshaws in Delhi. TERI submitted its Final Report under Project Code 2013UD02 early this year. A copy of the TERI report is annexed as Annexure R-17 to the said reply of the Delhi Government. For our purposes, reference to the “executive summary” of the TERI report would suffice. It reads as under:-

“Executive summary

About the study

Electric rickshaws or e-rickshaws, as they are commonly known, are three-wheeled vehicles which are powered exclusively by electric motors whose traction energy is supplied exclusively by traction batteries installed on the vehicle. A complete unknown mode a few years back, these e-rickshaws have made an unpredicted entry on to the streets of Delhi in the last one to two years and have become very popular for first and last mile connectivity, especially to and from metro stations in the city. There, however, is lack of knowledge on how and where the e-rickshaws are manufactured / assembled, what the technology that they use is and how is that these vehicles have entered the transport market in a big way without any approval and regulation. As is known, no government entity is currently regulating these passenger mobility vehicles.

Given the concerns related to their growing numbers, non-observance of any regulations by them and concerns related to safety and security of passengers, the Transport Department, Delhi Government commissioned TERI to study the operations of e-rickshaws in Delhi, including the technology used and design of the vehicles and suggest appropriate regulations.

TERI has carried out this study by conducting extensive field surveys including reconnaissance surveys, e-rickshaw counts at all metro stations and in specific areas in Delhi, e-rickshaw drivers' surveys, e-rickshaw users' surveys and e-rickshaw dealers' surveys. TERI also conducted extensive literature review to understand and study the different rules and regulations that are used to regulate vehicles similar to e-rickshaws in India and in other countries. Additionally, TERI carried out technical tests of the e-rickshaws plying on the roads of Delhi in order to measure the power and the speed of these vehicles. The CMVR requires such vehicles to be subject to test in a manner prescribed in the AIS codes (AIS: 041:2003 and the related procedures defined in AIS: 039:2003 and AIS: 049:200) by agencies specified in Rule 126 of the CMVR. These tests prescribed by AIS codes can only be carried out in specially equipped motor vehicle testing laboratories with prescribed equipments. However, these tests could not be carried out in specified labs for a variety of reasons, which have been discussed in the Report; they had to be carded out in the field. As AIS codes do not prescribe any particular methodology for testing power and speed of battery operated vehicles in the field, TERI developed a methodology following the existing AIS codes to the extent possible. The methodology developed by TERI is described in detail in the Report.

It should be noted that the MVA and CMVR require two conditions to be tested i.e. the 30 minutes power and the maximum speed to decide whether a battery operated vehicle comes under the category of motor vehicles or not. While the maximum speed test methodology was kept as close as possible to the AIS recommended test for speed in labs, the 30 minutes

power test could not be carried out in the field; the closest possible test was testing of maximum electrical power of the motor of the e-rickshaws i.e. the input power of the e-rickshaw. There is a clear relation between the input power and the output power of a motor, as explained in detail in Report. It was hence decided to measure the maximum electrical power of e-rickshaws and use its results to interpret whether e-rickshaws qualify the definition of motor vehicles under the CMVR.

Key results

TERI tested 53 e-rickshaws and in 51 cases, where power measurement was possible, our readings show that the maximum and average power of the motor of e-rickshaws tested was more than 0.25 kW. Even if we consider a low motor efficiency of 70% of e-rickshaw motors, the average output power (which will be the closest to the 30 minutes power) of 47 e-rickshaws comes out to be more than 0.25 kW. These results indicate that all 53 e-rickshaws do not meet the criteria for exemption under Rule 2(u) of CMVR and fall under the category of motor vehicles. However, whether they are motor vehicles or not can be categorically established only if the tests are carried out as provided in Rule 2(u) of the CMVR by the authorized testing agencies.

These test results lead to another critical finding which is that the components and processes used in the manufacturing of e-rickshaws are not standardized and therefore the performance of e-rickshaws belonging to the same model vary. It is therefore recommended that if the Transport Department recommends type approval of e-rickshaws, it should find a way of ensuring standardization of e-rickshaws.

The study also provides interesting findings with regard to e-rickshaw operations in the city. The ownership and business model of e-rickshaw services, profile and perceptions of e-rickshaw drivers, users and dealers are all discussed at length in the Report and highlight the informal yet socially important role of e-rickshaws from the perspective of meeting the mobility

needs of population in an affordable and convenient manner. The emergence of e-rickshaws at such rapid pace in fact points towards the huge latent and unmet demand for mobility, especially for shorter distances and access and egress trips, which these e-rickshaws are catering to and which wasn't being met by / planned for by the public agencies. Interestingly, the e-rickshaws while catering to this demand also do it in an environmentally benign manner as they have no tail-pipe emissions and can be charged from clean electricity. The key environmental concern related to the disposal of batteries used in the e-rickshaws can also be addressed by formulation of appropriate schemes by the government.

