

SUPREME COURT OF INDIA

Nagar Panchayat, Kurwai

Vs.

Mahesh Kumar Singhal

C.A.No.7821 of 2013

(K.S. Radhakrishnan and A.K. Sikri JJ.)

06.09.2013

JUDGMENT

K.S. RADHAKRISHNAN, J.

1. Leave granted.

2. We are in these cases concerned with the question whether the appellant, Nagar Panchayat, Kurwai (in Civil Appeal No.7821 of 2013 @ SLP(C) No.20997 of 2008) is justified in demanding any fee, for the parking of the motor, trucks and buses in the bus stand, owned and maintained by the Nagar Panchayat.

3. The High Court held that Nagar Panchayat has no power to collect that amount and allowed the writ appeal against which the Nagar Panchayat has come up with this appeal.

4. The appellant in exercise of the powers conferred under Section 357(3) read with Section 349(2), 357 (5) and 358(4) (b) and (d) of Madhya Pradesh Municipality Act, 1961, imposed parking fee on the owners of vehicles, motors, trucks, buses, matadors etc. Following that a notice was issued by the appellant demanding Rs.20/- per day or Rs.600/- per month, imposing entry fees on motors, trucks, buses and matadors parked in the bus stand. Challenging the same, writ petition was preferred by the vehicle owners before the High Court of Madhya Pradesh at Jabalpur, seeking a writ of certiorari to quash the above-mentioned bye-law and also for a direction to the Nagar Panchayat not to collect any fees from the petitioners. The learned Single Judge found no merit in the writ petition and same was dismissed on 10.07.2007. Aggrieved by the same, writ petitioners took up the

matter in Writ Appeal No.458 of 2007, which was allowed by the Division Bench, holding that Section 349 of Act of 1961 does not confer any power to impose the licence fees for the use of bus stand and the same is not covered under Sections 358(4)(b) and (d) or (7) (m) of the Act of 1961. Respondents are merrily using the bus stand owned and maintained by the Nagar Panchayat, free of cost, not bothering about its maintenance and upkeep. The question is, can a court, on the basis of such an interpretation sideline the larger public interest and deny the right of the Nagar Panchayat to claim parking fees which can be utilized for the benefit of people?

5. We, before examining the question, shall not forget the basic fundamental principle that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded.

6. The respondents are operating their vehicles with the stage carriage permits granted by the competent authority under the Motor Vehicles Act. As per the provisions of the Motor Vehicles Act the State Government or any other authorized authority has jurisdiction to determine a place at which a motor vehicle be parked, either indefinitely or for a specified time for taking up and alighting passengers. Rule 203 and Rule 204 of the Motor Vehicles Rules, 1994 provide for maintenance and management of the parking places and make the concerned local authorities responsible for the said purpose. As per the conditions of the permit they are required to commence the journey of their vehicles from the bus stand or place fixed for getting and alighting passengers. Such a condition has been imposed on the licence by the authorities under the Motor Vehicles Act since operators would commence the journey of their respective vehicles on the routes from the bus stand only and would not stop the vehicles on the streets, causing inconvenience to the public. Since vehicle operators started using the bus stand, Nagar Panchayat passed the Resolution, as already indicated, charging the parking fees for the purpose of maintaining of bus stand and providing other facilities. Bus stand, as already indicated, was constructed on the land owned by the Nagar Panchayat.

7. The Constitution (74th Amendment) Act, 1992 Part IXA which deals with Municipality, came into force on 20.04.1993. Article 243P(e), 243Q and Article 243W(a)(1)(4) are relevant and hence extracted below: "243P(e): "Municipal" means an institution of self-government constituted under Article 243Q.

243Q. Constitution of Municipalities.-(1) There shall be constituted in every State,-

- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
- (b) a Municipal Council for a smaller urban area; and
- (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

243W – Powers, authority and responsibilities of Municipalities, etc. – Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow –

a) 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 –

i) the preparation of plans for economic development and social justice;

ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule.

b) The Committees with such powers and authority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

Twelfth Schedule was inserted w.e.f. 01.06.1993. Entry 17 therein reads as follows:

“Entry 17 – Public amenities including street lighting, parking lots, bus stops and public conveniences.”

8. Nagar Panchayat is, therefore, a unit of self-government, which is a sovereign body having both constitutional and statutory status. Article 243Q and 243W(a)(i) and (ii) read with Entry 17, confer considerable powers on the Nagar Panchayat to carry out various schemes for economic development and social justice. Municipalities need funds for carrying out the various welfare activities and for the

said purpose, it can always utilize its assets in a profitable manner to its advantage so that various welfare activities entrusted to it under law could be properly addressed and implemented. Bus stand has been provided by the Nagar Panchayat for the benefit of all vehicle owners and the passengers, spending public money. Nagar Panchayat has to get a reasonable return for its upkeep and maintenance.

