(1959) 03 MP CK 0008

Madhya Pradesh High Court

Case No: L.P.A. No. 86 of 1958

Grain and Oil-seed Merchants Association		APPELLANT
	Vs	
Municipal Board Satna		RESPONDENT

Date of Decision: March 27, 1959

Acts Referred:

- Rewa State Municipalities Act, 1946 - Section 120, 281

Citation: (1959) JLJ 654

Hon'ble Judges: T.C. Shrivastava, J; P.K. Tare, J

Bench: Division Bench

Advocate: R.S. Dabir with R.K. Tankha, for the Appellant; G.P. Singh and M.P. Shrivastava, for the Respondent

Final Decision: Dismissed

Judgement

T.C. Shrivastava, J.
This appeal under clause 10 of the Letters Patent is directed against the order of Naik J. delivered on 21-3-1958 dismissing the appellants'' petition under Article 226 of the Constitution. By that petition the appellants had challenged the imposition and recovery of certain fees by the Municipal Board of Satna (respondent No. 1) on persons doing business in the "Galla Mdndi" of that place.

2. The twenty seven appellants are merchants of Satna dealing in grain, oil and ghee. They have formed an association of merchants which is named as petitioner No. 1 in the petition. It is not registered, but that aspect need not be considered, as the petitioners were entitled to file the petition in their individual capacity in any case.

3. Bye-laws (Annexure A) were framed by the respondent-committee on 30-7-1952 imposing a fee on all sellers bringing articles for sale on trucks or carts or animals (bye-law No. 4) and also on purchasers at the rate of one anna per bag or tin

purchased (bye-law No. 9). Fees were imposed on weigh men and hammals also, but we are not concerned with these in this appeal. The market was originally held in Ward No. 3 on the Talab Road, but in December 1955 it was shifted to Ward No. 4 (Mahabir Road). The appellants allege that the bye laws were not framed with the sanction of the Government and are not therefore sustainable under any of the provisions of the Rewa State Municipalities Act, 1946 (hereinafter referred to as the Municipal Act), The fee imposed amounts to a tax and has been illegally imposed. Further, the imposition amounts to a restraint on trade and thus infringes the fundamental right of the appellants to carry on business. The appellants did not pay any fees after 1955 when the site of the market was changed and contend that no fees can be recovered for the changed market, as there is no imposition for this site in any case.

4. The Municipal Committee admitted that fees were imposed by the bye-laws (Annexure A) and submitted that this was done with the previous sanction of the Government. The shifting of the market to another site in December 1955 was admitted, but it was stated that this was because the original site needed extensive constructions and repairs which could not be carried out without shifting the market. The market was hence temporarily shifted. The Municipality contends that it was the same old market and no fresh imposition of fees is necessary. The shifting, it is stated, was done with the consent of the appellants. According to the Municipal Committee, the fees have been validly imposed and are being validly recovered. It was, therefore, submitted that there was no violation of any fundamental rights and the appellants are bound to pay the charges. Respondent No. 2 is the State Government. They have filed no return, as they have been only formally impleaded.

5. The learned Single Judge found that the relevant bye-laws were validly framed and that the fees could be justified u/s 120 read with section 281 of the Municipal Act. It was also found that the shifting of the market to another site was temporary, at the instance of the appellant-petitioners themselves, and that the bye-laws applied to the shifted market also. On these findings, the petition was dismissed.

6. In his arguments before us, Shri R.S. Dabir, for the appellants, has attacked bye-law No. 4 imposing fees on the sellers as also bye-law No, 9 imposing fees on the buyers. We find in para 4 of the petition under Article 226 that only bye-law No. 9 has been referred to and no reference is made to bye-law No. 4. In their second prayer in the petition, they ask for holding the impugned portion of the bye-laws as void. Thus, there is no specific attack on bye-law No. 4. However, as the language of the petition is general and relief No. 1 is in general terms, we will consider both the bye-laws.

7. The first contention of Shri R.S. Dabir is that the imposition of the fees cannot be justified as ''fees'' in the strict legal sense can only be imposed for specific services rendered to the payees. The legal conception of "fees" as distinguished from "taxes" was considered in Nagpur Kshatriva Khatik Samaj vs. Corporation of City of Nagpur

ILR 1956 Nag. 102, On the authority of several cases decided by the Supreme Court, it was laid down that while tax is levied as part of common burden and is for augmenting general revenues, a fee is a payment for a special benefit or proving. ACCORdingly, fees must be correlative to the expenses incurred in rendering the special service. Further, fees collected must be kept separate for being used for the particular service and should not be merged in general revenues. Shri Dabir contends that as the Municipality has not shown both the essentials of a fee it cannot justify the imposition as the fee, and it must be regarded as a tax in the garb of a fee.

