

(1990) 11 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15928, 15929 and 13692 of 1989

Mohammad Ishaq Abdul Hamid and Brothers

APPELLANT

Vs

Zila Parishad and Others

RESPONDENT

Date of Decision : 13-11-1990

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 239, 239(1), 239(2)(D), 239(2)(F), 239(2)(H)

Uttar Pradesh Municipalities Act, 1916 — Section 298(2)H

Citation : (1991) 1 AWC 139 : (1991) RD 4

Hon'ble Judges : N.N. Mittal, J;G.P. Mathur, J

Bench : Division Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant;

Judgement

N.N. Mittal, J.—The Petitioners M/s. Mohammad Ishaq Abdul Hamid have filed this petition praying for a writ of mandamus commanding the Respondents not to interfere with their business of cattle fair and in parking the vehicles of the Transporters on their land on the basis of the bye-laws framed by the Zila Parishad and also to restrain them from charging any fee from them or from the Transporters for loading and unloading of cattle and other animals in the fair area. In substance, the challenge in the petition is to the validity of the bye-laws framed by the Zila Parishad, Meerut and published in the Official Gazette dated 4-3-1989 on the plea that the same were beyond its jurisdiction apart from being illegal, unjust and arbitrary.

2. To understand the controversy, a look at the background facts may help. The Petitioners claimed to be the owners of the land on which, it is alleged, they have been holding a weekly cattle fair since 1938. The said land is about 4 kms. outside the Municipal limits of Nagar Palika. Sardhana and 18 kms. away from the Municipal Corporation, Meerut and is situate by the side of the P.W.D. roal linking Meerut and Sardbana. The allegation further is that cattle ere brought to the fair site by the owners of the cattle for sale which are transported in Trucks

and other kind of Transport vehicles. The cattle are then unloaded in the fair area and are open for sale. After the transactions are over, the vehicles are again hired either by the purchasers to carry the cattle to their destination or some times by the sellers who carry their unsold cattle back to their destination. The entire business of sale and purchase of cattle takes place within the limits of the cattle fair area and the transport vehicles are also loaded and unloaded within its limits. The assertion is that the Zila Parishad, Meerut does not render any kind or service directly or indirectly in the running of the fair or for the facility of cattle owners or of the transporters in any way. On the other hand, the platforms for loading and unloading the cattle and facility for parking of the vehicles etc. are also provided by the Petitioners themselves.

3. The Zila Parishad has framed the bye-laws in exercise of powers u/s 239 of the U.P. Kshetra Samiti and Zila Parishad Adhiniyam, 1961 known as Parking of Traffic and Public Safety and Facilities Byelaws, the avowed object of which is to regulate traffic of vehicles in the rural area of district in respect of those vehicles which are transporting cattle or leather for sale or purchase in a cattle or leather market or fair any where within the rural area of the District. Bye-laws 5 empowers the authorities to stop any vehicle laden with leather or cattle or is likely to be used for the aforesaid purpose and if it is found that the vehicle was so being employed without payment of the requisite fee, the same may not be allowed to proceed without payment of the requisite fee. Byelaw 6 lays down that no transport vehicle can be used without payment of requisite fee if it is being used for transport of cattle or leather for sale in a cattle market or fair, HVLaw 8 provides that the Zila Parishad will make arrangements for establishing such parking spaces or stands for the Transport Vehicles. Byelaw 9 prohibits the use of any other place for parking of such vehicle except the specified stands or parking area and for this purpose the vehicle will have to pay the requisite fee.

4. The validity of these bye-laws is challenged on several grounds. It is contended that:

- (1) The Zila Parishad has no jurisdiction to frame the bye-laws for this purpose;
- (2) There is no nexus between regulation of traffic for promoting or maintaining the health, safety and convenience of the Rural Area and the transportation of cattle and hides or leather by motor vehicles
- (3) The Zila Parishad can not force the transporters to park their vehicles only at the specified parking places and to force them to do so will infringe Article 19(1) (g) of the Constitution of India;
- (4) The fee levied is not being used for rendering any service to the persons liable to pay the same;
- (5) The bye-laws as framed do not achieve the object for which the power has been exercised and the same are arbitrary; and lastly
- (6) The Zila Parishad cannot shift the responsibility of providing and maintaining

the Parking space and the facilities necessary for loading and unloading of the cattle, sanitation, light and water, sheds, to the contractor after receiving a fixed amount from him.

