

(1999) 08 AHC CK 0066
In the Allahabad High Court
Case No : C.M.W.P. No. 20620 of 1991

Mohammed Yusuf Khan

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Constitution of India, 1950 — Article 110(2), 14, 19, 199(2), 226
Uttar Pradesh Municipalities Act, 1916 — Section 128
Uttar Pradesh Town Areas Act, 1914 — Section 14

Citation : AIR 2000 All 35 : (1999) 3 AWC 2656

Hon'ble Judges : Onkareshwar Bhatt, J;D.S. Sinha, J

Bench : Division Bench

Advocate : S.A. Shah, for the Appellant; Vinay Malviya, S.C. and J.S. Audichya, for the Respondent

Judgement

Onkareshwar Bhatt, J.—The petitioner, Mohammad Yusuf Khan, in his individual capacity as also in the capacity of Secretary of the Union of Three Wheeler (Auto-Rickshaw) Operators. Kamalganj, district Farrukhabad, has filed this writ petition under Article 226 of the Constitution of India. He has prayed that bye-laws regarding parking fee made by Town Area Committee. Kamalganj, Farrukhabad, respondent No. 3, published in U. P. Gazette on 30.3.1991 at page 255. Annexure-1 to the writ petition, be declared unconstitutional and void. In the alternative, he has prayed that of the above bye-laws the bye-law which imposes fees of Rs. 2 per trip on a three-wheeler be declared ultra vires.

2. In the writ petition, it has been averred that the respondent No. 3 is a local body, which manages the affairs of the town-area. Kamalganj, that the petitioner has been plying his three-wheeler (Auto-Rickshaw) in between Kamalganj and Fatehgarh, district Farrukhabad, the distance being 10 kilometres in between them ; that the respondent No. 3 Imposed parking fees upon the petitioner and other operators of the three-wheelers at the rate of Rs. 2 for each trip ; that the respondent No. 3 provides no facility whatsoever to the owners and operators of the three-wheelers (Auto-Rickshaws) making use of the road passing through the

town of Kamalganj ; that no place for parking of the three-wheelers (Auto-Rickshaws) has been provided by the respondent No. 3 and parking place as mentioned in the bye-laws is illusory ; that the petitioner plies his Auto-Rickshaw and takes about ten rounds and is made to pay Rs. 20 each day. which is arbitrary and onerous ; that motor, lorry, bus, truck, taxi and tractor cover a long distance and take one trip in a day and pay lesser fees for one trip only ; that the respondent No. 3 renders no service, hence, the imposition of fee is bad and is violative of Articles 14 and 19 of the Constitution of India : that the imposition of fees of Rs. 2 for each trip is a tax and not fees : and that no procedure for imposing the tax has been adopted by the respondent No. 3.

3. The respondent No. 3 has filed counter-affidavit and has averred that the Town-Area Committee, Kamalganj manages the affairs of town Kamalganj ; that the petitioner plies three-wheeler between Kamalganj and Fatehgarh and distance in between the two is 12 kilometres ; that the respondent provides all facilities to the petitioner like place for parking of Auto-Rickshaw, light and water, etc. and also repairs the parking place from time to time and has also provided - big pieces of land with all facilities where the petitioner parks his Auto-Rickshaw in the day and night after the trip ; that the petitioner usually takes five rounds in a day and pays only Rs. 2 for each round which is a very petty amount ; that the bye-laws for imposing the parking fees have been framed in accordance with the provisions of law ; and that they are absolutely legal.

4. In rejoinder-affidavit, it is averred that no parking place is provided by the respondent No. 3 and it renders no service to the petitioner and provides no facility. The averments made in the writ petition have been reiterated.

5. Heard Sri S. A. Shah, learned counsel for petitioner, Sri Vinay Malviya, learned standing counsel of the State of U. P., for the respondent Nos. 1 and 2. and Sri J. S. Audichya, learned counsel for the respondent No. 3.

6. It has been contended on behalf of the petitioner that since the respondent No. 3 renders no service or facility whatsoever, levy of Rs. 2 per trip as parking fees is in violation of Articles 14 and 19 of the Constitution. The second contention of the petitioner is that in any case levy of Rs. 2 per trip as parking fees on the three-wheeler of the petitioner is arbitrary and excessive.

7. Section 14 of the Town Area Act, 1914 read with Section 128 of the U. P. Municipalities Act, 1916, empowers the Town Area Committee to impose tax and fees. Various annexures have been filed along with counter-affidavit of the respondent No. 3 which show that the impugned bye-laws relating to parking fees and traffic control have been passed with due regard to the procedure prescribed. A perusal of the by-laws. Annexure-No. 1 to the petition, shows that it has been framed with the object of general welfare and for regulating the traffic. The levy of fees need not be only of the services rendered. It has been held by Hon'ble the Supreme Court in the case of Corporation of Calcutta and Another Vs. Liberty Cinema, that :

"In fact In our Constitution fee for licence and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Article 110(2) and Article 199(2) where both the expressions are used Indicating thereby that they are not the same."

It has further been held that :

"It would, therefore, appear that a provision for the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered."

8. The Hon''ble the Supreme Court in the case of P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED], has observed that :

"Even in the matter of fees, it Is not necessary that element of quid pro quo should be established in each and every case, for it is well-settled that fees can be both regulatory and compensatory and that in the case of regulatory fees, the element of quid pro quo Is totally irrelevant."

9. Again, Hon''ble the Supreme Court in the case of Vam Organic Chemicals Ltd. and Another Vs. State of U.P. and Others, has approved that there is distinction between the fees charged for licence, i.e., regulatory fees and the fees for the services rendered as compensatory. It approved the view that in the case of regulatory fees, like the licence fees, existence of quid pro quo is not necessary. In the impugned bye-laws, as has been mentioned above, it is stated that it is for general welfare and for regulating the traffic, meaning thereby that the impugned bye-laws also seek to regulate the traffic in the town area. In the circumstances of the case, parking fees Imposed by the impugned bye-laws is regulatory fees and existence of quid pro quo is not necessary. The impugned bye-laws cannot, therefore, be held to be unconstitutional, ultra vires and void. A perusal of the bye-laws shows that different parking fees have been levied on different vehicles. However, the vehicles have been subjected to pay the parking fees in the event they park their vehicles for loading and unloading of goods for commercial purposes or for taking and dropping the passengers. The bye-laws also mention that no parking fee is chargeable from those vehicles which pass away from the limits of the town-area without parking.

10. The five vehicles, mentioned in the bye-laws, are required to pay parking fees per trip. The parking fees , chargeable on three-wheeler (Auto-Rickshaw) is Rs. 2 per trip. The amount of Rs. 2 per trip is too meagre keeping in view the present economic condition prevailing in the society, and the same. In the opinion of the Court, appears reasonable and proper. The parking fees of Rs. 2 per trip levied on the three-wheeler (Auto-Rickshaw) cannot be said to be onerous and, therefore, violative of Articles 14 and 19 of the Constitution of India.

11. In the result, the writ petition fails and is dismissed. There is no order as to costs.