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In the Andhra Pradesh High Court

Case No : Writ Petition No. 9209 of 2002

Navata Road Transport — APPELLANT

Vs

State of A.P. and Others — RESPONDENT

Date of Decision : 29-11-2002

Acts Referred:
Andhra Pradesh Municipalities Act, 1965 — Section 277(2)

Citation : (2003) 2 ALD 78 : (2003) 3 ALT 711 : (2003) 1 APLJ 134

Hon'ble Judges : P.S. Narayana, J;Motilal B. Naik, J

Bench : Division Bench

Advocate : B. Nalin Kumar, in WP Nos. 9209, 11357, 11510 and 11795 of 2002, R. Raghunandan, in WP No. 11614 of 2002 and J. Prabhakar, in WP No. 13021 of 2002, for the Appellant; Government Pleader for HMLA for Respondent No. 1, E. Sambasiva Pratap and Srinivasa, SC for Municipality for Respondent No. 2 and D.V. Sitaram Murthy, for the Respondent

Judgement

P.S. Narayana, J.—This batch of Writ Petitions are filed praying for a writ of mandamus or other appropriate order or direction in the nature of writ declaring the Supplement to Prakasam District Gazette No. 5, dated 12-2-2002 insofar as it seeks to levy a tax of Rs. 30/- on loading and unloading from lorries under Entries 35(b) and 35(c) at Page No. 11 of the said Gazette Notification and the letter dated 30-4-2002 bearing Roc. No. 4189/2001/A issued by the 2nd respondent, as being without jurisdiction, ultra vires, contrary to the provisions of the A.P. Municipalities Act, arbitrary, discriminatory and violative of Articles 14, 19(1)(g) of the Constitution of India and null and void and consequently direct the respondents not to collect any tax from petitioners in the interest of justice and pass such other suitable orders.

2. The writ petitioners in these Writ Petitions are the proprietors or the partners, as the case may be, of the transport operators and in all these Writ Petitions, the petitioners had questioned the Supplement to Prakasam District Gazette No. 5, dated 12-2-2002 insofar as it proposes to levy a tax of Rs. 30/- on all lorries for loading and unloading within the limits of Chirala Municipality and also the letter

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dated 30-4-2002 of the 2nd respondent directing the transport operators to pay Rs. 30/- to the 3rd respondent-Contractor as per the Gazette Notification. The stand taken by the respective petitioners as reflected from the affidavits filed in support of the respective Writ Petitions may be summarised briefly as follows:

3. The writ petitioners have registered the lorries under A.P. Motor Vehicles Taxation Act and they are having valid goods carriage permits and certain of the vehicles also possess inter, State carriage permits and the petitioners have been paying the motor vehicles tax as well as carriage permit fees on all the vehicles and hence they are not liable to pay any further tax or fees on their vehicles. It was also pleaded that the Council of the 1st respondent-Municipality issued a notification for the year 2002-2003, published in Prakasam District Gazette, dated 12-2-2002 proposing to collect a sum of Rs. 30/- for lorries for loading and unloading in Chirala Municipality limits. The 1st respondent, purporting to rely on the opinion of the Standing Counsel as well as the above notification, issued a letter dated 30-4-2002 directing all the transport operators to pay Rs. 30/- to the 3rd respondent-Contractor. The impugned levy of Rs. 30/- on lorries for loading and unloading in Chirala Municipality limits is without jurisdiction and ultra vires of the provisions of the A.P. Municipalities Act, 1965. It was further pleaded that Section 81 of the A.P. Municipalities Act, 1965, inter alia, empowers the Council after following the procedure, to levy by resolution, tax on carriages and carts and the ''carriages'' and ''carts'' are defined in Section 2(5) and Section 2(6) of the A.P. Municipalities Act, 1965, according to which a motor vehicle within the meaning of Motor Vehicles Act would not fall within the purview of said definitions of ''carriages'' and ''carts''. It was also pleaded that according to Section 81 of the Municipalities Act, 1965, before any tax is levied, the Municipal Council is required to publish a notice as specified therein inviting objections and no such notice had been given and no such objections had been invited. It was also pleaded that u/s 104 of the A.P. Municipalities Act, 1965, the Council can levy tax only if carriages are kept or used within the municipal limits for an aggregate period of not less than 120 days, and if such aggregate period exceeds 30 days, but is less than 120 days only, a moiety of the yearly tax shall be leviable for the year and the said Section further stipulates that if the aggregate period does not exceed 30 days, no tax shall be payable, and the II Schedule to the A.P. Municipalities Act, 1965 contemplates maximum yearly tax of Rs. 30/-. Except in W. P. No. 9209/2002, in other Writ Petitions, it was also specifically pleaded that the impugned notification is not relatable to any of the provisions in Section 277 of the A.P. Municipalities Act, 1965 and hence these Writ Petitions are filed seeking the reliefs referred to supra.

