(2013) 04 CHH CK 0029

In the Chhattisgarh High Court

Case No : Writ Petition No. 425 of 2002

Raj Kumar Guruwara APPELLANT

Vs

State of Chhattisgarh and Another RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Chhattisgarh Municipal Act, 1961 — Section 127, 127A, 129, 129(1), 129(1)(b)

Citation : AIR 2013 Chh 156 : (2013) 3 MPHT 83 : (2013) 4 MPJR 71

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Vivek Chopda, for the Appellant; Manish Nigam, Panel Lawyer for the State and Shri Saurabh Sharma, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks to challenge the legality and validity of the implementation of the resolution dated 6-3-2000 published on 31-3-2000 (Annexure - P/1) whereby fee of Rs. 5/- per day and Rs. 50/- for a period of one month or part, thereof, has been increased to Rs. 25/- per day and Rs. 500/- per month or part, thereof, for temporary use of road, land of the Municipal Council by the motor/truck/bus/matador. The facts, in brief, as projected by the petitioner, are that the petitioner is a transporter, plying passenger buses in Bastar area i.e. from Kirandole to Sukma, Dantewada to Sukma and Matwada to Geedam. The buses have to pass through the Municipal area of Dantewada. The respondent No. 2 had earlier fixed the fee at the rate of Rs. 5/- per day by way of bye-laws framed under the provisions of the MP/CG Municipalities Act, 1961 (for short "the Act, 1961").

2. Subsequently, the respondent No. 2 resolved in its resolution No. 4 dated 6-3-2000 to increase the rate of fees, which was published on 31-3-2000. By resolution, the said fee, as aforestated, was enhanced from Rs. 5/- to Rs. 25/- per day and from Rs. 50/- to Rs. 500/- for one month or a part, thereof. Being

aggrieved, the petitioner preferred an appeal before the Sub Divisional Officer, Dantewada (for short "the SDO"). The said appeal was, later on, withdrawn on the ground that the appeal was not maintainable before the SDO. Thereafter, the petitioner filed an objection on 13-6-2000 (Annexure - P/4) to the impugned resolution, published on 31-3-2000, no decision has been taken till date. Subsequently, one more representation was submitted by the petitioner on 31-7-2000 (Annexure - P/5).

3. Shri Chopda, learned counsel appearing for the petitioner, would submit that the respondent No. 2/Municipal Council has power to impose temporary occupation charges, however, the same can be done only by amendment in the bye-laws, which is framed under the provisions of Section 358(7)(m) of the Act, 1961. Before enhancing the above-stated charges, the Municipal Council is required to obtain necessary permission from the State Government. The fees or taxes cannot be enhanced by mere passing a resolution without amending the bye-laws. Thus, the enhancement of fees (temporary occupation charges) is not at all sustainable in the eyes of law, as the impugned publication has been made without obtaining prior approval of the State Government. Shri Chopda would further submit that there is no provision for imposition as well as collection of taxes and, as such, on this count also the implementation of the impugned notification is bad and the same may be quashed.

4. On the other hand, Shri Sharma, learned counsel appearing for the respondent No. 2, would submit that by virtue of Section 129(1) of the Act, 1961, the Municipal Council is empowered to determine the rates of fee. The Municipal Council has not imposed the tax, but a fee for the services rendered by it, by way of maintaining the roads, streets and the fee has been enhanced by way of resolution, which is permissible, as aforestated. In the case on hand, the resolution No. 4 dated 6-3-2000 provides for enhancement of the temporary occupation charges in respect of motor/truck/bus/matador. No prior approval of the State Government is required to enhance the rates of fee, as provided u/s 129(1)(b) of the Act, 1961.

5. Shri Sharma would further submit that Section 349(ii) provides for imposition of charges for the temporary occupation of any public street or any land or building belonging to the Municipal Council. The Municipal Council has already framed the bye-laws. Shri Sharma would also submit that the petitioner has approached this Court belatedly, as the publication of the resolution was made on 31-3-2000 and the instant writ petition was filed before this Court on 20-2-2002 without explaining the inordinate delay and laches by giving sufficient and cogent reasons. Shri Sharma would next submit that the collection of temporary occupation charges has already been prescribed and handed over to the contractor by auction. The fees has been increased having regard to the price index.

6. Shri Nigam, learned Panel Lawyer appearing for the State, would submit that for determining the fees by the Municipal Council in respect of the areas falling

within their respective jurisdiction, no approval of the State Government is necessary. Once the Municipal Council has been empowered under the provisions of the statute to fix the fees, it is competent to enhance the same also.

7. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

8. Section 127 of the Act, 1961 provides for imposition of taxes under the Act. Under the said provision, the Municipal Council is empowered to impose specified taxes in the whole or in any part of the Municipal area, subject to any general or special order which the State Government may make in this behalf, but it does not provide for imposition of occupation charges by motor vehicles, except the entry tax and terminal tax. Section 127-A of the Act, 1961 provides for imposition of property tax.

