

Madhya Pradesh High Court

Sindhi Sahiti Multipurpose ... vs Municipal Council And Anr. on 18 October, 1966

Equivalent citations: AIR 1967 MP 169

Author: Dixit

Bench: P Dixit, R Bhawe

JUDGMENT Dixit, C.J.

1. By this application under Article 226 of the Constitution the petitioner, Sindhi Sahiti Multipurpose Transport Co-operative Society Ltd., challenges the validity of the bye-laws of the Bhopal Municipal Council issued in the Gazette dated 6th November 1964 prohibiting all persons in charge of motor buses plying for hire from taking up or setting down passengers, or parking, or stopping their buses anywhere within the limits of the Bhopal Municipality except at a Bus Stand situated on Hamidia Road. Bhopal, and prescribing fees for the use of the Bus Stand. The petitioner prays that the aforesaid bye-laws be declared invalid and the respondents be restrained from giving effect to the bye-laws in any manner.

2. The impugned bye-laws were published in the Madhya Pradesh Gazette dated 6th November 1964. The preamble to the bye-laws recites that in exercise of the powers conferred by Section 357(3) of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the Act), the State Government confirms the bye-laws made by the Municipal Council, Bhopal, under Sub-clauses (f) and (m) of Clause (7) of Section 358 read with Section 349(ii) and Section 357 (5) of the Act. Clause (c) of bye-law 1 defines "Municipal Bus Stand" as meaning "the Municipal Bus Stand situated on the Hamidia Road. Bhopal as described in the Schedule" to the bye-laws Bye-law 2 is in the following terms:

"No persons in charge of a motor bus plying for hire shall for the purpose of taking up or setting down of passengers, park or stop his bus anywhere within the limits of the Bhopal Municipality except at the Municipal Bus Stand:

Provided that the Chief Municipal Officer or the Superintendent of Police, Bhopal, or any person authorised by such Superintendent, may, on special occasion, allow the parking or stoppage of a motor bus at a place other than the Municipal Bus Stand for the taking up or setting down of passengers" By bye-law No. 3 a fee for the use of the Municipal Bus Stand has been imposed "at the rate of rupee one for every eight hours or part thereof for each Bus". This fee is payable by the person in charge of the motor bus. Bye-laws Nos. 4, 5, 6 and 7 deal with the payment of the fee by the person in charge of a bus, the collection thereof by the authorized employee of the Municipal Council, the issue of a permit on payment of the fee and inspection of the permit. The last bye-law, namely No. 8, makes the person in charge of a motor bus committing a breach of any of the bye-laws liable to the punishment prescribed by that bye-law.

3. In order to appreciate the contentions put forward on behalf of the petitioner challenging the legality of the bye-laws, it is first necessary to refer to the material provisions of the Act. Section 357 lays down the procedure for the making of the bye-laws. Section 358, in so far as it is material here, is as follows:

"358. In addition to any power specially conferred by this Act, the Council may, and if so required by the State Government shall, make bye-laws for-

X X X X X

7. Public Health, Safely. Nuisance and Sanitation-

X X X X X

(f) prohibiting or regulating, with a view to sanitation or the prevention of disease, any act which occasions or which is likely to occasion a public nuisance and for the prohibition or regulation of which no provision is made under this heading:

X X X X X

(m) regulating and prohibiting the stationing of carts or picketing of animals on any ground under the control of the Council or the using of such ground as halting place of vehicles or animals or as a place for encampment or the causing or permitting of any animal to stray;

X X X X X"

Section 349 empowers the Municipal Council to charge fees as may be prescribed by the bye-laws, inter alia, for:

"(ii) any permission granted under this Act for making any temporary erection or for putting up any projection or for the temporary occupation of any public street or any land or building belonging to the council".

