**(1992) 07 AHC CK 0033**

**In the Allahabad High Court**

**Case No :** Writ Petition No. 47 of 1980

Mohammad Mahroz Iqbal and others — APPELLANT

Vs

State of U.P. and another — RESPONDENT

**Date of Decision :** 27-07-1992

**Acts Referred:**

Uttar Pradesh Municipalities Act, 1916 — Section 251, 298, 298(1), 298(2)H, 299(1)
Uttar Pradesh Town Areas Act, 1914 — Section 14, 14(1), 15

**Citation :** AIR 1994 All 168

**Hon'ble Judges :** S.C. Mathur, J;B.C. Saksena, J

**Bench :** Division Bench

**Advocate :** S. Mohd. Husain, for the Appellant; Pt. Surya Kumar Awasthy, for the Respondent

## Judgement

S.C. Mathur, J.—The petitioners, seventeen in number, residing within the jurisdiction of Town Area Committee, Manikpur, district Pratapgarh, and having houses in the area and doing business, have approched this Court through the instant petition to challenge the imposition/levy of certain taxes/fees. The imposition/levy has been made through notification dated 7th Sept. 1979 issued by the District Magistrate, Pratapgarh u/s 298(2) read with Section 301(2) of the U.P. Municipalities Act, 1916 (II of 1916), for short Municipalities Act, a copy of which has been filed as Annexure-1 to the writ petition. It is alleged by the petitioners that this notification was published in the U.P. Gazette dated 13th October 1979. This notification refers to an earlier notification dated 2nd April, 1928.

2. The above notification contains bye-laws on various subjects like -

(1) Tahbazari

(2) Licnsing of bicycles

(3) Use of loud speakers

(4) Regulation of house building

(5) Control of shops of various categories

(6) Control of shops of various categories including barber shops

(7) Control of flour mills and factories

(8) Control of slaughter houses

(9) Cotnrol of meat and fish markets

(10) Trade, calling and profession.

3. There is separate notification in respect of the bye-laws covering each subject. Thus Annexure-1 is a compilation of several bye-laws. In the bye-laws in respect of each item it is mentioned that they have been framed and that the District Magistrate confirms them and publishes them u/s 301(2) of the Municipalities Act. These notifications do not make any references to any provision of the U.P. Town Areas Act, 1914 (II of 1914), for short T.A. Act.

4. The above-laws have been challenged by the petitioners on the following grounds:--

(1) the bye-laws are beyond the scope of Section 298(2) which has been invoked in the impugned notification;

(2) the bye-laws have been framed without following the procedure prescribed in T.A. Act;

(3) the fees levied is not related to any service and cannot, therefore, be charged;

(4) tax on trade, callings and profession can be imposed only after framing rules u/s 14 of the T.A. Act but no rules have been framed any yet the said tax has been imposed;

(5) rules are necessary in order to provide guidelines for imposition of the tax; and

(6) the taxes and fee imposed are, in any case, excessive.

5. In Annexure-1 there is reference to notification No. 974/XI-574-E dated 2nd April, 1928. Annexure-1 is not certified copy of the notification. On checking the correct date of the notification from the Government Gazette it appeared that the date of the notification is April 3, 1928 and not April 2, 1928. The notification dated 3rd April, 1928 was issued by the State Government in exercise of the power conferred by Section 38(1) of the T.A. Act Section 38(1) empowers the State Government to extend the provisions of any enactment in force in any municipality town area or any part thereof. This extension is possible to be made with restrictions and modifications also. By the notification dated 3rd April, 1928 the provisions of Sections 298 (2)H (h) to (1), 251, 299 (1), 301(2) and 301(5)

 

of the Municipalities Act have been extended to all the town areas in the State in the modified form set forth in the notification. Thus the extension of the provisions of the Municipalities Act mentioned herein is with medications.