Moving forward

While we recognize the informal nature and contribution of the e-rickshaws, it is also important to look at the accompanying issues. The complete unregulated growth of e-rickshaws in such huge numbers in the city raises concerns related to the safety and security of the passengers. Ideally, any transport service employed for public use at large should not compromise on the safety and security of the passengers, no matter, how large its contribution is. It is hence strongly felt that e-rickshaws should be regulated to ensure safety and security of passengers. In fact since the e-rickshaws are emerging as motor vehicles, the provisions of MVA that help ensure this should be applicable on e-rickshaws. However, given the nature of these vehicles and their specific use for ferrying passengers, primarily for short access and egress trips, TERI recommends that the government need not make very stringent regulations for these vehicles; measures that ensure safety and security of passengers should be focused upon. Following provisions in the MV Act could be considered for relaxation:

- Requirement for a commercial driver license to drive commercial vehicles
- Removing government control over fare structure; the fares should be left to market forces

The government could also consider regulating the manufacturing of these vehicles to bring about standardization and uniformity in designs; this would perhaps require recommending specific design standards for e-rickshaws, for which a technical committee will have to be constituted by the Ministry of Road Transport and Highways. The other areas that would need government's attention are the disposal of e-rickshaw batteries and use of clean electricity for charging these e-rickshaws.”

(Underlining added)

8. We would also like to refer to paragraphs 2.3.5 and 2.3.6 of the said report which deal with specifics of the test results and TERI’s interpretation of the results. They are as under:-

“2.3.5 Results of technical tests on e-rickshaws

The existing market for e-rickshaws has a number of manufacturers producing different models. Some of the prominent models that were found during the field tests are listed below:

- Chetak
- Garud
- Sarthi
- Saera (Delux and Mayuri)
- Atut Shakti
- Saksharn
- Krishna
- Bullet
- Guru Tiger
- Soni
- Plaza Auto
- Yatri
- Neel
- Rozgar
- JMD Motors
- Deep

- Shakti
- Maharaja

The test results for the above mentioned makes are given in table 1.
Table 1 E-rickshaw technical test results

SI no	Identity	Max Speed (kmph)	Max Power (Watts)	Average Power (Watts)
1	Shakti_49_48	28.25	1589	524
2	Shakti_47_46	27.01	1629	526
3	Mayurishera_00_47**	26.88	(not able to measure, point not accessible)	not able to measure, point not accessible
4	Saras_51_51	26.43	2594	876
5	Sarathi_50_51	26.40	1749	489
6	Rozgar_50_51	25.59	1500	453
7	Neel_50_51	25.59	1637	520
8	Yatri_50_51	25.55	2300	607
9	Sarathi_49_51	25.47	1261	380
10	Mayurideluxe_00_47**	25.46	(not able to measure, point not accessible)	not able to measure, point not accessible
11	Krishna_49_51	25.17	1572	500
12	Sarathi_49_51	25.12	1662	473
13	Devante_49_51	25.10	1718	495
14	Chetak_50_51	24.93	1486	427
15	Neel_49_51	24.86	1668	541
16	Sarathi_48_52	24.67	1795	676
17	Yatri_50_51	24.67	1539	420
18	Sarathi_49_51	24.54	1517	423
19	Plaza_51_50	24.49	1505	546
20	Sarathi_49_51	24.41	1440	403
21	Sarathi_49_51	24.35	1634	706
22	Sarathi_49_51	24.34	1392	378
23	Sarathi_49_51	24.22	1639	495
24	Sarathi_49_51	24.04	1882	606
25	Saksham_49_51	24.01	1420	514
26	Chetak_48_51	23.98	1367	462
27	Sarathi_50_51	23.96	1654	483
28	Deep_48_51	23.88	1561	484
29	Bullet_49_51	23.84	1655	485

30	Yatri_48_51	23.82	1506	532
31	Maharaja_48_46	23.76	1446	432
32	Eco_50_54	23.74	1895	503
33	Sarathi_48_50	23.69	2068	713
34	Sarathi_49_51	23.66	1520	378
35	Yatri_48_51	23.65	1635	471
36	Sarathi_48_51	23.49	1562	427
37	Yatri_49_51	23.39	1641	571
38	Yatri_50_48	23.26	1530	430
39	Soni_50_48	23.23	1550	448
40	Sarathi_49_47	23.18	1433	519
41	Sarathi_49_50	23.11	1384	487
42	Garud_48_46	23.00	1318	428
43	Sarathi_49_51	22.83	1793	537
44	Rozgar_48_46	22.80	1266	368
45	Saksham_47_51	22.79	1484	509
46	Sarathi_49_51	22.18	1388	295
47	Sarathi_48_47	21.94	1288	465
48	Victory_47_45	21.94	959	292
49	Byby_50_48	21.81	1896	619
50	Imdmotor_49_45	21.75	964	261
51	Atutshakti_48_51	19.57	1546	378
52	Guru_48_51	18.82	837	250
53	Jmdmotors_49_45	17.95	1145	381

*The unique id given to each of the tested e-rickshaws followed the following coding scheme: "make of rickshaw" _ "battery voltage in volts" _ "diameter of front wheel in cm"

In these two cases, the battery voltage could not be measured because the measuring point was inaccessible Results: All the e-rickshaws tested in the field had maximum electrical motor power in excess of 250 Watt. Thirteen e-rickshaws showed speed level above 25 kmph while others had speed in the range of 20-25 kmph, except three e-rickshaws that had speed below 20 kmph.

