(1964) 09 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 785 of 1964 (P)

V. Parthasarathy APPELLANT

Vs

The State of Pondicherry and Another RESPONDENT

Date of Decision : 18-09-1964

Acts Referred:

Constitution of India, 1950 — Article 14, 239(1), 239A, 240, 246(3)
Foreign Jurisdiction Act, 1947 — Section 4
Government of India Act, 1935 — Section 14(2), 143(2)
Government of Union Territories Act, 1963 — Section 18(1), 18(2), 54
Motor Vehicles Act, 1939 — Section 68, 68(2), 76
Pondicherry (Administration) Act, 1962 — Section 4, 7
Pondicherry (Application of Motor Vehicles Act) Order, 1959 — Section 2, 4
Tamil Nadu District Municipalities Act, 1920 — Section 270, 270B

Citation : (1966) ILR (Mad) 93

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Advocate : K.K. Venugopal, for the Appellant; V.S. Ramakrishnan, Government Pleader for Pondicherry, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishnan, J.—The Petitioner is the proprietor of Sri Sathi Vilas Bus Service, Porayar. He applies in this petition for the issue of a writ

of mandamus or other appropriate writ restraining the Respondents-the State of Pondicherry, the first Respondent, and the Municipal Council of

Karaikkal, the second Respondent, from levying and collecting bus stand fees at Karaikkal bus stand in accordance with the resolution of the

second Respondent Municipal Council, dated 4th November 1963, as approved with certain modifications by the first Respondent, the State of

Pondicherry, on 2nd April 1964. He is operating stage carriages, the permits for which are issued both by the State of Madras as well as by the

State of Pondicherry. According to the affidavit of the Petitioner, eleven of these stage carriages have Karaikkal as one of its termini and another

eleven stage carriages ply through Karaikkal. Thus, twenty two of his vehicles have to use the Municipal bus stand in Karaikkal. Prior to the

impugned resolution of the Municipal Council of Karaikkal, dated 4th November 1963, the Municipal Council levied fees for the use of the

municipal bus stand on the following basis. Buses with eight to thirty seats had to pay 1ï¿½ naye paise per seat per day. Local buses and lorries

had to pay one rupee per day. But by the resolution, these rates were enhanced, and finally, was modified by the Government of Pondicherry by

their order, dated 2nd April 1964, the revised rates were:

Bus with 8 to 30 seats-60 nP. to and fro.

Bus with more than 30 seats-80 nP. to and fro-

Local bus plying exclusively within the commune-20 nP. to and fro.

Tax is-Rs. 24 per year.

2. By a calculation, the Petitioner averred that prior to the revision of rates he had to pay per day for his twenty-two vehicles Rs. 15-87 to the

Karaikkal Municipality, but under the new rates he would have to pay Rs. 56 per day; thereby he would have to pay per annum an excess of Rs.

14,446-80 nP. If the income from the three other transport agencies is also taken into account, the income of the municipality per day will come to

Rs. 20-40 nP. Under the old rate and Rs. 71-20 nP. Under the new rate, exclusive of fees from lorries and taxis. By a calculation given in the

affidavit, the expenses of the contractor to maintain the bus stand would come to Rs. 3,240 per annum. If a reasonable rate of charges for

maintenance, annual repair, etc., of the bus stand are added, the actual expenditure would be within Rs. 7,500. The new impost, which yields a

receipt of Rs. 27,000 per annum, would make it a tax and not a fee. After Pondicherry became de facto a territory administered by the

Government of India under the Foreign Jurisdiction Act, the provisions of the Motor Vehicles Act (Central Act IV of 1939) have been extended

by the Pondicherry (Application of Motor Vehicles Act) Order, 1959. Under this Order, the Motor Vehicles Act of 1939 (Central Act IV of

1939), as in force in the Union Territory immediately before the commencement of the order (19th June 1959), has to be applied to Pondicherry.

Under clause 4 of the order all jaws in force in Pondicherry immediately before the order, which correspond to the Motor Vehicles Act, rules,

notifications and orders apply to Pondicherry, by the order, shall except in so far as such laws related to the levy o any fee, cease to have effect.

