
(1979) 03 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No"s. 83, 87, 89 and 100 of 1973

Kishore Gupta

APPELLANT

Vs

Municipal Corporation, Indore and Another

RESPONDENT

Date of Decision : 30-03-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Indore City Municipal Act, 1909 — Section 29, 84, 84(1)

Madhya Pradesh Municipal Corporation Act, 1956 — Section 322, 323, 366, 366(3)

Citation : AIR 1980 MP 79

Hon'ble Judges : P.D. Mulye, J;G.L. Oza, J

Bench : Division Bench

Advocate : A.M. Mathur and S.D. Sanghi, for the Appellant; B.P. Jhanjariya, for the Respondent

Final Decision : Allowed

Judgement

Oza, J.—This petition and Misc. Petitions Nos. 83, 69 and 100 of 1973, have been filed by the respective petitioners challenging two orders, in this petition, one bearing No. 1208 dated 9-1-1973 issued by the Administrator, Indore Municipal Corporation, and the second dated 19-4-1973 issued by the Mal Padadhi-kari of the Indore Municipal Corporation.

2. According to the petitioners, they have been permitted by the Municipal Corporation under bye-laws regulating Public Advertisements etc., framed by the State Government dated 19th December 1944 under the Indore Municipal Act to put up their own hoardings for putting up advertisement boards and they were permitted to do it on payment of charges as prescribed under those bye-laws framed under the Indore Municipal Act. By the impugned order dated 9-1-1973 the Administrator of the Municipal Corporation directed that henceforth those boards will be given on auction and the order of the Mal Padadhi-kari dated 12-4-1973 prescribed that the auction will be by tenders (quotations) to be submitted in writing by persons intending to put the advertisements on their own

hoardings at the places permitted by the Corporation.

3. It is contended by the petitioners that these bye-laws were framed under the Indore Municipal Act by the State Government and by these bye-laws the fees have been prescribed, which are being charged up to the date of filing of these petitions. The order of the Administrator dated 9-1-1973 amounts to repealing of these bye-laws but the Administrator in law had no authority to repeal the old bye-laws and frame new ones as the procedure for framing of bye-laws has been provided for under the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as the "Madhya Pradesh Act") in Sections 427, 428 and 429; and as this has not been done the old bye-laws continued in force and this order issued by the Administrator is without any authority.

4. It was also contended that any tax on advertisements could only be levied by the Corporation in accordance with Section 132 of the Madhya Pradesh Act and after following the procedure prescribed under that section and the following sections. That has not been done and therefore the Administrator could not by an administrative order prescribe conditions contrary to the bye-laws for allotting the hoardings for advertisements. It was also contended in one of the petitions that the Corporation is not in existence and an Administrator is continuing and in the scheme of the Act the Administrator could not continue ad infinitum and thus the Administrator has no jurisdiction to function on behalf of the Corporation.

5. Learned counsel appearing for the Indore Municipal Corporation conceded that the bye-laws framed by the State under the Indore Municipal Act, 1909 (hereinafter referred to as "the Indore Act") are still in force and they have not been repealed. But it was contended that in these bye-laws, bye-law No. 5 provides that fees shall be charged according to the schedule of rates sanctioned from time to time by the Municipal Council; and it was therefore contended that the Municipal Council, i.e., now the Municipal Corporation, is authorized to prescribe rates; and in absence of the Corporation, the Administrator had the authority under these bye-laws to prescribe new rates. Thus the order passed by the Administrator is in accordance with these bye-laws. It is not disputed that the bye-laws are still in force and that no new bye-laws u/s 427 of the Madhya Pradesh Act have been framed. It was further contended that in fact the rates are not being changed but only the manner of allotment has been prescribed by the Administrator and this according to learned counsel could be done while exercising powers u/s 322 or 323 of the Madhya Pradesh Act.

6. It is therefore not in dispute that the bye-laws framed by the Holkar State exercising powers u/s 84 (1) (a) of the Indore Act are still in force and they have not been repealed. It is also not in dispute that these bye-laws provide for permission to be granted for fixing or putting up advertisements on the municipal property, across the lane, or on hoardings, or hoardings of the applicants themselves. An attempt was made to suggest that these bye-laws only apply to cases where advertisements are put up on the municipal property and do not apply to cases where the applicants themselves put up their hoardings for

putting up advertisements although the rates prescribed under these bye-laws under heading II themselves clearly indicate that these bye-laws provide for advertisements being put up on hoardings belonging to the applicants themselves.

7. It is clear from these bye-laws that they were framed by the State Government exercising powers under Section 84 (1) (a) of the Indore Act. Bye-law No. 1 (Annexure "A") runs:

"1. No person shall, without the permission in writing of the Municipal Commissioner, stick, fix or hang or cause to be stuck, fixed or hung, bills, posters, advertisement, notices etc., of any kind upon any well, culvert, tree, lamp-post or any Municipal or State building or other property except on terms mentioned below.