4. The petitioner first contends that the Municipal Bus Stand defined by bye-law No. 1 (c) is an open piece of land belonging to the State Government and not to the Municipal Council and consequently the Council had no power whatsoever to declare that open land as a Bus Stand or to regulate the use of the Bus Stand by persons in charge of motor buses plying for hire. The petitioner's further contention is that a bus stand can be notified only under Section 68 (2) (r) of the Motor Vehicles Act, 1939, by the competent authority and the Municipal Council has no power whatsoever under the Act of 1961 to declare a certain land as Bus Stand and to regulate the use of it by persons in charge of motor vehicles; that in any case Sub-clauses (f) and (m) of Clause (7) of Section 358 of the Act do not authorize the Municipal Council to levy any fees for the use of a place declared to be a "Bus Stand"; and further that the Municipal Council is also precluded by Section 6 of the Madhya Pradesh Motor Vehicles Taxation Act, 1947, from imposing any fee in respect of a motor vehicle using the Bus Stand for parking or stopping for the purpose of taking up or setting down of passengers.

5. The two questions that arise for determination in this petition are--first, whether the Municipal Council has the power to declare an open piece of land or any ground as a "Bus Stand" and prohibit

all persons in charge of motor buses plying for hire from taking up or setting down passengers or from parking or stopping their buses anywhere within the municipal limits except at the declared Bus Stand; and, secondly, whether it has the power to prescribe a fee for the use of the Bus Stand.

6. Taking first the question of the declaration of a ground or a piece of land as a Bus Stand, the Municipal Council has clearly the power under Sub-clause (m) of Clause (7) of Section 358 of regulating and prohibiting the use of any ground under its control as a halting place for vehicles. In exercise of this power it can declare that motor vehicles or buses shall be parked or shall stop for picking up or setting down passengers only at a certain place within the municipal limits and nowhere else. Sub-clause (f) of Clause (7) of Section 358 referred to in the preamble to the bye-laws which gives to the Municipal Council the power to prohibit or to regulate, with a view to sanitation or the prevention of disease, any act which occasions or is likely to occasion a public nuisance, cannot, in any sense, be construed as authorising a Municipal Council to declare any ground under its control as a halting place for vehicles. Such a construction cannot be put on Sub-clause (f) when no control or regulation of 'sanitation' or the prevention of disease or the prevention of a public nuisance is involved in declaring a certain place as a halting place and when Sub-clause (m) specifically provides for regulation and prohibition of any ground under the control of the Municipal Council as a halting place for vehicles.

The petitioner has no doubt averred that the land covered by the Hamidia Road Bus Stand as demarcated by bye-law No. 1 (c) does not belong to the Municipal Council but belongs to the State. But this statement has been denied in the return filed on behalf of the Municipal Council. It must, therefore, be taken that the land which has been declared to be the Municipal Bus Stand belongs to the Municipal Council; and if it belongs to the Municipal Council, then both bye-law No. 1 (c) and bye-law No. 2 have been validly made by the Municipal Council in exercise of the power conferred on it by Sub-clause (m) of Clause (7) of Section 358.

7. It is no doubt true that under Section 68 (2) (r) of the Motor Vehicles Act, 1939 the State Government can make rules for "prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicles at a notified halting place". When such rules are made, the authority empowered, in that behalf can fix or alter the location of a bus stand. But, as explained by the Supreme Court in *T. B. Ibrahim v. R. T. A. Tanjore*, AIR 1953 SC 79, this power of the competent authority to fix or alter the location of a Bus Stand is a over-riding power in no way controlled by the power given to a Municipal Council to construct or provide halting places.

In *T.B. Ibrahim's Case*, AIR 1953 SC 79 (supra) the Supreme Court considered Section 276(b), (c) and (e) of the Madras District Municipalities Act, 1920, empowering a Municipal Council constituted under that Act to construct or provide a bus stand for motor vehicles, to prohibit the use of any other place as a halting place and also prohibit any person from opening or continuing to keep open a private stand without obtaining a licence from the Council. The Supreme Court observed that these provisions of the Madras District Municipalities Act, 1920, did not affect the

power of the transport authority under Section 68 (2) (r) of the Motor Vehicles Act, 1939, to fix or alter the location of a bus stand.