6. Modification in respect of Clause H(h) to (I) of Section 298(2) of the Municipalities Act is as follows:--

(h) Providing for the seizure and confiscation of ownerless animals at raying within the limits of the town area;

(i) Providing for the registration of dogs;

(j) Providing for the imposition of an annual fee for such registration;

(k) Requiring that every registered dog shall wear a collar to which shall be attached a token, to be issued by the Panchayat; and

(1) providing that a dog, unless registered and wearing such a token, may, if found in any public place, be destroyed or otherwise disposed of."

There are modifications in Ss. 299(1), 301(2) and 301(5) also but for the purposes of the case they are not material. It may only be pointed out that the modified S. 301(2) provides that a copy of the bye-law shall be pasted in a conspicuous place within the town area and no bye-law shall take effect until it has been confirmed by the District Magistrate.

The writ petition has been half-heartedly contested by the town area committee, opposite party No. 2. On its behalf Ram Bihari Shukla, Secretary filed an absolutely insufficient affidavit dated 16th April 1980. At the time of hearing no one appeared on behalf of opposite party No. 2. The counter affidavit vaguely accepts or denies the allegations made by the petitioner. No case of its own has been set up by the town area. It is difficult from the said counter affidavit to ascertain * the pleading of the town area committee.

7. Before taking up the petitioners'' challenge a few provisions of Town Area Act and the Municipalities Act may be examined.

8. Chapter III of the T.A. Act deals with taxation and town fund. Section 14 falling in this Chapter specifies the taxes and fees which may be imposed by the town area committee. Sub-sec. (1) reads "subject to any general rules or special orders of the State Government in this behalf, the taxes which a committee may impose are the following:". The taxes enumerated are contained in sub-clauses (a) to (g). Sub-clauses (d) and (g) read as follows :

"(d) A tax on races, callings or professions not exceeding such rates as may be prescribed.

(g) any other tax, being one of the taxes mentioned in sub-sec. (1) of S. 128 of the U.P. Municipalities Act, 1916 except a tax mentioned in clauses (vii) and (viii) of that subsection."

 

Sub-clause (g) is a very wide provision and enables the town area committee to impose all taxes referred to in S. 128 of the Municipalities Act except those mentioned in clauses (vii) and (viii).

9. Sub-sec. (2) of S. 14 reads "The Committee may also Impose the following taxes and fees:

(a) Fees for licensing hackney carriages

(b) Tehbazari leviable for the use of public land or public roads.

(c) Fees for licensing carts.

(d) Fees for licensing Palledars."

10. Sections 15-A, I5-B and 17 lay down the procedure for imposition of taxes. Section 17 requires the assessment list to be posted in a conspicuous place within the town area. It also speaks of confirmation of the assessment list by the prescribed authority and where no prescribed authority has been appointed, by the District Magistrate. S. 18 makes provision for appeal against the assessment for levy of tax to the prescribed authority and where no prescribed authority has been appointed, to the District Magistrate or such magistrate as he may appoint in this behalf. Sub-sec, (3) prescribes the period of limitation for filing appeal; it is 30 days from the date of posting under S. 17. The appellate authority has the power to condone delay in filing the appeal on sufficient reason being shown for the delay. Under sub-sec. (4) the decision of the appellate authority is final and is not open to question in any court.

11. Chapter IV deals with "power for sanitary and other purposes." S.26 falling under this Chapter enumerates the matters for which provision may be made by the town areas committee. The matters are mentioned in clauses (a) to (e). In all these matters the committee is competent to make provision on its own. In respect of the matters enumerated in clauses (f) to (h) provision can be made by the committee with the previous sanction of the prescribed authority or if none has been appointed the district magistrate. Clause (a) mentions "the regulation of regulation of slaughter houses." Clause (g) reads "the prohibition for reasons of public health of the use of any place for the sale of meat in default of a licence granted by the committee or otherwise than in accordance with the conditions of the licence." Under this clause the committee can prescribe the obtaining of licence for carrying on the business of sale of meat. Under clause (h) the Committee can fix the conditions subject to which, the circumstances in which, and the areas or localities in respect of which, licence for the sale of meat may be granted, refused, suspended or withdrawn.