8. Shri G.P. Singh, on behalf of the Municipality, justified the impost u/s 120 of the Municipal Act and contends that the word "fees" used there is not in the strict legal sense but is equivalent to "charges" for use of the Municipal property. In this view, the strict conception of fees in the legal sense is not material. We shall now examine this contention.

9. Section 120 of the Municipal Act runs as follows :

Charges for use of Municipal Property:--

1. The Chairman of a Board may charge fees to be fixed by bye-law or by public auction or by agreement for the use or occupation (otherwise than under a lease) of any immovable property vested in, or entrusted to the management of, the Board, including any public street or place of which it allows the use or occupation whether by allowing a projection thereon or otherwise.

2. Such fees may either be levied along with the fee charged u/s 281 for the sanction, license or permission or may be recovered in the manner provided by Chapter VI:

Section 281 to which reference has been made in arguments is as follows:

Licence fees etc.--The Board may charge a fee to be fixed by bye-law for any license, sanction or permission which it is entitled or required to grant by or under this Act.

10. Section 120 occurs in Chapter IV which deals with "Municipal Fund and Property" and not in Chapter V which deals with taxes, contains several items like scavenging tax, tax for cleansing of latrines, water tax etc., which are charges for specific services and would more appropriately fall under "fees." Shri Dabir agrees that the word "tax" in section 121 is used in a loose sense covering both fees and taxes. The placing of section 120 shows that what is recovered under the authority of that section is not a "tax" for a "fee" proper, but only some return for the use of the Municipal property.

11. There is another reason why the word "fee" in section 120 must be held to be in a sense different from the strict legal sense. The fees are allowable for encroachment by a projection which obviously cannot be a charge for any service

rendered by the Municipality. Further, it is provided that fees may be fixed by public auction or agreement according to the section which would be inconsistent with the strict legal conception of fees. These considerations make it clear to us that the word "fees" is not used in that section in the strict legal sense but refers only to charges which are payable for use or occupation of the municipal property. It is not, therefore, necessary for the Municipality to prove that the income from fees was equivalent to the expenditure on a particular service or to show that the income from the impugned "fees" is kept apart from general revenues.

12. We may, in this connection, refer to the decision in Nagpur Kshatriya Khattik Samaj and Others Vs. Corporation of the City of Nagpur, Considering section 70 of the C.P. Municipal Act, it was held that the word "fees" was used in that section to cover charges for occupation of the municipal property and not in connection with any service which the Municipality may render. The language of section 120 of the Rewa Municipal Act is similar and this view would apply equally to that Act.

13. We have next to see how far the imposition is justified u/s 120 of the Municipal Act. Shri Dabir contends that that section is restricted to recoveries in the nature of occupational rent for municipal properties and cannot be extended to justify a levy on the sellers and buyers in a market. It has been provided in section 108, which deals with ''Municipal Property,'' that amongst other things "markets" vest in the Municipality. This makes it clear that market is a property and vests and belongs to the Municipality. A market would fall within the category of ''immoveable'' properties. Section 120 authorised imposition of charges for use of immoveable property and hence it appears that charges for use of the market could be validly imposed under that section.

14. A similar question arose in the context of section 179 of the C.P. Municipalities Act in Khurai Municipality vs. Firm Kaluram Hiralal AIR 1944 Nag. 73. That section permits the municipalities to charge fees for the use of markets. Reference was also made in the case to Section 50 (1) which imposes a compulsory duty on municipality to maintain a market and to section 38 which vests markets in the municipalities. It was held that the Municipality has power to levy licensing fees on the buyers and sellers as also on hammals working there. The following observations are helpful:

No objection can be taken to the levy of registration fees. They represent the price of the privilege of using the market owned by the committee and tray be intended to cover the charges of keeping the market in good condition.

It was further observed:

The market is vested in the committee and in its capacity as the owner of the market it can make any reasonable rule and impose any reasonable charges for the privilege of working as hammals within the market.

These observations apply to the instant case and support the contentions of respondent No. 1.

15. Shri Singh for the respondent-committee has further relied upon an unreported decision of the Allahabad High Court in Civil Misc. Writ No. 561 of 1953, decided on 24-3-1955. He has filed a certified copy of the order in that case. In that case, as in the instant case, a tax on goods was lived on the basis of the conveyance by which they were brought inside the market. The tax was challenged as ultra vires of the Uttar Pradesh Municipalities Act. It was sought to be justified u/s 293 of that Act which authorises charging of fees "for use and occupation of any immovable property vesting in the Municipality," The contagion was upheld with the following observations:

It is, therefore, clear from the reading of section 293 that the Municipal Board has power to charge fee for use and occupation of any immoveable property which vests in the Municipal Board, In the present case, it is admitted by the petitioner that the market vests in the Municipal Board and the persons who bring their goods inside the market for sale and the wholesale dealers inside the market use the market and as such the Municipal Board-has power u/s 293 of the Municipalities Act to charge any fee from them. It cannot, therefore, be said that the levy of fees by the Municipal Board is against the provisions of the Municipalities Act." Our the provisions of the Municipalities Act.

