(2012) 01 CHH CK 0028

In the Chhattisgarh High Court

Case No : Writ Petition (T) No. 5466 of 2010

Gurpreet Singh Babara — APPELLANT

Vs

State of C.G. and Others — RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Chhattisgarh Motoryan Karadhan Adhiniyam, 1991 — Section 3, 6
Constitution of India, 1950 — Article 162, 265, 277, 73
Motor Vehicles Act, 1988 — Section 117

Citation : (2012) 1 CGBCLJ 439

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Vivek Verma, for the Appellant; V.V.S. Moorthy, D.A.G. for the State/ Respondent No. 1, Shri Shrijith C.S. Nair, Advocate for the Respondent No. 2, Shri Sumesh Bajaj, Advocate for the Respondent No. 3 and Shri M.P.S. Bhatia, Advocate for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the imposition of "stand fee/suvidha shulk'''' on motor vehicles for parking in the bus stand within the limits of respondent No. 2 & 4-Municipal Corporations, Municipal Councils and respondent No. 3, 5, 6 & 7- Nagar Panchayats. Shri Verma, learned counsel appearing for the petitioner would submit that levy and collection of suvidha shulk/ stand fee under the provisions of sections 132 and 133 of the Chhattisgarh Municipal Corporation Act, 1956 (for short ''the Act, 1956'') in case of Municipal Corporations and sections 127 and 129 of the Chhattisgarh Municipalities Act, 1961 (for short, ''the Act, 1961'') in case of Municipalities and Nagar Panchayat, is without competence in view of the bar on imposition of taxes/fee by any local authority u/s 6 of the Madhya Pradesh/ Chhattisgarh Motoryan Karadhan Adhiniyam, 1991 (for short ''the Adhiniyam, 1991''). Shri Verma would further submit that the Municipal Corporation/Municipal Council/ Nagar Panchayats, even with the approval of the State Government, cannot impose tax or fee without having competence under the provisions of law as Article 265 of the Constitution of India clearly provides that no tax/fee shall be levied or collected except by an authority of law.

2. Shri Verma would next contended that section 6 of the Adhiniyam, 1991, enforces a clear embargo on imposition of tax/fee by any local authority under any other enactment, after the Adhiniyam, 1991 came into force. Thus, the levy and imposition of suvidha shulk/stand fees is bad in law. In support of his contention, Shri Verma would rely on a decision of the Supreme Court in Municipal Council, Manasa v. M.P. State Road Transport Corporation, (1997) 11 SCC 640: 1998 AIR SCW 4117 decision of the Division Bench of the High Court of Madhya Pradesh in Mahesh Kumar Singhal & Others v. State of'' M.P. and a decision of this Court in Raghvendra Singh and Others Vs. State of Chhattisgarh and Another, . Shri Verma would further contend that the provisions of section 349 read with section 358(4)(b) (d) or 7(m) of the Act, 1961 also do not provide imposition of licence fee or any other fee for parking vehicles in the bus stand.

3. On the other hand, Shri Bhatia, learned counsel appearing for the respondent No. 5 would submit that the bye-laws were framed by the Municipal Councils for imposition of suvidha shulk/stand fees and the same has been approved and notified properly. It is further submitted that the Supreme Court, in the matter of Cantonment Board, Mhow and Another Vs. M.P. State Road Transport Corpn., held that there is no inconsistency or repugnancy between the provisions of the Adhiniyam, 1991 and the Act, 1961 for imposition and levy u/s 127(1)(iii) of the Act, 1961 in case of imposition of entry tax which was referred with approval in case of Ramgarh Cantonment Board and Another Vs. State of Jharkhand and Others,

4. The Adhiniyam, 1991 is a State Act and the same is enacted with the purpose to levy motor vehicle taxes on the vehicles used or kept for the use in Chhattisgarh. Section 3 of the Adhiniyam, 1991 provides for levy of taxes on every motor vehicle used or kept for use in the State at the rate specified in the First Schedule. Section 6 of the Adhiniyam, 1991 provides for restriction on imposition of taxes by any local authority. The same reads as under:

3. Levy of tax on motor vehicles. - (1) A tax shall be levied on every motor vehicle used or kept for use in the State at the rate specified in the First Schedule:

Provided that the lifetime tax on every motor vehicle shall be levied at the rates specified in the second schedule.

Provided further that in respect of motor vehicle passing through the State from a manufacturer to a dealer under a temporary certificate of registration for a period not exceeding one month, the rate of tax shall be one third of the tax payable for a quarter.

