
(1978) 02 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 1129 of 1975

Prahlad Upadhyia

APPELLANT

Vs

Notified Area Committee and Others

RESPONDENT

Date of Decision : 01-02-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) 26 BLJR 664

Hon'ble Judges : Shambhu Prasad Singh, J; Hari Lal Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shambhu Prasad Singh and Hari Lal Agrawal, JJ.—The petitioner has filed this application under Article 226 of the Constitution of India for quashing Annexure "1", a resolution dated 22-6-1974 of the Notified Area Committee, Rajgrih, for realising as tax or fee a sum of Rs. 5/- from each of the parties celebrating marriage in Kund Chhetra at Rajgrih on the ground that such parties make the area filthy and that has to be cleared by the Notified Area Committee. The petitioner claims that he once went to Rajgrih for the performance of the marriage of his relation with the daughter of one Kedarmuh Upadhyia and had to pay Rs. 10/- as tax to respondent No. 3, Laxmi Narain Upadhyia, an agent of the Notified Area Committee (respondent No. 1) of which the Sub-divisional Officer, Sadar at Bihar Sharif (respondent No. 2) is the Chairman. The receipts issued to him and the bride's party have been made Annexure "2" to the writ petition and a prayer has also been made that an order be passed for refunding the amount realised from the petitioner and the other party to the marriage. Some instances have also been given in the petition where such tax or fee has been realised from other persons and the receipts issued to such persons have been made Annexures 2/a and 2/b to the writ petition. It has been stated in the writ petition that formerly also respondent No. 2 as the Secretary of the Rajgrih Lodging House committee passed resolutions for realisation of tax on every marriage

from both parties to it under the Bihar and Orissa Pilgrimage Act, 1920. Om Lakshmi Upadhyaya and others came to this Court for quashing of those resolutions in C.W.J.C. No. 392 of 1969, which was allowed by a Bench of this Court on 13-1-1972. The Bench allowing the writ petition quashed the resolutions and also directed for the refund of the, amount realised as tax on marriages. Thereafter the impugned resolution has been passed. The case of the petitioner is that respondents 1 and 2 had no power to impose any such tax or fee on marriages and respondents 3 and 4, as agents of respondent No. 1, could not realise any such tax or fee.

2. A counter affidavit has been filed only on behalf of respondent No. 1 in which an attempt has been made to justify the imposition of tax or fee, by whatever name it may be called, on marriages u/s 210 of the Bihar and Orissa Municipal Act, 1922 (hereinafter to be referred to as "the Act").

3. Section 82 of the Act deals with the power of the municipality to impose tax. It is not in dispute that notified area committee also exercises or may exercise the same powers. Learned Counsel for respondent No. 1, however, could not justify that the tax imposed by the resolution (Annexure 1) was a tax u/s 82 of the Act. He, therefore, again fell back upon Section 210 of the Act, which has been mentioned in the counter affidavit. Section 210 of the Act reads as follows:

The Commissioners may charge such fees as they think fit in respect of the removal, with the consent of the occupier, of rubbish from any house or land, or in respect of the removal from a public road of rubbish which has accumulated in the exercise of a trade or business.

Under this section the Commissioners may charge fees in respect of removal of rubbish from any house or land with did consent of the occupier or in respect of removal from a public road of rubbish which has accumulated in the exercise of a trade or business. It is manifest that this section can have got no application to the realisation of tax or fees proposed to be realised under Annexure 1. Admittedly, the amount is not being realised in respect of removal of any rubbish from any house or land of which some body else is the occupier with his consent. It is also not being removed from any public road. Further, it cannot be said that what is claimed to be removed has accumulated in the exercise of trade or business, for marriage is neither trade nor business. It is also doubtful whether Section 210 can have any application for removal of filth. Rubbish is something else than filth. In the circumstances we are of the view that respondent ho. 1 could not pass any resolution as contained in Annexure "1" for realisation of tax or fee from the parties performing marriage at Rajgrih in the Kund Chhetra u/s 210 of the Act.

4. In the result, the application is allowed and Annexure "1" is quashed. Respondent No. 1 is also directed to refund to the petitioner a sum of Rs. 10/- realised under Annexure "2", within one month from today. In case it is not refunded within the said time it will be open to the petitioner to realise it by

execution. In the circumstances of the case, however, there will be no order as to costs.