

Madhya Pradesh High Court

Pandit Ramprasad Purohit And Ors. vs State Of Madhya Pradesh And Ors. on 15 January, 2008

Equivalent citations: 2008 (2) MPHT 150

Author: V Mittal

Bench: V Mittal

ORDER Viney Mittal, J.

1. This order shall dispose of four writ petitions being W.P. Nos. 1678/2000, 2049/2000, W.P. No. 2050/2000 and W.P. No. 2463/2000, as an identical and common controversy is involved in all these petitions. The writ petitioners in all these writ petitions have challenged the imposition of bus stand fee (Asthai Dakhal Shulk) on the motor vehicles using the bus stand set up by the respondent-Nagar Panchayats. For the sake of convenience, the facts are borrowed from W.P. No. 2463/2000.

2. The petitioners are the holders of Particular Stage Carriage Permit (PSTP) and on the strength of the aforesaid permit, they are plying the buses/passenger vehicles on various routes in the State of Madhya Pradesh. Respondent No. 2, Nagar Panchayat Khujner, has set up a bus stand in the municipal area Khujner. During the course of plying the buses by the petitioners, they also use bus stand Khujner for taking up and setting down passengers at Khujner. A resolution dated February 9, 2000 has been passed by respondent No. 2-Nagar Panchayat Khujner, imposing the bus stand fee on various passenger vehicles using the bus stand. A copy of the aforesaid resolution has been appended as Annexure P-2 and is subject matter of challenge in the present petition.

3. The petitioners have challenged the aforesaid imposition of bus stand fee and the resolution, Annexure P-2 passed by the Nagar Panchayat, Khujner, on the ground that under the provisions of Section 117 of the Motor Vehicles Act, 1988, the State Government or any other authority in this behalf authorized by the State Government, may in consultation with the local authority having jurisdiction in the area concerned, determine places at which the motor vehicle may stand either indefinitely or for a specific period for taking up and setting down of passengers. The petitioners have also relied upon Rules 203 and 204 of Madhya Pradesh Motor Vehicles Rules, 1994, wherein according to the petitioners, maintenance and management of parking places has been made the responsibility of the District Magistrate of the area concerned. On the strength of the aforesaid provisions, the petitioners maintain that since the bus stand Khujner was notified by the State Government and as per the provisions of Rules 203 and 204, it was the responsibility of the District Magistrate for its maintenance, therefore, Nagar Panchayat Khujner had absolutely no jurisdiction or authority to impose a bus stand fee upon the bus operators, such as the petitioners, for using the bus stand Khujner, for purposes of taking up and setting down of passengers. Additionally, on the basis of the resolution, Annexure P-2, the petitioners have also maintained that while passing the resolution, Annexure P-2, Nagar Panchayat Khujner had in fact, under the garb of a bus stand fee, imposed an entry tax on passenger vehicles for entering the municipal area of Khujner. The petitioners have also raised a grievance that there was absolutely no jurisdiction with Nagar Panchayat Khujner or any other Nagar Panchayat/Municipality, to impose an entry fee for entering the concerned municipal area.

4. The claim made by the petitioners has been contested by the respondents. Whereas the imposition of the bus stand fee has been justified, the learned Counsel appearing for various Nagar Panchayats/Municipalities, during the course of arguments, have specifically stated that irrespective of the language, the resolution passed by the Municipal Council/Nagar Panchayat, none of the Nagar Panchayat/Municipalities had ever imposed any entry tax on the commercial passenger vehicles and as a matter of fact, the said resolution was merely for imposing of a bus stand fee. All the learned Counsel for the aforesaid local authorities have specifically undertaken that the respondent-local authorities were not charging any entry fee from any of the commercial/ passenger vehicles.

5. In view of the specific stand taken by the learned Counsel for the respondent-Nagar Panchayat/Municipalities, the only controversy which survives for adjudication is as to whether a local authority such as Nagar Panchayat/Municipality, has the jurisdiction or authority to impose a bus stand fee or not ?

