(1961) 12 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 49 of 1961

Manohar Vasudeo APPELLANT

Vs

Gram Panchayat and Another RESPONDENT

Date of Decision : 08-12-1961

Acts Referred:

Central Provinces and Berar Panchayats Act, 1946 — Section 42(1)
Constitution of India, 1950 — Article 265

Citation : AIR 1962 MP 177 : (1963) MPLJ 23

Hon'ble Judges : Sheo Dayal, J;S.P. Bhargava, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

Sheo Dayal, J.

This is a petition under Article 226 of the Constitution challenging the imposition of registration fee on animals and heads -of cattle sold in the Market of the Gram Panchayat, Ratanpur, District Bilaspur. It is contended that what is charged from the purchasers in the said cattle market is really a ''tax''--not ''fee''--and is ultra vires the C. P. and Berar Panchayafe Act No. 1 of 1947. Section 42 (1) (c) of the Act empowers a Gram Panchayat to charge ''fee'' on sale of animals but does not authorise it to charge ''sales tax.''. The section runs thus :

"42, (1) With the approval of the District Council, and subject to rules made under this Act, a Gram Panchayat may, by a majority of two-thirds of its members, impose any of the following taxes, tolls, fees or rates :

(a) tolls On vehicles, pack-animals and porters bringing goods for sale into the Gram Panchayat area;

(b) fees on persons exposing goods for sale in any market or place belonging to or under the control of the Gram Panchayat or for the use of any building or structure therein;

(c) fees on the registration of animals sold in any market or place belonging to or under the control of the Gram Panchayat;

(d) fees for the use of sarais, dharamshalas, responses, slaughter-houses and encamping grounds;

(e) a water-rate where water is supplied by the Gram Panchayat;

(f) fee for cleansing private latrines payable by the owners or occupiers of the houses to which the private latrines are attached where such cleansing is done by the Gram Panchayat agency;

(g) a tax payable by the owners of animals used for riding, driving, draught or burden or ot dogs or pigs kept within the Gram Panchayat area;

(h) a fee payable by the owners on vehicles where such vehicles are kept within the Gram Panchayat area;

(i) a lighting rate where the lighting of public streets, places and buildings is undertaken by the Gram Panchayat;

(i) a drainage fee where a system of drainage has been introduced by the Gram Panchayat;

(k) any other tax, toll, fee or rate approved by the Provincial Government ....."

The section makes a distinction between ''fee'', ''tax'', ''toll'' and ''rate''.

Gram Panchayat Ratanpur is constituted under the said Act. It has established a market for the sale of cattle. Every sale within the market is registered and a registration fee is charged. The fee varies according to the price of the cattle sold. In fact the registration fee is indirectly charged through a contractor who takes an annual contract of the market from the Gram Panchayat.

The petitioner''s grievance is that in the name of ''registration fee'' what is really charged is ''sales tax'' because it is calculated upon the price fetched by the sale. And, although the services required for registration of one cattle is the same as those required for registration of any other animal of the same class, still the fee varies. It is urged that the imposition is for raising money for general revenue. The petitioner had to pay such fee on different occasions and apprehends that such fee would be collected in future also.

In the return filed by the Gram Panchayat it is stated that for the relevant year (1960-61) the Theka (contract) of the cattle market was auctioned publicly. Keshav Prasad respondent No. 2, being the highest bidder, paid Rs. 17,710/- as auction price when it was knocked down in Ins favour. The Gram Panchayat maintains the market; it keeps it clean and hygienic, it also renders services by giving market facilities; and it also provides facilities for water and conservancy. It is admitted that the basis for the fee of registration is the price of the animal sold within the market. These facts the learned counsel for the petitioner has not challenged before us and we must accept them.

Shri Pande relies on the decision in Nagpur Kshatriya Khatik Samaj v. Corporation of City of Nagpur ILR (1956) Nag 102 : ((S) AIR 1956 Nag 152). Delivering the judgment of the Court, Chief justice Hidayatullah (as his Lordship then was) summed up the law relating to the distinction between ''tax'' and ''fee'' and quoted the analysis contained in the judgment of Mr. Justice Sinha in Netram v. Chairman, Raigunj Municipality 59 Cal WN 872. The Division Bench in the Nagpur case then applied those principles to the facts and circumstances of the case before them and held that the registration fee on the sale of animals sold within the limits of City of Nagpur Corporation was ultra vires the Corporation. That decision, as is stated there is based on three decisions of the Supreme Court : The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., ; Ratilal Panachand Gandhi Vs. The State of Bombay and Others, and Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, . With greatest respect we would follow the principles laid down in the Nagpur decision.

When the analysis in the Calcutta case is applied here, the only conclusion which we reach is that what is charged in the present case is really a ''fee'' and not a ''tax''. It is transparent from the facts stated above that the Gram Panchayat has established a market and maintains it; it provides market facilities; it looks after the sanitation and cleanliness and provides facilities for water and conservancy. Thus there is clearly the element of quid pro quo between those who take advantage of the market and the Gram Panchayat. There is no doubt that special services are rendered. The levy of the fee is, therefore, correlative to the expanses incurred in rendering the services.

Section 14 (2) (d) of the City of Nagpur Corporation Act empowered the Corporation to impose-

"fees on the registration of cattle sold within the city."

It is strenuously urged by Shri Pandey that the wording of the Nagpur Act being substantially the same as that of Section 42 (1) (c) of the Panchayats Act, the decision reported in ILR (1956) Nag 102 : ((S) AIR 1956 Nag 152), must be followed and must be applied here in his favour. But in our view that case is clearly distinguishable and is not apposite here. In that case, the Corporation did not levy the so called fee for rendering any services. In fact there it was conceded by the Corporation that it did not render, and was not going to render, any services in respect of the cattle which were sold within the Corporation limits. It is in this that the real distinction lies.

It seems quite clear to us that where a cattle market is established by an Authority which provides market facilities and also renders special services, (e. g. sanitation and cleanliness; water and conservancy) the levying of a registration fee on price of cattle sold within such market is really a ''fee'' not a ''tax''. It may not be possible to prove that the fees collected approximate to the expenses that are incurred in rendering the services. It cannot be laid down that in order to justify a charge as a fee, the Authority must further establish that a separate fund has been created or that the amount of fee charged is the same, or nearly the same, as is actually expended by it in rendering the special service. What is to be seen is whether there is a correlation between the fee changed and the expenses incurred for the pin-pose of rendering such services. So also, the mere fact that there is a graduated scale of fees does not alter it into a tax. That is just a basis for calculating the fee. These features have not been declared to be the real criteria either in the Nagpur decision or in the ''analysis'' in the Calcutta case.

We are clearly of the opinion that having regard to the basic difference between a tax and a fee, as laid down in the above authorities and in view of the fact that special services are render ed by the Gram Pauchayat in respect o? the cattle market, the registration fee in the present case is intra vires Section 42 (1) (c) of the Panchayats Act. The petition is dismissed. Parties shall bear their own costs.

