

(1990) 09 AHC CK 0015

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 435 of 1990

Hardoi Roadways (Private) Union, Hardoi and another

APPELLANT

Vs

Contonment Board, Shahjahanpur and others

RESPONDENT

Date of Decision : 11-09-1990

Acts Referred:

Cantonments Act, 1924 — Section 60
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 117

Citation : AIR 1991 All 59 : (1990) 2 UPLBEC 1253

Hon'ble Judges : Reddy, C.J;R.A. Sharma, J;B.P. Jeevan, J

Bench : Full Bench

Advocate : M.M. Ghirdayal, L.P. Naithani and U.K. Srivastava, for the Appellant;
Ajit Kumar, S.C., for the Respondent

Final Decision : Disposed Of

Judgement

R.A. Sharma, J.—Pititioner No. 2 is an existing operator holding stage carriage permit on Lucknow-Shahjahanpur route. Petitioner No. 1 claims to be an Union of private bus-operators, plying their buses on Lucknow-Shahjahanpur route. Both the petitioners have challenged fixation of bus-stand/parking place by Cantonment-Board, Shahjahanpur and charging parking fees in excess of the rates notified by auction notice, which has been filed as Annexure-2 to the writ petition.

2. At the admission stage the Cantonment Board Shahjahanpur has filed a counter affidavit. The respondent No. 3, who is contractor of the Cantonment Board, has also been served, but has not put in any appearance before this Court. The writ petition is accordingly being disposed of in accordance with Rules of the Court.

3. .Hardoi Roadways (Private) Union, petitioner No. 1, in our opinion, is not entitled to file the writ petition for and on behalf of transport operators. Right to ply stage carriage is derived by operators from permits granted to them under

Motor Vehicles Act. A transport operator can challenge any action of an authority if it affects him adversely. It is not the case of the petitioners that the Union holds any stage carriage permit or that any of its rights are being infringed by the action of the respondents. It is also not the case of public interest litigation where a person or association can espouse cause of others who are incapable of espousing their own cause on account of poverty etc. The Union, as such, has no locus standi to file this writ petition and the writ petition so far as the Union, Petitioner No. 1 is concerned, is dismissed.

4. As regards the grievance of the petitioner No. 2 is concerned, the fixation of bus-stand/ parking place have been challenged on the ground that the Cantonment Board has no jurisdiction to fix a bus-stand. The case set-up by the Board in its counter-affidavit is that it has allotted some of its property for use as parking place and those who park their vehicles voluntarily on the aforesaid property are charged fee as compensation for use of the property of the Cantonment Board and the Board does not coerce or compel the petitioners or any other vehicle owners to station their vehicles on the property of the Board. The Board has not claimed any statutory right to fix bus-stand or parking place. Its case is that if anybody uses the property of the Board he has to pay compensation in the form of fees for use of its property. In view of the stand taken by the Board in its counter-affidavit, it is not necessary for us to decide as to whether Cantonment Board has power to fix a bus-stand so as to compel the vehicle owners to station their vehicles, on the bus-stand, because even if Local Body does not have a power for fixing bus-stand it can still provide a bus-stand for anybody who likes to use it voluntarily and such person being required to make payment of fee for its use. In *Municipal Council, Bhopal Vs. Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd. and Another*, the Supreme Court, after holding that Municipal Board has no power under the provisions of the Madhya Pradesh Municipalities Act to fix a bus stand, has laid down that even if Municipal Council has no statutory power for fixing bus stand:

"there can be no objection to its providing a bus stand for anybody who choose to use it voluntarily and to such person being required to pay for such use. In that sense propositions 2 and 3 put forward by Mr. Chagla are inexceptionable. If for this permission the formality of the issue of a permit is followed and a fee is charged it cannot be said to be objectionable. In that case the charges may be such as may be agreed upon between the parties i.e. if the Municipality charges a certain rate only people who are prepared to pay at that rate would resort to that place. Nobody can be compelled to go to that place. Such a provision is permissible not under any provisions of the Madhya Pradesh Municipalities Act but arises out of the right which the Municipal Council, like the owner of any other property has, to permit people to use any property belonging to it only on certain conditions".

