

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Order reserved on: 30.4.2018****Order passed on: 18.6.2018****Writ Petition (T) No.139 of 2015**

M/s Jai Jhulelal Bus Service, Through Nandlal Verma, aged 55 years,
Son of Late Biharilal Verma, R/o Near Post Office, Chakarbhata, P.S.
Chakarbhata, Tahsil Behla, Civil and Revenue District Bilaspur (CG)

----Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Dept. of Transport,
Mahanadi Bhawan, Mantralaya, Naya Raipur, Raipur (CG)
2. Nagar Panchayat Sargaon Through Chief Executive Officer,
Nagar Panchayat Sargaon, Tehsil Pathariya, Revenue District
Mungeli (CG)

---- Respondents

For Petitioner	:	Mr.Mukesh Sharma, Advocate
For Respondent No.1	:	Mr.Gary Mukhopadhyay, Govt.Advocate
For Respondent No.2	:	Mr.Harshal Chauhan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. The petitioner is a bus operator and is operating his vehicles with the stage carriage permit granted by the competent authority under the provisions of the Motor Vehicles Act, 1988. He has called in question legality, validity and correctness of suvidha sulk/parking fees imposed and being recovered by respondent No.2/Nagar Panchayat, Sargaon holding the same to be contrary to to the provisions contained in Section 6 of the Chhattisgarh Motoryan Karadhan Adhiniyam, 1991 (hereinafter called as "the Act of 1991").

2. Mr. Mukesh Sharma, learned counsel for the petitioner, would submit that levy/recovery of parking fees/suvidha sulk from buses of the petitioner, which are passing through the territorial limits of Nagar Panchayat, Sargaon is directly in contravention of Section 6 of the Act of 1991 and that runs contrary to a decision of Single Bench of this Court passed in Writ Petition No.1879 of 2005 (Pahalad Tiwari & Others v. Nagar Panchayat, Takhatpur & Another), duly affirmed by a Division Bench of this Court in Writ Appeal No.92/2011 (Chief Municipal Officer v. Pahalad Tiwari and others) and therefore, it is liable to be quashed.

3. Mr. Harshal Chauhan, learned counsel for respondent No.2 reiterating his statement made in the return would submit that respondent No.2 is only collecting fees for providing amenities at the bus-stand as the passengers alighting from buses/vehicles need certain basic amenities like washroom, sanitation, drinking water, electricity etc. and these basic amenities are being provided by respondent No.2 and for which only suvidha sulk is being recovered from buses of the petitioner, which is strictly in accordance with law. He would rely upon a decision of the Supreme Court rendered in the matter of **Nagar Panchayat, Kurwai and another v. Mahesh Kumar Singhal and others**¹.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

¹ (2013) 12 SCC 342

5. In order to consider the plea raised at the Bar, it would be appropriate to notice the Constitution (Seventy-fourth Amendment) Act, 1992 by which Part-IX-A, which deals with municipalities, was introduced w.e.f. 20.4.1993. Articles 243-P(e), 243-Q and Article 243-W(a) are relevant and hence extracted below:

“243-P.(e) 'Municipality' means an institution of self-government constituted under Article 243-Q.

243-Q. Constitution of municipalities.-(1)
There shall be constituted in every State-

- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
- (b) a Municipal Council for a smaller urban area; and
- (c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

243-W. Powers, authority and responsibilities of Municipalities, etc.-
Subject to the provisions of this Constitution, the legislature of a State may, by law, endow-

(a) the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) The Committees with such powers and authority as may be necessary to enable



them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

The Twelfth Schedule was inserted w.e.f. 1.6.1993. Entry 17 therein reads as follows:-

“**17.** Public amenities including street lighting, parking lots, bus-stops and public conveniences.”

