

(2003) 01 AHC CK 0013
In the Allahabad High Court
Case No : C.M.W.P. No. 38871 of 1998

Ram Sewak Goyal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14
Motor Vehicles Act, 1939 — Section 68
Motor Vehicles Act, 1988 — Section 211, 217(2), 95, 96, 96(2)
Uttar Pradesh Motor Vehicles Rules, 1940 — Rule 55
Uttar Pradesh Motor Vehicles Rules, 1998 — Rule 125, 130

Citation : (2003) 5 AWC 3889

Hon'ble Judges : Prakash Krishna, J; M. Katju, J

Bench : Division Bench

Advocate : L.P. Naithani, Piyush Shukla and, H.P. Dube, for the Appellant; Vinod Mishra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—By means of this writ petition the Petitioner has challenged the impugned notification dated 11.9.1998, Annexure - 6 to the writ petition by which the Assistant Transport Commissioner (Administration), U.P. has informed the Secretary of the State Transport Authority about the fees fixed for grant of permit, renewal, transfer, registration and licences of motor vehicles under the Motor Vehicles Act and Rules.

2. The Petitioners are stage carriage permit holders. u/s 68 (g) of the Motor Vehicles Act, 1939, the State Government was empowered to prescribe fees in respect of applications for permits. Prior to 1957, the fees prescribed for permits, renewal, temporary permits, etc. was as mentioned in paragraph 5 of the writ petition. On 31.3.1987, an amendment was made framing the U.P. Motor Vehicles Amendment Rules, 1955, copy of which is Annexure - 1 to the writ petition. By this amendment, the fees for application for grant of permanent permit, renewal, etc. was increased from Rs. 20 to Rs. 250 vide Annexure-1 to

the writ petition. The fee was also increased in respect of grant, renewal and countersigning of temporary permit.

3. Thereafter the State of U.P. framed a supplementary amendment known as U.P. Motor Vehicles Supplementary Rules, 1989, on 28.12.1989. The fees prescribed in the same was as mentioned in paragraph 7 of the writ petition read with Annexure-2 to the writ petition. Rule 1990 was published on 11.7.1990 by which the fees for grant, renewal and countersigning was increased to Rs. 3,000 vide Annexure-4 to the writ petition.

4. The new Motor Vehicles Act, 1988, came into force from 1.7.1988. Under Sections 96(2)(vii) and 211 of the said Act, the State Government was empowered to make rules to prescribe fees for application of permits for motor vehicles.

5. Under the new Act, the U.P. Motor Vehicles Rules, 1998, has been framed. Rule 125 of the Rules has been annexed as Annexure-5 to the writ petition. A perusal of the same shows that the fee for grant of permit other than temporary permit for stage carriage is Rs. 6,000. The fees for temporary permit is mentioned therein. It is this rule which is sought to be enforced by the impugned notification dated 11.9.1998.

6. Learned Counsel for the Petitioner submits that the increase of fees is arbitrary as the fees for grant/renewal, countersigning of temporary permit has been increased from Rs. 3,000 to Rs. 6,000. The fees for temporary permit for four months has been increased from Rs. 2,000 to Rs. 9,500, the fees for transfer from Rs. 1,000 to Rs. 10,000 and the fees for replacement from Rs. 75 to Rs. 1,000. Learned Counsel for the Petitioner submits that there is discrimination against the Petitioners as under Rule 130 the State Transport Undertaking has only to pay Rs. 200 for grant of permit by the State Transport Authority and Rs. 100 by the Regional Transport Authority.

7. A counter-affidavit has been filed by the State Government. In paragraph 4 of the same, it is stated that the State Government has rule - making power under Sections 95 and 96 of the Motor Vehicles Act, 1988. In view of Section 217(2)(a) of the Act, the provisions of the U.P. Motor Vehicles Rules, 1940 which are not inconsistent with the provisions of 1988 Act shall be deemed to have been made under the new Act. The provisions for granting permit, etc. have been laid down in the U.P. Motor Vehicles Rules, 1940. The State Government under its rule-making power can prescribe the fee for grant of stage carriage permit, etc. The fees for grant and renewal of permits other than temporary permit was prescribed under Rule 55 of the U.P. Motor Vehicles Rules, 1940, which was not amended up to March, 1987, i.e., it remained unchanged since 1940. The fees for grant of temporary permit was revised in 1986 and again in March, 1997. u/s 211 of the Motor Vehicles Act, the State Government has power to prescribe fees in respect of applications, permits, authorisation, countersignatures, etc. Hence, it is submitted by the Respondents that the State Government has full power to

issue the impugned notifications and revise the fees.

8. In paragraph 7 of the counter-affidavit, it is stated that the fees was revised in view of the increased price rise and to correlate the fees according to services rendered. The cost of services being rendered by the Department in 1989 almost doubled by 1996-97, i.e., from Rs. 4.40 crores it increased to Rs. 8.65 crores. Since the commencement of the Motor Vehicles Act, 1988, some additional services have been provided for making available to the prospective operators for their guidance and convenience. There was also a proposal to set up an authority for the maintenance and management of bus stations for public service vehicles, for regulation of their traffic, and providing amenities to the passengers. Hence, it is submitted that the revision of fees was fully justified.