5. So far as the question of jurisdiction to frame bye-laws is concerned, the contention has no force. Section 239 of the U.P. Kshetra Samiti and Zila Parishad Adhiniyam, 1961, hereinafter Zila Parishad Act for short empowers the Parishad to make bye-laws for its own purpose in respect of matters required by this Act to be governed by the bye-laws and also for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the Rural area of the District. In addition Sub-clause (2) of the section also empowers the Parishad to make any bye-laws in respect of items mentioned in the list given in the section. Although in the counter affidavit the stand taken is that these bye-laws are within the jurisdiction of the Zila Parishad u/s 239(1) and 239(2)(D), (F) (a) and (e) and (H) (a), but in our opinion the matter does not fall either under the head (D) or under head (H)(a) of Section 239. The relevant provision may be under (H)(1) which provides as under:

Regulating fairs, cattle markets...held under the authority of a Parishad...to which the public is allowed access.

(F)(a) and (e) are also relevant for this purpose and may be quoted below:

(a) Providing for the regulation or prohibition of any description of traffic in the streets where such regulation or prohibition appears, to the Parishad to be necessary

(e) Prohibiting or regulating, with a view to promoting the public safety or convenience any act which occasions or is likely to occasion a public nuisance and for the prohibition or regulation of which no provision is made under this heading.

6. The language of Clause (e) is much wider and is residuary in nature. The heading F deals with public safety and convenience. The question, therefore, is whether the bye-laws framed by the Zila Parishad can be said to have been framed under any of these provisions? As we have seen earlier, the nature of business carrier) on by the Petitioners involves visits by a large number of cattle owners who bring in their cattle from different places in motor transport vehicles. The whole pattern of business has changed over the years. While earlier the cattle owners mostly used to walk down their cattle to the market place and the purchasers also used to walk them back to their respective destinations, with the increase in population, there has been an increase in the sale and purchase of cattle. While earlier the trade was localised, now a days the purchases are made for transporting cattle to far flung places in the country. The speed with which the cattle can be transported is a relevant consideration and, therefore, over the years more and more cattle are being brought into these cattle markets in transport vehicles. Besides the main business of sale and purchase of cattle, there is a side industry or business of transporters. We are informed that in the

District of Meerut alone there are 13 places where weekly markets are held and cattle are transported from one fair to another.

7. The magnitude of the business has increased manifold and where only a few hundred cattle used to come for sale earlier, now they come in thousands and mostly they are transported in trucks. It is a matter of common experience that the cattle after being loaded in truck are kept in position by providing side rest by fixing bamboos so that the animals do not hit each other on account of jostling while in transit. The cattle are mostly unused to this type of travel and get agitated and worked up by the time they reach the destination. As soon as they are unloaded, they run helter skelter and create lot of uneasiness around. At that time it is necessary that the cattle should be calmed down and should be properly rested for which it is necessary to provide shelter under a shed, fodder and water. They also pass extensive quantity of urine and dung while they are agitated and this creates excessively insanitary conditions at the places where these catties are disembarked. Parking of such transport vehicles by the side of the main road in a haphazard manner also have to be regulated. The disembarking of agitated cattle by the side of the road may also create traffic hazard to the other normal traffic and to the passersby. It, therefore, can not be said that the Zila Parishad should not have thought of regulating this and for providing a specified area as a stand for parking the vehicles, for loading and unloading of cattle into the truck, for providing troughs for water and fodder, to provide space for parking of vehicles and also to make arrangements for the proper sanitation of the area and to provide lighting there. All these are essential requirements for catering to this type of business of transport of cattle by the vehicles. It was to meet this situation that bye laws were framed by the Zila Parishad. The object of the bye laws being regulation of traffic with a view to promote public safety and convenience as it was likely to occasion public nuisance and, therefore, it can not be accepted that the Zila Parishad had no jurisdiction to frame these byelaws. Besides being covered by Sub-clause (1) of Section 239 which empowers the Zila Parishad to frame bye-laws for the purpose of promoting and maintaining the health, safety and convenience of the inhabitants of the rural area, it has also got the power under Clause F (a) and (e) to frame bye-laws for regulating the traffic and this is what precisely is sought to be achieved by these byelaws.

