(2008) 05 MP CK 0034

In the Madhya Pradesh High Court

Mahesh Kumar Singhal and Others APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Constitution of India, 1950 — Article 265
Motor Vehicles Act, 1988 — Section 117, 194, 68, 76

Citation : (2008) 2 JLJ 296 : (2008) 4 MPJR 158 : (2008) 1 MPLJ 272

Hon'ble Judges : Rajendra Menon, J;Abhay Gohil, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhay Gohil, J.

Appellants have filed this writ appeal u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 against the order dated 10.7.2007 passed by Single Judge in W.P. No. 157/2004.

The brief facts of the case are that the appellants are the bus operators. They are registered owners of the vehicle and are residents of Kurwai, district Vidisha. They have challenged the bye- laws framed by the Nagar Panchayat, Kurwai (Annexure P-1) dated 27.12.2003 which came into force w.e.f.1.2.2004. Bye-laws have been framed exercising powers under Sub-section (3) of Section 357 as well as exercising the powers u/s 349 (2), 357 (5) and 358 (4), Sub-clause (b) and (d) of the Madhya Pradesh Municipalities Act, 1961 (in short the ''Act of 1961''), by which they have imposed parking fees on the owners of the vehicles, i.e., motor, truck, buses and matador, which are parked at the bus stand, at the rate of Rs. 20/- per day (Rs.600/- per month) and they prayed that resolution number 157 dated 27.12.2003 (Annexure P-2), by which bye-laws are adopted and notification issued (Annexure P-3), be quashed. In the petition, notice was issued to the respondents and return was filed by them. In the return the respondents have justified their action. After hearing the arguments, learned Single Judge dismissed the writ petition holding therein, that in view of various provisions as contained u/s 358(4) (a) and (b), Section 357 (3) and Section 349 (ii) of the Act of 1961, Nagar Panchayat has power to frame such bye-laws as contained in byelaws No. 4,6,7 and 8 and dismissed the writ petition, against which the appellants have filed this writ appeal.

We have heard the learned Counsel for the parties and perused the documents and the finding recorded by the learned Single Judge.

In nut-shell, the submission of the learned Counsel for the appellants is that u/s 349(ii) of the Act of 1961 fees cannot be levied because it is a special provision which provides to charge fees for licences and permissions. It was further submitted that Section 349 is not applicable to the place, which is marked as bus stand, but the fees is only chargeable when some special or individual licences and permissions shall be obtained for parking the vehicles at the place other than the bus stand. Learned Counsel for the appellant vehemently argued and submitted that the bye-laws are also contrary to the provisions of Section 117 of the Motor Vehicles Act, 1988 (hereinafter referred to as the ''Act of 1988''). It was further submitted that the case of the appellant is covered by the decision of the Division Bench of M.P. High Court in the case of Sindhi Sahiti Multipurpose Transport Co-operative Society Ltd. v. Municipal Council, Bhopal 1967 JLJ 47, which was subsequently affirmed by the Supreme Court in the case of Municipal Council Bhopal v. Sindhi Sahiti Multipurpose Transport Co-operative Society Ltd. 1974 M.P.L.J.362 and the appeal filed by the Municipal Council, Bhopal was dismissed and it was held by their Lordships of the Supreme Court that,-

The permission mentioned in Section 194 is one of the matters for which fees can be prescribed u/s 349(ii). Section 223 (4) deals with allowing any temporary occupation or execution in any public street on occasions of festivals and ceremonies, or allowing the occupation of, or temporary erection of structures for any other purpose. Fees can be prescribed u/s 349 (ii) in respect of these matters. The words above mentioned in that section deal with permission granted to individuals to temporarily occupying municipal land. It would be doing violence to that section to hold that it deals with the provision of a bus stand. In the context of that it is difficult to hold that when people are compelled to use a bus stand constructed by the Municipal Council it is a permission for temporary occupation of land belonging to the Council.

