

(1978) 08 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 65 of 1973

Sindh Transport Co.

APPELLANT

Vs

Nagar Palika Parishad, Datia

RESPONDENT

Date of Decision : 23-08-1978

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 130

Citation : AIR 1979 MP 142 : (1978) JLJ 761 : (1979) 24 MPLJ 259

Hon'ble Judges : K.K. Dube, J;A.R. Naokar, J

Bench : Division Bench

Advocate : G.L. Athwale, for the Appellant; S.B. Mishra, for the Respondent

Judgement

K.K. Dubey, J.

By this petition under Article 226 of the Constitution of India, the petitioner seeks a writ to quash the notification in Madhya pra-desh Rajpatra dated 13-4-1973 by which the rate of fee for motor vehicles stopping at the Bus-Stand has been enhanced to Re. 1/- per vehicle from .50 p. per vehicle charged previously,

The petitioner is an owner of several stage carriages (buses) operating in Gwalior region. In the course of operation of his permits on Gwalior to Jhansi via Datia and Datia-Seondha and Datia-Chhatarpur routes he is required to halt his buses at Datia Bus-Stand. Datia Bus-Stand was constructed by State Government prior to 1956. The Government of Vindhya pradesh took a decision to hand over the Bus-Stands in the State to the Municipal Boards. In pursuance of this decision, they directed the Collector, Datia to give management of the Bus-Stand to Municipal Board, Datia. The District Magistrate (Collector) purporting to exercise powers under R. 89 (b) of C. P. & Berar Motor Vehicles Rules as were applicable in Datia at that time, transferred the management of the Bus-Stand in Datia town within municipal limits to Municipal Board, Datia, It was further directed that Municipal Board, Datia was authorised to charge-/8/- (.50 Paise) per day per

vehicle for using the Bus-Stand and further directed the Board to maintain the Bus-Stand property. The transfer of the Bus-Stand was duly notified in M. P. Rajpatra, dated 27-10-1956. The Municipal Committee, Datia is a successor of the Municipal Board and is constituted under the M. P. Municipalities Act, 1961.

The petitioner as also other bus-operators were paying at the rate of .50 p. per day for each vehicle for the use of the Bus-Stand when in April 1973 by a notification the Municipality, Datia enhanced the rate to Re. 1/-. On 13-4-1973, a notification was published in M. P. Rajpatra, Part III (1) under the authority of Chief Municipal Officer, Municipality, Datia stating that the charge of .50 p. was being increased to Re. 1/- per day per vehicle and that the same would come in operation on the expiry of 30 days from the date of publication i. e. with effect from 13th May 1973. The notification was issued in exercise of powers u/s 130 of the M. P. Municipalities Act, 1961 in pursuance of resolution No. 10, dated 14-3-1973 passed by the Municipal Council, Datia. The petitioner challenges this notification on the ground that the municipality has no power to enhance the rate and the notification issued is in excess of their powers and liable to be struck down.

The Bus-Stand was created in exercise of powers conferred under Rule 89 of the C. P. & Berar Motor Vehicles Rules. Under this rule, the District Magistrate, by a notification in the official gazette may in respect of the taking Up or setting down of passengers or both by public service vehicles conditionally or unconditionally prohibit the use of any specified place or of any place of a specified nature or class, or require that within the limits of any municipality, certain specified stands or halting places only shall be so used. By Sub-rule (b), when a place has been notified then, notwithstanding that the land was in possession of any person, the place shall be deemed to be a public place within the meaning of Motor Vehicles Act and the District Magistrate may enter into an agreement with or grant a licence to any person for the provision or maintenance of such place including the provision or maintenance of the buildings or works necessary thereto subject to the termination of the agreement or licence forthwith upon the breach of any condition thereof and may otherwise make rules or give directions for the conduct of such place including rules or directions prescribing the fees to be paid by the owners of public service vehicles using the place and providing for the receipt and disposal of such fees. The rules empowered the District Magistrate to enter into an agreement with or grant licence to the Municipal Council for the maintenance of the Bus-Stand and to charge .50 P. every day for each vehicle. Under Rule 89 (b), the fee could be prescribed to be paid for the use of the Bus-Stand. This fee is to be prescribed by the State Government and as already stated above, they had permitted the Municipality to realise -/8/- per vehicle per day for the use of the Bus-Stand. We have to consider whether the Municipality which had thus been realising 8/- per vehicle per day from the bus operators under the above notification could enhance the rate of fee to Re. 1/-.