8. The second ground for challenging the bye-laws is that there exists no nexus between regulating of traffic and the transport of cattle. It may be pointed out that there does exist a clear nexus between the two. In fact a similar question was raised in the case of *Ali Hasan v. Zila Parishad, Etawah* 1988 UP LB EC 258 and the contention was repelled by a Division Bench of this Court. There also a Tahbazari was imposed on the transporters who used to bring their cattle into or take them out from the cattle fair. There also the question raised was about the existence of a nexus. After taking notice of several cases, Division Bench of this Court held that the charge of Tahbazari as a fee on Transport Agencies operating for hire and reward as a consequence and incidental to the cattle fair permitted

to be held under licence by the Zila Parishad, was regular and not illegal. In view of the aforesaid decision it is not necessary for us to dwell upon the said aspect in any further detail as we entirely agree with the reasoning given by their Lordships in that decision.

9. As far the question whether the Zila Parishad has any right to prescribe a specified place for parking of their vehicles and whether any such bye-laws would be hit as infringing Article 19(1)(g) of the Constitution is concerned, the matter stands squarely covered by a Full Bench decision of this Court rendered in the case of Dashrath Yadav v. Zila Parishad 1984 ALJ 310 FB where precisely the same question was raised. The Court relied upon on earlier Full Bench in Mewa Ram Vs. Municipal Board, and came to the conclusion that the Zila Parishad had the necessary jurisdiction to frame the byelaw. In that case also the District Board (predecessor-in-interest of the Zila Parishad) Jaunpur framed a bye-law prohibiting that no motor vehicle etc. shall be allowed to halt, for searching passengers on a public street or place other than the stand fixed by it. A certain amount of daily charges were also levied. This levy was challenged placing reliance on three Supreme Court decisions, namely T.B. Ibrahim Vs. Regional Transport Authority, Tanjore, and Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others, All the aforesaid three cases were distinguished. Mention was also made to 1975 ALJ 571 and 1970 ALJ 249 but these cases were also distinguished and regarding the latter case it was mentioned that the bye-laws in that case (1970 ALJ 249) were not at all related to traffic in streets of the Municipal area, much less for regulating or prohibiting the same Bye laws in that case did not contemplate that the motor vehicles of the kind mentioned in the impugned bye-laws would not enter the streets, in such period of times when the traffic may be unusually heavy on the streets without paying the requisite fee. The fee was chargeable at any time without consideration to the condition of the traffic on the street. The bye-laws did not deal with the subject matter mentioned in Clause (b) of Section 298(2)-H of the U.P. Municipalities Act and could not be sustained.

10. The Petitioners also made a reference to the case of Deep Chand Singh Pawar v. Zila Parishad Uttarkashi (1980 UP LB EC 318) where also a Division Bench of this Court was confronted with a similar question. Relying upon 1975 ALJ 971 and Municipal Council, Bhopal Vs. Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd. and Another, , the Court held that the bye-law fixing a certain amount of fee for parking of vehicles at the specified place be struck down. However, the aforesaid case is now of no relevance in view of the decision of the Full Bench referred to earlier (1984 ALJ 310) in which the two cases relied upon by the said Division Bench were considered and distinguished Thus the very basis on which the aforesaid Division bench case is founded now did not exist at all. In the instant case, the bye-laws provide that a specified area will be earmarked for parking of vehicles and certain facilities are to be provided therein. A specified parking place is essential in order to regulate the traffic which has increased manifold and for providing facilities for loading and unloading of the cattle and

other amenities connected therewith. The bye-laws, therefore, can not be invalidated on that ground.