The Petitioner alleges that by virtue of the has mentioned clause, the right of Pondicherry State to levy a fee alone has beer preserved. But in the

present case, the new charges under the resolution impugned will amount to a tax and is, therefore, ultra vires. The affidavit went on to allege that

after the de jure transfer of the State of Pondicherry, the Constitution of India will apply to the territory in question. Under the impugned resolution,

local buses plying within the commune have to pay only 20 nP. for a round trip as against 80 nP. and 60 nP. for mofussil buses like the

Petitioner''s. It was also alleged in the affidavit of the Petitioner that since the bus stand conferred similar advantages on all buses, whether plying in

the commune or wholly from the mofussil, this levy involved an unreasonable classification and was discriminatory and violative of Article 14 of the

Indian Constitution. But this last point was not argued at the time of the hearing.

3. Both the Respondents filed a common counter affidavit. They alleged that the communes in Pondicherry are governed by a decree of the

President of the French Republic, dated 12th March 1880 and promulgated by an Arrete, dated 21st April 1880. Under Article 44 of the said

decree, the municipality has got the power to impose taxes for parking on the roads, squares and other places belonging to the municipality.

Section 4 of the Pondicherry (Administration) Act, 1962 (Central Act XLIX of 1962) has the effect of preserving this law in force in Pondicherry

until it is amended or repealed by a competent Legislature or other competent authority. Further, Section 18(1) of Central Act XX of 1963 is

similar to Article 246(3) of the Constitution, and thereunder Pondicherry State has the right to levy a tax like the one now under consideration. In

the Pondicherry State, under the previous French law no distinction is made between fees and taxes as in the English system of law, which has

been adopted in India. The municipality of Karaikkal had recently constructed a bus stand providing very many amenities at a cost of nearly Rs.

80,000. Taking into account this large expenditure and the necessity to increase the revenue of the commune, the municipality raised the tax on vehicle, and the rates levied by the municipality were modified by the Government. The counter affidavit traversed the allegations of the Petitioner

regarding income and expenditure, and asserted that the new rates bore a reasonable proportion to the services rendered. The counter affidavit

also alleged that there was no discrimination between the local buses and the mofussil buses, as the classification is a reasonable one. In a

supplemental counter affidavit, the second Respondent, the Municipal Council of Karaikkal, alleged that under the old tariff a sum of Rs. 8,375

was realised at the auction sale of the right to collect the parking dues. From 1st January 1964, the collection was made by the department itself at

the old rate and up to 15th May 1964 a sum of Rs. 4,028-35 nP. had been collected. For constructing the new bus stand the municipality has

borrowed Rs. 50,000 as loan from the Government and interest on the loan has to be paid as a necessary item of expenditure.

4. Before considering the legal grounds urged by the rival parties, it is necessary to have a clear idea of the anticipated income and expenditure at

the Karaikkal bus stand under the new schedule of rates especially since the main part of the figure is not seriously disputed. The Petitioner''s

calculation works out thus: Under the old rates the income per annum exclusive of lorries and taxis is Rs. 7,446. Under the new rates the income is

Rs. 26,276. The expenditure involving lighting charges, salary of two sweepers and salary of two bill collectors will come to Rs. 270 per month

and about Rs. 3,240 per annum. Allowing for a liberal margin for maintenance, annual repair, etc., the expenditure should be about Rs. 7,500,

Thus, under the old rates as against the income of Rs. 7,446, the expenditure of Rs. 7,500 would show that the levy was commensurate with the

services rendered. But under the new rates the Collection would exceed three times the expenditure.

5. The supplemental affidavit filed by the second Respondent on the other hand alleges that under the old rates the contractor paid to the

municipality a sum of Rs. 8,375 per annum by making the highest bid at an auction. This will be the real income of the municipality from this levy.

From 1st January 1964, the collection was made by departmental agency for 4ï¿½ months ending with 15th May 1964. The collection was Rs.

4,023-35 nP. On a proportionate basis for twelve months, the collection would be Rs. 10,742-27 nP., exclusive of charges for lorries and taxis.

The statement filed by the first Respondent about the expenditure gives the following:

RS.

PER MONTH.

