
(1991) 05 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3619 of 1985

Subhash Chander and others

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 29-05-1991

Acts Referred:

Constitution of India, 1950 — Article 19, 245, 265
Haryana Municipal Act, 1973 — Section 181(1), 182(1), 199, 200, 70

Citation : AIR 1992 P&H 20

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : M.L. Sarin and Mrs. Sarin, for the Appellant; D.D. Vasudeva and Jaswant Singh, AAG, for the Respondent

Judgement

1. These two writ petitions Nos. 3619 of 1985 and 979 of 1986 challenge the Haryana Municipal (Cow-Houses) Bye-Laws 1978 (hereinafter referred to as the Bye-laws") as also the imposition of the fee. The questions of fact and law being identical, these petitions shall be disposed of by a common order.

2. It would suffice to notice the facts in CWP No. 3619 of 1985. The 169 petitioners are residents of Sonapat. Each one of them owns 3 to 35 cows or buffalows and are engaged in the business of "dairy". They claim to have been engaged in this business for the last many years. It is the case of the petitioners that the Municipal Committee, Sonapat (hereinafter referred to as "the Committee") does not provide any facility by way of grazing grounds, a pond, or any other facility which may be of any use to the petitioners. On the contrary, the petitioners claim that their business is a source of revenue of the Committee in as much as the carcasses are sold by the Committee, as a result of which it earns about Rs. 80,000/- to Rs. 1,00,000/ - per year.

3. The State of Haryana u/S. 200 of the Haryana Municipal Act, 1973 (hereinafter referred to as "the Act") framed the bye-laws providing interalia that no person living within the municipal limit shall use any premises as a cow-house without

obtaining a licence. It was also prescribed that for each cow-house a separate licence will be necessary. A licence fee of Rs. 10/- per animal above one year of age and Rs. 5/- per animal up to one year of age was prescribed. The petitioners having failed to obtain licence and to pay the necessary fee were served with a notice alleging infringement of the bye-laws. They were called upon to explain their conduct. They were also informed that on that failure to comply with the notice legal proceedings were likely to be initiated against them. Aggrieved by the issue of the notices, the petitioners have challenged the validity of the bye-laws through the present writ petition.

4. Separate written statements have been filed by the two respondents. The averments in the petition have been controverted. It has been inter alia averred on behalf of the State that the Municipal Committee has provided facilities by maintaining ponds, giving water connections, light, sweepers, pacca streets and drainage facilities. The suggestion that the Committee was earning Rs. 80,000/- to Rs. 1,00,000/- from the sale of carcasses has been denied. It has been further averred that some of the petitioners had applied for the licence and paid the requisite licence fee. The action for the recovery of the licence fee is being taken only against only such persons as have not complied with the provisions of the bye-laws. It has been further averred that the bye-laws are valid and the challenge thereto is wholly untenable. Similar avernments have been made in the written statement filed on behalf of the committee.

5. Mr. M.L. Sarin, learned counsel for the petitioners has contended for the levying of licence fee is totally beyond the provisions of the Act because the Act does not authorise the levy of licence fee for premises used as cow-houses, the He has further contended that even if it is assumed that fee could be levied on cow-houses, the levy in the present case was ultra vires the Act in as much as it had been levied on the number of cattle heads and not the premises. He has further contended that the levy of fee is in any case bad as no service for the class of cattle holders was being rendered by the Committee. There was no element of quid pro quo between the licensee and the Committee. He has further contended that if the provisions of the bye-laws are construed to mean that the levy is a tax, it is vitiated because the provisions of S. 70 of the Act do not contemplate the levy of tax on animal houses and also because the procedure laid down u/Ss. 74 and 75 of the Act had not been followed. On the other hand, Mr. D. D. Vasudeva appearing for the respondent-State has contended that under the provisions of S. 70, the Committee is competent to impose a fee. Fee levied in the present case and contemplated in the bye-laws falls squarely within the provisions of S. 70 and, that the levy of fee was justified as the Municipal Committee was in fact rendering services to the class of cattle-owners including the petitioners.

