

Municipal Council, Bhopal

Vs

Sindhi Sahiti Multipurpose Transport Co- Op. Society Ltd. and Another

Civil Appeal No. 1547 of 1967

(D. G. Palekar, A. Alagiriswami JJ)

24.07.1973

JUDGEMENT

ALAGIRISWAMI, J. -

1. On 6-11-1964 the Municipal Council of Bhopal made bye-law under the provisions of sec. 359(7)(f) and (m) read with A 349(ii) of the Madhya Pradesh Municipalities Act, 1961 after previous publication in the M. P. Rajpatra as required under sec. 357(4) and confirmation by the State Government under sec. 357(3) in respect of a Municipal bus stand. The Bye-Law 2 of the bye-laws provided that no person incharge 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. The other bye-laws provided for a levy of a fee of Re. 1/- for every eight hours or part thereof in respect of the use of the bus stand by such buses and for the issue of a permit on such payment. On 13-11-1964 the respondents filed a writ petition in the said High Court of Madhya Pradesh challenging the said bye-laws. The High Court held that bye-laws 1(c), which defined the expression 'Municipal Bus Stand' and bye-laws 2, which has been set out earlier, were valid, but held bye-laws 3 to 7 which provided for the payment of fee and the giving of a permit etc. as invalid, and restrained the Municipal Council from giving effect to those bye-laws in any manner. The Municipal Council was also directed to refund the fee collected from the respondents. This appeal has been filed by the Municipal Council by certificate granted by the High Court.

2. Section 348(ii) of the Madhya Pradesh Municipalities Act read:

The Council may charge such fee as may be prescribed by bye-laws for :

(i)

(ii) Any permission granted under the 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, and

(iii)

Section 358 in so far as it is relevant for the purpose of this case read :

3. 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.

(1)

(7) Public, Health, Safety, Nuisance and Sanitation -

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

.....

(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 escapement or the causing or permitting of any animal to stray.

It appears to us that sec. 319(ii) does not apply to this case ...

4. The relevant portion of that section reads :

"The Council may charge such fee as may be prescribed for any permission granted under this Act for the temporary occupation of and land belonging to the Council."

The section itself does not enable the Municipal Council to require that permission should be obtained for any purpose. It deals with levy of fees for permissions which are required to be taken for various purposes under other sections of the Act. Section 187(3) which deals with permission to erect, alter, and to or reconstruct building, and section 194 which deals with permission to the owners or occupiers of building in public street to put up verandahs, balconies or rooms, to project from any upper story thereof are instances in point. The permission mentioned in section 194 is one of the matters for which fee can be prescribed under section 349(ii). Section 233(4) deals with allowing any temporary occupation or erection in any public street on occasions of festivals and ceremonies, or allowing the occupation of, or temporary erection of structures for any other purpose. Fees can be prescribed under section 349(ii) in respect of these matters. The words above mentioned in that section deal with permission granted to individuals to temporarily occupy municipal land. It would be doing violence to that section to hold that it deals with the provision of a bus-stand. In the context of that section it is difficult to hold that when people are compelled to use a bus stand constructed by the Municipal Council it is a permission for temporary occupation of land belonging to the Council.

5. Let us now consider if under the provisions of sec. 358, already contracted the Municipal Council can validly make the present bye- laws. It is not possible to relate the provision of clause (f) of sub-section (7) of sub-section as having anything to do with the provision of a bus stand. As regard clause (m) of sub-section (7) "the regulating and prohibiting the stationing of carts on any ground under the control of the Council or the using of such ground as halting place of vehicles" cannot be said to relate to the provision of a Municipal bus stand. The power to regulate or prohibit the use of municipal land as halting place of vehicles cannot be used to compel people use such land

as halting places. Such a power must be specifically given. Compare this section with sections 270-B and 270-C of the Madras District Municipalities Act, 1920, which read as follows:

"270-B. (1) The Municipal Council may construct or provide and maintain public landing places, halting places and cart stands and may levy fees for the use of the same.

(1-4)

(2) A statement in English and a vernacular language of the district of the fees fixed by the council for the use of such place shall be put up in a conspicuous part thereof.

Explanation :- A cart stand shall for the purposes of this Act include a stand for carriages including motor vehicles within the meaning of the Indian Motor Vehicles Act, 1914 and animals."

"270-C. Where a Municipal Council has provided a public landing place, halting places, cart-stand, the executive authority may prohibit the use for the same purposes by any person within such distance thereof, as may be determined by the Municipal Council, of any public or the sides of any public street."

6. Even these sections deal with use of landing places, halting places and cart-stands but do not deal with places for setting down or taking up of passengers. It is well to keep clear in one's mind the distinction between halting places which would be the equivalents of garages of private persons and places where passengers may be set down and taken up which can properly be called bus stand. The power to compel persons incharge of motor buses to stop only at certain places for the purposes of taking up or setting down of passengers is a matter which relates to motor traffic and there is a specific provision in sec. 68 (a) (r) & (s) of the Motor Vehicles Act for this specific purpose. They read as follows :

"68. (2) Without prejudice to the generality of the forgoing power, rules under this section may be made with respect to call or any of the following matters namely :-

.....