9. Section 129 of the Act, 1961 provides for imposition of taxes or fees, which reads as under:

129. Imposition of taxes and fees.--(1) The Council may, by a resolution, at the time of final adoption of the budget estimates for the next financial year, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf:

(a) impose any of the taxes or fees specified in this Act; or

(b) increase the rates of taxes or fees already imposed.

(2) The resolution as referred to in sub-section (1) shall contain--

(a) in case of imposition of any tax or fee, the provisions under which such tax or fee is being imposed, class of persons or description of property to be taxed, the amount or rate of tax or fee being imposed, system of assessment and collection to be adopted and the date from which imposition of such tax or fee shall take effect:

(b) in case of increase of rate of any tax or fee, the prevailing rate of such tax or fee, the proposed increased rate of such tax or fee and the date from which increase of rate or such tax or fee shall take effect.

(3) The resolution, as passed shall be conclusive evidence of the imposition of a new tax or fee, or increase of rate of any tax or fee; as the case may be.

Provided that if the Council decides to have supplementary taxation during the financial year, it may do so from such date as the Council may resolve, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf.

(4) nothing contained in this section shall apply to tax mentioned in clause (i) of sub-section (1) of Section 127 which shall be charged and levied in accordance with Section 127-A.

10. Sub-section (4) of Section 129, which is a non-obstante clause, clearly states that nothing contained in this section shall apply to tax mentioned in clause (i) of sub-section (1) of Section 127 which shall be charged and levied in accordance with Section 127-A.

11. Section 129 is a charging section and, as such, the Municipal Council is empowered to impose any of the taxes or fees specified in this Act; or increase the rates of taxes or fees already imposed by a resolution. Sub-section (3) provides that the resolution, as passed shall be conclusive evidence of the imposition of a new tax or fee, or increase the rate of any tax or fee; as the case may be. Proviso to the said provision provides that if the Council decides to have supplementary taxation during the financial year, it may do so from such date as the Council may resolve, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf.

12. The petitioner does not challenge the power of the Municipal Council to impose temporary occupation charges except that the same cannot be done without making a provision in the bye-laws, as the bye-laws framed earlier clearly provides for imposition of temporary occupation charges.

13. Section 358 of the Act, 1961 provides that the Council may, if so required by the State Government shall, make bye-laws, inter alia, for regulating Municipal administration, taxation, building, streets, drains, privies, cesspools, sewage disposal and scavenging, water-supply, public health, safety, nuisance and sanitation, markets, slaughter-houses, trades, occupations and sale of foodstuffs and miscellaneous. Thus, the Municipal Council may exercise its power under the provisions of Section 129 of the Act, 1961, which may be done by way of resolution and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf.

14. Section 358(7)(m) of the Act, 1961, which was substituted by M.P. Act No. 31 of 1973, is basically a regulatory provision, however, it provides for imposition of fee, inter alia, for using of any ground under the control of the Council or the using of such ground as halting place of vehicles or animals by way of framing of bye-laws. It is indisputable that the bye-laws have been framed, which prescribed specific fee.

15. The petitioner as well as the respondents have not pointed out any limitation or condition, which was prescribed by the Government in respect of exercise of powers to impose tax or fee u/s 129 of the Act, 1961. I have also not found any provision in the Act, 1961, which curtails the power of the Municipal Council to impose the fee for temporary occupation charges, except as provided under the provisions of Section 358 (7) (m) of the Act, ibid.

16. Sub-section (3) of Section 129 of the Act, 1961 had already indicated that the resolution shall be conclusive evidence of the imposition of a new tax or fee, or increase the rate of any tax or fee; as the case may be. Thus, the power of

the Municipal Council is untrammeled, as it has not been pointed out by the petitioner that there is any limitation or restriction on the part of the State Government. The stand of the State Government in this petition is very clear that it is for the Municipal Council to enhance the fee for temporary occupation charges and for that no approval of the State Government is necessary.

17. In view of the above, it is necessary to incorporate the provisions of enhancement of temporary occupation charges in the bye-laws and the same is valid only after necessary amendment and its publication. Thus, the Municipal Council has full power to impose the fee for halting a motor/truck/bus/matador in the area under the control of council as per the provisions of Sections 129 read with Section 358(7)(m) of the Act, 1961. However, in absence of necessary incorporation in the bye-laws, the amount revised is neither chargeable nor collectable.

18. Thus, the resolution No. 4 dated 6-3-2000 is not implementable till the same is incorporated in the bye-laws, which is statutory and has been framed in exercise of power conferred u/s 358 of the Act, 1961. Sub-section (3) of Section 129 provides that the resolution shall be conclusive, but does not say that it shall be effective without making necessary amendment in the bye-laws.

19. In the instant case since the bye-laws have been framed in exercise of powers u/s 129 read with Section 358(7)(m) of the Act, 1961 without making necessary amendment in the bye-laws the enhanced fees for use of road, land of the Municipal Council by the motor vehicles, as aforestated, is not permissible and, as such, the same is quashed. Consequences shall follow. As a sequel, the writ petition is allowed. No order as to costs.