Provided that where by reason of unusual size or any other cause the Municipality is unable to provide the boards it shall be competent for the Municipal Commissioner to permit the same on any other boards approved by him."

This bye-law clearly indicates that these bye-laws provide for permission for putting up advertisements on the municipal property, culverts, lamp-posts, buildings etc., and the proviso makes it further clear that if the Municipality is unable to provide boards, it may permit the boards to be put up as approved, Item II at the end of these bye-laws which provides for rates also clearly indicates that these rates under this clause have been provided for boards belonging to the applicants. Thus this clearly goes to show that the contention advanced by learned counsel that these bye-laws do not apply to the cases of the petitioners as they put up their own boards on stands erected by them is without any substance. These bye-laws clearly apply to the petitioner's cases; and it is not disputed that up to the time the impugned order was issued by the Administrator the petitioners were being charged in accordance with the rates provided in these bye-laws,

8. Section 84 (1) (a) of the Indore Act authorizes the Government to frame bye-laws for this purpose and it is in exercise of these powers that the State Government framed these bye-laws and it is not disputed that they have not been repealed and are still in force. Section 29 of the Indore Municipal Act runs:

"29. (1) Where any licence is granted under this Act, or where permission is given for making any temporary erection or for putting up any projection or for the temporary occupation of any street, the Commissioner may charge a fee for such licence or permission.

(2) The Commissioner may also charge such fees as may be fixed by bye-laws made u/s 84 for the use of any places being Municipal property."

This section clearly enacts that permission may be granted, or a licence may be granted, by the Commissioner for putting up projections or temporary erection

on any street. Sub-section (2) of this section provides that the Commissioner, when permits, may charge fees; but the fees have to be fixed by bye-laws made u/s 84. It is therefore clear that u/s 29 fees could be charged; but the fees could only be provided for under the bye-laws framed u/s 84. Bye-law No. 5 reads:

"5. Advertisement fees shall be payable strictly in advance according to the schedule of rates sanctioned from time to time by the Municipal Council."

This bye-law provides that the fees will be charged according to the schedule of rates sanctioned from time to time by the Municipal Council. It was contended that "sanctioned by the Municipal Council" would indicate that the Municipal Council without modifying the bye-laws could change the rates to be charged. This argument cannot be accepted apparently because Section 29 specifically provided that the fees could be charged as may be prescribed in the bye-laws only. Section 29 does not empower the Municipal Council to prescribe the fees. Sub-section (2) of Section 29 specifically talks of bye-laws framed u/s 84; and Section 84 provides for the scheme of framing of bye-laws with regard to the various subjects. Section 84 (1) (a) provides for the bye-laws pertaining to these boards of advertisements. Thus it is clear that what Clause 5 of these bye-laws means is the rates that may be sanctioned by framing of appropriate bye-laws. It is also apparent that the rates provided in these bye-laws are part of the bye-laws themselves and it is not disputed that these rates were prescribed as part of the bye-laws by the State Government itself exercising powers u/s 84 (1) (a) of the Indore Act. It, is therefore clear that in the scheme of the Indore Municipal Act the rates could only be prescribed by bye-laws framed u/s 84 and the Council could not prescribe different rates than what were prescribed by the bye-laws themselves. It is also apparent that the Council by changing the rates will modify the bye-laws and that could not be done under the scheme of Section 84 of the Indore Act.

9. Under the Madhya Pradesh Act, Section 366 provides for licences and permissions. Sub-section (3) of this section provides:

"366 (3). Except when it is otherwise expressly provided in this Act or in any rule or bye-law made thereunder, a fee for every such licence or written permission may be charged at such rate as may be fixed by the Commissioner and such fee shall be payable by the person to whom the licence is granted,"

This sub-section clearly indicates that where any fee is prescribed under the Act or under the bye-law that fee will be charged for granting licence or permission; and if it is not so fixed under the Act or bye-law, then alone the fee can be fixed by the Commissioner. As it is clear that the bye-laws framed by the Holkar State under the Indore Act prescribed the necessary fees and are still in force, therefore, the Commissioner has no authority to fix any other fee except what is provided under those bye-laws.

10. It was contended by learned counsel for the Corporation that the case of the petitioners will fall u/s 322 or 323 of the Madhya Pradesh Act as according to him

he frankly conceded that it is not a tax levied u/s 132 of the Madhya Pradesh Act on advertisements and he also frankly conceded that therefore the procedure prescribed for levy of such tax has not been followed. Section 322 of the Madhya Pradesh Act provides:

"322. (1) No person shall, except with the permission of the Commissioner and in accordance with such conditions including the payment of rent as he may impose either generally or specially in that behalf place or deposit upon any street, public place or drain, well or channel therein, any stall, chair, bench, box, ladder, bale, tray, goods, vehicle, or other things and the Commissioner may without giving notice remove any such stall, chair, bench, box, ladder, tray, goods or vehicle or other things or may in lieu of such removal collect such rent for the use of the land as he may impose."

