(1983) 10 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 375 of 1982

Dayabhai Punambhai Patel — APPELLANT

Vs

State of M.P. and Another — RESPONDENT

Date of Decision : 12-10-1983

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 127, 129, 357, 357(3), 358(7)
Motor Vehicles Act, 1939 — Section 68(2), 76

Citation : AIR 1984 MP 31

Hon'ble Judges : P.D. Mulye, J;Faizanuddin, J

Bench : Division Bench

Advocate : A.S. Kutumbale, for the Appellant;

Final Decision : Allowed

Judgement

P.D. Mulye, J.—The petitioner, who is a passenger transport operator, has filed this petition under Articles 226 and 227 of the Constitution to quash the resolution No. 26 dated 31-5-1982 passed by the Municipal Council, Anjad (Annexure-B) whereby they have decided to impose Adda Tax or fees at the rate of Rs. 2/- per bus per day which enters or passes through the bus stand at Anjad and in implementation thereof by Annexure-C which is a letter dated 1-6-1982 addressed by the Chief Municipal Officer, Anjad to the petitioner, he has been directed to pay the Adda Tax at Rs. 2/- per day per bus with effect from 1-7-1982.

2. The short facts giving rise to this petition may be stated, in brief thus : The petitioner holds six stage carriage permits to ply passenger buses from Barwani which pass through the area of Anjad Municipality. The respondent No. 1 by Annexure-A; which is a letter dated 1-12-1981 addressed to all the municipalities invited suggestions regarding levy of such a tax or fee. It appears, treating this letter Annexure-A as an order of the State Government the respondent No. 2 Anjad Municipality passed the resolution Annexure-B, in pursuance of which they called upon the petitioner by Annexure-C to pay the said tax at the rate of Rs.

2/- per day per bus with effect from 1-7-82.

3. Despite service of notice the respondents have not filed any returns. Even though SPC was issued to the respondents none of them have appeared at the hearing of this petition.

4. Section 127 of the M. P. Municipalities Act deals with the imposition of taxes which could be levied by the Municipal Council. Section 129 deals with the procedure to be adopted by the Council while imposing any tax as provided u/s 127. According to the provisions of Section 129 when such a resolution has been passed by the Council it is mandatory to publish a notice in the prescribed form and manner along with the resolution and any inhabitant of the municipality objecting to the proposed tax has a right to submit his objections within 30 days from the publication thereof to the Council, whereafter the Council has to take the objections received into consideration at a special meeting and may modify the proposal so as not to affect their substance and then forward them to the State Government along with all the objections received, its decisions thereon and its reasons therefore and the State Government on receiving such proposals can either refuse to sanction them or sanction them as provided in Sub-section (5) of Section 129 of the said Act.

5. The grievance of the petitioner has been that the Anjad Municipality has not declared, a particular place as the bus-stand as laid down u/s 76 and Section 68 (2) (r) and (s) of the Motor Vehicles Act and that u/s 127 of the Municipalities Act, the Municipality is not empowered to levy a tax on halting of vehicles or for a bus-stand without following the prescribed procedure and that even according to Section 358 (7) (m) of the Municipalities Act, the Municipality cannot impose any fees for halting buses because even according to this section a prior sanction of the State Government is necessary as is clear from the opening words itself. Besides, according to Section 357 (3) no prior sanction has been taken from the State Government. For all these reasons it was, therefore, contended that the resolution passed by the Municipality, Anjad Annexure-B is illegal, without jurisdiction and deserves to be quashed and in support of his submission the learned counsel for the petitioner relied on the decisions reported in Sindhi Sahiti Multipurpose Transport Co-operative Society Ltd. Vs. Municipal Council and Another, and 1975 MPLJ 19 (MPSRTC) v. Chief Executive Officer, Dewas Municipality) which fully applies to the facts of the present case.

6. In view of these decisions, this petition is allowed and the levy of the Adda Tax or fee imposed. by the Municipal Council, Anjad (Annexure-B) is struck down as ultra vires and the Municipal Council, Anjad, is restrained from recovering the said fees from the petitioner. The respondent Municipal Council, Anjad, is further directed to refund the entire fees recovered from the petitioner as per Annexure-C, within period of 2 (two) months from today. As none appeared on behalf of the respondents, the petitioner shall bear his costs of this petition. The amount of security deposit on verification be returned to him.

