courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 29/10/2025

Tika Ram Yadav and Another Vs State of U.P. and Others

Civil Misc. Writ Petition No. 19235 of 2003

Court: Allahabad High Court

Date of Decision: Oct. 10, 2003

Acts Referred:
Constitution of India, 1950 â€" Article 226#Uttar Pradesh Municipal Corporation Act, 1959 â€" Section 115, 438, 541

Citation: (2003) 6 AWC 5245 : (2004) 1 UPLBEC 247

Hon'ble Judges: R.S. Tripathi, J; M. Katju, J

Bench: Division Bench

Advocate: H.P. Dube, for the Appellant; Vivek Chaudhary and M.D. Singh and S.C., for the Respondent

Final Decision: Disposed Of

Judgement

M. Katju, J.
The problem of traffic congestion, traffic jam and parking has become a headache in most of the cities, not only in India, but

in most of the countries of the World. For instance, in Allahabad about twenty five years ago one could go to the Civil Lines area on his vehicle

without any problem, but today Civil Lines has become like Chowk and it is a headache to go there on a car in the evening. In Kanpur City to

enter the city side from the railway station is like entering a beehive. The same is the position in the cities of Lucknow, Varanasi, Agra etc. Even the

capital of the country, New Delhi has a terrible traffic problem. All this calls for careful traffic regulation by the concerned authorities so that there

may be free flow of traffic and proper places for parking vehicles.

2. The present petition relates to Meerut City where the Nagar Nigam by the impugned bye-laws dated 7.2.2003 (published in the U.P. Gazette

dated 15.3.2003) has imposed licence fee on the buses @ Rs. 2,500/- per annum vide Annexure-1 to the writ petition.

3. The petitioners have alleged that they are stage carriage operators on the route known as Meerut-Baghpat-Chhaprauli-Tanda and allied routes.

4. It is alleged in Paragraph 8 of the writ petition that in the third week of April, 2003 the Respondent No. 3 Nagar Nigam, Meerut demanded

licence fee @ Rs. 2,500/- per vehicle per annum from the buses including those of the petitioners.

5. It is alleged by the petitioners that imposition of licence fee on the petitioner''s vehicles by the impugned bye-laws is illegal and without

jurisdiction. It is contended by the learned Counsel for the petitioner that regulations regarding motor vehicles could only be made under the Motor

Vehicles Act or under the U.P. Motor Vehicles Taxation Act, 1997, and hence the respondent No. 3 has exceeded its jurisdiction in framing the

impugned bye-laws.

6. A counter affidavit and supplementary counter affidavit have been filed and we have perused the same. The respondents have justified the

impugned bye-laws as being within the ambit of Section 115 (xvii), 438 and 541 (41) of the U.P. Municipal Corporation Adhiniyam, 1959.

7. Section 438 states as under.--

438. Certain things not to be kept, and certain trades and operations not to be carried on without licence.--(1) Except under and in conformity

with the terms and conditions of a licence granted by the Mukhya Nagar Adhikari, no person shall--

.....

.....

(d) carry on or allow to be carried on, in or upon any premises (i) any trade or operations connected with any trade specified in the bye-laws.

8. Section 541 states as under.--

Bye-laws for what purposes to be made.--The Corporation may from time to time make bye-laws, not inconsistent with this Act and the Rules,

with respect of the following matter, namely.

.....

.....

(41) fixing of fees for any licence, sanction or permission to be granted by or under this Act.

Section 115 (xvii) of the Act entitles the Corporation to organise, maintain and manage motor transport facilities for the conveyance of the public

or goods within or without the city.

9. In Paragraph 9 of the counter affidavit it is stated that the Nagar Nigam has to provide facilities for the transportation system in the city including

bus stand, cleaning and maintenance of roads, footpath, regulation of traffic, civic amenities etc.