(2) Any property removed under Sub-section (1) may be disposed of and any charges incurred for the removal, custody and disposal thereof, may be recovered in the manner prescribed by bye-laws."

Even if this provision or the provision in Section 323 is considered, it indicates that the Commissioner may on conditions grant a permission or licence on payment of such rent as he may prescribe. It could not be doubted that the fee for permission or licence even under this provision, i.e. Section 322, would be governed by the provisions of Section 366 and therefore if the fees were provided under the bye-laws, the Commissioner could not prescribe any fees different than what has been provided for in the bye-laws themselves, although a reading of Sections 322 and 323 apparently indicates that to those cases of hoardings for advertisements these provisions will not be applicable. It is not in dispute that no bye-laws have been framed u/s 427 of the Madhya Pradesh Act to substitute or repeal the bye-laws framed under the Indore Act.

11. Learned counsel for the respondent Corporation contended that there is no right which the petitioners can claim and the protection of which is sought by these petitions because according to learned counsel, the petitioners are granted a licence for a fixed period and the respondent is free not to grant a licence any further and petitioners cannot claim that they are entitled to a fresh licence for a fresh period. It is not in dispute that the permission granted to the petitioners is in the nature of a licence; but as discussed earlier these permissions are granted in accordance with the bye-laws framed under the Indore Act by the Holkar State on conditions of payment laid down in the bye-laws themselves. By the impugned order the Administrator of the Municipal Corporation has directed that only those applications will be considered which offer quotations and the highest offer may be accepted for grant of licence. This additional payment of the amount for grant of permission is not provided for in the bye-laws. It is also clear that the bye-laws have not been modified and it is also clear that the Administrator by administrative order could not impose some additional conditions which are not justified under the bye-laws. Thus, the petitioners have a right to get their cases considered in accordance with the bye-laws. According

to the order of the Administrator, if the petitioners do not offer as desired by the impugned order, the applications may not be considered on that short ground alone. Thus, although the petitioners have no right to get a permission, but under the bye-laws they have a right to get a permission if they pay in accordance with the rates provided in the bye-laws themselves. And this right of the petitioners is a statutory right as it is not in dispute that the bye-laws have the force of law. By the impugned order passed by the Administrator of the Corporation this right of the petitioners is infringed and the petitioners therefore are entitled to come to this Court under Article 226 of the Constitution.

12. Learned counsel for the respondent-Corporation placed reliance on a decision reported In Re: V. Nagalingam Servai and Others, . According to learned counsel the facts are also similar. In that decision the petitioners who were vending various articles on the platform at Madurai Junction under permission granted by the South Indian Railway Company Ltd., were stopped from vending as the railway was taken over by the Government and the Government wanted to introduce a new policy about vending on the platforms. And it is in this context that the learned Judges of the Madras High Court felt that there is no fundamental right of the petitioner which is affected. This judgment clearly shows that there was no rule or bye-law having the force of law under which these licences were granted to these vendors and there is nothing in the judgment to indicate that this law was still in force and still the railway authorities wanted not to grant licences to these vendors. Apparently therefore, their Lordships only considered the question of fundamental right as no statutory right was urged and in this view of the matter the decision is of no help to the respondent's case. As discussed above, we are here concerned with the statutory right of the petitioners to get their applications considered and granted on conditions which have been laid down under the bye-laws which indisputably have the force of law. The contention advanced by learned counsel for the respondent therefore cannot be accepted.

13. Learned counsel for the respondent Corporation also contended that in these petitions when stay order was granted, a condition was imposed that the petitioners shall deposit with the respondent the highest amount shown in the quotations and on that condition the interim order was passed. According to learned counsel, some of these petitioners have not complied with the condition of depositing the amount according to the highest quotation and therefore such petitioners are not entitled to any relief. It is no doubt true that while passing the interim order it was ordered that the petitioners shall deposit the amount in accordance with the highest quotation and on that condition the further proceedings were stayed. It is also apparent that the payment in accordance with the quotations has been held to be not in accordance with law and not legally valid. Under these circumstances, on this ground it could not be urged that relief could not be granted. It is no doubt true that if during the pendency of these petitions this matter had been urged, at that time the stay or interim order might have been vacated. But now, while deciding the petitions finally and having come

to the conclusion that imposition of that condition of paying the money in accordance with the highest quotation is not justified in law, the petitions cannot be thrown out because the petitioner has not deposited the amount in accordance with the highest quotation.

14. In view of our conclusions noted above, we do not think it necessary to go into the further question which was raised in one of the petitions about the duration for which an Administrator could function in absence of an elected Corporation. Learned counsel also frankly conceded that if the petition succeeds on other grounds, he will not insist on a decision on this question and in our opinion, therefore, it is not necessary for us to decide that question in these petitions.

15. In the light of the discussion, therefore, the petitions are allowed. The orders passed by the Administrator dated 9-1-1973 and that passed by the Mal padadhikari dated 19-4-1973 are set aside. In the circumstances of the case parties are directed to bear their own costs of these petitions. Security amount be refunded to the petitioners after verification.