Learned Counsel for the appellants further submitted that though the learned Single Judge has considered the provisions of Section 349 which deals about the grant of imposition of licences and permissions, Sections 282, 357(5) and 358(4) (a) and (b), Section 117 of the Act of 1958 as well as provisions of Rule 204 of the M.P. Motor Vehicles Rules, 1994 and has also considered the decision of the Supreme Court in the case of Municipal Council Bhopal (supra) but dismissed the writ petition. It was further argued that the learned Single Judge has not considered the ratio laid down by Their Lordships of the Supreme Court in the case cited above.

Learned Counsel for the appellants also placed reliance on another decision in the case of Municipal Council, Manasa v. M.P. State Road Transport Corporation, (1997) 11 SCC 640: 1998 AIR SCW 4117 in which the Hon''ble Supreme Court has considered the effect of Section 6 of the Madhya Pradesh Motor Vehicles Taxation Act, 1947, which has been extended to the whole of Madhya Pradesh by the Madhya Pradesh Taxation Laws (Extension) Act, 1957, w.e.f. 1-11-1957, in which it is held by Their Lordships of the Supreme Court that no local authority shall, after the commencement of this Act, impose or enhance a tax, toll or licence fee in respect of a motor vehicle and dismissed the appeal of the Municipal Council, Manasa.

In reply, Shri Vivek Khedkar, learned Government Advocate for the respondent No. 1 and Shri Akhil Sinha, learned Counsel for the respondents No. 2 and 3 have supported the impugned order passed by the learned Single Judge and submitted that recently in the case of Pandit Ramprasad Purohit and Others Vs. State of Madhya Pradesh and Others, , the Single Bench of the High Court has upheld the imposition of bus stand fee upon the passenger vehicles by the Nagar Panchayat and dismissed the Writ Petition. It was further argued by the learned Counsel for the respondents that in the case of Pandit Ramprasad Purohit (supra) the decision in the case of Municipal Council Bhopal (supra) was considered by the learned Single Judge. The learned Counsel also cited another decision in the case of Bus Operators Association Tikamgarh and Ors. v. State of M.P. and Ors. W.P. No. 321/1996 decided on 23.4.1996. It was further argued that in the case of Pandit Ramprasad (supra), a decision of the Hon''ble Supreme Court in the case of Municipal Board, Hapur etc. Vs. Jassa Singh and others, was considered. Learned Counsel for the respondents also placed reliance on the judgment in the case of Nagar Palika, Bhind v. M.P. State Road Transport Corporation 1989 JLJ 641, in which it was held that u/s 358 (7) (m) of the Act of 1961, Municipalities are having power to impose fees.

After hearing rival contentions of the learned Counsel for the parties., it will be useful to reproduce certain provisions of M.P.Municipalities Act 1961, M.P.Motor Vehicles Act 1988, M.P.Motor Vehicles Rules, 1994 and the provisions of M.P.Motoryan Karadhan Adhiniyam, 1991.

It is settled position under the law that tax cannot be levied except under the authority of law. There are two general sections in the Act of 1961 - Section 127 and Section 129, which provide power to the Municipal Council to impose taxes and fees. Section 127 provides taxes to be imposed under this Act, according to which, council is entitled to impose taxes. There are the general powers. In this case admittedly the fees which have been imposed on the bus stand is not under consideration and the same has also not been levied by exercising power u/s 127 or 129 of the Act of 1961.

The relevant Sections 282, 349, 357, 358(4) (b) and (d) and 358 (7) of the Act of 1961 are reproduced as under:

282: Reservation of certain areas for special purposes of public utility-

(1) The State Government may, either on its own motion or on the request of the Council in respect of any Municpality and after making such inquiry as it deems necessary, notify by a notice published in the official gazette any area or areas to be reserved from a date fixed therein, for use in the future for any special purpose of public utility such as public parks, pay grounds, educational and a medical or a public health institutions, markets, stands for vehicles and animals, public recreation centres and housing colonies.