11. The Full Bench decision referred to above being binding on this, Court, we hold that the bye-laws are not invalid for the aforesaid reasons as, in our opinion, the bye-laws only regulate the traffic in such manner so as to promote the health, safety and convenience of the inhabitants of the rural area and, therefore, do not infringe Article 19(1)(g) of the Constitution. Apart from this, the right of the Petitioners to carry on their business of holding cattle fair is not affected by the bye-law in any manner. The only effect of (he bye-law would be that cattle will now have to be disembarked from" the transport vehicle in the specified parking area from where the same can be walked down to the cattle fair for being put up for sale. The Petitioners in the other connected petition are also not affected inasmuch as they have to unload the cattle some where, either in the land specified for the purpose or in the cattle fair itself, as they claim to be doing at present. In either case, as their right to business and trade is not affected in any manner. We, therefore, have no hesitation in rejecting the Petitioners' submission in this respect

12. It is next urged that the fee which has been imposed is not being utilised for rendering any service to the person paying it. The Petitioners in Writ Petition No 15929 of 1989 are merely owners of the land on which they hold a cattle fair under a licence granted by the Zila Parishad. The levy of fee has been imposed on the owners of the vehicles and not on the person who organises the cattle fair. The Petitioners of this case, therefore, can have no grievance so far as this impost is concerned. However, since the connected Writ Petition No. 15928 of 1989 has been filed by the owners of the vehicles who transport cattle to the fair, we would like to discuss the matter here and now. We may also mention here that according to the Respondents, the owners of the vehicles and the owners of the land where the cattle fair is held are closely related and the two petitions are alleged to have been filed collusively. Be that as it may, the fact remains that two distinct petitions have been filed and the same can not be rejected merely on the ground that the Petitioners in one case are related to the Petitioners in another case. The question of the existence of quid pro quo and whether the bye laws framed do not achieve the object for which the power has been exercised and that the Zila Parishad can not shift its responsibility to provide the required facilities to the contractor or other agency or concern are all interconnected and can be conveniently disposed of together.

13. Now so far as the principle of quid pro quo sought to be applied in this case is concerned, we may point out that the aforesaid principle has long lost its rigour. In *Municipal Corporation of Delhi and Others Vs. Mohd. Yasin*, , the question as to the difference between tax and fee was raised and after a consideration of a number of authorities, the Supreme Court observed as under:

What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, through broadly a tax is a compulsory

exaction as part of a common burden, without promise of any special advantages to classes of tax payers whereas a fee is a payment for services rendered, benefit provided or privileges conferred. Compulsion is not the hallmark of distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payer of the fees may even be secondary as compared with the primary motive of regulation in public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of services rendered etc against the amount, of fees collected so as to evenly balance the two. A broad co-relationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax.

14. This case was referred with approval in the case of City Corporation of Calicut Vs. Thachambalath Sadasivan and Others, and the law was enunciated there in these words:

It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee.

15. However, in this very case, there is a note of caution also when in paragraph 5 of the Report, the Supreme Court observed as under:

However, co-relationship between the levy and the services rendered or expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be reasonable co-relationship between the levy of the fee and the services rendered.

16. In this case, the Supreme Court had also placed reliance on its earlier decision in Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, . A look at the facts of that case, however, would be relevant. On the question of quid pro quo the stand taken by the Corporation was that against the realisation of Rs 4,25,000 approximately, the Corporation had shown an expenditure of Rs. 2,56,000/ as expenditure in connection with slaughter houses. The argument

was that the entire amount of fee realised had not been spent for the purpose of maintaining the slaughter houses. The position was explained by the Deputy Health Officer of the Corporation by filing an affidavit to the effect that these are only direct expenditures over slaughter houses but there were some other expenditures also incurred in that connection which were shown under different heads. The expenses were such AS maintenance of supervisory staff and for making provision for expansion and improvement of the slaughter house facilities and expenditure Incurred in the purchase, maintenance and use of truck and other vehicles for removing the filth and refuse from slaughter houses. These items had not been considered by the High Court and in view of this the Supreme Court took the view that the enhancement in the rates could not be struck down as invalid merely because the sum actually realised by way of enhanced fee would exceed the direct expenditure to be Incurred for that purpose. That expenditure need not be incurred directly or even primarily in connection with special benefit or advantage conferred and there need not be fastidious balancing of the cost of service rendered with the fee collected.

