**(1975) 11 GAU CK 0001**

**In the Gauhati High Court**

**Case No :** Civil Rule No. 2138 of 1993

Kollong Valley Bus Santha APPELLANT

Vs

State of Assam RESPONDENT

**Date of Decision :** 08-11-1975

**Acts Referred:**
Assam Municipal Act, 1956 — Section 3(3), 3(3)

**Citation :** (1996) 1 GLJ 91 : (1996) 1 GLR 209 : (1996) 1 GLT 393

**Hon'ble Judges :** J.N.Sarma, J

**Bench :** Single Bench

**Advocate :** B.P.Bora , A.C.Bora, Advocates appearing for Parties

## Judgement

1. This application under Article 226 of the Constitution of India has been filed praying the following reliefs :

(i) To restrain the respondent No.3 from realising the entry fee or parking fee from the vehicle of the petitioners.

(ii) To quash the action of the authority imposing entry fee or parking fee on the vehicle of the petitioners by respondent No.3 and to obtain licence by Annexure A. Annexure A is quoted below :

"Annexure A: With reference to your petition dated 28.6.93 the consideration for selection of parking place and halting station for buses run by the ''Kollong Valley Bus Santha'', Morigaon is under process under section 117 of the Motor Vehicles Act, 1988. Till finalisation of selection of parking and halting station, the Superintendent of Police, Morigaon is requested to maintain the arrangement that was in existence prior to 28.6.93.

Regarding your proposed arrangement for parking place and halting station on the land owned by individual near ''Bhogali Hotel'' Morigaon, you are hereby advised to formally reply to the "Morigaon Town Committee for obtaining licence as per section 213 (1) of the Assam Municipal Act, 1956, whereby the Town

Committee is empowered to issue such licence."

2. By this Annexure A it was directed that the petitioners are to apply to the Morigaon Town Committee for obtaining a licence as per section 223 (1) of the Assam Municipal Act, 1956 whereby the Town Committee is said to be empowered to issue such licence. It is contended that this direction is without authority of law.

3. The brief facts are as follows : In 1990 the Morigaon SubDivision of Nagaon District was converted to a separate District as Morigaon District. In 1992 all the records relating to the petitioners'' vehicles maintained by DTO, Nagaon have been shifted to DTO, Morigaon. In September, 1992 a new Association was formed by the petitioners under the name and style of Kollong Valley Bus Santha. On 10.5.93 the petitioner''s Association entered into an agreement with a private person for using his land as parking place. On 17.3.93 Morigaon Town Committee asked the petitioners not to parking their vehicles in the aforesaid private land. In fact persons from Morigaon Town Committee asked the drivers of the vehicles of the petitioners not to park their vehicles on the aforesaid private land. On 28.6.93 the petitioners filed an application before the Deputy Commissioner, Morigaon about the difficulties in parking their vehicles at Morigaon Town. The Deputy Commissioner, Morigaon informed the petitioners vide Annexure A, quoted above to file application before the Municipal Committee as indicated above. On 2.7.93 the petitioners informed the Morigaon Town Committee about the aforesaid letter dated 29.6.93 (Annexure A) regarding parking place. From 10.7.93 the Morigaon Town Committee forcefully collected entry fee, stand fees or parking fees on the vehicles of the petitioners at the rate of Rs. 10/ for the buses and trucks and at the rate of Rs.5/ (five) from the Mini buses as will be evident from Annexure D series. On 12.7.93 the petitioners submitted application before the Deputy Commissioner, Morigaon about the forceful realisation of taxes by the Town Committee. But nothing was done. Hence this writ application.

4. I have heard Shri AC Bora, learned Advocate for the petitioners and the learned Government Advocate, Assam for the respondent Nos. 1,2 and 4. None appears for respondent No.3. No affidavitinopposition was filed. No record was produced. The following points are urged by Shri Bora :

(1) That the Town Committee has no power and authority vested on it by law to impose and collect any entry fee or parking fee from the vehicles of the petitioners and the said Committee has no power to restrain the petitioners from parking their vehicles on private land.

(2) That the Morigaon Town Committee has no power and authority under the MV Act or under the Assam Municipal Act to impose any entry fee or parking fee on the vehicles of the petitioners,

(3) That the Town Committee is not competent to grant any permission or impose restriction on the movement parking of the vehicles of the petitioners in

 

Municipal Area as the Deputy Commissioner is the appropriate authority to grant permission or impose such restrictions under the law.

(4) That the impugned actions of collecting entry fee or parking fee by the Town Committee is violative of the provisions of Article 265 of the Constitution of India inasmuch as collection of said taxes is without any authority of law.

5. First let us have a look at section 223 (1) of the Assam Municipal Act, 1956 in order to find out whether the Municipal Act gives this power to the Municipality. Section 223 (1) is quoted below:

"223. (1) Power to prohibit use unlicensed markets (1) The Board at a meeting may order that within such limits as it may fix, no land shall be used as a market otherwise than under a licence to be granted by the Board. The licence may be for one year and thereafter liable to renewal annually."

6. So this section does not apply to the facts of the present case. So this power cannot be exercised by the Municipality under section 223 (1). Chapter V of the Assam Municipal Act, 1956 provides for Municipal taxation. Section 117 provides for licence fees on carts, carriages and animals. Section 117 (1) is quoted below:

"117. Licence fees on carts, carriages and animals. (1) When it has been determined that licence fees on carts, carriages and animals shall be imposed under section 68, subsection (1) (g), the Board at a meeting shall make an order that the owner of every cart, carriages and animal of the kind specified therein, which is kept or used within the Municipality, shall take out a licence and pay such fees as are fixed in the order, and shall cause such order to be published in the manner prescribed."

Carriages has been defined in section 3 (3) of the Assam Municipal Act, that is quoted below :

"3. (3) Carriages: ''Carriages'' means any wheeled vehicle with springs or other appliances acting as springs, of a kind ordinarily used for conveyance of human beings and includes jinrickshaws, cycle rickshaws, bicycles and tricycles but does not include perembulators and in particular does not include any motor vehicles as defined in the Assam Motor Vehicles Taxation Act, 1936 (Act 1 of 1936)."

So, these buses, trucks and Mini buses will not come within the definition of carriage as it is specifically excluded by the definition. Bus, trucks or a Mini bus is motor vehicle as defined in the Assam Motor Vehicles Taxation Act, 1936. So, under the Assam Municipal Act, 1956 the Municiplity does not have any power to impose a tax on such a motor vehicle.

7. In that view of the matter this writ application is allowed. The respondent No.3, the Morigaon Town Committee is directed not to realise any tax or fee from the buses, trucks and Mini buses of the petitioners. There is no legal obligation on the part of the petitioners to apply to the Municipality for licence as directed in Annexure A.

8. I leave the parties to bear their own costs.

 