(2006) 05 GAU CK 0076

In the Gauhati High Court

Jayanta Kalita APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:
Assam Municipal Act, 1956 — Section 117, 148, 148(1), 148(2), 148(3)

Citation : (2009) 3 GLR 297

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—The petitioner, who, being a permit-holder of stage carriage, plies buses on different routes passing through the districts of Sibsagar, Dibrugarh and Tinsukia, has challenged the legality of the order, dated 29.5.2004, whereby respondent Nos. 2 and 3, namely, Naharkatia Town Committee, represented by its Chairman, i.e., respondent No. 3, has granted settlement of a public bus stand for the year 2004-05 in favour of respondent No. 4.

2. Put in a nutshell, the case of the petitioner runs as follows:

While plying his buses on the routes permitted in Terms of the permits for stage carriage issued to him, the petitioner stops his buses en route, at Naharkatia Town, for dropping passengers and also to pick up passengers for taking them to Duliajan, Moran and some other places. The Naharkatia Town Committee (''the respondent Town Committee'') has started realizing parking fees from the vehicles including the vehicles of the petitioner, when the petitioner''s vehicles stop, at Naharkatia Town, to pick up passengers or to drop passengers. The place, where the vehicles so stop, is a strip of land, located by the side of the highway, the said strip of the land measuring about 40 feet in length and 15 feet in breadth. There is no structure or any other facilities like water, sitting accommodation for passengers, waiting room, ticket-counter and/or lights for convenience of the passengers. Thus, the respondent Town Committee has not provided any infrastructure on the said land to call it a bus stand. Without, however, providing any infrastructure or facilities, as indicated hereinbefore, the respondent Town Committee has, vide impugned order, dated 29.5.2004, appointed respondent No. 4 as a lessee for the year 2004-05 of the said parking area and, on being so appointed, the lessee has started collecting parking fees. The land, in question, where the buses so stop, does not belong to the respondent Town Committee, but to the Public Works Department, Government of Assam. Thus, when the land, in question, does not belong to the respondent Town Committee and when the respondent Town Committee has not provided any infrastructural facilities, as pointed out hereinbefore, the respondent Town Committee is not entitled to collect any parking fees. This apart, parking fees cannot be collected by any Town Committee without obtaining requisite sanction from the State Government in terms of Clause (n) of Sub-section (1) of Section 68 of the Assam Municipal Act, 1956.

3. The respondent Town Committee has resisted the writ petition by contending, inter alia, that though the land, in question, is a Government land, the respondent Town Committee is in permissive occupation thereof. The land, in question, does not form part of the highway and that it is a plot of land, located by the side of the road, where parking of buses is allowed and it is on account of the fact that parking facility for the buses has been provided by the respondent Town Committee, at the said place, that the respondent Town Committee has imposed parking fees. As the buses stop there not only for the passengers to alight, but also for the passengers to board in, the respondent Town Committee is entitled to collect parking fees within the ambit of the powers nested in it u/s 148 of the Assam Municipal Act, 1956. Following a proper tender process, respondent Town Committee has appointed respondent No. 4 as the lessee for the said parking place, because the respondent No. 4 was found to be the highest bidder.

4. I have heard Mr. D.P. Chaliha, learned senior counsel, appearing on behalf of the petitioner, and Mr. A. Buragohain, learned Additional Advocate General, Assam, appearing on behalf of the respondent No. 1. I have also heard Mr. B. Malakar, learned counsel, for the respondent Nos. 2 and 3.

5. The moot questions, which fall for determination in the present writ petition, are as follows:

(i) Can a Municipal Board or a Town Committee collect parking fees without obtaining sanction from the Government, in this regard, and, if so, where lies the power of a Municipal Board or a Town Committee to impose and collect such parking fees?

(ii) For the purpose of collecting parking fees, is it necessary that the land, which is used as a parking place or which is established as a parking place by a Town Committee or a Municipal Board, must belong to, and be owned by, the Town Committee or the Municipal Board concerned?