In the present case, there is no conflict between the Bhopal Municipal Council and the State in regard to the declaration of a piece of ground situated on Hamidia Road, Bhopal, as a bus stand. It has been stated in paragraph 13 of the return filed by the Municipal Council that the District Magistrate, Bhopal, declared the very place defined as 'Bus Stand' by the impugned bye-laws as a Bus Stand under the provisions of the Motor Vehicles Act, 1939. That being so, the contention that the Municipal Bus Stand as defined by bye-law No. 1 (c) has not been validly declared to be a bus stand under the Motor Vehicles Act, must be rejected.

8. The declaration of a land belonging to the Municipal Council as a Bus Stand under the Motor Vehicles Act, 1939, does not, however, prevent the Municipal Council from exercising its power under Sub-clause (m) of Clause (7) of Section 358 of the Act of 1961 of regulating the use of the bus stand. But this power of regulation does not carry with it the power of imposing fees for the use of the Bus Stand. Sub-clause (m) of Clause (7) of Section 358 does not empower the Municipal Council to impose any fees for the purposes mentioned in that sub-clause. It is pertinent to note that where the Legislature thought fit that the Municipal Council should have the power to impose fees by bye-laws, it has specifically so provided in Section 358.

For example, in relation to bye-laws for "Streets," Sub-clause (g) of Clause (4) of Section 358 expressly gives to the Council the power to frame a bye-law for charging fees for the setting up of any booth or stall. So also under Clause (7) the power to impose fees has been specifically conferred by Sub-clauses (c), (j), (o) and (q). In the absence of any specific provision in Sub-clause (m) empowering the Municipal Council to impose fees for the use of a halting place for vehicles, the Council cannot claim the power to impose such fees merely because it has the power under that sub-clause of regulating the use of the halting place. That the power to impose fees must be specifically conferred on the Council cannot now be doubted. In this connection it is sufficient to refer to what has been said by a Division Bench of this Court in *Lucky Bharat Garage v. R.T.A., Raipur*, 1965 MPLJ 473 at p. 476 : (AIR 1965 Madh Pra 232 at pp. 234, 235). The Division Bench said:

"It is now a firmly settled canon of taxation that no tax or fee can be levied by an instrument of subordinate legislation unless the statute specifically authorized its imposition in the plainest terms. This principle flows directly from Article 265 of the Constitution which provides, 'No tax shall be levied collected except by authority of law'. As pointed out by the Supreme Court in *Muhammadbhai v. State of Gujarat*, AIR 1962 SC 1517 at p. 1530 the word 'tax' as used in this article includes 'fees'. The general principle enunciated in Article 265, put in a positive form, implies that any tax can be levied or collected provided it is levied or collected by authority of law. It is important to note that Article 265 uses the word 'tax' and not the word 'taxation' and does not say that there shall be no taxation except by authority of law. The term 'taxation' covers every conceivable exaction; whereas the word 'tax' as used in Article 265 means a tax of any particular kind or nature or description and not a collection of taxes. Therefore, it is only if the statute specifically authorizes the imposition of a tax or a particular kind, nature or description that the particular tax can be imposed. This principle

is discernible in many cases where it has been held that where a law authorizes the imposition of a tax, the imposition, will be 'by authority of law' only if the imposition is made strictly within the terms and conditions prescribed by the law; or if the statute prescribes a certain basis for the tax, then it cannot be imposed on a different basis; or, again, if the statute specifies certain taxable things and commodities, then the subordinate authority cannot make addition to the list of taxable items."

"8. It follows from the principle that no tax can be levied or collected except by authority of law that if the power to impose and assess a tax is delegated by the Legislature to a subordinate authority, then the delegation must be specific and not in general terms; and a subordinate authority cannot impose any tax by a rule or regulation or a bye-law unless the statute under which the subordinate authority claims the power to tax specifically authorizes the imposition of the particular tax. ...."