(r) prohibiting the picking up or setting down of passengers by stages of contract carriages as 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 a light from the vehicle at a notified halting place;

(s) the requirements which shall be complied with in the construction or use of any duly notified stands or halting place, including the provision of adequate equipment and facilities for the convenience of all users thereof, the fees, if any which may be charged for the use of such facilities, the records for which shall be maintained at such stands or places, the staff to be employed there at, and the duties and conduct of such staff, and generally for maintaining such stands and places in a serviceable and clean condition."

7. This Court in T. B. Ibrahim v. B. T. C. Tanlora (1) held that the expression "duly notified stand"

in the Motor Vehicles Act means 'a stand duly notified by the Transport Authority.' It was contended before this court that section 68(2)(r) of the Motor Vehicles Act did confer the power upon the transport authority to direct the fixing or the alteration of a bus-stand. This Court rejected that contention. It pointed out that the section gives power to the Government to prohibit a specified place from being used for picking up or setting down passengers. This court held that section 270-B, 270-C and 270-M of the Madras District Municipalities Act do not affect the power of the Transport Authority to regulate traffic control or impose restriction upon the licence of any such cart-stand.

8. In *Municipal Board Pushkar v. State Transport Authority, Rajasthan* (2) this court pointed out that a 'bus stand' meant a place where bus service commenced or terminated and that section 76 dealt with parking places referred to in section 91(e) of the Motor Vehicles Act. The fixation of bus stands was held to be within section 68(2)(r) of the Act and the power to issue the necessary notification was held to be implied in that clause.

9. Under section 76 of the Motor Vehicles Act the state Government or any authority authorised in this behalf by the State Government may in consultation with the local authority having jurisdiction in the area concerned determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers. Unlike section 68 which confers power on the State Government alone this section enables the State Government to authorise any authority to take action under it. As is clear from a reading of section 76, it does not deal with a bus stand in the sense of a place for taking up and setting down of passengers, which is dealt with under section 68(2)(r), while section 368((7)(m) may enable the Municipal Council to regulate or prohibit the use of any ground under its control, it does not enable it to compel anybody to use it as halting place etc. much less to prescribe that no place other than the one provided by the Municipal Council shall be used for setting down and taking up of passengers. That can be done only under a provision like the one contained in sec. 68(2)(r) & (s) of the Motor Vehicles Act.

10. It is interesting to note that in this case the respondents as well as the Municipal Council stated that the District Magistrate had declared the Bhopal Municipal Bus Stand as a Bus Stand. Power to specify the place under section 68(2)(r) vest in the State Government. Neither Party has been able to show us that there is any power in this State Government to delegate their power under this section to the District Magistrate nor have we been shown any notification by the District Magistrate specifying the Bhopal Municipal Bus Stand as one under the provisions of section 68(2) & (r) of the Motor Vehicles Act. Apparently both the parties proceeded on a misapprehension. If at all the District Magistrate had taken any action it could only be under section 76. Not that section does not enable him to specify places for setting down or picking up of passengers as we pointed out earlier. Therefore, we must hold that the Madhya Pradesh High Court was in error in holding bye-law 2 valid.

11. Mr. M. C. Chagla, appearing for the Municipal Council made these four points :

1. There is no compulsion on any body to park his bus within the municipal limits and that he can park it outside the municipal limits for the purpose of picking up and setting down passengers.
2. That if he parks the bus in the municipal bus stand he is using municipal land.
3. That this is with the permission of the Municipality.

4. That for this permission a permit is issued and a fee is charged.

12. The first proposition has only to be stated to be rejected. The person plying a motor bus for hire cannot exercise his trade or profession effectively if he is not allowed to set down or take up passengers within the limits of a town. The Municipal Council cannot do indirectly what it cannot do directly. It cannot compel buses to go outside the municipal limits in order to set down or pick up passengers. This argument is as fallacious as the one put forward by Mr. Phadke on behalf of the respondent that he had a fundamental right to use the Municipal bus stand. Nobody has fundamental right to use a land belonging to another without that person's permission or paying for it if necessary. While the Municipal Council has no power to compel persons plying motor buses for hire to use only the Municipal bus stand for the purpose of taking up and setting down passengers, there can be no objection to its providing a bus stand for anybody who chooses to use it voluntarily and to such person being required to pay for such use. In that sense propositions 2 and 3 put forward by Mr. Chagla are unexceptionable. If for this permission the formality of the issue of permit is followed and a fee is charged it cannot be said to be objectionable. In that case the charges may be such as may be agreed upon between the parties, i.e., if the Municipality charges a certain rate only people who are prepared to pay at that rate would resort to that place. Nobody can be compelled to go to that place. Such a provision is permissible not under any provisions of the Madhya Pradesh Municipalities Act but arises out of the right which the Municipal Council, like the owner of any other property has, to permit people to use any property belonging to it only on certain conditions. The bye-laws compel persons in charge of motor buses to use the Municipal bus stand, which the Municipality has no power to do. Consequently we hold bye-law 2 as not valid and with it go the other bye-laws. As we hold by laws not valid we do not consider it necessary to deal with the argument advanced by Mr. Phadke based on section 6 of the Madhya Pradesh Motor Vehicles Taxation Act, 1947.

13. In the result the appeal is dismissed, the appellant will pay the respondents' costs.

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