(iii) Whether in the facts and circumstances of the present case, the respondent Town Committee has legally and justifiably appointed respondent No. 4 to collect parking fees?

6. In the present writ petition, since it has been contended, on behalf of the writ petitioner, that a Municipal Board cannot impose parking fees except with requisite sanction granted, in this regard, by the State Government in terms of Clause (n) of Sub-section (1) of Section 68 of the said Act, Section 68 is reproduced here in below:

68. Taxes. - (1) Subject to the provisions of this Act and the rules made hereunder, the Board may, from time to time, at a meeting convened expressly for the purpose, of which due notice, shall have been given, impose, within the limits of the municipality, the following taxes, fees and tolls, or any of them:

(a) a tax on holdings situated within the municipality assessed on their annual value, payable by the owner;

(b) a water-tax payable by the owner or occupter, on the annual value of holdings;

(c) a lighting-tax, payable by the owner or occupier, on the annual value of holdings;

(d) a latrine-tax, payable by the owner or occupier, on the annual value of holdings;

(e) a drainage-tax payable by the owner, where a system of drainage has been introduced;

(f) a tax on private markets payable by the owner;

(g) licence fees on carts, carriages and animals used for riding, or burden;

(h) a fee on the registration of dogs and cattle;

(i) a fee on boats mooring within the Municipality;

(j) toll and on bridges;

(k) a betterment fee on holdings in any area of which value has increased due to improvement schemes completed at Board''s cost;

l) fees for setting up and maintenance of fire brigade;

(m) fees for conducting at the cost of the Board, any scheme of social service for the improvement of public health;

(n) with the sanction of the State Government any other tax, toll, rate or fee;

Provided,-

(i) that both the taxes mentioned in clauses (a) and (f) shall not be imposed in respect of the same premises;

(ii) that when the Board has taken a loan form or guaranteed by the State Government, the Board shall not, without the previous sanction of, the State Government, make any alteration in respect of any tax which may have the effect of reducing the income of the Board; and

(iii) the State Government may, by order, exempt from the payment of any rate, tax, toll or fee payable under the provisions of this Act, any diplomatic or consular mission of a foreign State and the diplomatic and consular officer of such mission.

(o) licence fee on boats.

(2) Taxes of providing Public Utility Services. - The Board may, form time to time at a meeting convened as aforesaid, and in accordant with a scale of fees to be approved by the State Government charge a fee in respect of the issue and the renewal of any licence which may be grantpd by the Board under the Act and in respect of which no fee is leviable under Sub-section (1).

(3) Nothing in this section shall authorise the imposition of any tax or fee which the State Legislature has no power to impose in the State under the Constitution.

7. Before endeavour to ascertain the scope and ambit of Section 68 of the Assam Municipal Act, 1956, is made, pertinent it is to point out that under the scheme of the said Act, as reflected by a combined reading of Sections 334 and 335 thereof, the State Government may, before constituting a Municipal Board in respect of an area, constitute, during the transactional period, a Committee and the Committee, so constituted, has been termed as Town Committee. To a Town Committee, the provisions of, amongst others, Sections 68, 69, 117 and 148 have been made applicable. Thus, the powers, which are available to a Municipal Board under Sections 68, 69, 117 and 148 of the said Act, are also made available to a Town Committee.

8. As a corollary to what have been pointed out above, it becomes clear that a Town Committee, constituted under the said Act, such as the respondent Town Committee, enjoys the same very powers, which are available to a Municipal Board under the scheme of the said Act so far as Sections 68, 69, 117 and 148 are concerned. In fact, there is no dispute before me that Naharkatia Town Committee is one of the Town Committees established under the provisions of the said Act and enjoys the powers, which are available to a Municipal Board under Sections 68, 69, 117 and 148.