(2) A transport vehicle of which the certificate of registration is current, shall, for

the purpose of this Act, be presumed to have been in use or kept for use, notwithstanding the expiry of the certificate of fitness in case of such transport vehicle.

6. Bar on imposition of tax by any local authority. - Notwithstanding anything contained in any other enactment for the time being in force no local authority shall, after the commencement of this Act, impose or enhance a tax, toll or licence fee in respect of a motor vehicle and if any local authority has imposed such tax, toll or licence since before the first day of April 1942 and the same is still in force at the commencement of this Act any person who is liable to pay such tax, toll or licence fee to such authority shall be deemed to have paid it.

5. Section 132 of the Act, 1956 provides for imposition of taxes and fees, which reads as under:

132. Taxes to be imposed under this Act.-

(1) For the purpose of this Act, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, the following taxes, namely:-

(a) a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 135, 136 and 138.

(b) a water tax, in respect of lands and buildings to which a water supply is furnished from or which are connected by means of pipe with municipal water works.

(c) a general sanitary cess, for the construction and maintenance of public latrines and for removal and disposal of refuse and general cleanliness of the city.

(d) a general lighting tax, where the lighting of public streets and places is undertaken by the corporation.

(e) a general fire tax, for the conduct and management of the fire service and for the protection of life and property in the case of fire.

(f) a local body tax on the entry of such goods as may be declared by the State Government by notification in the official Gazette into the municipal area for consumption use or sale therein at a rate not exceeding four percent of the value of goods.

Provided that no local body tax shall be levied on the gods:

(i) brought by a person into the municipal area for his personal use or consumption; or

(ii) brought by a registered dealer within the municipal area and transmitted within 15 days thereof-

(a) to a registered dealer in any other local body; or

(b) in the course of export out of the territory of India; or

(c) in the course of inter-state trade outside the state.

(iii) Specified in the Schedule to the Madhya Pradesh Sthaniya Kshetron Me Mai Ke Pravesh Par Kar Adhiniyam, 1976 (No. 52 of 1976).

(2) Notwithstanding anything contained in clause (f) of sub-section (1) if in the opinion of the State government it is expedient to do so, it may delegate power to the Corporation to declare the goods on which local body tax shall be levied and the rates thereof.

(3) The mode of assessment and collection of the body tax shall be such as may be prescribed.

(4) The water tax under clause (b) of sub-section (1) shall be charged:-

(a) on buildings and lands which are exempted from property tax, at a rate as shall be determined by the Corporation.

(b) On buildings and lands which are not exempted from property tax at a rate as determined in clause (a) plus such percentage of the property tax, as shall be determined by the Corporation.

Provided that the water tax under clause (b) of sub-section (1) shall not be levied on building and land owned by freedom fighters during their life time, if they are exempted from Income Tax and the water connection is for domestic purpose and which does not exceed half inch connection.

(5) The taxes under clause (c), (d), and (e) of sub-section (1) shall be levied at a consolidated rate as under:

(a) on buildings and lands which are exempted from property tax at a rate determined by the corporation.

(b) on buildings and lands which are not exempted from property tax at a rate prescribed under clause (a) plus such percentage of the property tax as may be determined by the Corporation.

(6) In addition to the taxes specified in sub-section (1), the Corporation may, for the purpose of this Act, subject to any general or special order which the State Government may make in this behalf, impose any of the following taxes, namely:-

(a) a latrine or conservancy tax payable by the occupier or owner upon private latrines, privies or cesspools or open premises or compounds cleansed by Corporation agency;

(b) a drainage tax, where a system of drainage has been introduced;

(c) a tax on persons exercising any profession or art or carrying on any trade or calling within the city.

[(d)-(e) xxx]

(f) fees on the registration of cattle sold within the city;

(g) market dues on persons exposing goods for sale in any market or in any place belonging to or under the control of the Government or of the Corporation;

(h) a betterment tax on properties whose value may have improved as a result of town planning scheme undertaken by the Corporation;

(i) a tax on pilgrims resorting periodically to a shrine within the limits of the Corporation;

(j) a tax on persons occupying, houses, buildings or lands within the limits of the Corporation according to their circumstances and property;

(k) a toll on new bridge constructed by the Corporation; (1) a tax on advertisements other than advertisements published in newspapers;

(m) a tax on theatres, theatrical performances and other shows for public amusement;

(n) a terminal tax on goods or animals exported from the limits of the Corporation; and

(o) any other tax which the State Government has power to impose under the Constitution of India, with the prior approval of the State Government.

