

(1991) 04 SC CK 0040

In the Supreme Court Of India

Case No : Civil Appeal No. 1914 of 1991 (in S.L.P. No. 16528 of 1989)

Greater Gauhati Rickshaw Traders Association

APPELLANT

Vs

Gauhati Municipal Corporation and others

RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Gauhati Municipal Corporation Act, 1969 — Section 144, 146, 167, 180, 416

Citation : AIR 1991 SC 1553 : (1991) 2 SCC 700 Supp

Hon'ble Judges : K. Ramaswamy, J; A. M. Ahmadi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Delay condoned.

2. Special leave granted.

3. The appellant, placing reliance on Bye-law 26(iv) of the Gauhati Municipal Corporation (Licencing of Rickshaw and Rickshaw Puller) Bye-laws 1976 ('the Bye-laws') contends that the local authority was not competent to recover licence fee in excess of Rs. 10 p.a. for the renewal of the owner's rickshaw licence. Bye-law 26(iv) prescribes the licence fees and transfer fees in respect of owner's licence for a cycle rickshaw or rickshaw van at Rs. 20/- per annum, Puller's licence for cycle rickshaw at Rs. 10/- per annum. Renewal of puller's licence for a cycle rickshaw at Rs. 10/- per annum, renewal of owner's licence for a rickshaw at Rs. 10/- per annum and Transfer fee at Rs. 5/- per case. The appellant contends that in view of this bye-law the demand for renewal of licence fee at Rs. 20/- per annum is not legally justified. Therefore writ petition under Article 226 of the Constitution was filed challenging the demand made by the Municipal Corporation. That writ petition was heard by a Division Bench of the Gauhati High Court which came to the conclusion that the demand was justified as bye-law 26(iv) must be taken to have been amended by the Corporation's resolution dated 30th July, 1974. In this view that the High Court too, the writ petition was

dismissed and the interim order was vacated. Against this decision of the High Court, the appellant has approached this Court under Article 136 of the Constitution. By an interim order of this Court, the appellant was directed to continue to pay the licence fee at the rate of Rs. 10/- per annum. We have now heard learned Counsel for both sides on merits and we are of the opinion that the conclusion reached by the High Court does not demand any interference at our hands though for different reasons. We will briefly state the reasons for upholding the demand made by the local authority.

4. The Gauhati Municipal Corporation came to be constituted w.e.f. 15th February, 1974 under the Gauhati Municipal Corporation Act, 1969 (hereinafter called 'the Act'). Prior to its constitution, the Municipal Board was constituted under the Assam Municipal Act, 1956. The owners of cycle rickshaws were required to pay Rs. 12/- per annum. After the Constitution of the Municipal Corporation, a resolution was passed on 30th July, 1974 whereby the amount was raised from Rs. 12/- to Rs. 20/- per annum. The resolution described the levy as 'licence fee'. The Municipal Commissioner thereafter wrote a letter dated 5th August, 1974 to the Government seeking approval under the proviso to Section 146 of the Act. This was followed by a reminder dated 31st October, 1974. A notification dated 4th March, 1975 was then issued under the signature of the Municipal Commissioner raising the licence fee from Rs. 12/- to Rs. 20/- per annum on cycle rickshaws when kept for use in the city for the conveyance of passengers or goods in accordance with the First Schedule and Section 167 of the Act with the prior approval of the State Government. It will thus be seen that the correspondence which followed after the passing of the resolution dated 30th July, 1974 indicated that the levy was under Sub-section (2) of Section 167 of the Act although it was described as a licence fee. It would, therefore, be appropriate at this stage to refer to the relevant provisions of the Act.

5. Section 144 empowers the Corporation to impose certain taxes including a tax on vehicles other than those mechanically propelled. The procedure for imposing the tax is set out in Section 146. It says that before the Corporation passes any resolution imposing a tax or duty or fees for the first time, it shall direct the Commissioner to publish a notice in the Gazette or in the local newspapers clearly indicating the nature and amount of the tax or duty or fees and the date from which it is proposed to impose such tax, duty or fees. The proviso to that section then provides that any resolution abolishing an existing tax or duty or fees or reducing or increasing the rates at which any tax or duty or fees is levied shall not be carried into effect without the sanction of the Government. Section 167 then deals with levy of tax on certain vehicles, boats and animals. Sub-section (1) of Section 167 reads as under :

Except as hereinafter provided, a tax at rates not exceeding those specified in the First Schedule shall be levied on vehicles, boats and animals of the description specified in the Schedule, when kept for use in the city for the conveyance of passengers in the case of vehicles and boats and for riding,

racing, draught or burden, in the case of animals.