2.3.6 TERI's interpretation of results

TERI tested 53 e-rickshaws and in 51 cases, where power measurement was possible, our readings show that the

maximum and average power of the motor of e-rickshaws tested was more than 0.25-kW. Even if we consider a low motor efficiency of 70% of e-rickshaw motors, the average output power (which will be the closest to the 30 minutes power) of 47 e-rickshaws, comes out to be more than 0.25 kW. These results indicate that all 53 e-rickshaws do not meet the criteria for exemption under Rule 2(u) of CMVR and fall under the category of motor vehicles. However, whether they are motor vehicles or not can be categorically established only if the tests are carried out as provided in Rule 2(u) of the CMVR by the authorized testing agencies.

These test results lead to another critical finding which is that the components and processes used in the manufacturing of e-rickshaws are not standardized and therefore the performance of e-rickshaws belonging to the same model vary. It is therefore recommended that if the Transport Department recommends type approval of e-rickshaws, it should find a way of ensuring standardization of e-rickshaws.”

9. From the above report, it is clear that :-
 1. The e-rickshaws tested did not meet the criteria for exemption under Rule 2(u) of the CMV Rules. All the e-rickshaws tested in the field had maximum electrical motor power in excess of 250 Watts (0.25 KW);
 2. The components and processes used in the manufacturing of e-rickshaws are not standardized;
 3. The government could consider regulating the manufacture of these vehicles to bring about standardization and uniformity in designs;

4. Specific design standards could be specified, for which a technical committee may be constituted by the Ministry of Road Transport and Highways;
5. Government's attention is needed with regard to the safe disposal of e-rickshaw batteries and use of clean electricity for charging the e-rickshaws;
6. The complete unregulated growth of e-rickshaws in such huge numbers in the city raises concerns related to the safety and security of the passengers;
7. It is strongly felt that e-rickshaws should be regulated to ensure safety and security of passengers.

After referring to the TERI report, the Delhi Government in its said reply stated that:-

“16-17 In view of the legal provisions discussed above and findings of field tests conducted by TERI, e-rickshaws are ‘motor vehicle’ and their operation without any type approval or certification under rule 2(u) of CMV Rules is illegal and need to be stopped.”

(underlining added)

10. Finally, in response to the prayer clause, the Delhi Government's reply was as under:-

“Prayer Clause is wrong and denied. In view of the aforesaid facts and circumstances and the preliminary submission and objections set out hereinabove, it is humbly submitted that operation of e-rickshaws in Delhi is totally unauthorised and

illegal and needs to be stopped. So far as the question of making appropriate regulations for permitting plying of e-rickshaws is concerned, it is respectfully submitted that Government of NCT of Delhi is not competent to do the same as it will entail amendments in Motor Vehicle Act, 1988 and Central Motor Vehicle Rules, 1989. Petitioner should have made the Ministry of Road Transport, Govt. of India as a necessary party. Having failed to do so, the petitioner is not entitled to the reliefs claimed in the instant writ petition.”
(Underlining added)

11. Therefore, the stand of the Delhi Government, discernible from its said reply, is that the plying of e-rickshaws in Delhi is illegal and needs to be stopped. Furthermore, the amendments to the said Act and CMV Rules was not within the domain of the Delhi Government and could only be done by Parliament and the Central Government, respectively.

12. After the filing of the said reply on behalf of the Delhi Government, the matter was taken up by the court on 21.05.2014 when the court directed the Chief Secretary, Government of NCT of Delhi to file an affidavit disclosing “*as to under what circumstances e-rickshaws were allowed to ply in Delhi*”. The court also directed as under:-

“If the Chief Secretary, Government of NCT of Delhi agrees with the existing reply filed by R-2 he would disclose on oath reasons why no action was taken to prohibit import of e-rickshaws? Why no action was taken to ensure that no e-rickshaw was plied in Delhi?”

13. On 18.07.2014, another reply was filed on behalf of the Delhi Government. This time, as directed by the court, it was supported by an affidavit of Shri S. K. Srivastava, Chief Secretary, Government of NCT of Delhi. The stand taken in the earlier reply to the effect that plying of e-rickshaws in Delhi was illegal, was reiterated. It was specifically stated in paragraph 2(v) that:-

“None of the e-rickshaws plying on Delhi roads had taken any type approval from the designated agencies nor they were found having power less than 0.25 kw thus making them eligible for exemption under Rule 2(u) of CMV Rules, 1989. Their operation even before the amendment dated 24.04.2014 in rule 2(u) (discussed above) was totally unauthorized and illegal.”