6. Inevitably a reference to the provisions of the Act and the bye-laws is necessary. The following may be extrated :--

"Section 70: Taxes that may be imposed -

(1) Subject to any general or special orders of the State Government in this behalf and to the rules, a committee may, from time to time, for the purposes of this Act, impose in the whole or any part of the municipality any of the following taxes, tools, and fees, namely:- (i)to (viii) xx xx xx xx xx xx xx xx

(ix) a fee with regard to pilgrimages.

(xv) with the previous sanction of the State Government, any other tax, toll or fee which the State Legislature has power to impose in the State under the Constitution of India,

(2) The rates of any tax, toll or fee under sub-section (1) except that under clause (viii) thereof shall be determined by the committee.

Provided that such rates shall not exceed the maximum limits which the State Government may, from time to time, by notification specify in this behalf."

Chapter X, Bye-laws, Sec. 200:

General by Laws.-- The State Government shall make by-laws applicable to all or any of the municipalities as it may, by notification, specify, by which the committee shall -

(a) render licences necessary for the proprietors or drivers of vehicles other than motor vehicles or animals kept or plying for hire within the limits of municipality, and fix the fees payable for such licences and conditions on which they are to be granted and may be revoked, and may by such conditions provide among other things for a minimum breadth for wheel tyres and for a minimum diameter of the wheels;

(b) & (c)xx xx xx xx xx xx xx xx

(d) fix, and from time to time vary, the number of persons who may occupy a building or part of a building, which is let in lodgings occupied by members of more than one family, or which is situated within such congested bazar areas as may be specified in the bye-law; and provide -

(i) xx xx xx xx xx xx xx xx

(ii) for the licensing of hotels and lodging-houses and for the fees payable for such licences and the conditions on which they may be granted or revoked.

(iii) to (vii)xx xx xx xx xx xx xx

(e) provide -

(i) xx xx xx xx xx xx xx xx

(ii) for the inspection and proper regulation of markets and stalls, for the preparation and exhibition of a list of current price and fixing the fees rents and other charges to be levied in such markets and stalls;

(iii) for the holding of fairs and industrial exhibitions within the municipality or under the control of the committee, and for the collection of fees u/S. 199;

(f) & (g) xx xx xx xx xx xx

(h) render licences necessary for using premises as stables, cow-houses goats or houses or enclosures for sheep goats or swine, and regulate the grant and withdrawal of such licences;

(i) & (ii) xx xx xx xx xx

(k) prohibit the letting off of fire arras, fireworks, fire balloons bombs or detonators except (1) with the permission of the committee or of a municipal office empowered to give such permission, (2) subject to such conditions as the committee may impose, and (3) on payment of such fees, if any, as may at any time have been fixed by the committee in that behalf;

(l) to (t) xx xx xx xx xx xx

(u) provide for the registration of all or any specified classes of dogs, and in particular and without prejudice to the generality of the foregoing -

(i) provide for the imposition of an annual fee for such registration;

(ii) to (v) xx xx xx xx xx xx

(w) regulate the conditions on which and the periods for which permission may be given under sub-sec. (1) of S. 181 and sub-sec. (1) of S. 182, and provide for the levy of fees and rents for such permission;

The relevant provisions of Bye-laws are:--

Bye-law. 2: In these bye-laws, unless the context otherwise enquires :--

(a) xx xx xx xx xx xx xx

(b) "cow houses" means the premises where animals are kept;

(c) & (d) xx xx xx xx xx xx xx

Bye-law. 3 : No person shall use or permit to be used any premises, or part thereof, owned or occupied by him, within the limits of a municipality, as a cow house without a licence issued in this behalf by the Municipal Medical Officer of Health (hereinafter referred to as the licencing Officer).

Bye-law 4: (1) For every cow house, a separate licence shall be necessary. Unless the committee, for reasons to be recorded in a resolution otherwise direct, the number of licences granted for cow houses within the compound of a single building shall not exceed two.

(2) xx xx xx xx xx xx

Bye-law. 8: (1) The annual fee to be paid for a licence under these bye-laws shall

be ten rupees per animal of above one year's age and five rupees per animal up to one year's age.

7. Chapter 5 of the Act deals with the powers of the Committee regarding imposition of taxes and fee. S. 70 enumerates the taxes and fees that may be imposed by the Committee. Ss. 74 and 75 lay down a procedure which has to be followed before any tax can be imposed by a Committee. Sub-clause (xv) of S. 70 authorises a Committee to impose any tax, toll or fee with the previous sanction of the State Government, which the State Legislature has power to impose.

