Raj Kumar Dawar and Another Vs. State of M.P. and Another

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Court : Madhya Pradesh

Decided On : Nov-13-2000

Reported in : AIR2001MP157; 2001(1)MPHT464

Judge : Mr. S.S. Jha, J.

Acts : Madhya Pradesh Municipalities Act, 1961 - Sections 37(3), 126, 127, 127-A, 127(1), (4) and (6), 129, 129(1), 130, 357, 358, 358(2), (3) and (7); Madhya Pradesh General Clauses Act, 1958 - Sections 21; Constitution of India - Article 265

Appeal No. : Writ Petition No. 1153/97

Appellant : Raj Kumar Dawar and Another

Respondent : State of M.P. and Another

Advocate for Def. : Shri K.N. Gupta, Govt. Adv. and ;Shri C.S. Dixit, Adv.

Advocate for Pet/Ap. : Shri R.D. Jain, Sr. Adv.;Shri S.B. Mishra, Sr. Adv. and ;Shri Devendra Choubey, Adv.

Disposition : Writ Petition allowed

Judgement :
ORDER

S.S. Jha, J.

1. In the petition the petitioners have challenged enhancement of fees for keeping the vehicle within the limits of Nagar Panchayat, Mungaoli, District Guna. The tax is levied upon the buses carrying on the passengers, trucks carrying on the goods and tractors and trollies.

2. Counsel for the petitioners submitted that the fee cannot be enhanced unless the bye-laws framed under Section 357 of Madhya Pradesh Municipalities Act (hereinafter referred to as the 'Act') are amended. Learned counsel submitted that Section 358 of the Act provides for framing of bye-laws. The bye-laws have been framed and have been published in Madhya Pradesh Gazette dated 12th January, 1980. The bye-laws are known as 'Mungaoli Municipality Temporary Occupation of Streets and Public Places, Bye-laws, 1980' (hereinafter referred to as the 'Bye-laws'). Rule 4 of the bye-laws provides that no person shall use or occupy any public street or place or immovable property vested in or under the control of the council for the purpose of depositing building material or erecting, scaffolding thereon of selling or exposing for sales any goods or halting any cart, animal or vehicle or for any other like purpose without obtaining the permission of the ChiefMunicipal Officer or any officer authorised by the council in the respect on payment of fees prescribed under the provisions of bye-laws (6), (7) and (8). Bye-laws No. (6) provides that motor, truck, buses and tractors which are allowed to remain on stand so as to cause no obstruction in any public street or detained for a longer period than the scheduled one necessary for loading and unloading the goods or for taking up and getting down the passengers shall be subject to these bye-laws and permission shall be granted to them on payment of fees at the rate of Re. 1.00 per day or Rs. 30.00 per month.

3. Learned counsel for the petitioners submitted that unless the bye-laws are amended, the respondents have no right to recover fee in excess of fees fixed by the bye-laws. Learned counsel has, therefore, prayed that the notification of Nagar Panchayat, Mungaoli, Annexure P-1 deserves to be quashed, as Nagar Panchayat Mungaoli has no jurisdiction to enhance the rate of fee by passing a resolution. Learned counsel submitted that once the bye-laws are made, they can be

amended under the provisions of Section 21 of M.P. General Clauses Act. Section 21 of the M.P. General Clauses Act is reproduced below :--

'21. Power to make, to include, power to add, to amend, vary or rescind orders, etc.-- Where, by any Madhya Pradesh Act, a power to issue notification, orders, rules or bye- laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws, so issued.'

Learned counsel, therefore, submitted that the power to amend, which is included in power to make the order, is exercisable in the like manner and subject to the like sanctions and conditions as govern the making of the original order. Learned counsel submitted that unless the bye-laws are amended, enhancement of fee in excess of fee fixed by the bye-laws is contrary to law and no such fee can be recovered. Any taxation contrary to law cannot be recovered as envisaged under Article 265 of the Constitution of India.

4. Learned counsel for the respondents submitted that under Section 129 of the Act the Council is empowered to increase the rate of tax or fee by passing a resolution. Section 129 of the Act empowers the Municipal Council or Nagar Panchayat to enhance the tax by passing of resolution. Learned counsel then submitted that Section 130 of the Act is applicable when the taxes are abolished, reduced with the leave of the State Government. Learned counsel submitted that under Section 129 of the Act the respondent-Council is empowered to enhance the fee.

