

Anil Kumar Vs. District Magistrate, Badaun and Another

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Court : Allahabad

Decided On : May-06-1998

Reported in : 1998(4)AWC464

Judge : D.S. Sinha and ;M.L. Singhal, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 293, 293A and 298;
[Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 14195 of 1993

Appellant : Anil Kumar

Respondent : District Magistrate, Badaun and Another

Advocate for Def. : S.C

Advocate for Pet/Ap. : C.P. Ghildayal, Adv.

Judgement :

D. S. Sinha, J.

1. Heard Shri Shiv Nath Dey. holding brief of Shri C. P. Ghildayal, learned counsel appearing for the petitioner, Shri R. U. Ansari, holding brief of Shri N. I. Jafri, learned counsel representing the respondent No. 2, and Shri Sanna Ullah, learned standing counsel appearing for the respondent No. 1.

2. By means of this petition under Article 226 of the [Constitution of India](#), the petitioner seeks to challenge the bye-laws made by the Town Area.Babrala, district Budaun, whereby places for parking motor-vehicles of various descriptions, carrying passengers, have been earmarked and parking fee has been prescribed. A copy of the impugned bye-laws is Annexure-2 to the writ petition.

3. The learned counsel of the petitioner could not dispute that in view of the provisions of Sections 293, 293A and 298 of the U. P. Municipalities Act, 1916. and Full Bench decision of this Court rendered in the case of Dashrath Yadav and others v. Zila Parishad Kashetriya Samiti. 1954 UPLBEC 49, and the decision of the Hon'ble Supreme Court of India rendered in the case of Municipal Board. Hapur v. Jassa Singh and others, 1977 All LJ 1520, the impugned bye-laws cannot be struck down for lack of power.

4. However, the learned counsel submits that the respondent No. 2 is compelling payment of the parking fee by the motor-operators who only pass and repass the limits of the Town Area, Babrala and do not use the parking place earmarked by the respondent No. 2.

5. In paragraph 10 of the counter-affidavit filed on behalf of respondent No. 2, it is stated that Town Area is charging parking fee from only such motor-operators who use the place earmarked as parking places for the purpose of allowing the passengers to board and alight. It is further stated that fee is charged in lieu of the amenities and facilities provided by the respondent Town Area. These averments have not been denied by the petitioner.

6. It is well-settled that the parking fee, as is demanded under the impugned bye-laws, cannot be charged merely for passing and re-passing through the limits of the Town Area or other local authorities, it can be charged only if the motor-vehicles are parked at the places earmarked by the Town Area or other local authorities.

7. For what has been said above, the petition deserves to be dismissed, and it is dismissed accordingly. The interim order dated 29th April. 1993, shall stand discharged. There is no order as to costs.