(underlining added)

The above excerpt refers to the amendment of 24.04.2014 by virtue of which Rule 2(u) of the CMV Rules was amended. This aspect needs to be explained. Rule 2(u) as it stood prior to the said amendment was as under:-

“Rule 2(u) “Battery operated Vehicle” means a vehicle adapted for use upon roads and powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle:

Provided that if the following conditions are verified and authorised by any testing agency specified in rule 126, the battery operated vehicle shall not be deemed to be a motor vehicle:-

- (i) The thirty minutes power of the motor is less than 0.25 KW;
- (ii) The maximum speed of the vehicle is less than 25 km/h;

- (iii) Bicycles with pedal assistance which are – (a) equipped with an auxiliary electric motor having a thirty minute power less than 0.25 kw, whose output is progressively reduced and finally cut off as the vehicle reaches a speed of 25 km/h or sooner, if the cyclist stops pedalling; and (b) fitted with suitable brakes and retro-reflective devices, i.e. one white reflector in the front and one red reflector at the rear.

Explanation – The thirty minute power of the motor is defined in AIS:049:2003 and method of verification is prescribed in AIS:041:2003, till the corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986 (63 of 1983);”

The proviso to the said rule was substituted by a new proviso:-

“Provided that a two wheeled battery operated vehicle shall not be deemed to be a motor vehicle if all the following conditions are verified and authorised by any testing agency specified in rule 126, namely:-

- (a) vehicle is equipped with an electric motor having thirty minute power less than 0.25 kW;
- (b) maximum speed of the vehicle is less than 25 km/hr;
- (c) vehicle is fitted with suitable brakes and retro-reflective devices, i.e. one white reflector in the front and one red reflector at the rear;
- (d) unladen weight (excluding battery weight) of the vehicle is not more than 60 kg;
- (e) in case of pedal assisted vehicle equipped with an auxiliary electric motor, in addition to above, the thirty minute power of the motor is less than 0.25 kW, whose output is progressively reduced and finally cut off as the vehicle reaches a speed of 25 km/hr, or sooner, if the cyclist stops pedalling”.

The effect of the amendment was that the exemption from being regarded as a motor vehicle which was earlier available to all battery operated vehicles which satisfied the conditions prescribed in the proviso was now restricted to only “two wheeled” battery operated vehicles. In other words, even if an e-rickshaw had an electric motor having thirty minute power less than 0.25 kw and a maximum speed less than 25 km/hr etc., it would not get out of the ambit of “motor vehicle”. This is so because an e-rickshaw has more than two wheels and the amended proviso applies to only two wheeled battery operated vehicles.

14. Coming back to the 2nd reply filed on behalf of the Delhi Government, we find that it is further stated therein that all e-rickshaws are public service vehicles as defined in section 2(35) of the said Act. Paragraph 2(iv) of the said 2nd reply reads as under:-

“iv. Therefore, all e-rickshaws are required to be treated as public service vehicle which is defined under Section 2(35) of Motor Vehicles Act, 1988.

‘Public service vehicle means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi cab, motor cab, contract carriage, and stage carriage.’

It is clear from the above definition that e-rickshaw which is a battery operated vehicle are to be treated as a public service vehicle and required to comply with all extant rules and regulations governing operation of public service vehicles.”

With regard to the action taken by the Delhi Government, it was stated that a public notice was issued on 09.12.2012, inter alia, warning all manufacturers/dealers/operators selling e-rickshaws to stop their activities. The said public notice was as follows:-

“GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI
TRANSPORT DEPARTMENT
5/9, UNDER HILL ROAD, DELHI
PUBLIC NOTICE
**OPERATION OF BATTERY OPERATED RICKSHAWS
IN VIOLATION OF THE MOTOR VEHICLES ACT, 1988**

It has come to the notice of this department that some battery operated rickshaws are being operated in violation of the provisions of the Motor Vehicles Act, 1988. These rickshaws, are plying without valid registration, without type approval from a specified testing agency, without permit & certificate of fitness etc. These rickshaws are also violating rule 2(u) of the Central Motor Vehicles Rules, 1989, which provides that such rickshaws are deemed to be motor vehicles unless the following conditions are verified and authorized by a specified testing agency:-

- **Power of the motor to be less than 250 W and maximum speed of the vehicle to be less than 25 kmph.**

The department has decided to launch an intensive drive against these rickshaws as the operation of these rickshaws in violation of the Motor Vehicles Act, 1988 is also of grave danger to public safety.

All persons concerned with the business of manufacturing / selling / operating such battery operated rickshaws are hereby warned to immediately stop these activities.

Sd/-
Additional Commissioner (Transport)”

It was further pointed out in the 2nd reply that the Transport Department of the Delhi Government sent letters dated 10.12.2012, 10.01.2013, 11.01.2013 and 16.01.2013 to the Delhi Traffic Police pointing out that operation of e-rickshaws is illegal and dangerous to public safety and requested the latter to take immediate action to stop the operation of e-rickshaws. On 08.02.2013, the then Chief Secretary (Shri D.M. Spolia) who, incidentally is the current Chief Secretary, wrote to the Commissioner of Police as under:-

“A larger number of battery-operated rickshaws are plying in many parts of the city, including the NDMC area, particularly in the vicinity of India Gate. These vehicles do not have any certification from any of the authorized agencies. No permissions have been granted either by the Transport department or by any local body. Their operation is, therefore, not only unauthorized, but illegal also. These battery-operated rickshaws are prone to accidents and, hence, risky for its passengers and other vehicles on road.