5. In Para 3 of the return filed by respondent-Nagar Panchayat it is clearly mentioned that under the provisions of Section 129 (1) (B) of the Act, read with the bye-laws for Mungaoli the fee can beenhanced. 'Asthai Dakhal' fee is enhanced from Rs. 5/- to Rs. 20/- per day after passing the resolution dated 26-6-97. The resolution so passed is under the provisions of Section 129of the Act. Section 129 of the Act empowers the Municipality to impose any of the taxes or fees specified in the Act. Learned counsel for the respondents, therefore, submitted that levy of fees under the bye-laws by passing a resolution is proper and the petitioners have no locus standi to challenge the enhancement of fees.

6. Shri R.D. Jain, Senior Advocate, assisted the Court as amicus curiae and invited attention to Sections 126, 127 and 127-A of the Act. Learned counsel submitted that Chapter VII of the Act provides for 'Taxation'. Section 126 relates to assessment of the house and recovery of taxes on the property. Section 127 relates to the taxes mentioned in sub-section (1) of Section 127. Sub-section (4) of Section 127 relates to water tax and sub-section (5) relates to recovery of tax at a consolidated rate. Sub-section (6) provides that in addition to the taxes specified in sub-section (1), the Council may, for the purpose of this Act, subject to any general or special order which the State Government may make in this behalf, impose the taxes mentioned from Sections 127 (6) (a) to 127 (6) (o). He submitted that the power can also be exercised by the Council for imposition of taxes as per directions of the State issued by any general or special order. Learned counsel submitted that Section 129 of the Act relates to the taxes or fees referred in Sections 126, 127 and 127-A of the Act. Definition of 'tax' is given in Section 3 (37) of the Act.

7. Learned counsel then invited attention to Section 358 of the Act and submitted that the matters relating to tax and bye-laws are included in sub-section (2) of Section 358 of the Act. The present bye-laws are framed under Section 358 (7) (m), therefore, unless the bye-laws are amended the fee cannot be enhanced.

8. To appreciate the controversy it has to be examined whether Municipal Council is empowered to enhance the tax under the provisions of Section 129 of the Act ?

9. This Court had an occasion to consider the scope of Section 358 (7) (m) of the Act in the case ot Sindhi Sahiti Multipurpose Transport Co-operative Society Ltd., Bairagarh, Bhopal v. Municipal Council, Bhopal and another, reported in 1967 M.P.L.J. 108. The question was also considered in the case of Nagar Palika, Bhind v. M.P, State Road Transport Corporation, reported in 1989 JLJ 641. Thus, the Council is empowered to impose the fee as provided under the bye-laws. The fee cannot be enhanced by passing a resolution without amending the bye-laws. The bye-laws can be amended in the same manner as provided under Section 21 of the Madhya Pradesh General Clauses Act.

10. In the case of Kamla Prasad Khetan and another v. Union of India, reported in AIR 1957 SC 676, considering the scope of Section 21 of General Clauses Act the Apex Court has held in Para 15 that power to issue an order includes power to amend the order but this power is subject to a very important qualification and the qualification is contained in the words 'exercisable in thelike manner and subject to the like sanction and conditions'. Considering the scope of Section 21 it is provided that the power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, order, rules or bye-laws so issued. Thus, if fee is prescribed by a bye-laws, it can be very amended in the same manner as the bye-laws were framed. The bye-laws are framed under sub-section (3) of Section 357 of the Act. If the Municipal Council desires to amend the bye-laws for enhancing the fee or making a provision therein, the respondcnt-Nagar Panchayat ought to have passed a resolution for amending the bye-laws and should have sent it to the State Government for its approval. If the Government has approved and accepted the proposal then the procedure for amending the bye- laws should be followed in the same manner as the bye-laws were framed. Without any amendment in bye-laws the Nagar Panchayat or Municipal Council is not empowered to enhance the rate of fee under the provisions of Section 129 of the Act. The enhancement of fee by the respondent-Nagar Panchayat in excess of fee prescribed in the bye-laws is void and cannot be recovered. The respondents are entitled to recover the fee as mentioned in the bye-laws. Unless the bye-laws are amended, the respondents are not empowered to recover higher rate of fee than mentioned in the bye-laws. This enhanced fee not provided in any rule or bye-laws cannot be recovered. Even Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Article 265 provides that not only levy but also collection of tax must be under the authority of some law. Any recovery by invalid law or rule is liable to be interfered by the Court.

11. In the present case, fee has been levied under Rule 6 of the bye-laws. Unless Rule 6 of the bye-laws is amended, the respondent is not empowered to recover any tax in excess of fee mentioned in the bye-laws. The notification, dated 10-7-97 (Anncxure P-1), by Nagar Panchayat, Mungaoli, notifying the enhancement of fee is quashed being without jurisdiction.

12. The Court expresses its gratitude for assistance rendered by Shri R.D. Jain, Senior Advocate, as amicus curiae.

13. Petition succeeds and is allowed. There shall be no order as to costs.

14. Writ Petition allowed.