6. At this stage, it would be appropriate to notice Section 358 (7) (m) of the Chhattisgarh Municipalities Act, 1961 (hereinafter called as “the Act of 1961”) which reads as under:-

“358. **Power to make bye-laws.**- In addition to any power specially conferred by this Act, the Council may, and if so required by the State Government shall, make bye-laws for-

(1) to (6) xxx xxx xxx

(7) **Public Health, Safety, Nuisance and Sanitation---**

(a) to (l) xxx xxx xxx

(m) regulating and prohibiting the stationing of carts or picketing of animals on any ground under the control of the Council or the using of such ground as halting place of vehicles or animals or animals or as a place for encampment or the causing or permitting of any animal to stray and imposition of fees for such use....”

7. In the matter of **Nagar Panchayat, Kurwai** (supra), the Supreme Court considered the question whether Nagar Panchayat is entitled to claim parking fee and posed the following question for consideration:-

“The question is, can a court, on the basis of such an interpretation sideline the larger public interest and deny the right of the Nagar Panchayat to claim parking fees which can be utilised for the benefit of people ?”

Their Lordships held as under:-

“3. We, before examining the question, shall not forget the basic fundamental principle that nobody has a fundamental right to use the land belonging to another without the latter’s permission or paying for it, if demanded.

4. The respondents are operating their vehicles with the stage carriage permits granted by the competent authority under the Motor Vehicles Act. As per the provisions of the Motor Vehicles Act the State Government or any other authorized authority has jurisdiction to determine a place at which a motor vehicle be parked, either indefinitely or for a specified time for taking up and alighting passengers. Rule 203 and Rule 204 of the Motor Vehicles Rules, 1994 provide for maintenance and management of the parking places and make the local authorities concerned responsible for the said purpose. As per the conditions of the permit the respondents are required to commence the journey of their vehicles from the bus-stand or a place fixed for getting and alighting passengers. Such a condition has been imposed on the licence by the authorities under the Motor Vehicles Act since the operators would commence the journey of their respective vehicles on the routes from the bus-stand only and would not stop the vehicles on the streets, causing inconvenience to the public. Since the vehicle operators started using the bus stand, the Nagar Panchayat passed the Resolution, as already indicated, charging the parking fees for the purpose of maintaining of bus-stand and providing other facilities. The bus-stand, as already indicated, was constructed on the land owned by the Nagar Panchayat.”

8. Their Lordships further held that Nagar Panchayat constituted under Section 243-Q of the Constitution is entitled to levy parking fees in respect of stage carriage permits and held as under:-

“6. A Nagar Panchayat is, therefore, a unit of self-government, which is a sovereign body having both constitutional and statutory status. Article 243Q and 243W(a)(i) and (ii) read with

Entry 17, confer considerable powers on the Nagar Panchayat to carry out various schemes for economic development and social justice. Municipalities need funds for carrying out the various welfare activities and for the said purpose, it can always utilize its assets in a profitable manner to its advantage so that various welfare activities entrusted to it under law could be properly addressed and implemented. The bus-stand has been provided by the Nagar Panchayat for the benefit of all vehicle owners and the passengers, spending public money. The Nagar Panchayat has to get a reasonable return for its upkeep and maintenance.

7. We may, in this connection, refer to the decision of this Court in *Municipal Board, Hapur v. Jassa Singh*², wherein this Court while interpreting the provisions of the U.P. Municipalities Act, 1916 in the light of the Constitution (73rd Amendment) Act, 1992 (actually 74th Amendment Act) upheld the right of the Municipality in levying the bus stand fee in respect of stage carriage. The operative portion of the same reads as follows:

“6.....Even under the recent amendment brought by the Constitution (73rd Amendment) Act, 1992 which came into force w.e.f. 20-4-1993, it imposes the statutory responsibilities on the municipalities. Article 243-P(d) defines 'municipal area' to mean the territorial area of a municipality as is notified by the Governor. Article 243-W(a)(i) envisages that subject to the provisions of the Constitution, the legislature of a State may, by law, endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions, as may be specified therein, with respect to the preparation of plans for economic development and social justice. Entry 17 of the Twelfth Schedule provides for public amenities including street lighting, parking lots, bus-stops and public conveniences. Thus, the Constitution enjoins the appropriate legislature to

² (1996) 10 SCC 377

provide for preparation of the plans for economic development and social justice including power to provide public amenities including street lighting, parking lots, bus-stops and public conveniences. On such public amenities including bus-stops having been provided by the municipalities, as is a statutory duty, it is the duty of the user thereof to pay fee for service rendered by the municipality.”

