

MUNICIPAL BOARD, HAPUR ETC.

v.

JASSA SINGH AND ORS. ETC.

SEPTEMBER 4, 1996

[K. RAMASWAMY AND FAIZAN UDDIN, JJ.]

*Municipalities :*

*Hapur Municipal Act :*

*Sections 293, 294, 298—Bus stands set up by the Municipality—Stage carriages using them—Fee of 50 paise per day increased to 75 paise per day on the basis of Resolution—Transport operators challenging the power of the Municipality—High Court striking down the demand of fee holding it to be ultra vires the power of the Municipality—On appeal held, it is the duty of the user to pay fee for service rendered by the Municipality, as part of its statutory duty—Constitution of India—Art. 243.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 472 of 1980 Etc.

From the Judgment and Order dated 8.11.79 of the Allahabad High Court in C.M.W.P. No. 13 of 1978.

S. Markandaya and Ms. Chitra Markandaya for the Appellants.

V.J. Francis for the Respondents.

The following Order of the Court was delivered :

*In C.A. No. 472/80*

This appeal by special leave arises from the judgment of the Division Bench of the Allahabad High Court made on November 8, 1979 in CMWP No. 13/78. The admitted position is that all the respondents are transport operators using for their stage carriages the bus stand set up by the appellant-Board in Hapur. When the appellant-Board demanded payment of the fee at the rate of Re. 0.75 per day, though they had been paying fee earlier at the rate of Rs. 0.50 per day, they contended that the municipality was devoid of power. The High Court in the impugned judgment relying

A upon *Jagdish Prasad Bindla v. Municipal Board Atroli & Anr.* in CMWP No 3976 of 1973 decided on July 18, 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?

B The Government in their order dated June 13, 1959 had directed the appellant and all other municipalities as under :

C "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 Order so that no inconvenience is experienced by the people for parking motor vehicles."

D The same direction was reiterated in their further letter dated August 23, 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 February 25, 1961, Item No. 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 No. 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 No. 3 levy of fee has been imposed for parking vehicles, viz., public and private bus carrying passenger at the rate of Re. 0.75 per day or part of the day. It would, thus, be seen that pursuant to the directions 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.

G 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 or 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 :

"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 promoting or maintaining the health safety and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under this Act."

Sub-section (2) thereof, provides 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 exercises of the said power, any bye-law described in list II below.

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 prescribe the fee for use of the public property vesting in or belonging to the municipality. Even under the recent amendment by the Constitution (73rd Amendment) Act, 1992 which came into force w.e.f. April 20, 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(a)(i) envisages that subject to the provisions of the Constitution, the Legislature of a State may, 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 12th 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

- A provided by the municipalities, as a is 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 in ultra vires their power.
- B

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 C.A. No. 12299/96 (@ SLP (C) No. 4006/80*

- C Leave granted.

The appeal is allowed in terms of the above observations made in C.A. No. 472 of 1980.

G.N.

Appeals allowed.