(1933) 12 AHC CK 0032

Allahabad High Court

Case No: None

Brij Mohan Lal		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Dec. 15, 1933

Acts Referred:

- Uttar Pradesh Municipalities Act, 1916 - Section 298(2)H(c), 299

Citation: AIR 1934 All 497

Final Decision: Allowed

Judgement

1. This was an application in revision against the conviction of one Brijmohan Lal u/s 299, U.P. Municipalities Act. The applicant was convicted for the infringement of a bye-law framed by the Agra Municipality with reference to motor lorries plying for hire. The bye-law was made by the Municipality u/s 298(2)H(c), U.P. Municipalities Act. The bye-law laid down that no motor lorry of any kind shall be let to hire or offered for hire within the limits of the Agra Municipality except in accordance with these rules, and the rules further laid down that the fee for the necessary license would be Rs. 100 per annum. It was proved that the applicant was a resident of Muttra and that he paid license fees for his lorry within the Muttra Municipality. He drove from Muttra to Agra and while he was in Agra he took passengers from Agra back to Muttra. It was proved therefore that he did ply his motor lorry for hire within the Municipal limits of Agra without having obtained a license under the rules mentioned. He was fined Rs. 100 by the trial Court. The learned Sessions Judge has made a reference to this Court recommending that the fine should be reduced to Rs. 50.

2. It has been argued before us that no offence has been committed as the bye-law which the accused has infringed was void, being ultra vires of the Municipal Board. The argument is that the so called license fee is in substance a tax and the Municipal Board could not impose a tax without the sanction of the Local Government and without following the prescribed procedure for the imposition of a tax. In this case

the bye-law under which the license fee is demanded was sanctioned by the Commissioner to whom the powers of sanctioning bye-laws u/s 301 have been delegated. Undoubtedly the license fee has not been imposed and sanctioned in the manner provided for a tax. We find however that the act itself provides for the imposition of a license fee of this description. u/s 298(2)H(c) the Municipal Board is authorised to make bye-laws imposing the obligation of taking out licenses on the proprietors or drivers of vehicles kept or plying for hire within the limits of the Municipality, and fixing the fees payable for such licenses, and the conditions on which they are to-be granted and may be revoked. Section 294 of the Act also expressly lays down that the Board may charge a fee to be fixed by bye-law for any license which it is entitled to or empowered to grant under this Act. It is perfectly clear therefore that the U.P. Municipalities Act itself contemplates the making of a bye-law imposing the obligation of taking out licenses on proprietors or drivers of vehicles plying for hire and authorises the charging of a fee, to be fixed by bye-law, for such licenses. As the Act itself recognises license fees as something distinct from taxes and as something which may be imposed and fixed by bye-law, we are unable to accept the learned advocate''s contention that the license fee is practically identical with a tax and therefore could not be imposed except in the manner prescribed for the imposition of a tax.

3. It has further been argued that the bye-law in question is ultra vires because it is inconsistent with the rules made by the Local Government for the assessment and collection of taxes on vehicles in the Agra Municipality. Under those rules every person residing within the Municipality who has in his possession and use a wheeled vehicle, shall be liable to pay a certain tax. The rate of tax has been laid down for motor-cars at Rs. 6 per wheel per annum. It is argued that as this rule imposes upon the possessor or user of a motor-car the necessity for paying a tax on his motor-car it would be inconsistent to allow the Municipality to impose a further pecuniary obligation upon him in. respect of the use of that car if he plies of for hire. In our opinion, there is no inconsistency between demanding a tax for the use of a motor-car for private purposes and demanding a further license fee for its use when plying for hire. The Act itself contemplates both taxes and license fees and it cannot be said that there is anything inconsistent between the rules made by the Local Government imposing a tax and the bye-law made by the Municipal Board imposing the obligation of taking out a license and charging a license fee u/s 298(2)H(c).

4. It has further been argued that even if the bye-law is valid and not ultra vires for the reason that it has not been imposed or sanctioned as a tax, or for the reason that it is inconsistent with the rules made by the Local Government, still it is invalid on the ground that the amount of license fee is unreasonable. It is a recognised rule of law that bye-laws should not be unreasonable and they may be held ultra vires on the ground of unreasonableness. We think that the intention of the Legislature in permitting Municipal Boards to charge license fees was to cover the expenses incidental to business of licensing, such as the expenses of collection and of

supervision and regulation. In the present case it is clear that the Municipal Board will have to employ certain officials for inspecting and regulating the motor lorries which are licensed to ply for hire and for collecting the license fees. It is reasonable that the Board should recover by means of license fees the expenses incurred for such purposes, but we do not think it was the intention of the Legislature that Municipalities should raise revenue for general purposes under the guise-of imposing license fees. If the Board intends to raise revenue from motor-lorries plying for hire we think it would be contrary to the spirit and intention of the Act to raise the revenue in the form of a license fee and not in the form of a tax. In the present case we have no facts upon which we can come to any conclusion as to whether the amount of license fee is reasonable or not. The point was not raised in the trial Court and the Municipal Board were not in a position to produce any evidence showing that the amount of license fee was not unreasonable. We therefore cannot hold that the bye-law is invalid on the ground that the amount of license fee was unreasonable. This is however a question which the Commissioner or the Local Government may consider. Prima facie it may be suspected that the amount of Rs. 100 per annum is rather high with reference to the extra work imposed upon the Municipal Board in connection with the licensing business. The recommendation that the fine should be reduced to Rs. 50 seems to us reasonable. We therefore allow the application to this extent that we reduce the fine from Rs. 100 to Rs. 50 but maintain the conviction. The balance of the fine, if paid, shall be refunded.