4. Rule msI had been issued in these Writ Petitions and interim orders also were granted and the 3rd respondent-Contractor filed an application to vacate the interim orders, and inasmuch as the other respondents also had field counter-affidavits with the consent of the Counsel on record, all these Writ Petitions where common question had been raised, are being disposed of by this Common Judgment.

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5. The counter affidavits are filed by respondents 2 and 3 and reply affidavits also had been filed by the petitioners in certain matters.

6. The stand taken by the 2nd respondent-Commissioner, Chirala Municipality is that the Municipality notifying the rates of each item to be collected as market fees by the Municipality in all markets within the municipal limits and the right to collect market fees will be leased out every year by conducting auction. The terms and conditions of the auction and the rates will be published in the District Gazette after obtaining due approval from the Municipal Council and for the year 2002-2003, the conditions and rates are published in the Prakasam District Gazette No. 5, dated 12-2-2002 duly obtaining the approval of Municipal Council in C.R.No. 231, dated 31-1-2002 and the same was also placed in the Municipal notice board and the 3rd respondent-Contractor became the highest bidder for the Chirala market and he is entitled to collect market fees as notified in the Gazette. A preliminary notice along with the conditions and the other procedure pertaining to auction of leasehold rights to collect fees in respect of the use of markets, slaughter house, fishery or sale of fish in fresh water tanks, is detailed in Rule 7 of A.P. Municipalities (Regulation of Receipts and Expenditure) Rules, 1968 and further Section 277 empowers the Municipality to collect fees in public markets and in other places. It was further pleaded that the 3rd respondent-Contractor is the lessee of the Municipality and hence he is authorised to collect fees by and on behalf of the Municipality as notified and published in the Gazette. It was also pleaded that the lorries brought within the notified area and engaged in the activity of loading and unloading are liable to pay market fees to the 3rd respondent. It was also pleaded that the Municipality has got power to collect fees from the lorries for loading and unloading goods and the collection of fees of Rs. 30/- per lorry is with the approval of the Municipal Council and published in the Gazette with the permission of the Collector and District Magistrate, Ongole. The specific stand taken by the 2nd respondent-Municipality is that it has power to levy and collect fees from the vehicles including the lorries for bringing goods within the notified market area as per Section 277(2)(c) of the A.P. Municipalities Act, 1965.

7. The 3rd respondent-Contractor had taken a similar stand and had pleaded that inasmuch as he became the highest bidder for an amount of Rs. 17,89,248/-in proceedings Rc.No. 4189/2002/Al, dated 22-3-2002, he is entitled to collect the market fees and the 3rd respondent also had narrated other details and had taken the same stand as that of the 2nd respondent-Municipality.

8. Reply affidavits are filed virtually repeating the same stand taken and giving a few more particulars and details.

9. Heard Sri Nalini Kumar, Sri Raghunandan, the learned Counsel for the writ petitioners, Sri Srinivas representing the Chirala Municipality, hereinafter referred to as "Municipality" in short, and Sri D.K Sitharam Murthy, the learned Counsel representing the 3rd respondent-Contractor, hereinafter referred to as "Contractor" for the purpose of convenience.

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10. Sri Nalini Kumar and Sri Raghunandhan, the learned Counsel representing the writ petitioners had taken us through the relevant portion of the notification and had submitted that the levy of Rs. 30/- on all lorries for loading and unloading of goods is totally without jurisdiction. The learned Counsel had drawn our attention to Section 81 of the A.P. Municipalities Act, 1965, hereinafter referred as to "Act" for the purpose of convenience, and also Sections 104, 276 and 277 of the Act. The learned Counsel also submitted that even the Municipality is not disputing that if at all the power can be traceable, it can be in view of Section 277 of the Act only. The learned Counsel also contended that Section 277(2)(c) of the Act is clear and in view of the clear language, at any stretch of imagination, it cannot be said that the Municipality has power to issue such notification to the whole of the Chirala Municipal limits. The learned Counsel also had explained that Section 277 of the Act has to be read along with Section 276 of the Act for the purpose of appreciating whether the Municipality has got power to issue such notification or not. The learned Counsel further contended that in view of the language employed in Section 276 read with Section 277(2)(c) of the Act, necessarily this Court may have to arrive at the conclusion that the impugned notification -Supplement to Prakasam District Gazette No. 5, dated 12-2-2002, insofar as it seeks to levy a tax of Rs. 30/- on loading and unloading from lorries in Entries 35(b) and 35(c) of the said Gazette notification and the letter dated 30-4-2002 bearing Roc.No. 4189/2001/A issued by the 2nd respondent, is concerned, definitely can be said to be ultra vires of the provisions of the Act and without jurisdiction.