(7) Subject to the provisions of Article 277 of the Constitution of India, any tax which immediately before the commencement of the Madhya Pradesh Municipal Corporation Law (Extension) Act, 1960 (No. 13 of 1961) was being lawfully levied by the Corporation, may notwithstanding that such tax is not specified in sub-section (I) or (6), continue to be levied by the Corporation.

(8) The imposition of any tax under this section shall be subject to the provisions of this Act and of any other enactment for the time being in force.

(9) [xxx]

10. Notwithstanding anything contained in this Chapter, the Corporation may impose upon properties specified in clause (a) of Section 136, all or any of the taxes specified in clauses (b). (c) and (d) of sub-section (I) and clause (b) of sub-section (6) at a rate, in excess of the rate at which such tax is imposed, on other properties under the respective clauses, as the State Government may, by notification specify.

6. Section 127 of the Act, 1961, which is applicable in case of Municipal councils and Nagar Panchayats also, provides for imposition of taxes, as aforestated.

7. Section 133 of the Act, 1956 and section 129 of the Act, 1961 deal with

procedure for imposition of tax and fee as specified in the respective Acts. Section 133(b) of the Chhattisgarh amendment deals with the power of the State Government to require the Corporation to impose tax in municipal corporations. The charging sections provisions of both the Acts i.e. Act, 1956 and Act, 1961 are section 132 and section 127 respectively and as such, nothing more beyond what is provided in the charging sections can be enforced under the provisions of section 133 of the Act, 1956 and section 129 of the Act, 1961.

8. Article 265 of the Constitution of India, reads as under:

265. Taxes not to be imposed save by authority of law.--No tax shall be levied or collected except by authority of law.

9. Section 132(1)(f) of the Act, 1956 provides for levy of local body tax on the entry of such goods as may be declared by the State Government by notification in the official gazettee into the municipal area for consumption, use or sale therein at the rate not exceeding four percent of the value of goods. Section 127 (1)(f) of the Act, 1961 also, which is in identical terms, provides for imposition of local body taxes, as aforestated at the same rate. There is no other provision under the Act, 1956 or the Act, 1961 for imposition of any other taxes in respect of vehicles for parking in the form of suvidha shulk/stand fee.

10. Section 349 of the Act, 1961 provides for fees for licence and permission as may be prescribed by bye-laws for any licence granted under this Act or any permission granted under this Act for making any temporary erection or for putting up any projection or for the temporary occupation of any public street or any land or building belonging to the council or any application or appeal made to or filed before the council under this Act, and for giving copies of its order or other documents, and as such, no fee or licence can be provided under the bye-laws which are not specifically authorised under the charging section of the statute i.e. in the instant case, section 132 and 127 of the Act, 1956 and 1961 respectively.

11. In the instant case, the contention of the respondents are that in case of Surajpur, Surguja, they have imposed suvidha shulk/stand fee under clause (6) of the bye-laws namely Surajpur Municipality Temporary Occupation of Streets and Public Places Bye-laws, 1985. No other municipalities or nagar panchayats have produced a copy of the document in support of the above contention that the bye-laws were framed in exercise of powers conferred under sub section (3) of section 357 of the Act, 1961. Section 357(3) of the Act, 1961 clearly provides that all the bye-laws for which a provision is made in this Act, shall be made by the Council and shall be consistent with this Act and with the rules made thereunder. Sub-section (3) of section 357 of the Act, 1961 clarifies that unless specifically excepted in this Act from the operation of this sub-section no bye-law shall take effect until it has been confirmed by the State Government. Clause 4(b) of section 358 of the Act, 1961 is in respect of regulating the conditions subject to which permission may be given for temporary occupation of or

erection of temporary structures on public streets or for projections over public streets and places. Clause (4)(g) of section 358 of the Act, 1961 deals with permission, regulation or prohibition of use or occupation of any street or place by itinerant vendors or hawkers or by any person for the sale of articles or the exercise of any calling or the setting up of any booth or stall and the fees chargeable for such occupation. Thus, even under the bye-laws, tax or aforestated fee cannot be levied and collected, as the same are not provided under the provisions of the Act.