6. Shri G.M. Chaphekar, learned Senior Counsel appearing for the petitioners, during the course of arguments, has reiterated all pleas taken by the petitioners in their petitions. Shri Chaphekar has specifically referred to the provisions of Section 117 of the Act and Rules 203 and 204 of the Rules and has contended that since the bus stands in question were notified by the State Government and were required to be mandatorily used by a passenger vehicle and such bus stands were the responsibility of the District Magistrate for its maintenance and management, therefore, a local authority, such as Nagar Panchayat Khujner, had absolutely no jurisdiction or authority to impose a bus stand fee. In this regard, Shri Chaphekar, has relied upon a judgment of the Division Bench of this Court in M.P. No. 1540/1975, decided on January 1, 1980 (Madhya Pradesh State Road Transport Corporation v. Municipal Council Manasa and Anr.). Shri Chaphekar has also pointed out that the judgment of the Division Bench was upheld by the Apex Court, when the appeal filed by Municipal Council Manasa was also dismissed and the judgment of the High Court was upheld. The judgment of the Apex Court is reported as (Municipal Council Manasa v. M.P. Road Transport Corporation and Anr.).

7. On the other hand, Shri B.L. Pavecha, learned Senior Counsel, who has appeared in the connected matter, and Shri Shailendra Mukati, learned Counsel appearing for Nagar Panchayat Khujner, have defended the resolution, Annexure P-2, passed by the Nagar Panchayat and have contended that under the provisions of Section 349 of Madhya Pradesh Municipalities Act, 1961, a Municipal Council/Nagar Panchayat had a statutory authority to impose a fee for using the land belonging to the Municipal Council. The learned Counsel have argued that the bus stands in question had been set up by various Municipal Councils in their respective areas by incurring huge expenses and were being maintained and looked after by the respective Nagar Panchayats/Municipalities and therefore, to meet the said expenses and to provide better facilities to the general public, it was necessary for the Municipal Council/Nagar Panchayats to charge the bus stand fee. In this regard, the learned Counsel have also referred to a judgment of the learned Single Judge in W.P. No. 321/1996, decided on April 23, 1996 (Bus Operators Association Tikamgarh and Ors. v. State of M.P. and Ors.).

8. I have duly considered the rival contentions raised on behalf of the parties by their learned Counsel. I have also gone through the record of the case and various statutory provisions relied upon by the learned Counsel.

9. At the outset, it may be noticed that under the provisions of Section 117 of the Motor Vehicles Act, the State Government or any other authority authorized in this behalf by the State Government, has a jurisdiction to determine a place at which a motor vehicle may stand either indefinitely or for a specified period of time for taking up and setting down of passengers. The Motor Vehicles Rules, 1994 have been framed by the State of M.P. Rules 203 and 204 thereof also provide for maintenance and management of the parking places and make the District Magistrate and the concerned local body responsible for such purpose. Under the provisions of Section 349 of the Madhya Pradesh Municipalities Act, 1961, a Municipal Council is authorized to charge such fee, as may be prescribed by bye-laws, for granting any permission under the Act or for use of any land or building belonging to the Municipal Council. The conjoint reading of the provisions of the Motor Vehicles Act as well as Section 349 of the Municipalities Act, leads to an irresistible conclusion that there was no conflict between the provisions of two enactments. None of the provisions of the Motor Vehicles Act prohibit the imposition of any parking/user charges in the parking places so notified under the provisions of the Act/Rules. Thus, even if a parking/halting stand has been notified under the provisions of Motor Vehicles Act still there is nothing in the said Act to restrain a local authority to charge a fee for user by a passenger vehicle for the purposes of its maintenance and providing facilities to the general public. As a matter of fact, Rule 203 specifically enjoins a local body also, alongwith the District Magistrate, to maintain and manage such a parking place. Once, a statutory duty has been placed upon the local authority, then in terms of the statutory authority conferred upon it under Section 349 of the Municipalities Act, a local authority is fully justified and well within its rights to impose a fee for such parking/halting.

10. In fact in almost circumstances, the Apex Court while repelling a similar challenge to the imposition of bus stand fee by Municipal Board, Hapur, had held that a local authority was well within its right to impose such a levy. , Municipal Board Hapur v. Jassa Singh and Ors.).

11. Before parting with this order, it may be noticed that reliance placed by the learned Senior Counsel for the petitioners upon Municipal Council Manasa's case (supra), is wholly misplaced, inasmuch as, the judgment of the Division Bench clearly shows that in that case, a challenge had been raised to question the imposition of a toll-fee by Municipal Council Manasa for entering the vehicles into the municipal area. The said imposition of toll-tax was held to be unauthorized by a Division Bench of this Court and the aforesaid judgment of the Division Bench was upheld by the Apex Court. However, as specifically undertaken by the learned Counsel for the local authorities, the imposition in question in the present case cannot be treated to be a toll-fee nor an entry-tax.

12. In view of the aforesaid facts, I do not find any merit in the present petitions. The same are dismissed.

However, there shall be no order as to costs.