11. Sri Srinivas, the learned Counsel representing the Municipality had made an attempt to justify the action of the Municipality on the ground that the power to impose such fees is traceable to Section 277(2)(c) of the Act. The learned Counsel also submitted that in view of Sections 276 and 277 of the Act, it cannot be said that a part of the notification which had been impugned in the present Writ Petition is either without jurisdiction or ultra vires of the provisions of the Act. The learned Counsel also had drawn our attention to Entries 35(b) and 35(c) of the District Gazette and had pointed out the words "municipal limits", and hence for the loading and unloading within the municipal limits by virtue of the notification, inasmuch as the Contractor became successful bidder, he has a right to collect the said fees. The learned Counsel also made an attempt to contend that there are several disputed questions of fact involved in these Writ Petitions and hence on this ground also, the Writ Petitions are bound to fail.

12. Sri D.V.Sitharam Murthty, the learned Counsel representing the 3rd respondent-Contractor, in substance had adopted the submissions made by the learned Standing Counsel representing the Municipality and also had further contended that WP No. 9209/2002 is bound to fail since the affidavit is bald and certain important pleas had not been taken at all and no doubt in the other Writ Petitions, some improvements were made. The learned Counsel also contended that the Contractor is an unfortunate man who had parted with huge amount and this aspect also may have to be taken into consideration while deciding these

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Writ Petitions.

13. Heard the Counsel on record at length and also perused the material available on record.

14. It is no doubt true that in WP No. 9209/2002, the specific plea relating to Sections 276 and 277 of the Act had not been raised. But however, on a reading of the pleading, it is clear that specific stand had been taken that this levy of tax or fees is ultra vires of the provisions of the Act and also one without jurisdiction and hence this contention raised by the learned Counsel representing the Contractor may not in any way alter the situation. Further, the Municipality in the counter-affidavit itself had taken a specific stand that the notification was issued u/s 277(2)(c) of the Act only and not u/s 81 or any other provisions of the said Act.

15. Section 276 of the Act defines "Public markets" and the said provision reads as hereunder:

(1) All. markets which are acquired, constructed, repaired or maintained out of the municipal fund shall be deemed to be public markets; and such markets shall be open to all persons.

(2) Notwithstanding anything in the relevant law for the time being in force, every market situated within the municipal limits and belonging to a Gram Panchayat, Panchayat Samithi or Zilla Parishad shall vest in the Municipality. The Government shall determine, in the manner prescribed, the amount of compensation payable therefore to the Gram Panchayat, Panchayat Samithi or the Zilla Parishad, as the case may be.

Section 277 of the Act deals with Power in respect of public markets.

Section 277(2)(c) of the Act reads as hereunder:

(1).....

(2) The Council may, in any public market, levy any one or more of the following fees at such rates and may place the collection of such fees under the management of such persons as may appear to it proper or may farm out such fees for any period not exceeding one year at a time and on such terms and subject to such conditions as it may deem fit--

(a).....

(b).....

(c) fees on vehicles or pack-animals carrying, on or persons bringing goods for sale in such markets.

As can be seen from the impugned notification, so far as it relates to Entries 35(b) and 35(c) in the Gazette is concerned, it appears as though the whole Chirala Municipality as such is notified as a public market. This stand taken by

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the Municipality, in our considered opinion, is totally unsustainable and in fact the learned Standing Counsel was unable to explain, when specific questions were posed by us in this regard. When that being so, it is needless to say that the Municipality has no power to issue the notification so far as it is impugned in the present batch of Writ Petitions by exercising the powers u/s 277(2)(c) of the Act, and when the power cannot be traceable to any other provisions of the Act, the only conclusion that can be arrived at is that the said notification, insofar as the levy of tax of Rs. 30/- on loading and unloading from the lorries under Entries 35(b) and 35(c) of the Gazette is concerned, has to be necessarily held to be without jurisdiction and ultra vires of the provisions of the Act.

16. No other Points had been urged by the Counsel representing the respective parties.

17. In view of the foregoing discussion, the writ petitioners are bound to succeed and accordingly the Writ Petitions are allowed. But, inasmuch as the 2nd respondent is a local body and the 3rd respondent is only a Contractor under the local body, this Court orders no order as to costs.

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