8. Necessarily, the first question that arises is regarding the competence of the legislature to impose a fee in respect of the matters covered by the bye-laws. The bye-laws in the present case are intended to regulate the use of premises or part thereof for the purpose of housing cattle. For every cow-house, which means the premises where animals are kept, it is incumbent to obtain a licence. The bye-laws prescribe the application form. The description and number of animals, which may be kept in the licensed premises and the space which is required to be reserved per animal is prescribed in bye-law 6. Bye-law 8 regulates the fee to be paid for a licence. Bye-law 10 lays down the conditions, which a licensee has to fulfill. A perusal of the bye-laws would show that the size, the type of floor, the material to be used for the floor, the provision for channel, gutter, sloping, drainage, the interior fittings and other matters connected with the maintenance of hygiene are regulated. A perusal of the various provisions of bye-law 10 makes it manifest that proper hygienic condition, which are so important for public health to be provided for by the licensee. Provision is intended to ensure proper living conditions for the cattle. A licensee is required to inform the licensing Officer of outbreak of any infectious disease and for the segregation of the animals affected pending the consideration of the matter by the officer. It is further provided in the bye-laws that no cow house shall be erected within 50 feet of any premises which are licenced for the sale of articles of food and drink. The cooking of food in any cow house or the ventilation from the cow house into a kitchen or place of human habitation is clearly prohibited. The cow houses have to be opened for inspection by the licensing Officer. Every license holder has to ensure that the cow houses are thoroughly swept and kept clean. All litter, dung, filth and rubbish and contents of all cesspools have to be removed at least twice a day. Such litter, dung, filth or other offensive material have to be collected and stored in proper dust bins to be provided by the licensee. A breach of any of the conditions of the bye-laws entails penal consequences.

9. A combined reading of these bye-laws leaves no manner of doubt that the intention of the State Government was to ensure that the cattle were kept in proper conditions and public health was not unduly endangered. With this object in view the State Government has made it incumbent upon the owners of the cattle houses to obtain licences. A rateable licence fee has also been imposed.

10. The first question that arises for consideration is as to whether or not the Committee could impose the licence fee. Under clause (xv) of Section 70, the Committee can with the previous sanction of the State Government impose a fee (sic) could the State Legislature (sic), think it could. Entries 6 and 66 of the 7th schedule (list-II) read as under:--

"Entry 6. : Public health and sanitation, hospitalisation and dispensaries."

"Entry 66: Fees in respect of any of the matter in this list, but not including the fees taken in any Court."

11. It is well settled that the various entries in List II do not enumerate the powers of legislature but the "fields of legislation". The entries are "legislative heads and are of enabling character". The language of the entries has to be given "the widest scope of which their meaning is fairly capable....." Provision in a single legislation can be made in exercise of power conferred by several entries in the list. Under Entry 6, it is open to the State Legislature to make every provision which would ensure maintenance of sanitation and hygienic conditions. The provisions contained in S. 200 of the Act particularly in regard to the matters contained in Clause (h) viz. rendering licence necessary for using premises or enclosures for sheep, goats, or swine etc. are clearly referable to Entry 6 in List II. S. 70(1)(xv) authorises the Committee to impose any fee which the State Legislature has power to impose under the Constitution of India. Entry 66 authorises the State Legislature to impose fee in respect of any of the matters covered by other entries. A combined reading of Entry 6 and Entry 66 enables the State Legislature to authorise imposition of fee in respect of any matter connected with sanitation and public health. Sub-clause (xv) of S. 70(1) authorises a Committee to impose the fee in the present case. A combined reading of the provisions contained in Ss. 70 and 200 in my view, authorises the levy of fee in respect of cow houses. While framing bye-laws u/S. 200 in respect of cow-houses, the State Government was competent to authorise the levy of licence fee also. It merely recorded its "previous sanction" in framing the bye-laws providing for the levy of licence fee. I am, therefore, of the opinion that bye-law 8 lays down the annual fee which a licensee has to pay. This bye-law is within the provision of Section 70(1)(xv). The bye-laws themselves are within the competence of the State Government u/S.200(h).