No exception can be taken to parking place fixed by the Cantonment Board as petitioners are not compelled to park their buses over there. However, if the

petitioner or any other operator chooses to station his vehicle in parking place fixed by the Board, they have to pay fee compensation for the use of the property of the Board.

5. Learned counsel for the petitioner has further argued that Cantonment Board can charge fee for use of its parking place at the rate specified/notified by it and it has no jurisdiction to charge any amount in excess of the notified rate. In this connection, the learned counsel for the petitioners has invited our attention to the auction notice which has been filed as Annexure 2 to the writ petition, which contains terms and conditions for collecting fees by a contractor on behalf of Cantonment Board from the owners of the buses at the rate of Rs. 60/- per month from each bus owners/drivers as parking fee. The grievance of the petitioner is that although the Cantonment Board has notified fee at the rate of Rs. 60/- per month per bus, but the contractor (respondent No. 3) is charging at exorbitant rate, and, representation made by the petitioners in this connection to the Cantonment Board had remained un-heeded. No such allegations have been made by the petitioner in writ petition. However, in para 5 of the Supplementary Affidavit of Jamal Ahmad it has been averred that contractor is charging parking-fees from the petitioners at the rate of Rs. 30/- to Rs. 40/- per day instead of Rs. 2/- per day. In this connection certain complaints are alleged to have been made by petitioners to the Cantonment Board. This Supplementary Affidavit was sworn on 5th April, 1990 at Aliahabad whereas the period of the contractor for collecting fee on behalf of Cantonment Board commenced from 1-4-1989. Complaints in the form of telegrams have also been filed as Annexures to the supplementary affidavit and from postal receipt it is clear that some of these complaints were despatched on 1-4-1989. It appears that the complaints have been made even from the date the contractor started collection of the fee. The allegations in the supplementary affidavit could at best contain the position upto 4-4-1990. There is paucity of material on record to justify the grievance of the petitioner. The learned counsel for Cantonment Board has stated that on account of stay order passed by this court in this petition the contractor has shown his inability to charge any parking fee, as is clear from his letter dated 14-4-1990, which has been filed as Annexure-1 to the counter-affidavit. Be that as it may, it is not possible for us to decide this controversy about charging of excessive fee on the basis of material available on the record of this petition.

6. In this connection we may, however, observe that the Cantonment Board being a statutory authority has certain constitutional and statutory obligations and its actions are liable to be judged on touch-stone of fairness, reasonableness and equality of treatment. The Board cannot act arbitrarily and its actions must conform to standard and norms fixed by it. It is open to the Board to charge parking fee for use of its property "by the! owners of the vehicles, but fee is to be charged at the rate fixed by it and it is not open to it or its agent (contractor) to charge parking fee at" the higher rate. Although Cantonment Board has right to enhance parking fee from time to time, if circumstances so warrant, but at any, given time fee charged by the Board, its official or Agent (Contractor)

cannot be in excess of the specified rate. It is the duty of the Board to see that its officials and agent (contractor) charge fee at the specified rate and if any complaint is received by it regarding charging of excess fee it is under obligation to enquire into it and set the matter right.

7. Learned counsel for Cantonment Board has, however, argued that charging of parking fee is the matter of contract and this court cannot issue any direction in connection therewith under Art. 226 of the Constitution of India. It is not possible for us to agree with the learned counsel. Act of the officials or, agents of the Cantonment Board which are unfair, illegal and mala fide, can be interfered with by this court under Art. 226 of the Constitution of India, although this court does not interfere if relations are governed by non-statutory contract. In the instant case there is no question of enforcing any contract between the parties, and what is complained of is that the official and agent of the Board are charging parking fee at a rate in excess of the notified rate. In such a situation this court has all the power to interfere if actions of the authority are found to be wrong.

8. For the reasons given above this writ petition is finally disposed of without there being any order as to costs.

9. Order accordingly.