The Transport Department has addressed Delhi Traffic Police on the subject several times. On January 16, 2013, the Commissioner (Transport) too wrote to the Joint CP (Traffic). Copies of these communications are enclosed.

You may like to advise the officers concerned to take immediate action on this issue.”

15. On 08.02.2013 itself another public notice was issued declaring the operation of e-rickshaws without type approval or certification from competent agencies as illegal. It is then stated in the said 2nd reply that even the Delhi traffic Police had started prosecuting e-rickshaws but the process

was stalled because, by an order dated 05.02.2013, a learned Metropolitan Magistrate had ruled that e-rickshaws do not fall under the category of ‘motor vehicles’ under the said Act. We may say at this juncture itself that this is not a correct interpretation of the court order dated 05.02.2013. The learned Metropolitan Magistrate was dealing with a specific case under Challan No: PTH-8-0030-13 where a person had been prosecuted for running a motor vehicle (battery operated rickshaw) without a valid registration certificate. The defence raised was that the battery operated rickshaw was not a ‘motor vehicle’ since its maximum speed was 14.17 km/h (i.e., under 25 km/h) and its motor was of only 182 watts (i.e., less than 250 watts). It is in this backdrop that the learned Magistrate held that no offence was made out by holding as under:-

“It is very clear from definition of motor vehicle that it means any mechanically propelled vehicle adapted for use upon roads, including a chassis to which a body has not been attached, where the chassis is of two wheeler or three-wheeler, scooter and motorcycle. However, in the present fact and circumstances prosecution has failed to place on record any documents to show that present vehicle in question has a capacity of being run for a speed more than 25 km/h and is more than 250 watts and therefore, falls in the category of a motor vehicle.”

It is only in that particular case, as the prosecution was unable to produce evidence to show that the proviso (un-amended) was not applicable that the court held that the particular rickshaw in question could not be regarded as a motor vehicle requiring registration. It is wrong to infer from the said decision that the learned Magistrate had ruled that e-rickshaws do not as a

class fall under the category of ‘motor vehicles’. In any event, now, because of the amendment to Rule 2(u), e-rickshaws would clearly be motor vehicles under the said Act.

16. Anyhow, the 2nd reply on behalf of the Delhi Government goes on to state that the then Chief Minister wrote a letter on 06.04.2013 to the Union Minister for Road Transport and Highways calling for amendments in the CMV Rules, 1989 in order to provide an adequate legal framework for permitting the plying of e-rickshaws. But, as we have seen, that did not happen. Instead, a new proviso to Rule 2(u) of the CMV Rules was substituted in place of the old one thereby shutting out any chance of an e-rickshaw of being taken out of the purview of a ‘motor vehicle’. The stand of the Delhi Government is summed up in paragraph 13 of the preliminary submissions in the said 2nd reply in the following manner:-

“13. So far as the issue raised in Hon’ble High Court order dated 21/05/2014 regarding the reasons of not taking any action against the e-rickshaws is concerned, it is clear from the above details that the Transport Department, GNCT of Delhi has taken appropriate action from time to time for prohibiting plying of e-rickshaws. However, the unscrupulous manufacturers and importers disguised their products in the garb of exemption discussed above. The Transport Department, GNCTD had not any other option but to wait for an expert opinion regarding the power and speed of e-rickshaws as none of the agencies authorized under Rule 126 of Central Motor Vehicle Rule work under its control. As soon as the expert opinion from TERI was available, the Transport Department, GNCTD took action to stop plying of e-rickshaws throughout Delhi. But after the announcement of ‘Deendayal e-rickshaw Scheme’ was made by Hon’ble Minister, further action had to be stopped.

Numbers of letters were also sent by the Transport Department to Delhi Police from time to time calling for action against e-rickshaws. Vide letter dated 05/06/2014 the Commissioner, Delhi Police has also been requested to file a reply in Hon'ble High Court regarding the action taken by Delhi Police against e-rickshaws. A copy of the letter to Commissioner, Delhi Police is annexed herewith and marked as **Annexure R 30**.

The above sequence of events easily demonstrates the intention as well as consistent action in furtherance of its intention to uphold "Rule of Law" on the part of Transport Department, GNCT of Delhi."