9. Bearing in mind what has been indicated above, when I turn to determine the scope and ambit of Section 68, what attracts the attention is that the Assam Municipal Act, 1956, has undergone, in the year 1994, significant amendments with regard to the powers of the Municipal Board or Town Committee, as the case may be, to levy tax, toils and fees and these amendments, as I shall shortly show, would have great bearing on the interpretation of Section 68 in the post-

amendment period.

10. From a careful reading of what Section 68 embodies, it becomes abundantly clear that Section 68 does not permit a Municipal Board or a Town Committee to levy parking fees, for, none of the Clauses embodied in Sub-section (1) of Section 68 specifically empowers a Municipal Board or a Town Committee to levy parking fees.

11. A careful reading, as a whole, of Section 68 also reveals that levy of parking fees was possible if sanction, in terms of clause (n) of Sub-section (1) of Section 68, was granted by the. State Government, for, Clause (n) of Sub-section (1) of Section 68 empowers Municipal Board or a Town Committee to impose, with the sanction of the State Government, any fees, which obviously would include parking fees.

12. Before proceeding any further, what may also be pointed out is that Section 148 of the said Act; as the same stood before the amendment, which this Section has undergone in the year 1994, read as follows:

148. (1) The Board at a meeting may use their own land or building or, purchase, take on lease or otherwise acquire any land or building for the purpose of establishing a municipal market or improving any existing municipal market.

(2) The Board at a meeting may levy rents, tolls and fees at such rates as it may think proper for the right to expose goods for sale in a municipal market and for the use of shops, stalls and standings therein and also may regulate such rates in respect of private markets or places used or declared by the Board as a market place by public notice in the locality.

(3) The Board may grant a lease according to rules under this section for a period not exceeding three years for the collection of rents, tolls and fees in municipal markets at the rates prescribed by the Board under Sub-section (2).

(4) A lessee of a municipal market appointed under Sub-section (3) may refuse to allow any person to expose goods for sale in the market or to use shops, stalls, and standings therein until the proper rents, tolls and fees have been paid.

(5) Whoever, having rendered himself liable to the payment of rents, tolls of fees refuses to pay the same shall be liable to a fine which may extend to fifty rupees (and shall also be liable to be evicted from the place, shops, stall or standing in the market used by him.)

(6) When resistance is offered to any person authorised to collect rents, tolls or fees, any police officer whom he may call to his aid, shall be bound to assist him, not such police officer shall for that purpose, have the same powers as he has in the exercise of his ordinary police duties.

(7) Whoever realises rents, tolls or fees at rates higher than rates fixed, under Sub-section (2) shall be liable to a fine not exceeding fifty rupees.

13. From a bare reading of Section 148, as the same stood before the Amendment Act, 1994, it clearly emerges that Section 148 did not empower a Municipal Board or a Town Committee to levy parking fees, What unamended Section 148, however, allowed was levy of tolls and fees for goods, which were exposed for sale in the municipal market, or rents, tolls and fees for use of the shops, stalls and standings at the municipal market.