12. Under S. 27 the committee is competent to issue general or special orders in respect of the matters specified in clauses (a) to (1). Under clauses (i) and (j) the order may require the obtaining of licence for the sale of fish, fruit, vegetables or sweetmeats. Clause (1) is residuary in nature and reads "any other measure which may be necessary generally for the conservancy of the town." S.

29 makes provision for appeal against orders passed u/Ss. 26 and 27. Sub-sec. (3) prescribes limitation of 30 days for filing the appeal. Sub-sec. (4) makes the decision of the prescribed authority/ district magistrate final and immune from challenged court. Chapter VI carries the heading "Supplemental Provisions". S. 38(1) falling under this chapter reads "The State Government may, by notification in the official Gazette extend to all town areas or to any town area or to any part of a town area any enactment for the time being in force in any municipality in Uttar Pradesh and declare its extension to be subject to such restrictions and modifications, if any, as it thinks fit." It is in exercise of this power that the notification dated April 3, 1928 referred to hereinabove was issued by the State Government. Sub-sec. (2) reads "where any enactment is so extended, any provision of this Act inconsistent with such extension or declared in the aforesaid notification to be inoperative shall cease to have effect so long as the extension is in force." In view of this provision when any enactment in force in any municipality is extended to a town area, the provisions of the T.A. Act inconsistent with the said provision of the Municipalities Act become inoperative. In the event of inconsistency the provisions of the Municipalities Act prevail over the provisions of the Town Area Act. Section 29 confers power upon the State Government to make rules for carrying out the purposes of the Act.

As already noticed, in view of S. 14(1)(g) of the Town Area Act the provisions of S. 128( 1) of the Municipalities Act are applicable to town area except clauses (vii) and (viii) thereof. Theopening sentence of S. 128(1) of the Municipalities Act reads "subject to any general rules or special orders of the State Government in this behalf, the taxes which a board may impose in the whole or any part of a municipality area". The taxes which the municipality may impose are enumerated in clauses (i) to (viv). Clauses (ii), (iii), (iv), (ix) and (xiv) read as follows:--

"(ii) a tax on trades and callings carried on within the municipal limits and deriving special advantages from, or imposing special burdens on, municipal services;

(iii) a tax on trades, callings and vocations including all employments enumerated by salary or fees;

(iv) a tax on vehicles and other conveyances plying for hire or kept within the municipality or on boats moored therein;

(ix) a tax on inhabitants assessed according to their circumstances and property;

(xiv) any other tax which the State Legislature has power to impose in the State under the Constitution."

Under clause (xiv) the power to impose tax is very wide-and extends to all items in respect of which the State Legislature itself had power to impose tax. Sub-sec. (2) contains restrictions on the exercise of power conferred under sub-sec. (1).

13. Section 298(1) confers power upon the Municipal Board to make bye-laws. These bye-laws have to be consistent with the Act and the Rules and have to be

 

for the purpose of promoting or maintaining health safety and convenience of the inhabitants of the municipality and for the further once of municipal administration under the Act Sub-sec. (2) contains two lists enumerating the specific items on which bye-laws may be made. List I applies to all the Municipal Board : List II contains items in respect of which a Municipal Board converting hill tracks alone may frame bye-laws. For such Municipal Boards the items mentioned in List II are in addition to the items mentioned in List I.