17. On 28.07.2014, an affidavit was filed on behalf of Delhi Traffic Police. The affidavit was of Shri R.K. Jha, Deputy Commissioner of Police, Traffic (HQ), Delhi. In the affidavit it is stated that the operation of e-rickshaws needs to be regulated and their unregulated operation is causing a nuisance on the roads. It is also stated that a large number of e-rickshaws are operating all over Delhi without registration and are being driven by persons who do not have driver's licenses. Nor are the drivers subjected to any background verification which is mandatory for drivers of all other public service vehicles operating in the state. It is also stated that a large number of e-rickshaws are functioning as a feeder service for metro stations and their unregulated traffic tends to cause traffic problems. Interestingly, it is stated in the affidavit that "*in the absence of any relevant provision in the Motor Vehicles Act, 1988, the police is unable to prosecute them under the MVAct*". This statement is not at all correct. Once an e-rickshaw is recognized as a 'motor vehicle' under the said Act, then all the provisions

applicable to motor vehicles such as the requirement of registration, insurance etc., would equally apply to e-rickshaws. This statement on the part of the Delhi Traffic Police is a very feeble attempt at trying to wriggle out of its responsibilities. One more aspect of the said affidavit needs to be emphasized and that is with regard to traffic violations on the part of e-rickshaws. It is stated as under:-

“It is respectfully submitted that there is a need to effectively regulate plying of e-rickshaw on the roads of Delhi. It is pertinent to mention here that during the year 2014 (upto 30.06.2014) a total of 137 cases have been registered u/s 279 IPC, against e-rickshaw drivers for rash and negligent driving. Out of them 02 fatal accidents took place in which 02 persons lost their lives. In addition, e-rickshaws have been involved in 29 other accidents in which 29 persons have been injured.”

18. At this stage of the pleadings, the matter was listed before us on 31.07.2014. We passed the following order:-

“Ms Zubeda Begum has handed over a copy of the letter dated 30.07.2014 which she has received from the Deputy Commissioner (ARU), Government of NCT Of Delhi, Transport Department, Delhi wherein it is clearly stated that the Department of Transport reiterates that the plying of e-rickshaws is illegal as per law as it stands today. The letter also indicates that the Ministry of Road Transport and Highways is considering to amend the Motor Vehicles Act, 1988 and the Rules framed thereunder so as to take e-rickshaws having engine capacity of 650 watts or less out of the ambit of the said Act and Rules.

Insofar as the present is concerned, plying of e-rickshaws is illegal. The respondents shall take steps forthwith to prevent

the plying of e-rickshaws without fail. We would like to express our view that unregulated plying of vehicles on the roads of Delhi prima facie is a hazard to the other traffic on the roads as well as to citizens.

We also take judicial notice of the incident which is reported in the newspapers today where an e-rickshaw is alleged to have hit a mother who was carrying an infant and the infant fell into a cauldron containing hot oil and died.

At this stage we are not commenting on the proposed move by the Ministry of Road Transport and Highways of seeking to amend the Motor Vehicle Act, 1988 and Rules framed thereunder.”

(underlining added)

19. Shortly thereafter, on 04.08.2014, Review Petition No.354/2014 was filed on behalf of respondent no.4 (Battery Rickshaw Welfare Association) seeking review of our order dated 31.07.2014 and a direction to the official respondents to permit the e-rickshaw operators to ply their vehicles in specified areas subject to regulatory conditions and such further conditions as this court may deem appropriate till necessary amendments are made in the said Act and CMV Rules as per the intention of the Central Government (Ministry of Road Transport and Highways). It was contended that for the sake of the *“fate of lakhs of families which for their livelihood depend upon the driving of e-rickshaws”* and in the interest of justice this court ought to review its order dated 31.07.2014 and permit the plying of e-rickshaws on certain conditions.

20. The review petition came up for hearing on 05.08.2014, when, for the first time, an appearance was made on behalf of the Union of India by Ms Pinky Anand, Additional Solicitor General. The Union of India was not a party in the matter. However, the learned ASG was heard on that date and on all subsequent dates when the writ petition and the said review petition were taken up. The Union of India supported the stand of the review petitioner (respondent no.4) and requested that till appropriate changes were made in the said Act by Parliament and by it (Central Government) in the CMV Rules, this court ought to permit the plying of e-rickshaws subject to guidelines and restrictions which this court may prescribe. Ms Anand submitted that as there were no provisions specifically dealing with e-rickshaws, this court had the power under article 226 of the constitution of India to prescribe guidelines enabling the plying of e-rickshaws in the interests of the “thousands” of families which depend on the plying of e-rickshaws for their sustenance.

21. Before we examine these submissions, it would be necessary to notice the spate of additional affidavits that were filed after 05.08.2014. The first was an affidavit dated 13.08.2014 of Shri R.K. Jha, Deputy Commissioner of Police, Traffic (HQ), Delhi wherein he simply stated :-

“I state that Delhi Police shall follow the directions conveyed by Central/ State Government for operationalization of e-rickshaws on Delhi Roads.”