14. What, thus, emerges from a cautious and careful reading of Section 68 and pre-amended Section 148 is that under the pre-amended Assam Municipal Act, 1956, the Municipal Board had no authority to levy, on its own, any parking fees nor was it even entitled to establish a parking stand, parking area, parking lot, etc. The Municipal Board or the Town Committee was, however, entitled, even under the pre-amended Section 148, to levy tolls and fees for goods, which were exposed for sale in the municipal market, and the Municipal Board or the Town Committee was also empowered to levy rents, tolls and fees for use of the shops, stalls and standings, which were provided by the Municipal Board. That the power of the Municipal Board or the Town Committee, as the case may be, to levy tolls and fees for goods, which were exposed for sale in the municipal market, or levy of rent, tolls and fees by the Municipal Board or Town Committee for use of shops, stalls and standings in the municipal market, was independent of its power to levy limited classes of tax and fees, which were specified u/s 68, and also the fact that Section 68 did not control the powers of the Municipal Board or the Town Committee, which the Municipal Board or the Town Committee had u/s 148, was made clear by a Division Bench of this Court in Shri Lohit Chandra Saikia and Ors. v. North Lakhimpur Municipal Board and Ors. 1984 (2) GLR 412. In Lohit Chandra Saikia (supra), the Division Bench, speaking through K. Lahiri, J, (as his lordship then was), observed and held, "3...A bare perusal of section makes it clear that these are different and distinct classes of taxes, toll and fees. The tax, toll and fees referred in Section 68(1)(a) to (n) cover those tax, toll and fees on or in respect of property other than the properties of the Municipal Board, like taxes on holding, latrine, drainage etc. The section and the sections following deal with taxes for providing public utility services, taxes of Government holding, taxes on holding situated within the Municipality but belonging to others. After exhaustively dealing with tax, tolls and fees of this kind, a separate provision has been made u/s 148 empowering the Municipal Board at a meeting to levy toll, fees and rents for using the municipal market. The provisions of the sections operate in two different fields. In our opinion, if the provisions of Sections 168 onwards are read alongwith Section 148 of "the Act" it becomes crystal clear that the provisions of Section 148 is an independent and separate power conferred by the Legislature on the Municipal Board at a meeting to levy rents, tolls and fees in respect of their Municipal markets. There is no conflict between the provisions of Section 148 and Section 68 of "the Act". Reading as a whole every relevant provisions of "the Act" we find no conflict between the provisions of Section 148 and Section 68 of "the Act" dealing with levy of tax, toll and fees. On perusal of the entire scheme of the Act, its design

and other connected provisions dealing with the tax, fee and toll we reach the irrestible conclusion that the interpretation that we have given to Section 148 accords with the intent of the Legislature. We have given full effect to legislative intent following the maxim "utres magis valiat quam pereat". If the provisions of Section 68 and 69 covered the entire field of power to levy tax, toll and fees there was no purpose in enacting a separate provision like Section 148 dealing with the power of the Board to levy rent, toll and fees for use of municipal markets. For the foregoings we hold that the Municipal Board at a meeting had the power and jurisdiction to levy rent, toll and fees, and, as such the first contention of the petitioner fails."

15. Thus, on an analysis of the provisions of Section 68, on the one hand, and Section 148 (as the same stood before amendment in 1994), on the other, the Division Bench, in Lohit Chandra Saikia (supra), coneluded that Section 68, together with Section 69, does not cover the entire field of the Municipal Board''s power to levy tax, tolls and fees and that the power given to a Municipal Board, u/s 148, to levy rents, tolls and fees is in addition to the powers vested in the Municipal Board to levy those taxes and fees, which are mentioned in Section 68.

16. Section 148 of the Assam Municipal Act, 1956, has, however, undergone a revolutionary change by the Amendment Act, 1994. With the amendment, so incorporated, Section 148, now, reads as under:

148. Rents, tools and fees. - (1) The Board, if decided in a meeting, may use their own land or land with building or land purchased, taken on lease or otherwise acquired with or without building for the purpose of establishment of a Municipal Market, Bus Stand, Truck Stand, Taxi Stand,'' Auto Stand and Parking Yard for improving any existing Municipal Market. Bus Stand, Taxi Stand, Auto Rickshaw or Rickshaw Stand and'' Parking Yard.

(2) The Board, if decided in a meeting, may levy rent, tolls and fees at'' such rates as it may think proper for the light to expose goods for sale in a Municipal Market and for use of shops, stalls and stands therein and also in respect of parking lots and may also regulate such rates in respect of private markets or places used or declared by the Board as a market place, parking lot by public notice in the locality.

(3) The Board may grant a tease according to rules under this section for a period not exceeding three years for the collection of rents, tolls and fees in municipal markets and parking lots at the rates, prescribed by the board under Sub-section (2).

