

(2007) 07 MP CK 0027

In the Madhya Pradesh High Court

Case No : Writ Petition No. 157 of 2004

Maresh Kumar Singhal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 187(3), 194, 223(4), 282, 349
Motor Vehicles Act, 1988 — Section 117

Citation : (2008) 1 MPLJ 272

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Arvind Dudawat, for the Appellant; Smt. Ami Prabal, for respondent No. 1, Dy. Advocate General, L.L. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.

The petitioners by way of present petition have challenged the Resolution No. 157 dated 27-12-2003 passed by respondent Nagar Panchayat Kurwai whereby bye-laws viz., "Kurwai Nagar Panchayat Sadkon Tatha Sarvajanic Sthano par Asthayi Dakhal Upvidhiyan, 2004," (hereinafter referred to as "Upvidhiyan, 2004") has been framed. The challenge put-forth to the validity of the aforesaid bye-laws is on the ground that it is beyond the power of the Nagar Panchayat to frame such bye-laws, the same is in contravention to the provisions contained under Motor Vehicles Act and the rules framed thereunder, that the enforcement of said resolution without being confirmed by the State Government is void ab initio and that the imposition of fee in respect of Motor Vehicle is beyond the powers of the Nagar Panchayat. The Petitioners in support of his contention has relied upon the judgment rendered by the Apex Court in case of Municipal Council, Bhopal v. Sindhi Sahiti Multipurpose Transport Cooperative Society Ltd. and Anr. 1974 MPLJ 362. The Petitioners have also relied upon Section 117 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act of 1988") and Rule 204

of Madhya Pradesh Motor Vehicles Rules, 1994 (hereinafter referred to as "Rules of 1994") to draw home his submissions.

Per contra, it is the submission of the counsel for the Respondent Nagar Panchayat that it was well within the power of the Nagar Panchayat to have framed bye-laws in exercise of powers drawn from various provisions of M.P. Municipality Act, 1961 and it was not incumbent upon the Respondent Nagar Panchayat to have sent the resolution for approval to the State Government in view of the amendment brought into Section 129 vide The Madhya Pradesh Vidhi (Sanshodhan) Adhiniyam, 1995 (hereinafter referred to as "Adhiniyam of 1995"). It is further submitted by the Respondent counsel that the bye-laws do not suffer from any infirmity and since they have sanction of law cannot be interfered into.

Heard the counsel for the parties at length.

Before entering into the rival contentions it will be worth to note the provisions contained under M.P. Municipality Act, 1961, Motor Vehicles Act, 1988, M.P. Motoryan Karadhan Adhiniyam, 1994 framed by the State Government in exercise of its powers under the provisions of Motor Vehicles Act, 1988.

M.P. Municipality Act, 1961 is an Act to consolidate and amend the law relating to municipalities and to make better provision for the organisation and administration of Municipalities in Madhya Pradesh which received the assent of the President on 6th November, 1961 and the assent first published in the Madhya Pradesh Gazette, Extraordinary, on the 20th November, 1961.

Section 282 empowers the Municipality/Nagar Panchayat to reserve certain areas, it stipulates:

Section 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 a Council in respect of any Municipality 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, playgrounds, educational and medical or public health institutions, markets, stands for vehicles and animals, public recreation centres and housing colonies. (2) After such reservation has been noticed -

(a) no construction 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 option, the owner may transfer the property.

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

(4) If any construction take place on any 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.

Section 349 makes a provision for licences and permissions, it stipulates:

Fees for licences and permissions.- 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; 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.]

Similarly, Section 357 prescribes a general provisions regarding bye-laws. Sub-section (3) of Section 357 stipulates that "a bye-law may be general for the whole Municipality 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."

Similarly, Sub-section (5) of Section 357 stipulates 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 proved to have been persisted in."

Similarly, Section 358 empowers the Council to make bye-laws in addition to any power specially conferred by this Act, the Council may, and if so required by the State Government shall, make bye-laws for Section 358(4)(b) stipulates:

- (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;

Respondent Nagar Panchayat in exercise of powers drawn from aforesaid provision passed resolution on 27-12-2003 and the same was sent for confirmation to the State Government as is required u/s 357(3) of the Act of 1961. The State Government accorded its confirmation and accordingly the bye-laws were made effective from 1-2-2004.