9. We may, in this connection, refer to the decision of this Court in *Municipal Board, Hapur and others v. Jassa Singh and others* (1996) 10 SCC 377, wherein this Court while interpreting the provisions of U.P. Municipalities Act, 1916 in the light of the Constitutional (73rd Amendment) Act, 1992 (actually 74th Amendment Act) upheld the right of the Municipality in levying the bus stand fee in respect of stage carriage. The operative portion of the same reads as follows:

“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.”

10. Vehicle owners placing reliance on the Judgments of this court reported in *Municipal Council, Bhopal v. Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd. and another* (1974) 2 SCC 478 and *Municipal Council, Manasa v. M.P. State Road Transport Corpn. And another* (1997) 11 SCC 640, questioned the powers of the Nagar Panchayat in demanding the parking fee, while using the bus stand and enjoying the facilities.

11. Noticeably both the above-mentioned Judgments were dealing with demands made prior to the Constitutional (74th Amendment) Act, 1992 by which Part IXA was incorporated.

12. This Court in *Municipal Council, Bhopal* (supra), held that M.P. Municipal Council Act does not empower a municipality to pass a bye law declaring certain place as a Municipal bus stand and cannot compel the persons plying motor buses or for hire to park the buses anywhere within the municipal limits except at the municipal bus stand for the purpose of taking up or setting down of passengers. Court further held that if a Municipality provides for a Bus stand without compelling anybody to use it, a fee can be charged on bus operators using it voluntarily. In *Municipal Council, Manasa*, the question which came up for consideration was whether a municipal council is competent to levy toll tax on motor vehicles in view of the provisions contained in Section 6 of the M.P. Motor Vehicles Taxation Act, 1947, which has been extended to the whole of M.P. by the Madhya Pradesh Taxation Laws (Extension) Act, 1957. The Court took the view that Madhya Pradesh Motor Vehicles Taxation Act is a special enactment while the Madhya Pradesh Municipalities Act is a general enactment and that the provisions of Section 127(1)(iii) and Section 6 are to be read in a way that both can stand together. Consequently, the words “tax on vehicles” used in Section 127(1)(iii) of the Madhya Pradesh Municipalities Act was held to mean vehicles other than motor vehicles.

13. Above-mentioned Judgments, on facts as well as on law, do not apply to the facts of the present case, especially in view of to the 74th Constitutional Amendment and in view of Section 358(7)(m) of the M.P. Municipality Act, which was not properly addressed in those cases.

14. We have already dealt with the scope of the 74th Constitutional Amendment Act. Section 358(7)(m), has to be read in the light of the Constitutional Amendment Act. Clause 7(m) of Section 358 of the Madhya Pradesh Municipalities Act, 1961, empowers the municipality to regulate or prohibit the use of any ground under its control and it does not compel anybody to use it as halting place of vehicles. Section 358(7)(m) of the Madhya Pradesh Municipalities Act, 1961 is extracted hereinbelow:

“358(7)(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 enactment or

the causing or permitting of any animal to stay and imposition of fee for such use.”

Article 243W(a)(i) and (ii) read with Entry 17 of the Twelfth Schedule and clause (7)(m) of Section 358 and the general principle that nobody has a fundamental right to use the land belonging to another without the latter’s permission or paying for it, if demanded, in our view, give ample powers to the Nagar Panchayat to impose parking fee for parking the vehicles in the Bus stand owned and maintained by it. Needless to say, if the Nagar Panchayat is demanding exorbitant or unreasonable parking fee without any quid pro quo, the same can always be challenged in accordance with law.

15. The High Court of Madhya Pradesh at Jabalpur disposed of the Writ Appeal No.147 of 2010 placing reliance on the Judgment of this Court in Municipal Council, Bhopal (supra). The facts of Civil Appeal No.7822 of 2013 @ SLP(C) No.18332 of 2010 are also identical. Since we have found no illegality in demanding the parking fee in using the Bus stand in Civil Appeal No. 7821 of 2013 @ SL(C) No.20997 of 2008, Civil Appeal No.7822 of 2013 @ SLP(C) No.18332 of 2010 is liable to be allowed. Consequently, both the appeals are allowed. The judgments of the High Court are accordingly set aside and the Resolution passed by the appellants imposing the bus stand fee is upheld. However, there will be no order as to costs.