(2) After such reservation has been noticed(a) no constructions shall take place on any area or areas so declared without the special permission of the State Government in this behalf; and (b) If any construction, structure or building is sought to be transferred by the owner to another party, an option to purchase shall be first given to the State Government and on its refusal to exercise the option the owner may transfer the property.

(3) The State Govt. may cancel such notification at its discretion after consulting the Council.

(4) If any construction take place on an y area in contravention of Sub-section (2), the Council may without prejudice to any other action that might be taken under this act or rules framed thereunder or under any other law for the time being in force demolish such construction and recover the cost incurred in such demolition from the owner or occupier of the land, building or structure.

Fees for licences and permissions.- The Council may charge such fee as mes be prescribed by bye-laws for -

(i) any licence granted under this Act;

(ii) any permission granted under this Act, for making any temporary erection or for putting up any projection or for the temporary occupation of any public street or any land or building belonging to the council; and

(iii) any application or appeal made to or filed before the Council under this Act, and for giving copies of its orders or other documents.

(iv) The rate of the licence and permission fees shall be revised once in every three years.

357: General provision regarding bye- laws-All bye-laws for which provision is made in this Act shall be made by the Council and shall be consistent with this Act, and with the rules made thereunder.

(2) A bye-law may be general for the whole Municipality under the jurisdiction of the Council making it, or special for any part of such Municipality, as the Council may direct.

(3) Unless specially excepted in this Act from the operation of this sub-section no bye-law shall take effect until it has been confirmed by the State Government.

(3-a) The State Government may cancel its confirmation of any such bye-laws and thereupon such bye-laws shall cease to have effect.

(4) Unless specially excepted in this Act, from the operation of this sub-section, no bye-laws shall take effect until it has been published in the manner prescribed by rules made under this Act.

(5) In making any bye-law the counsel may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees, and where the breach is a continuing with further fine which may extend to five rupees for every day after the first during which the breach is proved to have been persisted in.

358(4) Streets-

(a) xx xx xx. (b) Regulating the conditions subject to which permission may be given for temporary occupation of or erection of temporary structures, on public streets or for projections over public streets and places;

(c) xx xx xx (d) The erections of a temporary nature during festivals;

358(7) Public Health, safety, nuisance and sanitation-

(a) to (l) xx xx xx (m) regulating and prohibiting the stationing of carts or picketing of animals on any ground under the control of the Council or the using of such ground as halting place of vehicles or animals or as a place for encampment or the causing or permitting of any animal to stray and imposition of fees for such use.

Section 117 of the Motor Vehicles Act 1988 reads as under:

117. Parking places and halting stations- The State Government or any authority authorized in this behalf by the State Govt. may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

Rule 204 of the M.P. Motor Vehicles Rules of 1994 reads as under:

204: Maintenance and Management of stands.-(1) The Regional Transport Authority by notification in the official gazette, or by the erection of appropriate traffic sign of the Schedule of the Act or both, may in respect of the taking up or setting down the passengers or both by public service vehicles or by specified clause of public service vehicles: (a) Conditionally or unconditionally prohibits the use of any specified place or of any place of a specified nature or clause, or (b) Require that within the limit of any Municipal Corporation, Municipality notified area or cantonment, or within such other limits as may be specified in the notification certain specified stands only shall be so used:

provided that no place which is privately owned shall be so notified except with the previous consent in writing of owner thereof.

(2) Where a place has been notified or has been demarcated by traffic signs or both, as being stand for the purpose of this rule, then not withstanding that this land is in possession of any person, the place shall subject to the provisions of these rules, may be deemed to be a public place within the meaning of the Act and the Regional Transport Authority may enter into an agreement with, or grant a licence to any person or local body or State Transport Undertaking for the purpose of maintenance of the building of works necessary thereto subject to the termination of the agreement or licence forthwith upon the breach of any condition thereof and may otherwise make rules or give directions:

(i) Prescribing the fees to be paid by the owners of public service vehicle using the place and providing for the receipt and disposal of such fees;

(ii) Specifying the Public Service Vehicles or the clause of public service vehicles which shall use the place which shall not use the place.