12. As aforestated, there is a provision of entry tax which is altogether a different subject. Entry tax is imposable on the entry of such goods as may be declared by the State Government by notification in the official Gazette into the municipal area for consumption use or sale therein at a rate not exceeding four percent of the value of goods. In the instant case, challenge is to the imposition of suvidha shulk/stand fees. Thus, the above stated imposition of suvidha shulk/ stand fees is without authority of law as the same is not provided even under the provisions of the Act, 1956 or the Act, 1961.

13. Section 6 of the Adhiniyam, 1991 clearly puts an embargo on imposition of any taxes by any local authority. So far as imposition of fee or tax is concerned, there is no difference as tax or the fee may be imposed only by an authority of law under Article 265 of the Constitution of India.

14. In Municipal Council, Manasal, the issue involved was imposition of levy of toll tax on the motor vehicles as provided under sub section 1(iii) of section 127 of the Madhya Pradesh Municipalities Act, 1961, as it then was. The Supreme Court, upholding the view taken by the High Court held that the Madhya Pradesh Motor Vehicles Taxation Act, 1947 was a special enactment while the Municipalities Act, was a general enactment. Thus, u/s 127(1)(iii) of the Municipalities Act, vehicles means other than motor vehicles.

15. In Cantonment Board, Mhow, heavily relied on by the respondents, the question was the same wherein the Supreme Court, without referring to Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another, , held as under:

8 Since the Taxation Act does not provide for any imposition of tax on entry of the motor vehicles within municipal limits whereas the Municipal Act authorises for such levy u/s 127(I)("7) we do not find any inconsistency or repugnancy between the two provisions. In other words while under the Motor Vehicles Taxation Act a tax could be imposed on motor vehicles used or kept for use by the registering authority, no such imposition can again be made by any local authority including the municipalities u/s 127(1)(n) of the Municipalities Act But so far as the imposition of tax on motor vehicles entering into the municipal limits is concerned, which is provided u/s 127(1)(///) of the Municipalities Act, the said provision cannot be said to be repugnant to the special statute in respect of motor vehicles, namely, the Motor Vehicles Taxation Act.

16. In Municipal Board, Hapur etc. Vs. Jassa Singh and others, the provisions of section 298 of the U.P. Municipalities Act, 1916 was under consideration wherein the Supreme Court held that the Board was empowered statutorily to prescribe fee for the use of public property vested or belonging to the Municipalities.

17. In Ernakulam District Private Bus Operators Association Vs. State of Kerala, a Division Bench of the High Court, while considering section 472 of the Kerala Municipalities Act, 1994 read with section 117 of the Motor Vehicles Act, 1988 (for short, the MV Act'') is not relevant as the provisions of section 472 of the Kerala Municipalities Act, is different from the provisions of the Act, 1956 or the Act. 1961.

18. Another important aspect in the matter is provisions of section 117 of the MV Act, which is a central Act, and has an overriding effect on the State enactments. Section 117 of the MV Act provides that the State government or any authority authorised in this behalf by the State Government, may in consultation with the local authority having jurisdiction of the area concerned, determine places at which motor vehicles may stand either indefinetly or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers. For the purpose of declaring a particular place as a parking place or specified place, where the motor vehicles may stand, there should be a proper notification in consultation by the State Government or by an authority authorised by the State Government in consultation with the local authority having jurisdiction in the area.

19. In the instant case, the respondents have failed to produce any document, notification showing that a particular place where the vehicles are parked temporarily or permanently, have duly been notified by the State Government in accordance with the provisions of Section 117 of the MV Act. The Madhya Pradesh/Chhattisgarh Motor Vehicles Rules, 1994 (for short, the MV Rules'') was framed by the then State of Madhya Pradesh in exercise of its power conferred under the provisions of the MV Act, which has been adapted by the State of Chhattisgarh.

20. Chapter 8 of the MV Rules provides for control of traffic. Under Rule 203 of the MV Rules, which provides for maintenance and management of parking places, the District Magistrate alone is competent to declare a place as parking place for different category of vehicles in consultation with the Superintendent of Police and the local body by notification in the official gazettee for maintenance of parking places under certain conditions. Fee may also be prescribed and levied by the District Magistrate for parking of the vehicles. Under this rule only, the authorities can maintain and manage the parking places. The respondents have failed to produce any such document, notification showing that a particular place where the vehicles are parked temporarily or permanently has duly been notified by the State Government as prescribed under the provisions of section 117 of the MV Act. The impugned levy and collection of suvidha shulk/stand fee is not in

accordance with section 117 of the MV Act and Rule 203 of the MV Rules. Thus, levy and collection of suvidha shulk/stand fees for the purpose of providing parking place and its maintenance, is without authority of law as has already been stated above that there is no such provision under the provisions of the Act. 1956 or the Act, 1961.