9. The Supreme Court in **Nagar Panchayat, Kurwai** (supra) relying upon **Municipal Board, Hapur** (supra), has held as under:-

“14. Article 243W(a)(i) and (ii) read with Entry 17 of the Twelfth Schedule and clause (7)(m) of Section 358 and the general principle that nobody has a fundamental right to use the land belonging to another without the latter’s permission or paying for it, if demanded, in our view, give ample powers to the Nagar Panchayat to impose parking fee for parking the vehicles in the bus-stand owned and maintained by it. Needless to say, if the Nagar Panchayat is demanding exorbitant or unreasonable parking fee without any quid pro quo, the same can always be challenged in accordance with law. ”

10. Thus, in the aforesaid case, Their Lordships relying upon the constitutional provision and Section 358 (7) (m) of the Act of 1961 clearly held that Nagar Panchayat is empowered to levy parking fee for parking of the vehicles in the bus-stand owned and maintained by it.
11. Faced with the situation, learned counsel for the petitioner would submit that in Writ Appeal No.92 of 2011, a Division Bench of this Court relying upon **Municipal Council, Manasa v. M.P. State Road Transport Corpn. and another**³ has already decided the issue which reads as under:-

³ (1997) 11 SCC 640

“8. In the considered opinion also, the issue which was raised in writ petitions and now in these appeals, remains no more *res integra* and stands decided by the Supreme Court in the case of Municipal Council Manasa (supra) and hence the learned Single Judge was right in placing reliance on this decision for allowing the writ petition.”

12. The Supreme Court in the matter of **Nagar Panchayat, Kurwai** (supra) also considered a decision rendered by the Supreme Court in **Municipal Council Manasa** (supra) and distinguished the same by holding as under:-

“11. In Municipal Council, Manasa, the question which came up for consideration was whether a municipal council is competent to levy toll tax on motor vehicles in view of the provisions contained in Section 6 of the M.P. Motor Vehicles Taxation Act, 1947, which has been extended to the whole of M.P. by the Madhya Pradesh Taxation Laws (Extension) Act, 1957. The Court took the view that Madhya Pradesh Motor Vehicles Taxation Act is a special enactment while the Madhya Pradesh Municipalities Act is a general enactment and that the provisions of Section 127(1)(iii) and Section 6 are to be read in a way that both can stand together. Consequently, the words “tax on vehicles” used in Section 127(1)(iii) of the Madhya Pradesh Municipalities Act was held to mean vehicles other than motor vehicles.

12. Above-mentioned Judgments, on facts as well as on law, do not apply to the facts of the present case, especially in view of to the 74th Constitutional Amendment and in view of Section 358(7)(m) of the M.P. Municipality Act, which was not properly addressed in those cases. ”

13. Thus, from the aforesaid discussion, it is quite vivid that the Municipal Council is empowered to levy parking fee for parking the vehicles in the bus-stand owned and maintained by it, as such, Nagar Panchayat, Sargaon is absolutely justified in levying suvidha sulk/parking fees of the vehicles owned and

maintained by it from the petitioner's buses, which is strictly in accordance with law and such a levy cannot be declared as unconstitutional and contrary to law.

14. As a fall out and consequence of the above-stated discussion, the writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-



HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (T) No.139 of 2015

Petitioner

M/s Jai Jhulelal Bus Service

Versus

Respondents

State of Chhattisgarh and others

(Head-note)

(English)

Nagar Panchayat is competent to levy suvidha sulk/parking fee for parking the passenger vehicle in the bus-stand.

(हिन्दी)

बस स्टैण्ड में यात्री वाहन खड़े करने हेतु सुविधा शुल्क/पार्किंग उद्गूहीत करने हेतु नगर पंचायत सक्षम है।