(iii)Appointing a person to be the manager of the place and specifying the power and the duties of the manager;

(iv) Requiring the owner of the land, or the local body or the State Transport Undertaking as the case may be, to erect such shelters, lavatories and latrines and to execute such other works as may be specified in the rules or in the directions and to maintain the same in a serviceable clean and sanitary condition.

(v) Requiring the owner of the land or local body or the State Transport Undertaking as the case may be, to arrange for the free supply of drinking water for passengers including intending passengers;

(vi) prohibiting the use of such place by specified persons or by other than specified persons.

(3) If the owner of the land, local body or State Transport Undertaking, as the case may be, fails to comply with any rule or direction made or given to him under this Rule, the Regional Transport Authority may prohibit the use of such place for the purpose of this rule.

From bare perusal of the aforesaid provisions, it is noticed that Section 282 of the Act of 1961 provides about reservation of certain areas for special purposes of public utility. Bus stand is a place of public utility, therefore u/s 282 notification is necessary for bus stand. At this stage, learned Counsel for the appellants submitted that in the matter of Kurwai bus stand, the place where the buses are parked, is still not notified by the Nagar Panchayat as required u/s 282. Section 349 of the Act only provides about the fees for licences and permissions, according to which the Council may charge such fee as may be prescribed by bye-laws for -

(i) any licence granted under this Act;

(ii) any permission granted under this Act, for making any temporary erection or for putting up any projection or for the temporary occupation of any public street or any land or building belonging to the Council.

From bare reading of this Sub-clause (ii) of Section 349 it is clear that the same is not applicable for the bus stand. This provision is for the temporary occupation of any public street or any public land or building belonging to the Council. The bus stand will not come under this definition, because bus stand is a known regular place where vehicles are being parked, that place has to be notified u/s 282 of the Act of 1961 though there is a dispute about such a notification for Kurwai which has also not been clarified by Council or Nagar Panchayat. It is also not pointed out that for the use of bus stand any licence or permission is necessary to bus operators under the Act of 1961. Section 349 is a special provision for obtaining licence and permission from the Municipality and under Sub-section (ii) nowhere provides that for the use of land or bus stand, the Nagar Panchayat is empowered to impose any bus stand fees. Section 357 of the Act of 1961 provides general power to the Nagar Panchayat to frame bye-laws, according to which all bye-laws for which provision is made in this Act shall be made by the Council and shall be consistent with this Act, and with the rules made thereunder. Sub section (5) of Section 357 further provides that in making any bye-law the Council may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees, and where the breach is a continuing with further fine which may extend to five rupees for every day after the first during which the breach is provided to have been persisted in. Section 358 is the general rule making power of the Council. Sub-section (4) is about streets and Clause (b) speaks about regulating the conditions subject to which permission may be given for temporary occupation of or erection of temporary structures, on public streets or for projections over public streets and places, and Clause (d) speaks about erections of a temporary nature during festivals. These two provisions are also not material to decide the controversy involved in the matter. Sub-Section (7) of Section 358 provides that the council has a power to make rule about public health, safety, nuisance and sanitation. As per Clause (m) of Sub section (7) of Section 358, the council may frame bye- laws regulating and prohibiting the stationing of carts or picketing of animals on any ground under the control of the Council or the using of such ground as halting place of vehicles or animals or as a place for encampment or the causing or permitting of any animal to stay and imposition of fees for such use. The provisions of Clause (m) of Section 358 (7) specially came up for consideration before the Division Bench of M.P. High Court as well as before the Supreme Court in the case mentioned below.