Electricity 10O

Scavengers 50

Sweepers 50

Watchmen (2) 120

.... -----

Total 320

6. One bill collector has been engaged, according to the supplemental affidavit, on Rs. 120 per month. Adding this, the total expenditure will come

to Rs. 440 per month or Rs. 8,780 per annum as against the collection of Rs. 10,742-27 nP. by the departmental agency, under the old schedule

of rates. Even then, there is a reasonable correlation between the expenditure incurred and the receipts, the departmental system being slightly

more advantageous to the municipality than the auction system. According to a statement supplied by the learned Government Pleader for

Pondicherry on behalf of the Respondents, the receipts for 4ï¿½ months under the revised schedule of rates will come to Rs. 8,900 or Rs. 24,300

per annum. Even if the right to auction is leased out, the receipts will certainly be more than Rs. 20,000 which will be nearly twice the expenditure.

In the supplemental affidavit filed by the municipality it made a claim that interest on the loan charged should also be taken into account under the

heading expenditure. The amount that will have to be paid under this heading per annum is not stated. If we allow five per cent interest on the loan

of Rs. 50,000 borrowed from the Government, the interest would not exceed Rs. 2,500 per annum. Adding that amount to the expenditure

already calculated one will get Rs. 11,280 which amount has no reasonable correlation to the expected receipts, which as mentioned above will

easily exceed Rs. 20,000, even if there be an auction, or Rs. 26,400, if departmental agency is used. This figure does not take into account

receipts on account of lorries and taxis and from a betel shop and a canteen at the bus stand.

7. If we adopt the well-known principles laid down for distinguishing between a tax and a fee, there can be no doubt that this levy will be in the

nature of a tax and not a fee. The Supreme Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha

Swamiar of Sri Shirur Mutt., has observed at page 1041:

Coming now to fees, a ï¿½feeï¿½ is generally defined to be a charge for a special service rendered to individuals by some governmental agency.

The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the

costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These

are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would

be applicable to all cases.

8. As regards the distinction between a tax and a fee, in the same decision of the Supreme Court at page 1042 it is observed:

The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a

special benefit or privilege.... As Seligman says, it is the special benefit accruing to the individual which is the reason for payment in the case of

fees; in the case of tax, the particular advantage if it exists at all is an incidental result of State action.

If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on

the face of the legislative provision, be co-related to the expenses incurred by Government in rendering the services.

9. The Supreme Court in a later decision The The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, observed at page

545:

Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilized for all public purposes, whereas a cess

levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of

services for which it is levied.

10. But directly relevant in connection with the arguments in the present case is

the following observation of the Supreme Court in the decision last

cited:

Cases may arise where under the guise of levying a fee Legislature may attempt to impose a tax; and in the case of such a colourable exercise of

legislative power courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a correlation between

the service and the levy or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee

and not a fee in reality.

11. Applying the above tests to the present case, there is no room for doubt that in any view of the matter, whether the charges are collected by

lease to a contractor in auction, or by a departmental agency, while the old rates bore a reasonable correlation between the receipts and

expenditure for services rendered, the new rates would yield an income, far in excess of the expenditure, and there will be no reasonable

correlation between the two. The new levy, in the light of the principles extracted above will amount to a tax and not a fee.

12. I will take up next the second point urged by the learned Counsel for the Petitioner that after the promulgation of the Pondicherry (Application

of Motor Vehicles Act) Order, 1959 extending the provisions of the Motor Vehicles Act to Pondicherry, with effect from 19th June 1959, the

Order would render the impugned levy invalid. This Order was issued by the Central Government under the power conferred on it by Section 4 of

the Foreign Jurisdiction Act, 1947 (Central Act XLVII of 1947). u/s 2 of the Order, the Motor Vehicles Act of 1939, as in force in the Union

territory of Delhi immediately before the commencement of the order, was applied to Pondicherry. It is well-known that in different States of India,

the Motor Vehicles Act, 1939, together with such modifications as the local State Legislatures has made to its provisions, is in force. For the new

territory of Pondicherry, the Central Government decided to apply the Motor Vehicles Act, 1939 as modified by the amendments in the Union

territory of Delhi. Under Chapter 7 of the Delhi Motor Vehicles Rules and Delhi Motor Vehicles Taxation Rules, under the heading Parking of

motor vehicles in public places and control of stands there are several provisions dealing with control of parking places and levy of fees for parking. Rule 7(12)(1) in this chapter prescribes four classes of stands: (a) to be administered by the provincial Government; (b) entrusted by the