17. In view of the observation of the Supreme Court in the above case, the position of law appears to be that while considering the question of quid pro quo, the Court should not be very meticulous in balancing the amount realised as fee against the expenditure incurred on the services rendered but if certain services are rendered for promoting the object for which the fee is being realised substantially out of the fee realised then the impost can not be invalidated on the ground that the whole of it was not being expended for that purpose. The position, however, may be different if in a given case no expenditure at all is incurred or if no service is rendered in pursuance of the object for which the fee was imposed.

18. The submission of Sri R.N. Singh on behalf of the Petitioner was that the Petitioner was not being rendered any service of any kind by the Zila Parishad and the entire amount which is being realised by way of fee is only adding to its revenue.

19. In paragraph 17 of the petition it has been specifically mentioned that the Zila Parishad or its agent or contractor have neither specified neither any parking area nor they have made any platform for the purposes of loading and unloading the cattle and are only engaged in realising the fee and making money. In reply thereto the Zila Parishad has very vaguely mentioned that the Zila Parishad and its contractors are providing services but it has not been specified as to what kind of services was being rendered to the owners of the transport vehicles by either of them. In paragraph 6 of the supplementary counter affidavit on behalf of the Zila Parishad, an attempt has been made to elaborate this. It is averred that the vehicles used to come from different parts of the country carrying animals and leather which they used to park, and load haphazardly at different places of their choice, without caring for public convenience, hygiene and safety. It is also averred that there was no facility for parking the transport vehicles and

the cattle where mercilessly thrown in and out of the vehicles because of absence of proper loading and unloading facilities. It is further averred that after the cattle fair was over, no one used to care for the left over garbage, cattle dung etc. scattered at all places due to unregulated parking, loading and unloading of cattle from the vehicles and this affected the life, safety, health, hygiene and convenience of local inhabitants and of the visitors to the cattle fair. It is asserted on behalf of the Zila Parishad that the bye-laws were framed for regulating the movement, parking, loading and unloading of vehicles involved in the transport of cattle and leather in and out of the cattle market.

20. From these averments, it is obvious that the avowed object of framing the bye laws was to regulate the traffic of transport vehicles coming laden with cattle or leather to the cattle fair by providing a proper parking place where facility for loading and unloading would be available and also that it will ensure sanitation of the place after the fair was over. It is a matter of common knowledge and experience that when such fairs are held, cattle require drinking water and place to eat their fodder and also will require a proper shed and light arrangement as they cannot be left to the mercy of elements during the scorching heat of May and June or during the rainy season or when the winter is at its worse. Naturally, therefore, when the Zila Parishad intends to charge a fee for providing a parking place for vehicles, it is supposed to provide for the facilities and amenities also. In the instant case, in what manner this has been done? The Zila Parishad does not even own land of its own. As we find from the record of the third connected petition No. 13629 of 1989 Udaibir Singh v. Zila Parishad, Meerut, that it was the contractor who had to arrange for the land for providing parking area for the vehicles just opposite to the land where the cattle fair is organised. It is his obligation to provide for the platforms and ramps for loading and unloading the cattle and leather from the vehicles. Copy of the contract executed between Udaibir Singh and Zila Parishad is also on the record and a reading of the same will go to show that the main stress therein is the realisation of the amount for which the contract has been settled with Udaibir Singh and the contractors' right to realise the fee from the vehicle owners. As far providing the facilities, it appears that it was only of a tertiary importance and there is only a small mention in paragraph 3 of the contract that the contractor will provide platform for the loading of the cattle and will also be responsible for making arrangement for proper looking after of the transport vehicles. The terms of this Deed, therefore, clearly go to show how the bye-laws are being put to actual use by the Zila Parishad. It has not taken any responsibility on itself to acquire site as owner or on a lease any land for the purpose of providing parking space. It has also not cared to collect any information as to how many trucks normally come to a particular cattle fair for which arrangements are to be made. There is no provision in the contract as to how many platforms or ramps will be provided by the contractor. In the parking area and what will be their size. There is also nothing to indicate whether the contractor is also to provide any drinking water for the cattle and troughs for fodder for the cattle and if there will be any