Firstly Division Bench of this Hon''ble Court in the case of Sindhi Sahiti Multipurpose Transport Co-operative Society Ltd. (supra), has clearly held that:

8. The declaration of a land belonging to the Municipal Council as a Bus Stand under the Motor Vehicles Act, 1939, does not, however, prevent the Municipal

Council from exercising its power under Sub-clause (m) of Clause (7) of Section 358 of the Act of 1961 of regulating the use of the Bus Stand. But this power of regulation does not carry with it the power of imposing fees for the use of the Bus Stand. Sub-clause (m) of Clause (7) of Section 358 does not empower the Municipal Council to impose any fees for the purposes mentioned in that sub-clause. It is pertinent to note that where the Legislature though fir that the Municipal Council should have the power to impose fees by bye-laws, it has specifically so provided in Section 358. For example, in relation to bye- laws for "Streets"., Sub-clause (g) of Clause (4) of Section 358 expressly gives to the Council the power to frame a bye-law for charging fees for the setting up of any booth or stall. So also under Clause (7) the power to impose fees has been specifically conferred by Sub-clauses(c), (j) (o) and (q). In the absence of any specific provision in Sub-clause (m) empowering the Municipal Council to impose fees for the use of a halting place for vehicles, the Council cannot claim the power to impose such fees merely because it has the power under that sub-clause of regulating the use of the halting place. That the power to impose fees must be specifically conferred on the Council can not now be doubted. In this connection it is sufficient to what has been said by a Division Bench of this Court Lucky Bharat Garage v. R.T. A. Raipur and Ors. (1).

The Division Bench said:

7. It is now a firmly settled canon of taxation that no tax or fee can be levied by an instruments of subordinate legislation unless the statute specifically authorized its imposition in the plainest terms. This principle flows directly from Article 265 of the Constitution, which provides,''no tax shall be levied collected except by authority of law''. As pointed out by the Supreme Court in Muhammadbhai v. State of Gujarat (2), the word ''tax'' as used in this Article includes ''fees''. The general principle enunciated in Article 265, put in a positive form, implies any tax can be levied or collected provided it is levied or collected by authority of law. It is important to note that Article 265 uses the word ''tax'' and not the word ''taxation'' and does not say that there shall be no taxation except by authority of law. The term ''taxation'' covers every conceivable exaction; whereas the word ''tax'' as used in Article 265 means a tax of any particular kind of nature or description and not a collection of taxes. Therefore, it is only if the statute specifically authorizes the imposition of a tax or a particular kind, nature or description that the particular tax can be imposed. This principle is discernible in many cases where it has been held that where a law authorizes the imposition of a tax, the imposition will be ''by authority of law'' only if the imposition is made strictly within the terms and conditions prescribed by the law; or if the statute prescribes a certain basis for the tax, then it cannot be imposed on a different basis; or, again, if the statute specifies certain taxable things and commodities, then the subordinate authority cannot make addition to the list of taxable items.

It follows from the principle that no tax can be levied or collected except by authority of law if the power to impose and assess a tax is delegated by the legislature to a subordinate authority, then the delegation must be specific and not in general terms; and a subordinate authority cannot impose any tax by a rule or regulation or a bye-law unless the statute under which the subordinate authority claims the power to tax specifically authorizes the imposition of the particular tax....

The power to impose fees for the use of the Bus Stand cannot also be claimed u/s 349 of the Act of 1961. That provision confers on the Municipal Council the power to prescribe bye-laws fees for any licence granted under the Act or any permission granted under the Act for making any temporary erection or for the temporary occupation of any public street or any land or building belonging to the counsel. The use of a Bus Stand by a person in charge of a motor vehicle is neither under any licence granted under the M.P. Municipalities Act, 1961, nor under any permission granted under that Act. Shri Phadke, learned Counsel appearing for the petitioner, relying on Ramachandra v. Municipal Council, Satna and Ors. (1) and Dukkuram v. Cooperative Agricultural Association, Kawardha (2), rightly pointed out that bye-laws made under a power conferred by a statute or not parts of the statute and, therefore, if the impugned bye-laws ''permitted'' the use of the Bus Stand, the use could not be said to be under a permission granted under the Act of 1961. Learned Counsel was also right in his submission that in fact under the impugned bye-laws no permission was needed for the use of the Bus Stand. In our judgment, neither Sub-clause (m) of Clause (7) of Section 358 nor Section 349 empowered the Municipal Council to prescribe by bye-laws any fees for the use of the Motor Stand declared by the bye-laws.