District Magistrate to a private person or company; (c) stands administered by a municipality or local authority either directly or through a

contractor; and (d) company stands. Rule 7(12)(2) provides that the District Magistrate may, in consultation with the local authority, make an

order permitting any place to be used as a stand. Rule 7(12)(5) provides that the District Magistrate shall, from time to time, fix the fees or make

fees payable at any stand of class (a), (b) or (c) mentioned above. It would thus appear that after the promulgation of the Pondicherry (Application

of Motor Vehicles Act) Order, 1959 only the District Magistrate or a corresponding authority can prescribe the levy of fees for a bus stand in a

municipal area in Pondicherry, and the municipality would not have any such power. Learned Counsel appearing for the Petitioner refers to Section

4 of the Pondicherry (Application of Motor Vehicles Act) Order, 1959, which states:

All laws in force in Pondicherry immediately before the commencement of this order which correspond to the Act, notifications or orders applied

to Pondicherry by this order shall, except in so far as such laws relate to levy of any fee, cease to have effect, save as respects things done or

omitted to be done before such commencement.

13. Learned Counsel for the Petitioner submits that this saving clause will preserve only such laws which correspond to the Motor Vehicles Act

and which were in force prior to the Order in Pondicherry so far as they relate to the levy of any fee (no doubt for the purpose contemplated in the

order but if the corresponding law previously in force, provided for the levy of charges, which will amount to a tax in respect of any matter, which

the Pondicherry (Application of Motor Vehicles Act) Order, 1959, was intended to subserve, that will cease to be operative. Therefore, learned

Counsel for the Petitioner argued that even if a law, that was in force prior to the order, empowered the municipalities to levy charges, which

would amount to tax in respect of bus stands and parking places, that would automatically cease to have force with effect from 19th June 1959,

when the order mentioned above came into force. The learned Government Pleader appearing for the Pondicherry State urged in the first place that in the law of France, as extended to the French administered area of Pondicherry, there was no distinction maintained between taxes and fees

in the sense known to English law and the law as administered in India and as explained in the decisions cited earlier in this judgment. Next, the

learned Government Pleader submitted that the municipality was exercising powers granted to it under a decree of the President of France issued

in 1880 and which was extended to Pondicherry in the same year. This decree provided in general for the administration of municipalities, and is in

many respects analogous to the provisions of the District Municipalities Act. Article 44 of this decree of 1880 can be translated thus:

Towers of the municipal council: The municipal councils will be able to regulate by their decisions the following objects:

The charges (droits) to be collected for granting license (permis) to park and hire out places on streets, squares and other places which is part of

the public property.

14. Article 44 contains as many as ten sub-clauses, and the above sub-clause is only one of them being the sixth clause. The fifth clause deals with

the rate of charges to be collected in fairs and markets. The seventh clause deals with the rate of fees to be charged in cemeteries. Adverting to the

learned Government Pleader''s contention that this charge refers to a tax and not a fee on a careful consideration of the language used in Clause 6

of Article 44 the sense of the French words used appears to indicate a fee rather than a tax. The words are:

Les Droits a percevoir pour permis de stationnement et de location sur les rues, places, et autre lieux dependant du domain public communal.

15. The word droit is a word of general import. By reference to Harrap''s French-English Dictionary it is seen that one of its meaning is right as

known in English. Another meaning which it has acquired in legal parlance is charge, fee, due. Thus Droit d'' auteur means the royalties of an

author, Droits de port means harbour dues and Droits de inscription means registration fee. Therefore, the use of the word droits will not be

conclusive as to whether the charge is a fee or a tax. But the word permis will provide a clue to the import of the levy. According to Harrap''s

Dictionary permis means permi permission, and it is used also to mean a licence. Thus permis de chasse means shooting licence or game licence.

Permis de conduire means driving licence and permis de circulation means car licence. The use of the word droits in juxtaposition with the word

permis would indicate, in my view, that the provision in Section 44 of the 1880 decree refers to a fee for parking in streets, squares and other

public places in a municipality and that it serves the same purpose as corresponding provision in the District Municipalities Act in force in the

several States of India, for example, Section 270-B of the Madras District Municipalities Act which states that the municipal council may construct

or provide and maintain public landing places, halting places and cart-stands and may levy fees for the use of the same. The explanation to this

section states that a cart-stand will include a stand for carriages including motor vehicles within the meaning of the Indian Motor Vehicles Act. The

learned Government Pleader referred to Section 52(4) of the decree of 1880 by which the receipts from charges for stationnement or parking are

included under the heading of ordinary receipts of the municipalities, u/s 51 of the decree of 1880, these receipts can be diverted to the obligatory

expenses of the municipality, which include a wide range of items of expenditure and not exclusively expenses for the upkeep of the parking places

and parking stands. But it would seem that the distinction pointed out by the Supreme Court in The The Hingir-rampur Coal Co. Ltd. and Others