14. An appraisement of the provisions of the two Acts will show that the Town Area Committee, TAC for short, is competent to impose practically any tax which the State Legislature is competent to impose. This flows from Ss. 14(1)(g) of the TAC Act and S. 128(1)(xiv) of the Municipalities Act. S. 14(1)(g) makes applicable all the provisions of S. 128(1) except clauses (vii) and (viii), clause (xiv) is not excepted. Clauses (i) to (xiii-B) mention the specific items on which tax may be imposed by the Municipal Board. Then comes the residuary clause (xiv) which confers power on the Municipal Board to impose tax on any other item not specifically provided for in clauses (i) to (xiii-B), the only restriction being that the State Legislature should have power to impose tax on such item under the Constitution. For enabling the TAC to impose the taxes mentioned in S. 128 of the Municipalities Act no notification under S. 38 of the Town Areas Act is required. Therefore, if the taxes imposed by the Tax which are impugned in the present petition are covered either by the provisions of S. 14 of the Town Areas Act or of S. 128(1) of the Municipalities Act the same will not be challengeable on the ground of lack of jurisdiction or lack of notification under S.38. We may now consider whether the taxes imposed by Annexure-1 are covered by the provisions of TAC Act or the Municipalities Act.

15. Tahbazari is covered by S. 14(2)(b), and tax on trades, calling or professions by S. 14(1)(d) of the TA Act and tax on cycles is covered by S. 128(1)(iv) of the Municipalities Act.

16." Chapter IV of the Town Areas Act contains provisions which confer power upon the TAC to issue general or special orders ensuring hygienic conditions and conditions which will ensure preservation of the environment. Clauses (a) to (h) of S. 26 contain items on which sanitation orders may be issued. Clause (f) reads "the regulation of slaughter houses." Under this provision the TAC is competent to control slaughter houses by making suitable provisions in this behalf. Clauses (a) to (k) contain items on which sanitation and other orders may be issued by TAC. Clauses (i) and (j) reads thus :--

"(i) the prohibition for reasons of public health of the use of any place for the sale of fish, fruit, vegetable or sweet meats in default of a licence granted by the committee or otherwise than in accordance with the conditions of the licence;

(j) the fixing of the conditions subject to which and the circumstances in which and the areas or localities in respect of which licences for the sale of fish, vegetables or sweetments may be granted, refused, suspended, or withdrawn."

 

Under these clauses it is competent for the TAC to insist on a person desiring to do business in the items mentioned herein to obtain a licence and to prescribe the conditions on which business in these items shall be carried on. Even the place of business can be specified in the licence. The consequence of breach of licence may be indicated in the licence itself. Provision regulating sale of meat, fish, fruits, vegetables or sweet meats will be covered by these two clauses.

17. Clause (1) of S. 27 is a residuary clause and reads thus "(1) any other measures which may be necessary generally for the conservancy of the down." This clause will include measures to preserve natural environment. Unrestricted use of loud speakers may result in disturbance of natural environment. Flour Mills may create noise pollution and smoke coming out of the chimneys of flour mills and factories may also result in disturbance of environment. Regulatory measures for establishment of flour mills and factories would, therefore, also be covered by S.27(l).

18. Unregulated house building operations and unchecked establishment of shops of various categories may also contribute to the spoiling of the environment. Accordingly the TAG will be competent under S. 27(1) to regulate house building activity and establishment of shops doing business in various items.

19. From the above discussion it transpires that the TAC is not incompetent to impose/levy taxes/fees on the items covered by Annexure No. 1. The question now for consideration is whether the impugned taxes/ fees could be imposed/ levied by framing bye- laws under S. 298 of the Municipalities Act or some other procedure was required to be followed.

20. The TAC Act does not contain any provision1 authorising the TAC to frame bye-laws. Therefore, the TAC will be competent to frame bye-laws only when in exercise of power conferred by S. 38 of TAC Act the provisions of S. 298 of the Municipalities Act are extended to town areas. As noticed herein-above the power under the provision has been exercised but the entire S. 298 has not been extended; any certain clauses have been extended and these clauses do not cover the items on which the impugned bye-laws have been framed.

21. Let us now examine the procedure prescribed by the TAC Act for imposing/ levying taxes/fees. As noticed earlier the procedure is prescribed in Ss. 15-A, 15-B and 17. Section 15-A(1) requires preliminary proposals to be framed by the TAC. The proposals have to be framed by adopting resolutions. The proposal is required to specify -

(1)The tax proposed to be imposed;

(2) the amount or rate of tax;

(3) the person or class of persons liable to pay the tax; and

(4) any other matter which the State Government may by rule require to be

 

specified.