(4) A lessee of a municipal market appointed under Sub-section (3) may refuse to allow any person to expose goods for sale in the market or to use shops, stalls and standings therein until the proper rents, tolls and fees have been paid.

(5) Whoever, having rendered himself liable to the payment of rents, tolls or fees refuses to pay the same shall be liable to a fine which may extend to two

hundred rupees and shall also be liable to be evicted'' from the place, shop, stall or standing in the market used by him.

(6) When resistance is offered to any person authorised to collect rents, tolls or fees, any police officer whom he may call to his aid, shall be bound to assist him, and such police officer shall, for that purpose, have the same powers as he has in the exercise of his ordinary police duties.

(7) Whoever realises rent, tolls or fees at rates higher than the rates fixed under Sub-section (2) shall be liable to a fine not exceeding two hundred rupees.

17. With the amendment, which Section 148 has, thus, undergone, the Municipal Board or the Town Committee has, now, become entitled to not only establish municipal market, but also bus stand, truck stand, taxi stand, auto-rickshaw stand, rickshaw stand and parking yard and the Municipal Board or the Town Committee, as the case may be, is also entitled to improve any existing municipal market, bus stand, taxi stand, auto-rickshaw stand or rickshaw stand and parking yard. The Municipal Board and the Town Committee are, now, also empowered, under the amended Section 148, to impose parking fees at such rates as may be prescribed by the Municipal Board or the Town Committee, as the case may be. The source of power of a Municipal Board or of a Town Committee to levy parking fees can, therefore, be safely, now, traced to Section 148.

18. What crystallizes from the above discussion is that during the pre-amended period of Section 148, a Municipal Board or a Town Committee could impose fees only in respect of such subject-matters, which were covered under Clauses (g), (h), (i), (1) and (m) of Sub-section (1) of Section 68. None of these clauses, admittedly, permitted the Municipal Board or the Town Committee to impose parking fees. Clause (n) of Sub-section (1) of Section 68, however, made it possible for a Municipal Board or Town Committee to impose parking fees with the sanction of the State Government.

19. To put it differently, during the pre-amended period of Section 148, the source of power of the Municipal Board or the Town Committee to levy or collect parking fees could, thus, be traced to Clause (n) of Sub-Section (1) of Section 68; but this power could have been exercised only with the sanction of the State Government. However, even in the pre-amended era of Section 148, the embargo placed on the powers of the Municipal Board or the Town, Committee to impose fees did not control the power of the Municipal Board or the Town Committee to levy tolls and fees on the goods, which were exposed for sale in a municipal market, or such rents, tolls and fees, as the Municipal Board or the Town Committee deemed fit for allowing use of the shops, tolls and standings in the municipal market concerned. With the amendment, which Section 148 has undergone in the year 1994, the Municipal Board or the Town Committee can, now, impose parking fees and this power is not controlled by Section 68 and/or Section 69. The amended Section 148 has empowered the Municipal Board or the

Town Committee, as the case may be, to establish municipal market or bus stand, taxi stand, auto-rickshaw stand or rickshaw stand and parking yard and since this power, in the light of the decision in Lohit Chandra Saikia (supra), is not controlled by Section 68 and Section 69, it will be incorrect to suggest or submit that a Municipal Board or Town Committee has no jurisdiction or power to establish a bus stand, truck stand, taxi stand, auto-rickshaw stand, rickshaw stand and parking yard or improve an existing bus stand, truck stand, taxi stand, auto-rickshaw stand, rickshaw stand and parking yard and levy parking fees for use of such parking areas or parking places.

20. What logically follows from the above discussion is that while there was a complete embargo on the powers of the Municipal Board or the Town Committee to collect parking fees under Sub-section (1) of Section 68 except in terms of Clause (n) thereof and, that too, with the sanction of the State Government, the Municipal Board or Town Committee is, now, permitted, u/s 148, to impose and collect parking fees. Hence, it cannot be contended that a Municipal Board or Town Committee has no power to either provide a parking place or levy parking fees.