Vs. The State of Orissa and Others, that a tax will go into a consolidated fund to be utilised for a public purpose while a cess or a fee has to be

earmarked and set apart for the purpose of the services for which it is levied, was not contemplated in the decree of 1880. Reference could also

be made to the Commentary in Dallas Repertoire Pratique in the chapter Commune under the heading receipts from public property charges for

parking and hiring. Paragraph 2361 in this chapter states that that communes are entitled to levy charges for parking or hiring of property that

belonged to them either in the main roads or in lanes only to the extent that it is necessary to create resources for meeting their ordinary expenses

(obligatory expenses). Subject to the restriction that the charges should be moderate that they should not result in serious inconvenience from the

point of the traffic. But the restriction thus made that the charges should be moderate and that they should be imposed when there is a necessity to

meet obligatory expenditure will not show that it could be converted into a levy on the basis of a schedule of rates far out of proportion to the value of the services rendered. As already pointed out, the more important test is provided by the language of Section 44 of the decree of 1880 that it is

a charge to be levied for the grant of a permis or licence. It is not possible to visualise that while the relevant provision of the decree of 1880 is

designed to give power to levy a fee for the grant of a licence to obtain the benefit of parking vehicles in communal property that power can be

utilised without any restriction, to impose a tax, out of all proportion to the services rendered, while conferring that benefit. For all these reasons, I

hold that the pre-existing law, granting power to the municipalities to impose a levy for granting a licence to use parking places contemplated only

the levy of a licence fee commensurate to the services rendered and not the right to levy an arbitrary tax.

16. It is obvious that Section 4 of the Pondicherry (Application of Motor Vehicles Act) Order, 1959, would repeal only the pre-existing laws

which correspond to the Motor Vehicles Act. The decree of 1880 is not an enactment which corresponds to the Motor Vehicles Act. It is a

general enactment which deals with the administration of municipal councils, and, as already mentioned, it corresponds to the District Municipalities

Act. The learned Government Pleader draws my attention to certain rules, which correspond to the Motor Vehicles Act and which were in force in

Pondicherry before the commencement of the aforesaid order. Thus, there is Order No. 285 published in the French India Official Gazette on

23rd March 1954, which is described as Road Cede. It is such laws that would be repealed u/s 4 of the Pondicherry (Application of Motor

Vehicles Act) Order, 1959, and not a law similar to the District Municipalities Act. It is no doubt a fact, as pointed out by the learned Counsel for

the Petitioner that in respect of parking stands for buses, levy of fees is contemplated in India in the State of Madras both under the District

Municipalities Act-vide Section 270(b) mentioned above, and under the Motor Vehicles Act-vide Section 68(2)(s). But these two provisions deal

with different matters. The municipality may charge a fee for the amenities it has provided like lighting, water-supply, special access by roads,

scavenging and so on. The provision in Section 68(2)(a) of the Motor Vehicles Act specifically refers to equipment and facilities for the

convenience of the users of the stands or halting places and fees, which may be charged for the use of such facilities. Thus, from the point of view of the Motor Vehicles Act, it may be necessary to have a waiting shed with adequate shelter and benches for passengers in a halting place or a

booth where they can get information about bus services and so on. It is also important to note that the Motor Vehicles Act provide for

consultation between the authorities fixing halting places and termini for buses under the Motor Vehicles Act and the local authority-vide Section

76 of the Motor Vehicles Act, where in consultation between the authority under the Motor Vehicles Act, and the local authority is provided for

determining parking-places and halting stations. Again in Rule 268 of the rules under the Motor Vehicles Act it is stated that where the local

authority has provided and maintains a public stand for motor vehicles with facilities, the transport authority may approve of the use of stand for the

purpose of picking up or getting down passengers. The approval granted by the transport authority may be revoked by it if the facilities provided at

the bus stand cease to be to its satisfaction. As pointed out by the learned Government Pleader, Rule 268 was framed to meet the difficulties

visualised in a case which came up before a Bench of this Court in T. E. Ebrahim Saheb v. R.T.A., Tanjore (1950) 2 M.L.J. 593 where the