10. In Paragraph 5 of the supplementary counter affidavit it is stated that the number of buses within the Municipal limits of Nagar Nigam, Meerut

has drastically increased. Apart from the regular stage carriage vehicles, a large number of buses are used for marriage parties, picnic, occasional

travelling etc. and many of them are parked for long period on road sides, lanes, by-lanes etc. and this causes nuisance and hazard to the public at

large. Such parking also creates traffic congestion and other problems. It is further alleged that the Nagar Nigam, Meerut is spending a lot of

money on traffic signs, dividers, crossing points, Zebra crossings, foot paths, road barriers, speed breakers etc., and also for providing cleanliness

at and near bus stops and parking places, facilities for toilets, drinking water etc. Regulations have also to be made for public convenience e.g., the

use of power horns, high volume radio and loud speakers fitted in buses, condition of tyres and provisions for ladies seats (since may complaints

are received from ladies passenger about the hazards they face in the local buses). Hence the Nagar Nigam decided to frame bye-laws for

regulating the vehicles and for issuing licences to the bus owners.

11. In Paragraph 6 of the supplementary counter affidavit it is stated that the Nagar Nigam, Meerut has framed bye-laws and is going to issue

licences on the basis of the above mentioned regulations. However, as yet no licnece has taken by anyone, and without waiting for regulation

mentioned in the licence the petitioners have filed this writ petition and have obtained an interim order on 5.5.2003.

12. Learned Counsel for the petitioners has relied on the Supreme Court decision in Om Prakash v. Municipal Board 1987 ALR 732 , in which a

Division Bench of this Court following the Supreme Court decision in Municipal Council, Bhopal Vs. Sindhi Sahiti Multipurpose Transport Co-op.

Society Ltd. and Another, held that a Municipal Board cannot compel the persons plying motor buses for hire to park their buses at the places

specified by it. The Municipality can only charge a fee if the bus operators voluntarily park their buses on the land belonging to the Municipality.

13. In Hari Om Gautam Vs. District Magistrate, Mathura and Another, the Supreme Court held that a bus stand can only be notified by the

Regional Transport Officer having jurisdiction over the area. Hence the order of the District Magistrate declaring a certain area as a bus stand was

held to be illegal.

14. In our opinion, the above decisions are clearly distinguishable.

15. As stated in the very first paragraph of this judgment, the cities of India have a terrible problem of traffic congestion and parking and hence

there is pressing and urgent need for regulating the same. Hence the Municipal authorities can certainly frame a scheme for regulating the traffic, so

that there can be free flow of traffic and proper facilities for passengers etc. The Municipal Authorities in the present conditions in fact have the

duty to the public in the cities to frame such a scheme so that the nightmare of traffic jams, traffic congestion, parking problem etc. can be brought

to an end. Hence this Court will certainly uphold such a scheme as being in the public interest. No doubt if the Nagar Nigam passes an isolated

order fixing the place for the bus stand that order will not be valid as held in Hari Om Gautam"s case (supra), but where the fixation of a bus stand

is only a part of an overall scheme framed by the Municipal Authorities for regulating the traffic in the city then in our opinion, the decision in Hari

Om Gautam"s case (supra) has no application. In the absence of parking places and bus stands in the overall Traffic Control Scheme the whole

scheme may be disrupted, because then buses and other vehicles could be parked any where causing traffic congestion and many other hazards.

16. The impugned bye-laws do not mention about the fixation of any bus stand. All that has been mentioned in Item Nos. 18 and 19 of the

Schedule to the impugned bye-laws is the licence fee for the buses and mini buses. Bye-Law 4(3) of the impugned bye-laws no doubt states that

no one can do business within the Municipal limits of Nagar Nigam, Meerut without taking a licence, but there is no mention of any regulation in the

impugned bye-laws.

17. In Chakresh Kumar Jain and Others Vs. State of Uttar Pradesh and Others, a Division Bench of this Court pointed out the distinction between

a compensatory fee and a regulatory fee. Quid pro quo is required in the case of a compensatory fee but not for a regulatory fee. In Secunderabad

Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another, (vide paragraph), the

Supreme Court observed:--

9. It is, by now, well settled that a licence fee may be either regulatory or compensatory, When a fee is charged for rendering specific services, a

certain element of quid pro quo must be there between the service rendered and the fee charges so that the licence fee is commensurate with the

cost of rendering the service although exact arithmetical equivalene not expected. However, this is not the only kind of fee which can be charged.

