

Municipal Board, Hapur and Others

Vs

Jassa Singh and Others

Civil Appeals No. 472 of 1980

(K. Ramaswamy, Faizanuddin JJ)

04.09.1996

ORDER

In CA No. 472 of 1980

1. This appeal by special leave arises from the judgment of the Division Bench of the Allahabad High Court made on 8-11-1979 in CMWP No. 13 of 1978. The admitted position is that all the respondents are transport operators using for their stage carriages the bus-stand up by the appellant-Board in Hapur. When the appellant-Board demanded payment of the fees at the rate of Re 0.75 per day, though they had been paying fee earlier at the rate of Re 0.50 per day, they contended that the municipality was devoid of power. The High Court in the impugned judgment relying upon Jagdish Prasad Bindla v. Municipal Board [CMWP No. 3976 of 1973, decided on 18-7-1979] had allowed the appeal and quashed the demand without any further consideration. The question is whether the municipality has the power to levy fee and demand the payment thereof for use of the bus-stand ?

2. The Government in their order dated 13-6-1959 had directed the appellant and all other municipalities as under :

"I am therefore to request that you may kindly advise all the municipal bodies in your districts to take steps to establish bus-stands within their municipal limits in accordance with the government orders so that no inconvenience is experienced by the people for parking motor vehicles."

3. The same direction was reiterated in their further letter dated 23-8-1960 impressing upon the municipality to establish the bus-stand urgently and report the action taken in that behalf. In furtherance thereof, the municipalities had set up bus-stand at a considerable expenditure and fee was levied for the use of the bus-stand at varied rates by the owners of the motor vehicles. As regards the rates payable in respect of the stage carriages, it was resolved that each stage carriage should pay at the rate of Re 0.75 per day. The resolution dated 25-2-1961, Item 1 of the bye-laws says that all motor vehicles which run on fare shall be parked only at places specified by Nagar Palika and not at any other place. Item 4 envisages that no private stand shall be made for any parking of any motor vehicle within the limits of Nagar Palika. In Schedule A to the said resolution, Item 3, levy of fee has been imposed for parking vehicles, viz., public and private buses carrying passengers at the rate of Re 0.75 per day or part of the day. It would, thus, be seen that pursuant to the direction issued by the Government, the bus-stands have been set up for the convenience of the travelling public at a great expenditure and for use of the parking places the fee has been prescribed.

4. The question is whether the municipality has such power to levy the fee ? Section 293 of the Act

empowers the Board to charge fee to be fixed by bye-laws or by public auction or by agreement, for the use of occupation (otherwise than under a lease) of any immovable property vested in, or entrusted to the management of the Board including any public street or place of which it allows the use of occupation whether by allowing a projection thereon or otherwise. Such fee may either be levied along with the fee charged under Section 294. Section 298 provides thus:

"298. (1) A Board by special resolution may, and where required by the State Government shall, make bye-laws applicable to the whole or any part of the municipality, consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under this Act."

5. Sub-section (2) thereof, provide that in particular, and without prejudice to the generality of the power conferred by sub-section (1), the Board of a municipality, wherever situated, may, in the exercise of the said power, make any bye-law described in List I and the Board of a municipality wholly, or in part situated in a hilly tract may further make, in the exercise of the said power, any bye-law described in List II below.

6. Clause (b) thereof provides for the regulation or prohibition of any description of traffic in the streets where such regulation or prohibition appears to the Board to be necessary. It would, thus, be seen that the Board has been empowered statutorily to prescribed the fee for use of the public property vesting in or belonging to the municipality. Even under the recent amendment brought by the constitution (73rd Amendment) Act, 1992 which came into force w.e.f. 20-4-1993, it imposes the statutory responsibilities on the municipalities. Article 243-P(d) defines "municipal area" to mean the territorial area of a municipality as is notified by the Governor. Article 243-W(a)(i) envisages that subject to the provisions of the Constitution, the legislature of a State may, by law, endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions, as may be specified therein, with respect to the preparation of plans for economic development and social justice. Entry 17 of the Twelfth Schedule provides for public amenities including street lighting, parking lots, bus-stops and public conveniences. Thus, the Constitution enjoins the appropriate legislature to provide for preparation of the plans for economic development and social justice including power to provide public amenities including street lighting, parking lots, bus-stops and public conveniences. On such public amenities including bus-stops having been provided by the municipalities, as is a statutory duty, it is the duty of the user thereof to pay fee for service rendered by the municipality. The municipality had prescribed the minimum fee to the user at the rate of Re 0.75 per day or part thereof, for use of any transport vehicle, as mentioned hereinbefore. The High Court is clearly in error in striking down the demand of fee power holding that it is ultra vires their power.

7. The appeal is accordingly allowed, the order of the Division Bench of the High Court is set aside but, in the circumstances, without costs.

In CA No. 12299 of 1996 [@ SLP (C) No. 4006 of 1980]

8. Leave granted.

9. The appeal is allowed in terms of the above observations made in CA No. 472 of 1980.