Regional Transport Authority declared a private bus stand, licensed by the municipality, to be unsuitable for use as an approved stopping place

under the Motor Vehicles Act. The High Court observed that once the municipality chose to grant a licence to a person to open a stand, it was

doubtful if the Regional Transport Authority, acting under the Motor Vehicles Act, could declare that stand to be unsuitable. Rule 268 evidently

was framed to resolve such a difficulty. A perusal of the Delhi Motor Vehicles Act, and Rule 7(12) with its sub-section providing for classification

of stands, shows that the levy of fees by the District Magistrate should be deemed, therefore, as corresponding to Section 68 of the Motor

Vehicles Act which provides for a scheme of levy of fees in cases of stands approved by the transport authority as halting places. But the

jurisdiction of the municipality to levy fees on approved parking places for services, which the municipality could supply at those parking places to

the users, is entirely different. Section4 of the Pondicherry (Application of Motor Vehicles Act) Order,1959 , cannot, therefore, be deemed as

having in any way modified the power of the municipality to levy charges for stands and parking places, whether stands are constructed by the municipality or are private stands approved by it. Section 4 cannot be considered as repealing the provisions corresponding to the District

Municipalities Act, namely, the decree of 1880 in the present case.

17. As I have found above that the power of the municipality under the decree of 1880 is really concerned with the levy of a fee and not a tax,

much of the argument regarding the scope of Section 4 of the Pondicherry (Application of Motor Vehicles Act) Order, 1959, and whether it

repeals the decree of 1880 loses significance.

18. I will next come to another point, which appears to me to be very germane to the present case. It arises out of Section 7 of the Pondicherry

(Administration) Act, 1962 (Act XLIX of 1962). It reads thus:

All taxes, duties, cesses and fees which, immediately before the appointed day, were being lawfully levied in the former French Establishments or

any part thereof shall continue to be levied in Pondicherry and to be applied to the same purposes, until other provision is made by a competent

Legislature or other competent authority.

19. After the treaty of cession between Prance and India on 28th May 1956, when the establishments of France in India were ceded to India in full

sovereignty, the territory of Pondicherry was being administered by the President under the provisions of the Foreign Jurisdiction Act. Only with

effect from 16th August 1962 when the Pondicherry (Administration) Act, 1962, came into effect, the Pondicherry State became de jure part of

the Union territory. Therefore, the provisions of the Constitution became applicable to Pondicherry only from the date of the de jure transfer.

Section 4 of the Pondicherry (Administration) Act provided for the continuance of the existing laws in force in Pondicherry immediately before the

appointed day (16th August 1962) until amended or repealed by a competent Legislature or other competent authority. The fourteenth amendment

of the Constitution passed in 1962 added Pondicherry to the list of Union territories in the first schedule, with effect from 16th August 1962. The

power to administer the Union territory of Pondicherry by the President through an administrator was already conferred on the President by the

seventh amendment to Article 239(1) of the Constitution. The fourteenth amendment of the Constitution also amended Article 240 so as to include

Pondicherry as one of the Union territories for whose administration the President may make regulations from time to time. Article 239-A of the

Constitution, as introduced by the fourteenth amendment empowered Parliament to enact a law creating for Pondicherry and other similar Union

territories:

(a) a body whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory; or.

(b) a Council of Ministers, or both with such constitution, powers and functions in each case as may be specified in the law. The Parliament

thereafter enacted Act XX of 1963, the Government of Union Territories Act, 1963. It provided for the constitution of legislative assemblies for

the several Union territories mentioned in the Act including Pondicherry and the number of seats in such assemblies. Section 18(1) of the

Government of Union Territories Act XX of 1963, gave power to the assembly of a Union territory to make laws with respect to any of the

matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution. Section 18(2) enacted that nothing in Sub-

section (1) shall derogate from the powers conferred on Parliament by the Constitution to make laws with respect to any matter for a Union

territory or any part thereof. These Union territories differ from the other States in the Union in so far as the Parliament has got the power to

legislate for them even in regard to matters enumerated in the State List in Schedule VII. This is provided in Article 246(4) of the Constitution and

it is also referred to in Section 18(2) of Act XX of 1963. Act XX of 1963 was extended to Pondicherry with effect from 1st July 1963, Prior to

that date there was a representative assembly for Pondicherry which was functioning even before the date of de jure transfer. Section 54(c) of Act

XX of 1963 provides that this representative assembly shall be treated as the legislative assembly under Act XX of 1963 until fresh elections are

held under that Act. On 1st July 1963 the President appointed six members of the representative assembly to be ministers to carry on the

administration of Pondicherry. Fresh elections under Act XX of 1963 were held in August 1964.