provision for shed and lighting of that area as also about the cleaning of parking space for the purpose of maintaining proper sanitary conditions. The contract executed between the Zila Parishad and the contractor is mute on the point and it appears that the Zila Parishad does not deem it to be its concern to make any such provision, in normal circumstances, the Zila Parishad should have acquired the land of its own for the purpose and provided with sufficient number of ramps and platforms for the unloading of cattle and leather and also provide for drinking water and arrange for a shed with provision for fodder troughs and staff for maintaining sanitation in the area. After all these have been provided then the right to realise the fee may be given to some other agency or contractor and the Zila Parishad should have made some arrangement for supervising the arrangement. Then only it may be said that proper service was being rendered in lieu of the fee charged by it.

21. As seen earlier, the Zila Parishad itself has mentioned in paragraphs 6 and 8 of the supplementary counter affidavit sworn by Anup Singh that the bye-laws became necessary for regulating the movement, parking, loading and unloading of the vehicles involved in the transport of cattle and leather to and from the cattle market. Apart from saying this, no other details have been given as to what attempt has been made by it to provide any of these facilities and services. It is in this light that we have to examine whether the bye-laws really achieve the object for which the same have been framed? The bye-law is for regulating the movement, parking, loading and unloading of vehicles as mentioned in paragraph 6 of the supplementary counter affidavit. A copy of the bye-laws has been filed by the Petitioner as Annexure-4. By-law 4 Sub-clauses (2) and (3) define the terms "cattle or leather market or fair" and "vehicle." By-law 6 is the main charging bye-law according to which use of any vehicle in any cattle or leather market or fair for transport of cattle and leather is prohibited unless the requisite fee is paid. By-law 8 provides that the Zila Parishad shall make proper arrangement for providing specified parking space or stand, while according to bye-law 9 no vehicle can be parked at any place other than the specified place provided for the purpose. Bye-law 7, however, provides that the Zila Parishad itself or through any specified agency or contractor shall make arrangement for specified parking and for regulating the traffic. A perusal of bye-laws 7 and 8, however, will fail to indicate the nature of facilities which the Zila Parishad had undertaken to provide. The first indication of this is found in the supplementary affidavit. The stress in the bye-laws is more on the Imposition of fee and its realisation and not on the nature of services to be rendered in lieu thereof. In this respect the bye-laws are silent and vague. Unless the bye-laws in some way provide for the facilities to be provided by the Zila Parishad, how can it justify the levy of any fee? Merely because a piece of land is provided for parking of transport vehicles by itself will not be sufficient to justify the imposition of fee on the vehicles because that alone does not take care of the convenience, hygiene and sanitation of the persons living in the rural area or those visiting the cattle fair. A reading of the bye-laws leaves an impression in our mind that these bye-

laws are intended more to realise the fee than to render any service or provide facilities to achieve its object in lieu thereof.

22. When the legality of subordinate legislation is examined, there are certain principles governing the same. In a well reasoned decision by the Supreme Court in *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, the validity of certain Rules framed by the Supreme Court for its employees came under challenge. After referring to a large number of cases, the Supreme Court culled out the following principles which we must keep in mind while considering the validity or otherwise of the bye-laws:

(1) Whether relevant consideration have gone In and irrelevant considerations Kept out?

(2) Is there a reasonable nexus between matters which are taken into account in exercising the power and the purpose of exercise of that power?

(3) Public body invested with statutory powers such as those conferred upon a Corporation must take care not to exceed or abuse its power and must keep within the limits of the authority committed to it which must act in good faith and it must act reasonably.