21. Rule 204 of the MV Rules provides for maintenance and management of stands which reads as under:

204: Maintenance and Management of stands.-(I) The Regional Transport Authority by notification in the official gazette, or by the erection of appropriate traffic sign of the Schedule of the Act or both, may in respect of the taking up or setting down the passengers or both by public service vehicles or by specified clause of public service vehicles: (a) Conditionally or unconditionally prohibits the use of any specified place or of any place of a specified nature or class, or (b) Require that within the limit of any Municipal Corporation, Municipality notified area or cantonment, or within such other limits as may be specified in the notification certain specified stands only shall be so used:

Provided that no place which is privately owned shall be so notified except with the previous consent in writing of owner thereof.

(2) Where a place has been notified or has been demarcated by traffic signs or both, as being stand for the purpose of this rule, then not withstanding that this land is in possession of any person, the place shall subject to the provisions of these rules, may be deemed to be a public place within the meaning of the Act and the Regional Transport Authority may enter into an agreement with, or grant a licence to any person or local body or State Transport Undertaking for the purpose of maintenance of the building of works necessary thereto subject to the termination of the agreement or licence forthwith upon the breach of any condition thereof and may otherwise make rules or give directions:

(i) Prescribing the fees to be paid by the owners of public service vehicle using the place and providing for the receipt and disposal of such fees;

(ii) Specifying the Public Service Vehicles or the clause of public ser-vice vehicles which shall use the place which shall not use the place.

(iii) Appointing a person to be the manager of the place and specifying the power and the duties of the manager;

(iv) Requiring the owner of the land, or the local body or the State Transport Undertaking as the case may be, to erect such shelters, lavatories and latrines and to execute such other works as may be specified in the rules or in the directions and to maintain the same in a serviceable clean and sanitary condition.

(v) Requiring the owner of the land or local body or the State Transport Undertaking as the case may be, to arrange for the free supply of drinking water for passengers including intending passengers;

(vi) prohibiting the use of such place by specified persons or by other than specified persons.

(3) If the owner of the land, local body or State Transport Undertaking, as the case may be, fails to comply with any rule or direction made or given to him under this Rule, the Regional Transport Authority may prohibit the use of such place for the purpose of this rule.

22. The provisions of levy of taxes on vehicles etc. which was considered and decided by the Supreme court in Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another, has been substituted by section 132 of the Act, 1956 by M.P. Act No. 18 of 1997 and there is no other provision for levy of any taxes on vehicles. The same has been substituted by section 132(f) in case of Municipal Corporation, wherein it is only on entry of such goods in the municipal area for consumption, use or sale at the rate specified therein, and not on the vehicles. Likewise, in the Act, 1961, section 127 has been substituted by M.P. Act No. 18 of 1997 wherein identical provision of local body tax on the entry of such goods have been incorporated and there is no other tax on vehicles.

23. The Supreme Court, in Muhammadbhai Khudabux Chhipa v. State of Gujarat, held that fees are also included within the taxing power of the legislature.

24. In Commissioner of Income Tax, Udaipur Rajasthan Vs. Mcdowell and Co. Ltd., , the Supreme Court observed as under:

21. "Tax", "duty", "cess" or "fee" constituting a class denotes to various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kind of impost depending on the purpose for which they are levied. This power can be exercised in any of its manifestation only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only the expression that no "tax" shall be levied and collected except authorised by law. It in its elementary meaning conveys that to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State.

25. A nine-Judges Bench of the Hon''ble Supreme Court, in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , observed that Article 265 of the Constitution of India will have to be given full effect in cases of direct as well as indirect taxation.

26. The Supreme Court, in Consumer Online Foundation, etc. Vs. Union of India (UOI) and Others, etc., , held as under:

23. It is a settled principle of statutory interpretation that any compulsory exaction of money by the Government such as a tax or a cess has to be strictly in accordance with law and for these reasons a taxing statute has to be strictly construed.

27. Thus, section 6 of the Adhiniyam, 1991 would be applicable in full force. For the reasons stated hereinabove, this Court is of the considered opinion that the imposition of suvidha shulk/ stand fees by the local authorities is without authority of law and is accordingly quashed. Accordingly, the writ petition is allowed. No order as to costs.