Subsequently, the aforesaid Division Bench decision was the subject matter of challenge before the Supreme Court by the Municipal Council Bhopal (supra), in which Their Lordships of the Supreme Court held as under:

Fees can be prescribed u/s 349 (ii) in respect of these matters. The words above mentioned in that section deal with permission granted to individuals to temporarily occupy municipal land. It would be doing violence to that section to hold that it deals with the provision of a bus-stand. In the context of that section it is difficult to hold that when people are compelled to use a bus-stand constructed by the Municipal Council it is a permission for temporary occupation of land belonging to the Council.

Let us now consider if under the provisions of Section 358, already extracted, the Municipal Council can validly make the present by laws. It is not possible to related the provision of Clause (f) of Sub-section (7) as having anything to do with the provision of a bus stand. As regards Clause (m) of Sub-section (7) the regulating and prohibiting "the stationing of carts...on any ground under the control of the Council or the using of such ground as halting place of vehicles" cannot be said to relate to the provision of a Municipal bus stand. The power to regulate or prohibit the use of a municipal land as halting place of vehicle cannot be used to compel people to use such a land as halting places. Such a power must be specifically given. Compare this section with Section 270-B and 270-C of the Madras District Municipalities Act, 1920, which read as follows:

270-B. (1) The Municipal Council may construct or provide an maintain public landing places, halting places and cart stands and may levy fees for the use of the same.

(1-A) ...

(2) A Statement in English and a vernacular language of the district of the fees fixed by the council for the use of such place shall be put up in a conspicuous part thereof.

Explanation.-A cart-stand shall for the purposes of this Act include a stand for carriages including motor vehicles within the meaning of the Indian Motor Vehicles Act, 1914 and animals.

270C. Where a municipal council has provided a public landing place, halting place or cart-stand, the executive authority may prohibit the use for the same purpose by any person within such distance thereof, as may be determined by the municipal council, of any public place or the sides of any public street.

Even these sections deal with use of landing places, halting places, and cart stands but do not deal with places for setting down or taking up of passengers. It is well to keep clear in one''s mind the distinction between halting places which would be the equivalents of garages of private persons and places where passengers may be set down and taken up which can properly be called bus-stands. The power to compel persons incharge of motor buses to stop only at certain places for the purpose of taking up or setting down of passengers is a matter which relates to motor traffic and there is a specific provision in Section 68(2) (r) and (s) of the Motor Vehicles Act for this specific purpose. They read as follows:

68. (2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely;

x x x x x x (r) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified area or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to broad or alight from the vehicle at a notified halting place;

(s) the requirements which shall be complied with in the construction or use of any duly notified stands or halting place, including the provision of adequate equipment and facilities for the convenience of all users thereof, the fees, if any, which may be charged for the use of such facilities, the records which shall be maintained at such stands or places, the staff to be employed thereat, and the duties and conduct of such staff, and generally for maintaining such stands and places in a serviceable and clean condition.

Their Lordships further held:

Under Section 76 of the Motor Vehicles Act the State Government or any authority authorized in this behalf by the State Government may in consultation with the local authority having jurisdiction in the area concerned determined places at which Motor Vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers. Unlike Section 68 which confers power on the State Government alone this sections enables the State Government to authorize any authority to take action under it. As is clear from a reading of Section 76, it does not deal with a bus stand in the sense of a place for taking up and setting down of passengers, which is dealt with u/s 68(2)(r). While Section 358 (7) (m) may enable the Municipal Council to regulate or prohibit the use of any ground under its control it does not enable it to compel anybody to use it as halting place, etc. much less to prescribe that no place other than the one provided by the Municipal Council shall be used for setting down and taking up of passengers. That can be done only under a provision like the one contained in Section 68(2)(r) and (s) of the Motor Vehicles Act.