First contention of the Petitioner that it is beyond the power of the Nagar

Panchayat to frame bye-laws prohibiting vehicle from being parked anywhere in the street within the municipal limit without seeking a permission in writing/licence under bye-laws 6, 7 and 8 does not find support from the aforesaid provision and the provisions as contained u/s 349(ii), Section 358(4)(b). Section 358(4)(b) clearly empowers that in addition to any power specially conferred by the Act of 1961, the Council may, and if so required by the State Government shall, make bye-laws for "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". Thus, it cannot be said that the provisions as contained in bye-laws 4, 6, 7 and 8 of Annexure P/ I, reproduced hereunder are beyond the powers of the Nagar Panchayat.

The powers are drawn from the statute as discussed above. The first contention of the Petitioner, therefore, fails.

The Petitioner further submits that Section 117 of the Act of 1988 empowers the State Government to determine the places at which motor vehicle may stand either indefinitely or for a specified period of time. Section 117 stipulates:

Parking places and halting stations.- 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, 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." From bare perusal of aforesaid provision it can be seen that the same falls under Chapter 7 of the Act of 1988 which is determination of parking places and halting stations which vests with the State Government. The exercise of the power u/s 117 vis-a-vis the power conferred on the Local Authority viz. Nagar Panchayat u/s 358(4)(b) have two distinct field of operation. This gets further elaborated by reading into the provisions as contained under Rule 204 of Rules of 1994 stipulate which are framed by the State Government in exercise of its powers under the Act of 1988, it stipulates:

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 class of public service vehicles:

(a) Conditionally or unconditionally prohibits the use of any specified place or of any place of a specified nature or class, or

(b) Require that within the limit of any Municipal Corporation, Municipality notified area or cantonment, or within such other limits as may 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 the 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 notwithstanding that the 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 or works necessary thereto subject to the termination of the agreement of 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 class of public service vehicles which shall use the place or 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 direction 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.

Thus, the contention of the Petitioner that operation of Section 117 of the Act of 1988 read with Rule 204 of the Rules of 1994 creates a bar over the exercise of the powers of Nagar Panchayat from "regulating the conditions subject to which provision may be given for temporary occupation or erection of temporary structure on public streets or a projection over public streets and places" lacks substance and is hereby rejected.

Now coming to the judgment rendered by the Apex Court in the case of Sindhi Sahiti Multipurpose (supra) it is seen that in the said case the bye-law in question as culled out from paragraph 1 of the judgment provided "that no person in-charge of a motor-bus plying for hire shall for the purpose of taking up or getting down of passengers, park or stop his bus anywhere within the limits of

the Bhopal Municipality except at the Municipal Bus Stand. The other bye-laws provided for a levy of a fee of Re. 1 for every eight hours or part thereof in respect of the use of the bus-stand by such buses and for the issue of a permit on such payment." It is in the said context the Apex Court after analysing the provisions contained u/s 358(7)(f)(m), Section 349(ii), Section 223(4), Section 194 and Section 187(3) has held that "the power to regulate or prohibit the use of municipal land as halting place of vehicle cannot be used to compel people to use such land as halting places. Such a power must be specifically given." It was further observed in para 8 of the said judgment:

8. It is interesting to note that in this case the Respondents as well as the Municipal Council had stated that the District Magistrate had declared the Bhopal Municipal Bus Stand as a bus stand. Power to specify the place u/s 68(2)(r) and (s) vests in the State Government. Neither party has been able to show us that there is any power in the State Government to delegate their power under this section to the District Magistrate nor have we been shown any notification by the District Magistrate specifying the Bhopal Municipal Bus Stand as one under the provisions of Section 68(2)(r) and (s) of the Motor Vehicles Act. Apparently both the parties proceeded on a misapprehension. If at all the District Magistrate had taken any action it could only be u/s 76. But that section does not enable him to specify places for sitting down or picking up of passengers as we pointed out earlier. Therefore, we must hold that the Madhya Pradesh High Court was in error in holding bye-law 2 valid.

In the case at hand, it is seen that various provisions are contained u/s 358(4) (b), Section 357(3) and Section 349(h) empowering the Nagar Panchayat to frame such provisions as are contained in bye-laws 4, 6, 7 and 8 of Upvidhiyan, 2004. The judgment therefore relied upon by Petitioner is of no help in the facts of the present case.

For the reasons mentioned above, this petition lacks substance and is hereby dismissed. However, no order as to costs.