9. The power to impose fees for the use of the Bus Stand cannot also be claimed under Section 349 of the Act of 1961. That provision confers on the Municipal Council the power to prescribe by bye-laws fees for any licence granted under the Act or for any permission granted under the Act for making any temporary erection or for the temporary occupation of any public street or any land or building belonging to the Council. The use of a Bus Stand by a person in charge of a motor vehicle is neither under any licence granted under the M. P. Municipalities Act, 1961, nor under any permission granted under that Act. Shri Phadke, learned counsel appearing for the petitioner, relying on *Ramchandra v. Municipal Council Satna*, 1963 MPLJ 241 and *Dukkuram v. Co-operative Agricultural Association, Kawardha*, 1960 MPLJ 433: (AIR 1960 Madh Pra 273) rightly pointed out that bye-laws made under a power conferred by a statute are not parts of the statute and, therefore, if the impugned bye-laws 'permitted' the use of the Bus Stand, the use could not be said to be under a permission granted under the Act of 1961. Learned counsel was also right in his submission that in fact under the impugned bye-laws no permission was needed for the use of the Bus Stand. In our judgment, neither Sub-clause (m) of Clause, (7) of Section 358 nor Section 349 empowered the Municipal Council to prescribe by bye-laws any fees for the use of the Motor Stand declared by the bye laws.

10. On behalf of the respondent it was suggested that the imposition of the fees could be justified with reference to the power conferred on the Municipal Council by Section 127 of the Act of 1961 of imposing any tax which the State Legislature could impose under the Constitution. It was said that by virtue of Entry No. 49 of List II of the Seventh Schedule the State Legislature could impose a tax on lands and, therefore, the Municipal Council could also prescribe a fee for the use of any land set apart as a Bus Stand. The short answer to this contention is that the taxes enumerated in Section 127 which a Municipal Council can impose can be levied only after following strictly the procedure laid down in Section 129. Where the procedure for imposing a tax has not been strictly complied with, the liability to pay the tax cannot be said to arise. (See *Municipal Council, Khuraj v. Kamal Kumar*, 1965 MPLJ 233: (AIR 1965 SC 1321) ). In the present case, the Municipal Council while imposing the fee that it has by bye-law No. 3 of the bye-laws clearly did not purport to exercise its power under Section 127 of the Act.

11. In this view of the matter, it is really not necessary to consider the contention of the petitioner resting on Section 6 of the M P. Motor Vehicles Taxation Act, 1947. But we may observe that if the Municipal Council has the power to impose fees for the use of a Bus Stand, then Section 6 of the Act of 1947 does not stand in the way of exercise of that power. That provision says that "notwithstanding anything contained in any other enactment for the time being in force, no local authority shall, after the commencement of this Act, impose . . . . a tax, toll or licence fee in respect of a motor vehicle . . . .". What is prohibited is the imposition of a tax, toll or licence fee in respect of a motor vehicle, that is to say, tax, toll or licence fee which is in reality and substance a tax, toll or licence fee on a motor vehicle as subject-matter of taxation. The fee purported to have been imposed by the impugned bye-laws is a fee for the use of the Bus Stand. The measure of the fee has no doubt been fixed with reference to the hours and per bus. But that does not make the BUS Stand fee, a fee in respect of a motor vehicle. It remains a fee for the user of the Bus Stand.

12. For the above reasons, our conclusion is that bye-laws Nos. 3, 4, 5, 6 and 7, which deal with the imposition of a fee for the use of the Bus Stand, the collection and payment of the fees, the issue of a permit on payment of fees and inspection of the permit, are all invalid. The remaining bye-laws are valid. The result is that this petition is allowed in part. Bye-laws Nos. 3, 4, 5, 6 and 7 of the impugned bye-laws published in the Gazette dated 6th November 1964 are held to be invalid and the opponents are restrained from giving effect to those bye-laws in any manner. The respondent-Municipal Council shall, according to the undertaking given to this Court, refund the amount of fees collected from the petitioner from 14th November 1964 up to date. The petitioner shall have costs of this application from the respondent-

Municipal Council. Council's fee is fixed at Rs. 200/-. The outstanding amount of the security deposit shall be refunded to the petitioner.