
(1985) 05 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 9409 of 1978

K.S.R.T.C.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 30-05-1985

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 325 (2)

Citation : (1985) ILR (Kar) 3373 : (1985) 1 KarLJ 430

Hon'ble Judges : Rajasekhara Murthy, J

Bench : Single Bench

Advocate : B.M. Chandrasekharaiah, for the Appellant; Government Advocate for R-1; U.L. Narayana Rao, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Rajasekhara Murthy, J.—The petitioner in this Writ Petition is the Karnataka State Road Transport Corporation (KSRTC) represented by its General Manager. The K.S.R.T.G. constructed a modern bus-stand at Guledgud in Bijapur District for use of the travelling public. The estimated cost of the said bus-stand was Rs.3.5 lakhs and the petitioner applied to the second respondent-the Town Municipal Council, Guledgud, for necessary permission to put up the construction. The second respondent directed the petitioner to pay valuation fee at the rate of Re.1 /-per cent of the total value of the building and Rs.10/- towards permission fee as per Bye Law 27 of the Guledgud Municipal Council.

2. This was resisted by the K.S.R.T.C. on several grounds, inter alia, that the KSRTC bus stand was meant for public utility and hence it may be exempted from payment of the valuation fee demanded. The 2nd respondent by its order dated 9-6-1978 (Annexure B) declined to grant the request of the petitioner.

3. Being aggrieved by the said order, the petitioner-K.S.R.T.C. has; approached this Court by way of this Writ Petition under Article 226 of the Constitution and has prayed for quashing Annexure C and D issued by the second respondent

which authorise the Municipal Council to levy the impugned valuation fee.

4. It is contended by Sri B.M. Chandrasekharaiah, the Learned Counsel appearing for the K.S.R.T.C., that the valuation fee sought to be levied at Re. 1 per cent of the value of the building is not sustainable in law nor is there any relation nor nexus to the services rendered by the Municipality with the impugned levy. It is in these circumstances that the petitioner has sought for quashing the notification dated 4th December, 1975 and Corrigendum dated 23rd March, 1976, issued by the Town Municipal Council, Guledgud, (Annexure-C and D respectively) which are reproduced below:

(ANNEXURE-C)

"KARNATAKA GAZETTE, MARCH 18, 1976 (PART IX-BD740)

OFFICE OF THE CHIEF OFFICER, TOWN MUNICIPAL COUNCIL, GULEDGUD.

Notification, dated 4th December 1975

(Under Section 325(2) of Karnataka Municipal Act 1964)

Notice is hereby given for the information of persons likely to be affected thereby that the Municipal council of Guledgud has resolved at its meeting held on 28-11-1975 to adopt the Town Municipality Building Model Bye-Laws 67 and that the said Bye-laws shall come into force in the Municipality with effect from 1-1-1976.

SYED IQBAL HASHMI Chief Officer Town Municipal Council, Guledgud."

Sl. No.

Name of the Bye-laws proposed for adoption.

No. & date of Govt. Notification.

Fees & rates proposed by the T.M.C.Guledgud.

1.

The Karnataka Town Municipalities Building Model Bye-laws 1967

LMA 43 MLR (1) 65 dated 6-12-1966

1.

Permission fees Rs. 10/-

2.

Valuation fees @ of Rs. 1 per cent (per Rs. 1000-00 of the value of the building)

"The above bye-laws and rates will come into force within the Municipality of Guledgud from 1-1-1976.

SYBD IQBAL HASHMI, Chief Officer Town Municipal Council, Guledgud"

(ANNEXUR-D)

"OFFICE OF THE CHIEF OFFICER, TOWN MUNICIPAL COUNCIL, GULEDGUD
CORRIGENDUM

Notification, dated 23rd March 1976.

Notice is hereby given for the information of persons likely to be affected thereby that the following amendment shall be substituted to this office notification dated 4th December 1975 regarding adoption of the Town Municipality Building Model Bye-laws 1967 that against the entry in the last column of the said notification in the last column under the heading "Fees & rates proposed by the T.M.C. Guledgud" at Sl. No. 2 the figure Rs. 100-00 shall be substituted instead of Rs. 1000-00 which has appeared in the Karnataka Gazette dated 18th March 1976-Part IX-B on page D-740.

SYED IQBAL HASHMI, Chief Officer Town Municipal Council, Guledgud.

By the said notification, notice is given for the information of the persons likely to be affected by the resolution of the Municipal Council, Guledgud, passed on 28-11-1975, authorising it to levy the permission fee and the valuation fee on buildings. Under Bye-law 67 of the Town Municipality Building Model Bye-laws which came into force with effect from 1-1-1976, the Municipality is authorised to levy valuation fee Re.1 per cent of the value of the building which is challenged in this Writ Petition.

5. The Learned Counsel for the petitioner strongly relied upon the decision of the Supreme Court in Government of Aadhra Pradesh and another -v.- Hindustan Machine Tools Limited AIR 1975 SC 2037 in support of his contention that the impugned levy is without authority of law and is there-fore liable to be quashed.

6. The facts in the case H.M.T., Hyderabad which was the petitioner before the Andhra Pradesh High Court are similar to the facts of the present case. The HMT proposed to put up its factory and other buildings within the limits of Kuthbullapur Grama Panchayat. The H.M.T. applied for permission to the village Panchayat for construction of the factory and other buildings.

