

**(2009) 11 GAU CK 0032**

**Gauhati High Court**

**Case No:** Writ Petition (C) No. 3365 of 2009

All Guwahati Hand Cart Pullers  
Association and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision:** Nov. 4, 2009

**Acts Referred:**

- Gauhati Municipal Corporation Act, 1971 - Section 119, 120, 167, 167(2)

**Citation:** (2010) 1 GLR 457

**Hon'ble Judges:** Jasti Chelameswar, C.J; Hrishikesh Roy, J

**Bench:** Division Bench

**Advocate:** S.P. Roy, D. Nandi, R.P.N., K. Rajbongshi and K. Kalita, for the Appellant; B. Goyal, D. Saikia and S. Bora, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Jasti Chelameswar, C.J.

The writ portion is filed with the prayer as follows:

It is therefore, respectfully prayed that your lordships may be pleased to admit this writ petition, call for the records, Issue Rule calling upon the respondents to show cause as to why the writ of Mandamus an or certiorari should not be issued to sot aside and quash the impugned order passed by the respondent No. 3. The Commissioner, Guwahati Municipal Corporation, Guwahati vide Memo No. GLS/52/173/pt/96-97/38 dated 31.7.2008 (Annexure-3) and the letter No. GDD.100/94/Pt/57 dated 25.7.2008 issued by the respondent No. 1 holding that the enhancement of annual Tax and fee for two wheel hand carts by 400%, i.e., from the existing rate of Rs. 50 to Rs. 200 per annum is arbitrary, whimsical, capricious, unreasonable, illegal and has created tremendous hardship upon the members of the petitioners association and further more the Section 167(2) of the Guwahati Municipal Act, 1971 as amended up to date does not contain any procedure for

increase/enhancement of the rates nor it prescribes any limit as such the said provisions of law is totally vague, illogical, void, arbitrary and as such unconstitutional and liable to be strucked off from the said act, upon perusal of the cause or causes shown, if any, the Hon"ble Court may be pleased to make the rule absolute in the interest of justice.

2. It may be mentioned at the outset that Mr. S.P. Roy, Learned Counsel for the petitioner made a categoric statement, when the matter is taken up for hearing, that though it is prayed in the writ petition that Section 167(2) of the Gauhati Municipal Corporation Act, 1971 be declared unconstitutional, the same is not pressed at the time of hearing.

3. What is essentially challenged in the present writ petition are two memos dated 31.7.2008 and 25.7.2008 of the Gauhati Municipal Corporation.

4. The writ petition is filed by the petitioner, who appears to be an unregistered association, as there is no averment in the writ petition that the association is a registered association. According to the averments in the writ petition the members of the association are poor and uneducated people eking of their livelihood by plying manually drawn two wheeler carts.

5. By the impugned memo the Commissioner of the Guwahati Municipal Corporation (for short "the GMC") ordered to increase the rates specified in the First Schedule of the Act to Rs. 200 only. The relevant portion of the memo reads as follows:

As per approval of the Administrator, GMC as well Government vide letter No. GDD. 100/94/Pt/57 dated 25.7.2008 and in exercise of powers conferred by Section 167(2) of the Guwahati Municipal Corporation Act 1971, it is decided to increase the rates specified in the First Schedule of the Act with regard to the entries specified hereunder.

Prior to such increase, according to the petitioner, it was Rs. 50 only.

6. It is this enhancement that is challenged in the instant writ petition. The impugned memo indicates that the enhancement is made in exercise of the powers conferred u/s 167 of the GMC Act, 1971. Section 167 of the GMC Act reads as follows:

167. Tax on certain vehicles, boats and animals. - (1) Except as hereinafter provided, a tax rates not exceeding those specified in the First Schedule shall be levied on vehicles, boats and animals of the description specified in the schedule, when kept for use in the city for the conveyance of passengers or goods in the case of vehicles and boats and for riding, racing, draught or burden, in case of animals.

(2) The Corporation may, by notification in the Official Gazette, from time to time, increase the rates of tax specified in the schedule, in relation to any animal, class of vehicle or boat.

It occurs in chapter XIII of the GMC Act which deals with taxes on vehicles, boats and animals. The Legislature of Assam authorized the GMC to levy and collect such taxes as are specified in the First Schedule of the Act. Under Sub-section (2) the procedure for variation of the rates specified in the First Schedule to the Act is that the Corporation is required to vary the rates so specified by a notification in the official gazette.

7. Even according to the contents of the present writ petition the amount of the tax came to be varied from time to time. It appears from the writ petition that initially it was Rs. 3 per cart.