It is clear to us that the Government had given the Bus-Stand to the Municipality

for management. The notification seeking to enhance the fee to Re. 1/- purports to have been made in exercise of powers contained in Section 130 of the M. P. Municipalities Act. By Sub-section (i) of Section 130, a previous sanction of the State Government in case of Class I Municipal Council and in other cases the previous sanction of the prescribed authority is to be obtained before such Council can abolish or vary the rate of tax. Under Sub-section (2), a Council may at a special meeting, pass a resolution to propose the abolition of any tax already imposed or a variation in the amount of rate of tax. The procedure prescribed under Sub-section (3) is that after obtaining the sanction of the State Government or the prescribed authority, the Council shall publish in case of increase in the amount of rate of tax, a notice showing in detail the effect of such increase and the date which shall not be earlier than 30 days from the date of such publication from which it is proposed to bring such increase into force. Since the effect of pre-publication in the prescribed manner under Sub-section (4) was that the resolution proposing enhancement in the fee was conclusive proof that it was in accordance with the provisions of the Act, we need not go into the question whether or not a sanction had been obtained by the Municipal Council from the State Government or the prescribed authority. We are mainly concerned here whether the Municipal Council had the power to enhance the fee in respect of the vehicles halting there to take up and set down passengers at the Bus-Stand.

The matter is concluded by the decision of the Supreme Court in *Municipal Council, Bhopal Vs. Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd. and Another*, . It was held by their Lordships of the Supreme Court that M. F. Municipalities Act (37 of 1961) does not empower a Municipality to pass a bye-law declaring certain place as a Municipal bus stand and cannot compel the persons plying motor-buses for hire to park buses anywhere within the municipal limits except at the Municipal bus-stand for the purpose of taking up or setting down of passengers. This can only be done under a provision like the one contained in Section 68 (2) (r) and (s) of the Motor Vehicles Act. The power to specify the place u/s 68 (2) (r) and (s) vests in the State Government.

It is clear from the decision of the Supreme Court that the Municipal Council, Datia had no power to reserve a place for bus-stand and compel the buses for setting down and taking up passengers. If they have no power to create a Bus-Stand, they would not have also the ancillary power to impose a tax or fee in respect of the same. The Municipal Council cannot do indirectly what it cannot do directly. Even if the Motor-Stand was under their control for management purposes, they have no power to enhance the fee in respect of the motor vehicles for halting at the Bus-stand for the purpose of setting down and taking up passengers. The Municipal Council would not be able to charge such fee unless such a power is clearly found in the Act. The Supreme Court decision only permits the Municipal Council to charge fee where the Bus-owners by an agreement chose to halt their buses on the Municipal Council's property. The decision clearly indicates that as regards bus-stand as understood under the

Motor Vehicles Act which is used for the purpose of setting down and taking up passengers, the Municipal Council, Datia would have no power to enhance the fee imposed on the vehicles. We are of the view that this power has been exercised in excess of the provisions of M. P- Municipalities Act and the notification has to be struck down.

We accordingly quash the notification dated 13-4-1973 (Annexure "D" of the petition) with the result that the Municipal Council will only be able to charge .50 p. per vehicle per day for day for using the vehicles as before. We allow this petition with costs. Counsel's fee Rs. 100/-, if certified. The outstanding amount of the security deposit shall be refunded to the petitioner.