7. The Panchayat passed a resolution for collecting "permission fee" from the H.M.T. at half per cent on the capital value of the factory building and at 1 per cent on the capital value of other buildings and called upon the H.M.T. to pay house tax for three years amounting to Rs. 1,83,750/- and Rs. 1,65,000/- by way of "permission fee".

8. This demand was resisted by the H.M.T. and a Writ Petition was filed in the High Court of Andhra Pradesh Challenging the levy of house tax and permission fee on its factory and other buildings. The Writ Petition was allowed by the High Court and it was held that the building constructed by the HMT did not fall within the definition of "The House" as contained in the Andhra Pradesh Grama Panchayat Act, 1964. Regarding the "Permission fee", the High Court repelled

the Government's contention that the fee was in the nature of tax and held that since no services were rendered by the Panchayat to respondent in commensurate with the levy of "permission fee" was illegal. Being aggrieved by the said Judgment of the High Court, the Government of Andhra Pradesh preferred an appeal to the Supreme Court, on a certificate granted by the High Court. The Supreme Court however upheld the levy of house tax on the buildings constructed by the H.M.T. within the village Panchayat limits.

9. Dealing with the levy of "permission fee" under the Andhra Pradesh Grama Panchayat Act, the Supreme Court held, on a consideration of the provisions of the said Act, that there was no provision in the Act for the imposition of the levy of permission fee and struck down the levy, also on the ground that there was no element of quid pro quo in the imposition of the fee.

10. The Supreme Court also observed regarding the nature of fee sought to be levied in paragraph 22 which is reproduced herein:

"22. It was alternatively contended on behalf of the appellants that the Permission Fee though called a fee is really in the nature of a tax on buildings and may be upheld as such. It is impossible to accept this contention. That the Permission Fee is not a tax on buildings is clear from the fact that the fee may be required to be paid even if a building does not eventually come into existence. The scheme under which the Permission Fee is attempted to be levied is that it becomes payable at the time when the permission to construct a building is applied for. The . levy does not depend upon whether a building has been in fact constructed with the result that whether a building is constructed or not, the fee has to be paid. In other words, the Permission Fee is in the nature of a levy on a proposed activity and is not a tax on buildings."

11. Chapter VI of the Karnataka Municipalities Act deals with Municipal Taxation. Section 94 empowers the Municipal Council to levy taxes enumerated therein. "A tax on buildings or lands or both situated within the Municipality" is one such tax authorised by the Act. Sections 137 and 138 of the Act deal with power to charge fees? etc. u/s 137 a Municipal Council may levy fees in respect of "Jatras" "Urus" etc., which are necessary for providing sanitary facilities and other amenities on such occasions. u/s 138, a Municipal Council may levy fees on certain vehicles etc., such as fee on each bus for making use of the bus stand maintained by the Municipal Council for use of any Municipal land etc.

It is significant that these provisions do not authorise a Municipal Council to levy "Valuation Fee" on the value of any building nor is it brought to my notice by the Learned Counsel appearing for the Municipal Council that there is any other provision in the Act empowering it to levy valuation fee. Model Bye-law No. 9, which was relied upon by the Learned Counsel, also does not authorise levy of such fee. It is, therefore clear that there is no provision in the Act empowering the Municipal Council to frame a bye-law enabling it to levy valuation fee.

12. The next ground urged on behalf of the Municipal Council in support of the

levy is that the levy is valid since it is imposed for services rendered by the Municipality. Fees are a sort of return of consideration for services rendered, which makes it necessary that there should be an element of quid pro quo in the imposition of such fee. There has to be a correlation between the fee levied by an authority and the services rendered by it to the person who is required to pay the fee.

On the facts of this case, and the statement of objections filed on behalf of the Municipal Council, no case is made out to establish the correlation of the fee levied with the services rendered justifying the levy at the rate of 1% of the value of the building.

13. Thus, it is clear from the decision of the Supreme Court that "valuation fee" which is sought to be levied by the second respondent in this case at the rate of 1 per cent of the value of the building, though called a fee, is really in the nature of tax on the capital value of buildings.

14. One other decision of the Madras High Court by Veeraswami, J,, in A.A. Muthuswamy Raja Vs. The Kadayanallur Union Council, was referred to by the Learned Counsel for the petitioner. That was a case which arose under the Madras Panchayat Act and the increase in the licence fee sought to be levied by the Village Panchayat of Kadayanallur was struck down on the ground that it did not satisfy the correlation of quid pro quo test.

15. In my opinion, the decision of the Supreme Court rendered in H.M.T.'s case squarely covers the case of the petitioner in this Writ Petition.

16. The Resolution dated 28-11-1975 authorising the levy of valuation fee and the notification dated 4-12-1975 issued u/s 325(2) of the Karnataka Municipalities Act, 1964, are liable to be quashed as not sustainable in law and the levy of valuation fee is struck down as illegal and incompetent.

17. In the result, the Writ Petition is allowed. The notification issued by the 2nd respondent dated 4-12-1975 as per Annexure-C, and the corrigendum dated 23-3-1976 as per Annexure-D, are hereby quashed. Rule issued is made absolute. Parties to bear their own costs.