20. The above brief resume of the legislation relating to Pondicherry will show that in the interregnum after 16th August 1962, the date of the de

jure transfer, and till such time as the new Legislatures constituted under Act XX of 1963 began to function and exercise the power to legislative,

only the laws in force prior to 16th August 1962 together with such regulations as might have been issued by the President under Article 240 of the

Constitution from time to time, would be in force in Pondicherry. It is not in dispute that the pre-existing law, namely, the decree of 1880 was not

amended up to the present moment, so far as the levy of charges for parking stands in the municipal area is concerned, and it continues to be in

force u/s 4 of Act XLIX of 1962.

21. While Section 4 of Act XLIX of 1962 deals with the continuance of the pre-existing laws, Section 7 deals with the continuance of pre-existing

fiscal provisions after 16th August 1962, in the same manner as they were in force before. The continuance prescribed in Section 7 is in respect of

taxes, duties, cesses and fees which were being lawfully levied on the appointed day, i.e., 16th August 1962. The term lawfully levied has come in

for judicial interpretation in the light of Article 277 of the Constitution and Section 14(2) of the Government of India Act, 1935, which are

analogous provisions. There-is in Article 277 a non-obstante clause notwithstanding that those taxes, duties, cesses or fees are mentioned in the

Union List. But this non-obstante clause does not make any difference to the meaning to be attached to the term lawfully levied found in Section 7

of Act XLIX of 1962, Article 277 of the Constitution and Section 143(2) of the Government of India Act, 1935. Therefore, the interpretation

given to the words lawfully levied found in Article 277 of the Constitution and Section 143(2) of the Government of India Act, 1935, by the

Supreme Court will also apply to Section7 of Act XLIX of 1962. In Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia, the Supreme Court

observed that Section 143(2) of the Government of India Act, 1935 by its implication, conferred a limited legislative power to continue or not to

continue the existing levy. But it would not involve a power to enhance the rates. The import of the words may continue to be levied, was

summarised in the aforesaid decision thus at page 1080:

(1) that the tax was one which was lawfully levied by a local authority for the purposes of a local area at the commencement of Part III of the

Government of India Act,

(2) that the identity of the body that collects the tax, the area for whose benefit

the tax is to be utilised and the purposes for which the utilisation is

to take place continue to be the same, and

(3) the rate of the tax is not enhanced nor its incidence in any manner altered, so that it continues to be same tax.

23. The third item above, shows clearly that the power granted to continue the levy of taxes or fees which were being lawfully levied, will not

include the power to enhance the pre-existing rates. The decision in Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia, was followed in The

Town Municipal Committee, Amravati Vs. Ramchandra Vasudeo Chimote and Another, and at page 1171 of the latter report, the Supreme Court

again interpreted the words being lawfully levied to mean actually levied.

24. Applying the principles laid down above, it appears that as long as the law in force on 16th August 1962, namely, the 1880 decree, has not

been validly amended or modified by the appropriate authority or the Legislature ,the schedule of rates for the levy in force on 16th August 1962,

alone could be enforced, and they could not be enhanced by the resolution of any local authority in Pondicherry including the Municipality at

Karaikkal, which was approved with some modification by the local Government at Pondicherry in a purely administrative order. The attack in the

writ proceeding is against this enhancement. In the light of the principles laid down in the decisions mentioned above, this enhancement must be

considered also to be void for want of jurisdiction. The petition is, therefore, allowed. There will issue a writ of mandamus restraining the

Respondents from levying and collecting-bus stand fees at Karaikkal bus stand according to the new rates prescribed by the second Respondent

Council by its resolution/ dated 4th November 1963 and as modified by the first Respondent, State of Pondicherry by its order, dated 2nd April

1964. The Petitioner will get his cost from the Respondents.