21. What is, now, pertinent to note is that the decision to use a piece of land as a parking place has to be of the Municipal Board or of the Town Committee, as the case may be. In other words, a decision by the Municipal Board or the Town Committee concerned to use a piece of land or provide a piece of land as a parking place must precede imposition of parking fees. In the case at hand, it is not contended, on behalf of the petitioner, that the Municipal Board or the Town Committee has not taken the decision to provide the land, in question, as a parking place or to impose parking fees. It is, however, not necessary, as the language employed in Sub-section (1) and Sub-section (2) of Section 148 indicates, that the land, which is provided or used as a parking place, must belong to, or be owned by, the Municipal Board or the Town Committee. The Municipal Board or the Town Committee may, as the language used by Sub-section (1) of Section 148 indicates, use either its own land or the land, which it has purchased or taken on lease or otherwise acquired for the purpose of establishment of, amongst others, bus stand or for improving any existing bus stand or parking place. The use of the word ''otherwise'', occurring in Section 148(1), is of great significance. A piece of land may be obtained by the Municipal Board from a private individual or the Government or any Government department and/or governmental agency. The establishment of such a piece of land as a parking place and/or imposition of parking fees on the vehicles, which may be parked at such a place, cannot be objected to by its users, though the owner of the land may raise objection to the use of the land as a parking place by the Municipal Board cr the Town Committee. In short, the mode of acquiring of a piece of land by a Municipal Board or a Town Committee to be used as a parking place is immaterial.

22. In the case at hand, it is the specific case of the respondent No. 2, i.e., the

respondent Town Committee, that it is in permissive occupation of the land, in question. Thus, when the respondent Town Committee is in occupation of the land, in question, albeit permissive, there is no impediment on the part of the respondent Town Committee, to allow this place to be used in terms of Section 148 as a bus stand and impose parking fees for the vehicles, which may be parked there.

23. Turning to the question as to whether the respondent Town Committee could have imposed fees merely by providing space for parking, it is pertinent to note that fees are the amounts paid for a privilege enjoyed or special services received or benefits derived. The levy of fees are, however, be correlated to the expenses incurred for rendering services or in offering privilege and in extending the benefit. Observed the Apex Court, in Ratilal Panachand Gandhi Vs. The State of Bombay and Others, "25. "Fees" are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet the expenses connected therewith. Thus, fee are nothing but payment for some special privilege granted on service rendered." (See also Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others, and Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another,

24. From a minute reading of the authorities cited above, which explain as to what fees connote, it is clear that a fee may be charged for the privilege or benefit conferred or service rendered or facilities provided. In the case at hand, when the respondent Town Committee has provided the land, which the petitioner and persons, similarly situated, have been using as parking place or as a bus stand, it cannot be held that the levy of the parking fees by the respondent Town Committee is without jurisdiction and/or illegal.

25. What I may, however, hasten to add is that a levy of fee must be correlated to the expenses incurred in extending the benefit or the privilege. Observed the Apex Court, in Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others, "...If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be co-related to the expenses incurred by Government in rendering the services."

26. In the case at hand, it is not the petitioner''s case that the fees charged are exorbitant and not co-related to the expenses incurred by the respondent Town Committee for rendering services. Had it been the case of the petitioner that the rate or quantum of fees imposed is unreasonable, excessive or exorbitant and not co-related to the expenses incurred by the respondent Town Committee, the situation might have been a little different. Suffice it to point out here that in view of the fact that the rate or quantum of fees imposed is not subject of challenge in the present writ petition, I express no opinion on the legality or

justification of the rates of fees imposed by the respondent Town Committee.

27. Because of what have been discussed and pointed out above, I find absolutely no merit in the present writ petition, the writ petition, therefore, fails and the same shall stand dismissed.

28. There shall, however, be no order as to costs.