8. The case of the petitioner is two-fold -

That on coming to know of the enhancement the petitioner made a representation to the Corporation requesting the Corporation to reconsider its decision to enhance the tax as it would impose a heavy and unreasonable burden on the members of the petitioner association but the Corporation failed to take any decision on such a representation.

We are afraid that the submission is only stated to be rejected for the reason that nothing is brought to our notice to establish that the petitioner has any legally enforceable right for a consideration of the representation such as the one submitted by them.

The other submission made by the Learned Counsel for the petitioner (though there is no categorical pleading in the writ petition) is that before the enhancement, such as the one which is questioned in the instant writ petition, the procedure contemplated u/s 119 of the GMC Act is required to be followed but in the instant case such procedure is not followed. Section 119 of the GMC Act reads as follows:

119. Estimates of expenditure and income to be prepared annually by the Commissioner. - The Commissioner in consultation with the Mayor shall, on or before the 15th day of December, each year, prepare and submit to the Standing Finance Committee in such form as the Corporation may from time to time approve, -

(a) an estimate of the expenditure which should in his opinion be incurred by the Corporation in the next year;

(b) an estimate of all balances if any, which will be available for re-appropriation or expenditure at the commencement of the said year;

(c) a statement of the proposals as to taxation which it will, in his opinion, be necessary or expedient to impose under this Act in the said year;

(d) an estimate of receipt from all sources during the said year; and

(e) an estimate of loans to be raised for the purposes of this Act.

9. We are of the opinion that the reliance on Section 119 is wholly misplaced as it can be seen from the language of the section. It stipulates that the annual estimate of the expenditure and income is to be prepared by the Commissioner and placed before the Standing Finance Committee of the Municipal Corporation. The Learned Counsel for the petitioner placed heavy reliance on Sub-section (C) of the above mentioned Section and argued that without a proposal from the Commissioner to levy/enhance tax, the same could not be done by the Municipal Corporation. We see no substance in the submission. The Municipal Corporation, a statutory autonomous body, is not bound by the opinion of individual officers including the Commissioner. Section 119 only provides for annual estimates of expenditure and income to be prepared by the Commissioner for the information of the Standing Finance Committee which in turn is required to examine the proposals from the budget estimates for the next year. Such budget estimates prepared by the Standing Finance Committee are required to be laid before the Corporation which estimates are required to be adopted by the Corporation with or without modifications. The said procedure is prescribed u/s 120 of the GMC Act. Even the Standing Finance Committee is not bound by the recommendations made by the Commissioner u/s 119. Section 120 reads as follows:

120. Framing of Budget Estimates. - (1) The Standing Finance Committee shall on or as soon as may be after the 15th day of December, each year consider the estimates and proposals, submitted u/s 119 and after calling for such further detailed information as it shall think fit from the Commissioner and having regard to all the requirements of this Act shall, on the basis of such estimates and proposals, frame, subject to such modifications or additions thereto as it may think fit, Budget estimates of the income and expenditure of the Corporation for the next year.

(2) The Commissioner shall cause the Budget Estimates as finally approved by the Standing Finance Committee to be printed and shall not later than the 15th day of February forward a printed or, in the alternative, a cyclostyled copy thereof to each Councillor.

(3) The Budget Estimates prepared by the Standing Finance Committee shall be laid before the Corporation on the 19th February or as soon as possible thereafter and the Corporation shall consider the same. It may refer the estimates back to the Standing Committee for further consideration and re-submission within a specified time and shall on or before the 22nd day of March in each year adopt Budget Estimates of the income and expenditure for the next year.

(4) In the Budget Estimates the Corporation shall among other things, -

(a) make adequate and suitable provisions for such of the several duties imposed by this Act;

(b) provide for the payment of all installments of the principal and interest as they fall due for which the Corporation may be liable in respect of loans contracted by it;

(c) allow for a closing balance at the end of the year of not less than one lakh rupees as prescribed by rules.

10. The fact that the enhancement of the tax in question was not a part of the budget estimates does not automatically mean that the enhancement is illegal. The recommendations of the Commissioner and the Standing Finance Committee are only meant for the information of the Corporation. The Corporation is no way either bound by such recommendations nor the authority of the Corporation to impose tax under the various provisions of the Act including Section 167 is whittled down by the provision of Section 119.

11. Though another submission is made that there is no gazette notification, as contemplated u/s 167, we are satisfied that such a gazette notification exists. We may state here that Mr. D. Saikia, Learned Counsel for the Corporation placed before us a copy of the gazette notification made u/s 167 of the Act.

12. No other point is urged before us.

13. In the circumstances we see no merits in the writ petition and the same is dismissed at the admission stage.