12. Mr. Sarin, however, contends that S. 200 specifically provides for the framing of bye-laws and fixing of fees etc. in clauses a, d(ii), e (ii & iii) k, u(i) and w. He says that the legislative intention is clear. Wherever the legislature wanted the State Government to be competent to levy fee while framing bye-laws, it has so provided. Inferentially it follows that the legislature did not intend to permit the State Government to impose fee in respect of the matters covered by clause (h). I regret my inability to accept this submission. It is well settled that different provisions of the Act have to be harmoniously read. The provision of Section 70 clearly contemplates the matters in respect of which a Committee can impose tax and fee. Sub Clause (xv) of clause, (h) contains omnibus rule which

authorises a committee to impose such fees as the State legislature could have provided for. The necessary pre-condition is that the previous sanction of the State Government has to be obtained. It does not, however, place restriction on the power of the State Government to grant consent. In the present case, the State Government has merely recorded its consent by authorising the Municipal Committee to levy fee in respect of cow-houses. If the provisions of S. 70 are read along with the provisions of S. 200, it is clear that the State Government is competent to authorise the levy of fee in respect of all matters regarding which the State Legislature is competent to legislate.

13. Mr. Sarin, however, submits that if at all levy can be in respect of cow-houses, it cannot be in respect of the Cattle or the animals. His contention is that bye-law 8 lays down the rate of fee on the basis of the number of animals and not in respect of the cow-houses. This is not so. The levy is in respect of the cow-houses. The quantum of the fee is only determined with reference to the number of animals that are kept in the cow-house. Ultimately, the rate of fee is determined by the size of the cow-house.

14. Mr. Sarin further contends that the levy of fee pre-supposes the rendering of service. In the present case there was no quid pro quo between the Committee and the payer of the fee. A casual relationship is not sufficient. A major part of the fee has to be spent for the benefit of the payer of the fee. He has placed strong reliance on the decision reported as *Nagar Mahapalika Varanasi Vs. Durga Das Bhattacharya and Others*, . Relying on these judgments Mr. Sarin has contended that there was nothing on record to indicate that the major part of the fee realised by the Committee was being spent for the benefit of the payer of the fee. Consequently, the levy was vitiated.

15. It is no doubt correct that traditionally the levy of fee was co-related to the services rendered and wherever the element of service was not predominant, the levy was considered to be a tax rather than a fee. This traditional view, which was enunciated in *K.K. Puri's* case, has, however, undergone "sea change" and "transformation". This matter was considered in detail by a full bench of this Court in *M/s. Subhash Chander Kamlesh Kumar Vs. State of Punjab and others*, in the context of the levy of market fee by the Marketing Board. It was observed as under (para 43) :

"The correct statement of law is that the traditional view of quid pro quo has undergone a transformation. The true test for a valid fee is whether the primary and essential purpose is to render specified services to the specified area or class, it being of no consequence that the State may ultimately and indirectly benefit by it. Quid pro quo is not always a sine qua non of a valid fee and what is required to be shown is that by and large there is quid pro quo. The co-relationship between services expected is of a general character and a broad, reasonable and casual relationship is enough to satisfy the requirement of law. The payer of the fee represents collectively the class of persons i.e. users of the market, including growers and those engaged in business to whom the benefit is

directly intended by the establishment of a regulated market and not the actual Individual i.e. the trade. If there is quid pro quo in the sense explained above for such a class of persons, the test of valid fee is satisfied."

16. In view of the above position of law, it is not essential that the major part of the fee collected should be spent for the benefit of the payer of the fee. Even a "casual relationship" is enough. In the present case, the services being rendered by the Committee have: been mentioned. It has been specifically stated that the committee has provided facilities of maintaining ponds in the city, by giving water connections, lighting, sweepers, pacca streets and drainage etc. for the purpose. Even the Committee has broadly reiterated this position. In this situation, I cannot persuade myself to hold that the levy of fee is vitiated by absence of any service to the payer of the fee.

17. In view of the conclusion that the levy of fee is valid, it is not necessary for me to go into the question that it is in fact a tax or that its imposition was vitiated on account of non-compliance with the provisions of Ss. 74 and 75.

18. The writ petitions are thus lacking on merit. These are consequently dismissed with costs. The costs are quantified at Rs. 5,000/-per case. Since no one has appeared on behalf of the committee, the costs shall be payable to the State only.

19. Petitions dismissed.