

(2003) 07 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23210 of 2001

Janpad Auto Rickshaw Chalak Sangh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 132, 298, 44(3)

Citation : (2003) 6 AWC 5406 : (2003) 3 UPLBEC 2302

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : J.P. Singh, for the Appellant; Govind Krishna and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned bye-laws dated 28.6.1999 Annexure 3 to writ petition which were published in U.P. Gazette dated 20.5.2000. The petitioners also prayed that respondent Nos. 4 and 5 be directed not to realize licence fee from Auto-Rickshaws and not to harass their operators in this connection.

2. The petitioner No. 1 is a registered Union of Auto-Rickshaw Operators Society and petitioner No. 2 is the Secretary of the Society. It is alleged in Para 3 of the petition that the Nagar Palika Parishad, Azamgarh respondent No. 4 has been in the habit of imposing illegal taxes on Auto-Rickshaws and hence a Writ Petition No. 543 of 2000 had been filed in this Court which was disposed of by judgment dated 11.7.2000 Annexure 1 to the petition. By that order petitioner was directed to make a representation to the Nagar Palika Parishad.

3. In Para 4 of the petition it is stated that on 30.4.2001 the Chairman, Nagar Palika Parishad, Azamgarh notified the rate of annual licence fee to be implemented from 1.4.2001. True copy of the notification dated 30.4.2001 is Annexure 2. The rate schedule has been fixed in accordance with the bye-laws

published in U.P. Gazette dated 20.3.2000 Annexure 3 to the petition.

4. A perusal of Annexure 3 shows that the notification has been issued u/s 298 of the U.P. Municipalities Act, 1916 which gives the power to the Municipal Board to frame bye-laws. Section 298(1) of the U.P. Municipalities Act states :

"298. Power of Board to make bye-laws.-(1) 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 of promoting or maintaining the health, safety and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under this Act.

(2) 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 below, and the Board of a municipality, wholly, or in part, situated in a hilly tract may further make, in the exercise of the said power and bye-law described in List II below."

5. It is alleged in Paras 6, 7 and 10 of the petition that the licence fee can only be realized if some service is rendered by the Nagar Palika but it is alleged that the Nagar Palika Parishad, Azamgarh does not render any service to the Auto Rickshaws Operators. It is alleged in Para 11 of the petition that the impugned bye-laws were published without complying with the provisions of Section 44(3) and Section 132 of the U.P. Municipalities Act. In Para 12 of the petition it is stated that without approval of the Board and earlier Chairman of the Nagar Palika sent the impugned bye laws for publication in the Gazette on 28.6.99. A true copy of the letter of the Chairman dated 28.6.99 in this connection is Annexure 4. It is alleged that in the absence of any approval by the Board, the impugned bye-laws could not have been given effect to. In Para 14 it is stated that the impugned bye-laws were framed without inviting proper objections as per rules. However, a news item was published in Rashtriya Sahara in Lucknow but it is alleged that the local inhabitants were not in a position to see the news item and objections were not filed. It is alleged in Para 16 of the petition that there is a lot of resentment in the general public as well as in the owners of Auto Rickshaws. It is alleged that the fee imposed is unreasonable.

6. A counter-affidavit has been filed on behalf of the Nagar Palika Parishad and we have perused the same. In Para 5 it is stated that the petitioners had tried to create confusion between Tempo and Auto Rickshaw. It is stated that Tempo consists of 7 passengers whereas Auto Rickshaw consists of 2 or 4 passengers as indicated in the G.O. dated 29.9.92 issued by the U.P. State Road Transport Corporation vide Annexure CA-I. In Para 7 of the counter-affidavit it is stated that the State Government imposed licence fees on Auto Rickshaws after following the legal procedure. In Para 12 of the counter-affidavit it is denied that the Nagar Palika Parishad is in the habit of imposing illegal taxes on the Auto Rickshaw. It is stated in Para 14 that the licence fee has been levied in

accordance with law in order to maintain the roads, for providing light, sanitations and other facilities. In Para 19 it is stated that the letter dated 28.6.99 indicates that the same had been sent for publication to the Government Press, Allahabad. The State of U.P. had framed model bye-laws and sent them for implementation. In Para 20 it is stated that the bye-laws have been enforced on account of the G.O of the State Government dated 15.2.99,-and as such there is no need of approval by the State Government. In Para 21 it is stated that the publication has been made in "Rastriya Sahara" which is a daily news paper having wide circulation all over U.P. The allegation that local inhabitants were not in a position to see the advertisement was denied.

7. We have also perused the rejoinder-affidavit.

8. Annexure 3 to the petition indicates that the fees for licence of Auto Rickshaw is Rs. 500/- per year which works out to about Rs. 40/- per month. Hence, the impugned fee is not in anyway exorbitant or arbitrary. Similar notification imposing licence fees on vehicles; nursing homes, insurance companies, etc. has been upheld by us in Writ Petition No. 1403 of 1999, United India Insurance Co. Ltd. v. Nagar Nigam, Allahabad, decided on 19.5.2003. In this decision we followed the decision of the Division Bench in Chakresh Kumar Jain and Others Vs. State of Uttar Pradesh and Others, . As stated in Paras 14 and 17 of the counter-affidavit, several services are being provided by the Nagar Palika in this connection, and hence it cannot be said that there is no quid pro quo.

9. As regards Section 132 of the U.P. Municipalities Act, the same has no applicability because that relates to taxes and not fees. Thus, there is no force in this petition. The writ petition is dismissed.