(1989) 06 GAU CK 0028

In the Gauhati High Court

Case No : Civil Rule No. 906 of 1982

Shri Jamuna Sarma, Secretary, Greater Gauhati Rickshaw Traders Association — APPELLANT

Vs

Gauhati Municipal Corporation and Others — RESPONDENT

Date of Decision : 23-06-1989

Acts Referred:
Constitution of India, 1950 — Article 226
Gauhati Municipal Corporation Act, 1971 — Section 1, 144, 146, 167, 167(1)

Citation : (1990) 1 GLR 74

Hon'ble Judges : R.K. Manisana Singh, J;H.K. Sema, J

Bench : Division Bench

Advocate : J.N. Sarma and S.P. Roy, for the Appellant; G.K. Talukdar, H. Das and B.P. Bora, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—In this petition under Article 226 of the Constitution, the Petitioner has challenged the demand and/or realisation of Rs. 20/- per year for the renewal of licence for a cycle rickshaw by the Gauhati Municipal Corporation, for short "the Corporation".

2. The Petitioner is the Secretary of the Greater Gauhati Rickshaw Traders'' Association, Kumarpara, Gauhati-9. It is stated the society is registered under the Societies Registration Act, 1860. The case of the Petitioner is that under the bye-law 26(iv) of the Gauhati Municipal Corporation (Licencing of Rickshaw and Rickshaw Puller) Bye-Laws, 1976, for short the "Bye-law" the renewal fee for a cycle rickshaw licence is Rs. 10/- per annum and, therefore, the demand of Rs. 20/- is without any authority of law and in violation of bye-law 26(iv),

3. The Corporation does not dispute the demand of Rs. 20/- per year for the renewal of licence for a cycle rickshaw. The case of the Corporation is that u/s 167(1) of the Gauhati Municipal Corporation Act, 1971, for short "the Act", the Corporation is empowered to levy tax on cycle rickshaw not exceeding Rs. 24/-

per annum, as specified in item no (sic) of the First Schedule to the Act, and the Corporation fixed tax rate at Rs. 20/- per annum for a cycle rickshaw and Rs. 4/- as fine. Section 1 of the Act came into force with effect from 18.1.73 and all other sections came into force on 15.2.74. Before 15.2.74, Rs. 12/- per annum was charged for the renewal of licence for a cycle rickshaw. The rate was fixed by the then Gauhati Municipality. Before the Corporation came into existence, all the cycle rickshaw owners were paying the aforesaid Rs. 12/- Although the Bye-Laws were framed in the year 1976 fixing Rs. 10/- per annum for renewal of licence for a cycle rickshaw, at no point of time, the said rate of Rs. 10/-was levied by the Corporation. The rate mentioned in the bye-law 26(iv) of the Bye-Law is apparently a mistake as the Corporation could not have reduced the rate of Rs. 12/- to Rs. 10/- per annum without the consent of the Government. The Corporation passed a resolution on 30.7.74 for increasing the rate from Rs. 12/- to Rs. 20/-. The Government of Assam by a letter dated 19.2.75 approved the tax rate of Rs. 20/- per annum for a cycle rickshaw. Thereafter, the Commissioner duly published the notification dated 4.3.75. notifying the enhancement of licence fee from Rs. 12/- to Rs. 20/- per annum in the local papers and also in the Assam Gazette dated 19.3.75.

4. The question which arises for consideration is whether the demand and/or realisation of Rs. 20/- per annum for renewal of a cycle rickshaw licence is in violation of the bye-law 26(iv).

5. Bye-Law 26(iv) runs as follows:

Renewal of owner''s licence for a Rickshaw; Rs. 10.00 (Rupees ten) per annum.

6. u/s 144 of the Act, the Corporation shall, for the purpose of the Act, impose taxes mentioned therein including a tax on vehicles other than those mechanically propelled.

7. Section 146 provides:

Procedure in levy in tax, etc.--Before the Corporation passes any resolution imposing a tax or duty or fee for the first time, it shall direct the Commissioner to publish a notice in the Gazette or in the local newspapers clearly indicating the nature and amount of the tax or duty or fees and the date from which it is proposed to impose such tax, duty or fees:

Provided that any resolution abolishing an existing tax or duty or fees reducing or increasing the rates at which any tax or duty or fee is levied shall not be carried into effect without the sanction of the Government.

Section 144 empowers the Corporation to impose taxes mentioned therein. Taxes u/s 144 are to be imposed by the Corporation by passing a resolution. Bat before the Corporation passes any resolution imposing a tax or duty of fee for the first time, publication of a notice in the Gazette, or in any local papers, is required, clearly indicating the nature and amount of the tax, duty or fees and the date from which it is to be imposed, as provided u/s 146. The proviso to Section 146 shall be dealt with later on.

8. Section 167 runs:

Tax on certain vehicles, boats and animals.--(1) Except as hereinafter provided, a tax rates not exceeding those specified in the First Schedule shall be levied on vehicles, boats and animals of the description specified in the Schedule, when kept for use in the city for the conveyance of passengers or goods in the case of vehicles and boats and for riding, racing, draught or burden, in case of animals.

(2) The Corporation may, by notification in the official Gazette, from time to time increase the rates of tax specified in the schedule, in relation to any animal, class of vehicle or boat.

Explanation,-....

(emphasis added)

Tax rate for cycle rickshaw is provided in item No. 4 of the First Schedule. The maximum tax rate in Schedule for each cycle rickshaw is Rs. 24/-. This tax has already been imposed or charged by the Act itself and it is not the tax to be imposed by the Corporation by passing a resolution like the one u/s 144. The tax rate of Rs. 24/- can be increased by the Corporation by notification in the official gazette from time to time. At this stage the question may arise whether sanction of the Government as provided under the proviso to Section 146 is required. We are not expressing our opinion in this case as the sanction was obtained from the Government before the increase of the tax rate. We prefer to leave the question to be dealt with later, if ever it is alleged.

9. The case of the Corporation is that before the Corporation came into existence the tax rate of renewal fee for a cycle rickshaw was Rs. 12/- per annum, as fixed by the then Gauhati Municipality. Section 2(2)(f) provides that all rates, taxes, fees, rents, fares and other charges shall, until and unless they are varied by the Corporation, continue to be levied at the same rate at which they were being levied by any local authority immediately before the establishment of the Corporation.

10. In view of Section 2(2)(f), tax rate of Rs. 12/- shall continue to be levied unless it is varied by the Corporation. In such a situation, the tax rate of Rs. 10/- could not be prescribed in bye-law 26(iv) and therefore, tax rate of Rs. 10/- under bye-law 26(iv) is of no consequence.

11. The Corporation is not increasing the rate of tax specified in the Schedule, u/s 167(2). The Corporation is varying the rate in view of the provisions u/s 2(2)(f) by exercising its power which inheres from Section 167. Therefore, the Municipality has the jurisdiction to increase the rate from Rs. 12/- to Rs. 20/- per annum and there is no violation of bye-law 26(iv). In any event, it will be deemed that the Bye-laws have been amended by the resolution of the Corporation which was approved by the Government of Assam.

12. For the foregoing reasons, the petition is dismissed. No costs. Interim order stands vacated.