Our view that the Municipality, in the instant case, has a right to charge fees from the buyers and sellers using the market thus finds support in the decision, referred to above.

16. Shri Dabir contends that the market was a public market and, therefore, the vendors had a right to vend their goods there considering that it is the duty of the Municipality to maintain a public market u/s 109 of the Municipal Act. It is true that the Municipality has such a duty, but it does not follow that it cannot charge anything for its use. The market, in the instant case, was specially constructed and did involve some special expenditure. AN idea of this can be got from Annexure 2 in which the merchants give reasons why they do not agree to shift to the old site. They say that there is no arrangement for cleaning the site, lighting it and for putting in gates there and that lack of these facilities would cause harm or loss to the merchants. Obviously, the merchants expect special facilities there Shri Dabir says that scavenging and lighting are normal functions for which the Municipality imposes general taxes u/s 121. This is so; but the market imposes special burden on the committee on these matters also. Further, the construction of gates, which implies enclosing the space to make it safe, involves the Municipality into expenditure. It is common knowledge that the ground has to be leveled, drainage facilities have to be provided and roads have to be constructed to make it fit for use as a market. These improvements have to be made sport from putting platforms, stalls or shops. If the Municipality charges fees for use of the market which are

reasonable, there can be no complaint on that ground. Such charging of fees has been upheld in the Nagpur and Allahabad cases, referred to above, and we see no reason to take a different view.

17. The bye-laws in Annexure A were framed with the sanction of the State Government and were published in the official Gazette. This is clear from the Vindhya Pradess Gazette, dated 30-7-1952. There is thus no substance in the contention that they are invalid on the ground that they were not sanctioned or published. It is argued that the fees on purchasers have been imposed by an executive order of the Galla Mandi Committee (contained in Annexure C). This is incorrect. The fees are imposed by bye-law No. 9. As we shall presently discuss, this imposition continued on the shifted site and thus Annexure C is only a statement of the existing position.

18. We now pass on to the contention that the imposition of the fees is an infringement of the appellant''s fundamental right to carry on business. Reliance is placed on Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, where it is laid down that the illegal imposition of a license fee is always a restraint on trade. In that case, the imposition extended to traders doing business on their private premises and virtually created a monopoly of wholesale trade in favour of one person. In the instant case, the imposition is not illegal, nor is it unreasonable, as the fee is so small that it cannot affect the trade or act as a restraint on it. As such, there is no invasion on the appellant''s fundamental rights.

19. As regards the fees payable by purchasers imposed under bye-law No. 9 it was argued that they amount to imposition of sales tax and are, therefore, invalid. We do not agree. The fee, in the instant case, is not related to the price of sale of the goods which is an essential feature of the salts-tax. They are related to the quantity removed by the purchaser. This measures fairly the advantage which the buyer takes of the market and forms, in our opinion, a reasonable basis to which the fees may be related. The imposition cannot be considered invalid because the fees are related to the quantity sold. Similarly, the composition of fees on the basis of the conveyance used for bringing the goods by the seller under by law No 4 has a reasonable relation to the business done by the seller. The quantity brought on a truck is more than that brought on a cart and the fee on the former could therefore be more.

20. The other branch of Shri Dabir''s argument deals with the shifting of the market to another site. He contends that the boundaries of the original site are given in para 2 of the Annexure A and the fees as imposed under the bye-law would be valid only for the market on that site. It appears from the affidavit of respondent No. 1 that the market was temporarily shifted for repairs and construction. Annexure I shows that this was done at the request of merchants, as there was much inconvenience on the original site. Annexure 2 shows that after the repairs were done, the Municipality asked the merchants to shift to the original site and the

merchants agreed, subject to some more repairs being carried out. It is thus amply clear that the shifting was temporary pending repairs.

21. The bye-laws in Annexure A open with the first two paragraphs stating facts. The first paragraph says that there is a public market "Galla Mandi" and para 2 gives its existing boundaries. The other bye-laws are applicable to the market and the language would apply to any place where the market is held. The expression "Galla Mandi" does not refer to any particular place but to the institution of the market. It appears to us that the provisions imposing fees refer to the business carried on in the market and not to the place where the market is located. Accordingly, we agree with the learned Single Judge that the temporary shifting of the market did not affect the imposition. The bye-laws continued to apply to the market on the new site and it was not necessary to notify them again mentioning the new site.

22. In the result, the appeal fails and is hereby dismissed with costs. Hearing fee is fixed at Rs. 150/- for the counsel for respondent No. 1 and Rs. 50/- for the counsel for respondent No. 2