While concluding the Supreme Court mentioned in paragraph 106 of the report:

The true position thus appears to be that just as in the case of an administrative action, so also in the case of subordinate legislation, its validity is open to question if it is ultravires of the Constitution or the governing act or repugnant to the general principles of the laws of the land or It is so arbitrary or unreasonable that no fair minded authority could ever have made it.

23. We have already held that while framing the bye-laws the Zila Parishad was acting within its powers u/s 239 of the Act. Keeping in mind the dicta of the Supreme Court in *Supreme Court Employees Welfare Association (Supra)* we have only to examine whether the bye-laws are so vague, arbitrary and unreasonable as to render them invalid. In view of the discussion already made, in our opinion, the by-laws certainly suffer from vagueness and arbitrariness and they also do not tend to achieve the object for which the same had been framed.

24. A clause by clause examination of the various by-laws will indicate that so far as bye-laws 1 to 6 and 9 to 15 are concerned, we find no vagueness or other defect in the same. They do further the object for which the bye-laws have been framed and, therefore, can not be invalidated either on the ground of arbitrariness or due to lack of any nexus. The same, however, can not be said about bye-laws 7 and 8. While bye-law 8 provides that the Zila Parishad will provide such place (meaning an area for parking the vehicles) or stand, bylaw 7 empowers the Zila Parishad either to carry out the work itself or through any specified agency or through any contractor regarding parking and facilities connected with the traffic. Reading the two bye-laws together, it appears to us that the primary duty for providing the necessary area for the stand lies on the

Zila Parishad. It is only the work of supervising the parking and the traffic which can be entrusted to another agency or to a contractor by the Zila Parishad who may look after the facilities provided. This byelaw, however, is absolutely vague and does not specify as to what type of facilities would be provided in the said parking area. Byelaw 8 also is not happily worded and it does not indicate whether the Zila Parishad has undertaken merely to specify a stand and to make necessary arrangement for specifying the same. This again appears to be very vague. A reading of the two bye-laws does not clarify as to whose responsibility it is to provide the parking area and who is charged with the duty of providing the platforms and the ramps for loading, unloading and stacking of the cattle and the leather brought in the fair for sale and who will look after the other arrangements pertaining to traffic and for providing necessary facilities for the cattle, their drinking water, fodder troughs lighting and sanitation, it also does not provide as to who will specify the number of ramps and platforms to be provided in a particular parking area. In fact the bye-law should also have a provision charging an officer of the Zila Parishad to specify the minimum area which will be required for parking purposes, to specify the number of platforms and ramps for loading and unloading, number of sheds for the cattle, requisite facility for drinking water for the cattle and their owners and requisite number of fodder troughs to be provided in the parking area for a particular fair in the village. In case these facilities are to be provided by the contractor, the bye-laws must specify the period within which these facilities will be provided after the work is entrusted to a contractor to whom the right to realise the fee has been given. Some agency should also be provided for supervising the work of such contractor to ensure that the contractor was providing the necessary facilities to the persons from whom fees is being charged. We find that the present bye-laws are totally lacking in all these essential requirements.

25. Having considered the matter in some detail, we are of the opinion that bye-laws 7 and 8 are invalid on account of vagueness and also on the ground that they do not tend to achieve the object for which the fee has been levied. Bye-laws 7 and 8 framed by the Zila Parishad, Meerut and published in the U.P. Gazette dated 4th of March, 1989 are held to be invalid and are hereby struck down. It will, however, be open for the Zila Parishad to frame proper bye-laws in place of bye-laws 7 and 8 and also add other bye-laws in the light of the observations that we have made in the body of the judgment.

26. In the result, writ petition No. 15929 of 1989 and 15928 of 1989 are allowed in part to the extent indicated above. Writ petition No. 13692 of 1989, however, fails and is hereby dismissed, it is not necessary for us to go into the merits thereof since the relevant bye-law itself has been struck down by us. In the circumstances of the present case, we direct the parties to bear their own costs in all the above petition.