9. In paragraphs 8 and 9 of the counter - affidavit, the details have been given as to the service being rendered by the Respondents.

10. In paragraph 11 of the counter - affidavit, it is stated that Rule 125 of the 1998 Rules has only conveniently brought together at one place the fees to be charged for carrying out the different functions by the authorities under the Act. In paragraph 12 of the counter - affidavit, it is stated that the draft rules were published on 7.9.1998. Several representations were received from different parties including public representatives alleging that the increase in the rates was exorbitant. The State Government duly considered the same and also took into consideration the time gap between the present fixation of fees and the last fixation of fees, the economic viability of the transporter, evaluation of money and increase in the services. Hence, the notification was published on 21.11.1998 in which objections were invited and the date of hearing was also fixed. True copy of the notification dated 21.11.1998 is Annexure - A3 to the counter - affidavit. In pursuance of the same, objections were received from the officiating President of U.P. Truck Operators Federation and the Secretary of District Bus Operators Association and Advocates. Photocopy of the attendance sheet is Annexure - A 4 to the counter - affidavit to show that these persons were present and personally heard. After hearing and considering the objections, the representations were found baseless and unfounded and hence rejected. Thereafter the impugned notification was issued on 29.12.1998.

11. Learned Counsel for the Petitioner submitted that there was no quid pro quo regarding the impugned fees since the services being rendered was not correlated with the increase in the fees. In reply the learned standing counsel submitted that the quid pro quo is not always necessary, nor is to be established with arithmetical exactitude but even broadly and reasonably. He has relied on the Supreme Court decision in Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, . In this decision, it was held that a broad co - relation is all that is necessary, and quid pro quo in the strict sense is not the one and only true index of a fee.

12. Learned standing counsel also relied on the Supreme Court decision in City

Corporation of Calicut Vs. Thachambalath Sadasivan and Others, , where it was held that the traditional concept of quid pro quo in a fee is undergoing transformation and that though the fee must have relation to the services rendered or the advantage conferred, it is not necessary to establish that those who pay the fee must receive direct or special benefit of the service rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee, the element of quid pro quo is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee. The same view was taken in P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, .

13. In Commissioner and Secretary to Govt., Commercial Taxes and Religious Endowments Department and others Vs. Sree Murugan Financing Corporation, Coimbatore and others, , the Supreme Court upheld the enhancement of fees payable for registration of bye - laws of chits. In Bhagwan Dass Sood Vs. State of Himachal Pradesh and others, (vide Para 7), the Supreme Court observed that the traditional view of quid pro quo has undergone a sea change though co - relation between the fee collected and service rendered or intended to be rendered is still important. The true test is whether its primary and essential purpose is to render specific service to a specified area or class and it is of no consequence that the State may ultimately and indirectly be benefited by it. All that is necessary is that there should be a reasonable relationship between the levy of fee and services rendered.

14. In paragraph 22 of the counter - affidavit, it is stated that the fee for grant and renewal of permit has been increased from Rs. 3,000 to Rs. 4,800 (reduced from Rs. 6,000) that is an increase of 60%. This amount has been increased after 1992 and fee for grant of temporary permit has been increased after 1992 from Rs. 110 to Rs. 300. This fee is justified looking to the inflation rate and principle of quid pro quo.

15. It is further submitted that the U.P. State Road Transport Corporation and private operators do not belong to the same class and they stand on a different footing vide U.P.S.R.T.C. v. Regional Transport Authority and Ors. 1998 (5) Scale Vol. v. No. 2 page 175. Hence, it is stated that there is no violation of Article 14 of the Constitution. In tax matters, the State is allowed to pick and choose the districts, objects, persons, etc. vide Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others, .The same principle should apply to a fee. The fee under Rule 125 is required to be deposited along with the application form. It is submitted that the enhanced imposition under Rule 125 is valid.

16. We are of the opinion that there is no merit in this petition. The decisions of the Supreme Court referred to above clearly lay down that it is not necessary that there must be an exact co - relation between the service rendered and the fee. The details of service being rendered by the Respondent has been given in paragraphs 5, 8 and 9 of the counter-affidavit in great detail. For example, the salary of staff of the transport department has increased considerably and other

expenditures have also increased. Additional facilities and services have been provided. In our opinion, the fees has not been raised to such an extent that it can be called arbitrary and unreasonable.

17. It has been held in Mohammed Yusuf Khan Vs. State of U.P. and others, , that a fee can be regulatory fee, and quid pro quo is not always necessary. In Mohd. Yusuf Khan's case (supra), reliance was placed on the Supreme Court decision in P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED], ,where it was observed:

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.

18. There cannot be any dispute that there is need of several regulations for regulating the traffic and safety and convenience of the passengers and providing a rational and organised transport service. For this, a large number of staff is required and salaries have increased over the years in view of inflation. Facilities have to be rendered to the public by the transport authorities and hence, in our opinion the impugned notification and Rule 125 cannot be said to be arbitrary. There is power under the new Motor Vehicles Act to increase fees u/s 96(2)(vii) as well as u/s 211.

19. There is no force in this petition and it is accordingly dismissed.