This was followed by yet another “short affidavit” (the third) on behalf on the Delhi Government. This affidavit dated 16.08.2014 was of Dr Satbir Bedi, Principal Secretary-cum-Transport Commissioner, Government of NCT of Delhi. There is no mention of e-rickshaws in this affidavit. Only general statements with regard to grant of driving licenses and expediting the registration process have been made as under:-

- “2. That the Transport Department will grant driving licenses as per laid down procedure under the provisions of Motor Vehicle Act by opening special windows in all the 13 zonal authorities. All the field staff will be directed to work overtime to accomplish the job;
3. That the Transport Department shall make all efforts to expedite the registration process as per the Motor Vehicles Act and rules framed thereunder, the requirement of which as per present provisions are annexed as annexure R-1;
4. That the Transport Department will abide by any further directives issued by the Ministry of Road Transport & Highways, Government of India in this regard;”

The next affidavit is also dated 16.08.2014 and is that of Dharkat R. Luikang, Under Secretary, Ministry of Road Transport & Highways, New Delhi on behalf of the Union of India. The relevant portions of the affidavit are as under:-

- “2. I state that two office orders dated 07.08.14 for constituting two separate committees for recommending rules and a broad framework of guidelines for making rules for E-rickshaw have already been presented before this Hon’ble Court on 08.08.14. A Committee has been set up under the

Chairmanship of the Director, International Centre for Automotive Technology (ICAT), Manesar to recommend rules for construction, equipment and maintenance of e-rickshaws under CMVRs. A separate Committee has been constituted under the chairmanship of the Director, Automotive Research Association of India (ARAI), Pune to recommend rules for registration, control, insurance and offences, penalties and procedure in respect of e-rickshaw under CMVRs vide Order dated 7.8.2014. Copies of two office orders dated 07.08.14 constituting the said two committees are annexed herewith as **ANNEXURE-A (Colly.)**

3. The Central Government also evolved a broad framework of guidelines for making rules for E-Rickshaw for the guidance of the two committees. A copy of the broad framework of the guidelines given to the two committees is annexed herewith as **ANNEXURE-B.**

4. The two Committees have been allowed 10 days time to recommend rules for e-rickshaw. Both the committees have already started working. The Central Government would make earnest efforts to expedite the task of framing rules for e-rickshaw. However, notification of the final rules in the Official Gazette would take some time, specially due to statutory requirement of previous publication of the rules in compliance to provisions of Section 212(1) of MV Act, 1988.

5. That in the light of the above mentioned steps taken by Union of India to make rules for e-rickshaw in exercise of the powers conferred by the MV Act, 1988, this Hon'ble Court may be pleased to permit operation of e-rickshaws in the NCT of Delhi to mitigate extreme hardship to tens of thousands of e-rickshaw operators and their families and to mitigate hardships to lakhs of citizens of Delhi in terms of last mile connectivity. The permission may be subject to such directions as this Hon'ble Court may be pleased to give to regulate operation of e-rickshaws until notification of the rules.”

An affidavit dated 29.08.2014 was also filed on behalf of the North, South and East Delhi Municipal corporations. The relevant portion of the Affidavit reads as under:-

“2. I state that the Municipal Corporations are empowered to determine and notify streets in Delhi under Section 303(1) of DMC Act, 1957 to prohibit vehicular traffic including ply of e-Rickshaws in any public street in consultation with Delhi Traffic Police Department. If need be, the Municipal Corporations shall do the needful.

3. I state that the Municipal Corporations will obey all directions given by the Central Government pertaining to E-Rickshaw operation under the relevant provisions of DMC Act, 1957 as applicable in this regard in their respective jurisdiction.”

The last affidavit was filed on behalf of respondent no.4 on 29.08.2014 in court (though the affidavit is dated 19.08.2014). In order to cover the lacuna of lack of insurance cover in respect of e-rickshaws, respondent no.4 allegedly raised a corpus of Rs. 10 lakhs. The affidavit was in respect of this and the relevant portion reads as under:-

“That in the fitness of things the Applicant Association (respondent no.4) has consulted its members to raise the corpus fund of Rs. 10 lakhs for Insurance Fund to meet the immediate need in case of any unseen mishap, till the vehicles get insured.”

22. So, the position is clear. E-rickshaws are ‘motor vehicles’ as defined under section 2(28) of the said Act. In fact, they are covered by the

expressions “public service vehicle” and “transport vehicle” as contemplated under sections 2(35) and 2(47), respectively, of the said Act. These facts are admitted by all the parties. Once this is so, all the provisions of the said Act applicable to “motor vehicles” and “public service vehicles” would be applicable in respect of e-rickshaws also. It would be appropriate to point out some such provisions. Section 3 of the said Act prohibits a person from driving a motor vehicle (which includes an e-rickshaw) in any public place “*unless he holds an effective driving licence issued to him authorizing him to drive the vehicle*”. Section 39 stipulates that “*no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other places unless the vehicle is registered.*”. Section 66 stipulates that “*no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a regional or state transport authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used*”. Section 146 of the said Act prohibits a person from using, except as a passenger, or causing or allowing any other person to use, a motor vehicle in a public place, “*unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance*” complying with the requirements of Chapter XI hereof.