Sub-section (2) provides that the Corporation may, by notification in the Official Gazette, from time to time, increase the rates of tax specified in the Schedule, in relation to any animal, class of vehicle or boat. It will thus be seen that the tax that can be levied on vehicles u/s 167(1) must not exceed the amount stated in the First Schedule, which is Rs. 24/- per annum, and the increase is notified in the Official Gazette. In the present case, as pointed out earlier, after the Municipal Corporation passed the resolution of 30th July, 1974 the State Government's approval was sought under the proviso to Section 146 since the tax was sought to be increased from Rs. 12/- to Rs. 20/- per annum. There is a specific mention in the Municipal Commissioner's letter of 5th August, 1974 that the increase was u/s 167(2) of the Act for which sanction of the State Government was required under the proviso to Section 146. It was pursuant to this letter written by the Municipal Commissioner that the State Government accorded sanction which was followed by the notification issued on 4th March, 1975 under Sub-section (2) of Section 167 of the Act. It will, therefore, be seen that what was intended by the Municipal Corporation was to increase the tax in exercise of power conferred on it by Section 167 of the Act.

6. Learned Counsel for the appellant, however, submitted that the bye-laws were framed in exercise of power conferred by Section 146 read with Sections 167 and 417 of the Act and hence the Municipal Corporation could only recover a fee of Rs. 10/-per annum for the renewal of puller's licence for a cycle rickshaw. As stated earlier, the High Court dealt with this submission and came to the conclusion that the bye-laws stood amended by the resolution of the Municipal Corporation dated 30th July, 1974 which had the approval of the State Government. Learned Counsel for the appellant assailed this finding on the ground that the bye-laws were subsequent to the resolution and, therefore, the resolution could not have amended the bye-laws. That being so, it is necessary to ascertain with reference to the provisions in the Act if the bye-laws come to the rescue of the appellant. Section 180 of the Act states that every person who exercises or carried on in the city, either by himself or by an agent or representative, any of the professions, trades or callings indicated in the Fourth Schedule, shall annually take out a licence and pay for the same such fees as is mentioned in that behalf in the said Schedule. If we turn to the Fourth Schedule, there are three Entries to which our attention was drawn. These are Entries at Serial Nos. 123, 138 and 140. The Entry at Serial No. 123 refers to an owner of ten or more in rickshaws, the Entry at Serial No. 138 refers to an owner of less than ten in rickshaws and the Entry at Serial No. 140 refers to an owner of less than three in rickshaws. In the third column, the licence fee in respect of Entry No. 123 is shown as Rs. 24/-, the licence fee in respect of Entry No. 138 is shown to be Rs. 12/- and the licence fee in respect of Entry No. 140 is shown to be Rs. 6/-. It will thus be seen that none of these three entries speaks of a licence fee of Rs. 20/-or Rs. 10/- per annum. In fact, the Fourth Schedule itself prescribes the licence fee and nothing is left to be prescribed by the bye-laws.

Section 416 empowers the Corporation, to frame bye-laws in respect of the matters enumerated there under. These bye-laws may provide for the publication of rates of taxes 'as determined by the Corporation' from time to time as well as the rendering of necessary licences for the proprietors or drivers of cycle rickshaws and thelas kept or plying for hire. It will thus be seen that the Corporator has to determine the rates of taxes from time to time and only such rates as are determined would be published by the bye-laws. In the instant case, there is nothing on record to show that the Corporation had determined the fees for renewal of licence at Rs. 10/- per annum referred to in bye-law No. 26(iv). The rendering of licences has nothing to do with the levy of licence fee or tax. Therefore, on an examination of Section 416 of the Act it becomes clear that no tax or licence fee can be levied by the bye-laws itself but that is a matter which has to be regulated by Section 146 read with Section 167 or Section 180 of the Act, as the case may be. We are, therefore, of the opinion that the licence fee prescribed by Bye-law 26(iv) does not have the support of Section 146 read with Section 167 of the Act since counsel for the appellant is not able show that the Municipal Corporation had passed any resolution reducing the licence fee to Rs. 10/-per annum for renewal nor can the same be related to Section 180 read with the Fourth Schedule. The said bye-law, therefore, has no efficacy in law. That is perhaps the reason why for several years the payment was made at Rs. 20/- per annum without a demur. We, therefore, do not see any merit in the submission.

7. For the above reasons, we are of the opinion that the conclusion reached by the High Court is unassailable, though for different reasons. We, therefore, do not see any merit in this appeal and dismiss the same and also vacate the interim order. No order as to costs.