Licence fees can also be regulatory when the activities for which a license is given require to be regulated or controlled. The fee which is charged

for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for

the levy of such fees is not required although such fees cannot be excessive.

18. In P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED], the Supreme Court observed that there is no need for any

element of quid pro quo in a regulatory fee. The Supreme Court took the same view in the State of Tripura and others Vs. Sudhir Ranjan Nath,

Regulatory fees are charged because staff has to be engaged for enforcing the regulations, and their salaries have to be paid and other expenses

incurred in this connection.

19. Since we are concerned with a regulatory fee there is no need for any quid pro quo, though the fee cannot e excessive. In our opinion, the fee

of Rs. 2,500/-per annum is not excessive as it works out to only about Rs. 200/= per month.

20. Learned Counsel for the petitioner has alleged that in the impugned bye-laws there is no mention of any regulations. To this, the reply of the

learned Counsel for the Nagar Nigam is that Section 438 of the Adhiniyam itself mentions that the licence, which is issued by the Nagar Nigam will

contain the terms and conditions of the licence. In our opinion, this does not amount to making regulations in the manner indicated above in this

judgment. While we fully agree with the learned Counsel for the Nagar Nigam that there should be an overall scheme for the Meerut city framed by

the Nagar Nigam, Meerut for regulating the traffic, and this scheme can include fixing of the parking places and bus stands, these regulations should

have been provided in the bye-laws of the Nagar Nigam itself. Unfortunately the impugned bye-laws only provides for the licence fee to be taken

from buses and mini buses but it does not mention any regulation for regulating the traffic and for fixing the parking places for vehicles. The terms

and conditions in the licence and u/s 438, in our opinion, is no substitute for an overall scheme for regulating the traffic in the city. As held in

Secunderabad Hyderabad Hotel Owners Association case (supra), regulations may be framed and their terms may be incorporated in the licence

itself. In the absence of such regulations, however each licence can have different terms, and thus there will be no uniformity.

21. Hence while we uphold the power of the Nagar Nigam to frame a Scheme for regulating traffic in Meerut city, including fixing of the parking

places and bus stands, we direct that licence fee shall only be charged from the petitioners and other vehicle owners/operators after an overall

Scheme is framed by the Nagar Nigam, Meerut and bye-laws made accordingly. This traffic regulations scheme should ensure free flow to traffic

so that there may not be traffic jams and no inconvenience to passengers, vehicle operators and others. The Scheme should also provide for

flyways at road crossings which are often crowded, subways and other facilities.

22. Hence, we dispose off this petition with the direction that the Nagar Nigam, Meerut should frame a Traffic Regulation Scheme for the city of

Meerut so as to ensure free flow of traffic, avoidance of traffic jams and providing parking places and bus stands, in the city so that the public may

not be harassed. This Scheme should also contain provisions for flyways, subways etc. as is seen now days more frequently in Delhi. It is only after

making such bye-laws incorporating such Traffic Regulations that licence fee can be charged from petitioners or other bus owners/operators.

23. Although this petition was only regarding Meerut City, we are of the opinion that the same traffic problem exists in almost every city in Uttar

Pradesh. Hence, we direct the Chief Secretary, U.P. and Transport Secretary, U.P. as well as the L.R. to issue suitable circulars or directions to

all the Nagar Nigams/Municipal Corporation in the State to make Schemes (through suitable bye-laws) for their cities for regulating traffic and

ensuring free flow of traffic in the manner indicated above.

24. Let a copy of this judgment be sent by the Registrar (General) of this Court of the authorities mentioned above as well as to the Nagar Nigam,

Meerut and the other Municipal authorities in the State.