23. Therefore, e-rickshaws have to be registered; they need to have permits; they need to be covered by an appropriate policy of insurance; and they need to be driven by persons holding driving licences. This, we have seen, has not been happening. The e-rickshaws hitherto plying on the roads of Delhi were not registered, they did not have permits and did not have any insurance cover. The fund of Rs 10 lakhs said to have been raised by respondent no.4 cannot take the place of the statutory requirement of an insurance cover. Their drivers also, by and large, did not possess driving licences. All in all, their plying on the roads in Delhi was and is unauthorized and illegal. A position, which the Delhi Government has clearly brought out in its first and second replies. The Union of India has also recognized this and, as their affidavit states, has evolved a broad framework of guidelines for making rules for e-rickshaws for the guidance of the two committees it has established, one, to recommend rules of construction, equipment and maintenance of e-rickshaws and the other to recommend rules of registration, control, insurance, offences, penalties and procedure in respect of e-rickshaws. Thus, as of now, the plying of e-rickshaws in their present state is illegal and prohibited by law.

24. Till the plying of e-rickshaws is made lawful by Parliament and the Central Government, the latter has urged us to permit the operation of e-rickshaws in Delhi to “mitigate extreme hardship to tens of thousands of e-rickshaw operators and their families and to mitigate hardships to lakhs of citizens of Delhi in terms of last mile connectivity”. Can this court by a writ or direction under article 226 permit something which has been expressly

prohibited by parliament and, more so, when none of the provisions of the said Act are under challenge? We think not. In some systems of jurisprudence there is a legal maxim which says – what is not prohibited, is permitted. But, there is no authority in law for the proposition that what is validly prohibited can be validly permitted by an order of the court. The validity of the said Act and the CMV Rules are not questioned, yet, we are called upon to overlook the valid prohibitions contained therein and permit the plying of e-rickshaws till such time Parliament and/or the Central Government legitimize it! Courts can certainly iron out the creases, sand-paper the rough surfaces and chisel the jagged ends in a legislation to arrive at the true intent of the legislature, which, in turn, is an embodiment of the will of the people. High Courts can also quash provisions of statutes and, indeed, entire statutes if they run contrary to the Constitution. But, a High Court cannot create a statute, much less, permit what is prohibited by a valid statutory provision. We are not creators of law but, the interpreters and guardians of law and the rule of law.

25. However, the learned ASG and Mr Kapoor appearing for the respondent no.4 were insistent that we do have the powers and for this reason certain guidelines were suggested and, it was contended that from time to time courts have been issuing guidelines where none existed to bridge the gap in the interests of justice. References were made to (1) **Vishaka v. State of Rajasthan: (1997) 6 SCC 241**; (2) **Vineet Narain v. Union of India: AIR 1998 SC 889**; (3) **Nestle India Ltd v. Union of India: 201 (2013) DLT 245 (DB)**; (4) **Consumer Education & Research Centre v.**

Union of India: (1995) 3 SCC 42; (5) Manushi Sangthan, Delhi v. Govt. of Delhi: 2010 VII AD (Delhi) 353. The decisions in *Vishaka (supra)*, *Vineet Narain (supra)* and *Consumer Education (supra)* are those of the Supreme Court. The powers of the Supreme Court in this area are different from those of the High Courts. Articles 141 and 142 of the Constitution stand testimony to this. The *Vishaka (supra)* guidelines were issued by the Supreme Court, in the absence of enacted law. *Vineet Narain (supra)* was also a case where Supreme Court acted to fill the vacuum till suitable legislation was enacted. So, too, in the case of *Consumer Education (supra)*, where the Supreme Court gave appropriate directions to fill in the gaps in legislation in the interests of workers employed in asbestos industries. In the case before us, there is no vacuum or gaps to be filled or no absence of legislation: on the contrary there is a legislative prohibition. *Nestle India (supra)*, which was a decision of this very bench, was a case of an entirely different genre: there were inconsistencies in contemporaneous enactments where, adherence to one statute meant violation of the other statute. This is certainly not the case here. And, *Manushi Sangthan (supra)* was a case concerning cycle rickshaws and the Delhi Municipal Corporation Cycle Rickshaw Bye-laws, 1960. First of all, that case was concerned with ‘non-motor vehicles’ (which are not covered under the said Act), whereas the present case is one concerning ‘motor vehicles’, which do fall under the said Act. Secondly, there is nothing in the said decision which would suggest that the court can permit something which is prohibited by a valid statute. So, none of these decisions come to the aid of the learned ASG or Mr Kapoor.

26. In sum, the plying of un-registered e-rickshaws is illegal as per the law as it exists today. We cannot anticipate the legislative changes that may be brought about or the alterations in the statutory rules that may be introduced in the future. That is for Parliament and the Central Government to consider and act upon. For the present, a mandamus can certainly be issued to ensure that what is prohibited by law is not permitted in action. Therefore, we confirm our direction given on 31.07.2014, that the respondents shall act in conformity with the said Act and CMV Rules and prevent the plying of unregistered e-rickshaws. The writ petition is allowed to this extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

September 09, 2014

HJ/dutt