Under sub-sec. (2) TAC is required to frame draft rules also to be made by the State Government in respect of the tax proposed to be imposed. Under sub-sec. (3) the proposals and the draft rules are required to be published in the prescribed manner. Under sub-sec. (4) inhabitants of the town area are entitled to file objections against the proposals. Before finally settling the draft proposals, the TAC is required to take into consideration the objection if any filed. After this procedure has been gone through the proposals so settled and the draft ruies framed are required, by sub-sec. (5), to be submitted to the prescribed authority and where no prescribed authority has been appointed, to the District Magistrate. u/s I5-B(1) the prescribed authority/District Magistrate may reject the proposals or sanction the same with modifications or without modifications. Where the prescribed authority/District Magistrate sanctions the proposals the draft rules are required under sub-sec. (2) to be sent to the State Government, Under sub-sec. (3) the State Government is required to frame rules and send a copy thereof to the prescribed authority/District Magistrate and to the TAC. After receipt of the copy of the rules the TAC is required by resolution to direct imposition of tax with effect from a date to be specified by it. A copy of the resolution is required to be forwarded to the prescribed authority/District Magistrate. The prescribed authority/District Magistrate has then to notify the same. Under sub-sec. (4) the notification is conclusive proof that the tax has imposed in accordance with the provisions of the Act.

22. From an appraisement of the provisions of Ss. 15-A and 15-B it is apparent that taxes imposable under S. 14 are imposed through rules framed by the State Government. There is no statement in the counter affidavit that the State Government has framed rules in respect of the items covered by the impugned notification.

23. No separate procedure has been prescribed for levying fees. Sub-sec. (1) of S. 14 of the TAC Act refers to taxes and sub-sec. (2) to taxes as well as fees. We are, therefore, of the opinion that although Sections 15-A and 15-B do not specifically refer to fees, the procedure prescribed therein will have to be followed for levying fees also.

24. The procedure prescribed in the Municipalities Act for framing bye-laws u/s 298 is entirely different from the procedure prescribed in the TA Act for framing rules. For framing bye-laws the Municipal Board is not required to forward draft bye-laws to the State, Government. There is also no requirement of giving opportunity to the inhabitants of the areas to file objections against the proposed action u/s 298(1). u/s 298(1) the bye-laws have to be consistent to the Act and the rules. Under the TA Act the imposition of tax or fees has itself to be through rules. In view of the above, imposition/ levy of the impugned taxes and fees through the bye-laws contained in Annexure No. 1 cannot be sustained. Because of this finding other pleas raised by the petitioners are not required to be gone into.

 

25. By the notification dated 3rd April 1928 issued u/s 38 of the TA Act apart from certain clauses of Section 298(2), Sections 251, 299(1), 301(2) and 301(5) of the Municipalities Act have also been applied to all town areas in the State. The imposition of the impugned taxes/fees is not saved even by reference to these provisions. Section 251 deals with bar to award of compensation for dogs lawfully destroyed. Section 299(1) empowers the State Government to provide in the rules a default clause making the defaulter in the observance of rules liable to pay fine. Similarly under this provision the Municipal Board is empowered while framing bye-laws to provide that the defaulter in the observance of bye-laws will be liable to pay fine. Section 301(2) provides that the power of the Municipal Board to make bye-laws shall be subject to the condition of the bye-laws being made after previous publication and of their not taking effect until they have been confirmed by the State Government and published in the official Gazette. This provision merely required confirmation of the bye-laws by the State Government. From this provision a right to frame bye-laws by the TAC cannot be inferred. Section 301(5) deals with rescission by the State Government of regulation and bye-laws previously confirmed by it.

26. In view of the above, the writ petition deserves to be allowed. Accordingly the writ petition is allowed and the impugned bye-laws contained in Annexure No. 1 are hereby quashed. There shall be no order as to costs.

27. Petition allowed.

 