In view of the aforesaid discussion, this matter is fully covered by the decision of the Supreme Court in the case of Municipal Council Bhopal (supra) and Municipal Council, Manasa (supra).

It will be useful to refer the provision of Section 6 of the M.P.Motor Vehicles Taxation Act, 1947 extended by M.P.Taxation Act 1958 w.e.f. 1.11.1957, which imposes bar on imposition of taxes by any local authorities and this was the subject matter of consideration in the case of Municipal Council Bhopal (supra) before Their Lordships of the Supreme Court. But learned Counsel for the appellant submitted that now the Act has been replaced after new Act of M.P. Motoryan Karadhan Adhiniyam, 1991 came into force. Section 6 of the aforesaid Act reads as under:

6. Bar of imposition of tax by any local authority:-Notwithstanding anything contained in any other enactment for the time being in force no local authority shall, after the commencement of this Act, impose or enhance a tax, toll or licence fee in respect of a motor vehicle and if any local authority has imposed such tax, toll or licence fee since before the first day of April 1942 and the same is still in force at the commencement of this Act, any person who is liable to pay such tax,a toll or licence fee to such authority shall be deemed to have paid it.

This Section 6 of the M.P.Motoryan Karadhan Adhiniyam, 1991, which starts with non-abstante clause that "Notwithstanding anything contained in any other enactment for the time being...." The same has already been clarified by the Division Bench in the case of Sindhi Sahiti Multipurpose Transport Co-operative

Ltd. (supra), in which it is held that what is prohibited is the imposition of a tax, toll or licence fee in respect of a motor vehicle, that is to say, a tax toll or licence fee which is in reality and substance a tax, toll or licence fee on a motor vehicle as subject matter of taxation. The fee purported to have been imposed by the impugned bye-laws is a fee for the use of the Bus stand. The measure of the fee has no doubt been fixed with reference to the hours and per bus. But that does not make the Bus Stand fee, a fee in respect of a motor vehicle. It remains a fee for the user of the Bus Stand and fees for the use of the bus stand can be levied by Municipal Council if permitted under the law. In another recent decision of the Hon''ble Supreme Court in the case of Municipal Council Manasa (supra) Their Lordships of the Supreme Court has held that after the commencement of this Act no local authority shall impose or enhance a tax or licence fees in respect of a motor vehicle.

From the aforesaid discussion, we are of the view that the position under the law is very clear. Section 349 of the Act of 1961 does not provide any power to impose the licence fee for the use of bus stand and the same is also not covered with the help of Section 358 (4) (b) and (d) or (7)(m) of the Act of 1961. Though Section 6 of the M.P.Motoryan Karadhan Adhiniyam, 1991 makes express provision that no licence fee can be levied on a motor vehicle but that does not debar to the Municipal Corporation to impose a fees for the use of bus stand, but there is no power in the Act of 1961 to impose any fees on motor vehicles for the use of bus stand by the Municipal Council/Nagar Panchayat Kurwai. u/s 358 (7) (m), if any property is under the control of council, its use can be regulated and time frame can be fixed for the use of bus stand, but as held by the Supreme Court in the case of Municipal Council Bhopal (supra), no fees can be recovered from the owner of motor vehicle for the use of bus stand under the aforesaid provisions of Act of 1961. Therefore, we hold that the resolution passed by the Municipal Council, Nagar Panchayat Kurwai as well as the bye- laws framed are not applicable and for the vehicles parked at the bus stand no fees can be recovered from the owner of motor vehicle. Consequently, this Writ Appeal is allowed. Parties are directed to bear their own costs.