

(1991) 11 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 17418 of 1985 and 442 and 1059 of 1986

Suresh Prasad Misra and Others

APPELLANT

Vs

Municipal Board Deoria and Others

RESPONDENT

Date of Decision : 13-11-1991

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 293, 298(2)E, 298(2)H

Citation : (1992) 1 AWC 385 : (1992) RD 202

Hon'ble Judges : R.K. Gulati, J;A.N. Varma, J

Bench : Division Bench

Advocate : A.K. Singh, for the Appellant; S.N. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—These three petitions are being disposed of by a common judgment. The Petitioners claiming to be the operators are aggrieved by the levy and collection of parking fee from them by the Respondent Municipal Board or the contractor to whom the right to collect fee has been auctioned.

2. The challenge to the levy was threefold: First, that no bye-laws have been framed to authorise the Municipal Board to levy and collect parking fee from those stopping at the parking places earmarked by the Municipal Board. Second, that such a bye-law could be framed only u/s 298(2)H(b) of the U.P. Municipalities Act and not u/s 298(2)E(b) of the Act under which the bye-laws relied on by the Respondent Municipal Board have been framed. Third, that at any rate, no rates have been prescribed for the levy of parking fee.

3. None of these three grounds has any merit. So far as the first ground is concerned, the same stands completely negated by the counter-affidavit which has been filed on behalf of the Municipal Board in writ petition No. 1059 of 1986, Suresh Prasad Misra and Ors. v. Municipal Board Deoria and Ors. with this counter affidavit a copy of the bye-laws has been annexed as annexure 5. These

bye-laws furnish a complete answer to this contention of the Petitioner.

4. Coming to the second ground, it is now too late in the day to contend that absence of reference to the relevant bye-laws in the pre-amble has effect of invalidating the bye-laws themselves, it has been settled by a line of decisions that if the power to levy fee in the bye-laws is available and there is a mere inaccuracy or omission to refer to them in the pre-amble, the bye-laws are not there by invalidated. The bye-laws in question clearly provide that the vehicle passing through the Municipal Board shall be parked only at the places earmarked for them. That such a bye-law can be framed u/s 298(2)H(b) and cannot be seriously disputed. The mere fact, therefore, is that instead of quoting Section 298(2)H(b) a reference to Section 298(2)E(b) has been made will not, in our considered view, have the effect of vitiating the bye-laws. The power to levy such a fee is also available to the Municipal Board u/s 293 of the U.P. Municipalities Act by a bye-law framed in that behalf or by a public auction or agreement. In all the three modes laid down u/s 293 the Municipal Board can levy parking fee for the use and occupation of the land belonging to or vesting in it.

5. Coming to the third submission, we find from Annexure 5 which purports to be a copy of the bye-laws that a schedule of the rates of fee chargeable from those parking their vehicle at the places earmarked for that purpose has been prescribed. The third ground, therefore, also disappears.

6. The learned Counsel lastly submitted that even if it be assumed that rate has been prescribed, neither the Municipal Board nor its agent could levy and collect from the Petitioners the parking fee in excess of that specified in the bye-laws. There can be no quarrel with this proposition or law. However, we find that the Petitioners have furnished no material to indicate that the contractor is charging any amount in excess of that specified in the bye-laws beyond the bald statement of the Petitioners that the Municipality is realising a sum of Rs. 25/- every day as parking fee from each of the Petitioners. These allegations have not been controverted in the counter-affidavit. It is, therefore, not possible to give any relief to the Petitioners on the basis of an unsubstantiated allegation which has been controverted in the counter-affidavit.

7. There is no merit in these petitions and the same are accordingly dismissed with costs. It will, however, be open to the Petitioners to raise objections as regards the quantum of fees being realised from the Petitioners which is stated to be in excess of the prescribed rates, before the Municipal Board itself.