

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Mian Saqib Nisar

Mr. Justice Mushir Alam

Mr. Justice Maqbool Baqar

Civil Appeal No.1132 of 2007

Against judgment dated 08.11.2005 of High Court of Sindh at Karachi, passed in Constitution Petition.No.D-687 of 2004.

Hyderabad Cantonment Board

Appellant(s)

VERSUS

Raj Kumar & others

Respondent(s)

For the Appellant(s):

Mr. Anwar Mansoor Khan, Sr. ASC

For Respondents#7-12:

Mr. Qasim Mir Jat, Addl. AG, Sindh
Dr. Saeed Ahmed Qureshi, Focal
person for Chief Secretary of Sindh
Ms. Lubna Salahuddin, Addl. Secy.
Local Government.

Date of Hearing:

20.05.2015

JUDGMENT

Mushir Alam, J-. Leave to appeal was granted on 17.04.2007 to consider the following:-

"After hearing the learned counsel for the parties, we find that the question as to whether the Cantonment Executive Officer is empowered under Cantonment Act, 1924 to charge the service fee from the vehicles being used as public transport for use of the facilities provided for the convenience of passengers at halting places fixed under Motor Vehicle Ordinance, 1965 read with Motor Vehicle Rules, 1969 would require consideration in the light of relevant provision in the above referred statutes and the rules framed thereunder. Therefore, we grant leave in this petition to consider the above question."

2. Backdrop forming matrix of instant appeal appears to be that the appellant-Hyderabad Cantonment Board levied parking fee on commercial vehicles plying within Hyderabad city on each and every stop i.e. general bus stand situated in the cantonment area of Hyderabad through its contractors, which action was successfully challenged before the High Court of Sindh through Constitution Petition No.D-687 of 2004 and a learned Division Bench of the High Court vide impugned judgment dated 08.11.2005, also reported as **Raj Kumar v. Hyderabad Cantonment Board (2006 MLD 549)**, on

examining various provisions of the Cantonment Act, 1924 including Sections 25, 60, 61, 62 and 200 thereof came to the conclusion that *“since there was no provision in the Cantonment Act, 1924 empowering the Cantonment Board to charge parking fee, such levy was without lawful authority”*.

3. Mr. Anwar Mansoor Khan, learned Sr.ASC, representing the appellant-Hyderabad Cantonment Board, has contended that the Appellant-Cantonment Board, has established Bus Stands at various halting places which maintain waiting rooms and wash rooms for ladies and gents and further facilities for the bus owners to park their buses for the purpose of collecting the passengers. It was urged that on account of such services, a nominal fee was imposed and was being collected through contractors. According to him, the Appellant-Cantonment Board, under Section 200 of the Cantonment Act, 1924 is fully empowered to impose such fee. To support his contention he has placed reliance on the case of Federation of Pakistan v. Durrani Ceramics **(2014 SCMR 1630)**. It was urged that fee is charged in respect of services provided, therefore, no exception to it could be taken.

4. It may be observed that said case does not support the case of the appellant-Cantonment Board. In the cited case validity of Gas Infrastructure Development Cess Act, 2011 was successfully challenged in the High Court being ultra vires to the Constitution. On examining the legality of the Act, 2011 this Court came to a conclusion that subject Cess was not a tax and was not covered by the Entry relating to imposition of levy of tax under Part-1 of the Federal Legislative List, and it was accordingly held; not validly levied in accordance with the Constitution.

5. Mr. Anwar Mansoor, learned ASC for the Appellant-Cantonment Board has fairly brought to the notice of this Court a judgment of House of Lord reported as *McCarthy & Stone (Development) Ltd. v. London Borough of Richmond Upon Thames* **(1994 SCMR 1393)**, which goes against the Appellant. In the cited case, the Appellant were charged fee under Section 87 (1) of the Local Government Planning and Land Act, 1980, which was unsuccessfully challenged before the Council, being beyond the

scope of the referred Act of 1980, the Appellant failed in the Court of Appeals, which issue was then taken to the House of Lords. The House of Lords considered the legality of the policy of the Council of the respondent London Borough of Richmond upon Thames (the Council), which it adopted on 2nd July 1985 and under which it had made a charge for consultations concerning speculative development or redevelopment proposal between the developers and the Council's. Developer engaged into preliminary consultation prior to making formal application for planning permission, he was charged. Such charges were paid twice for the consultation under protest, developer made unsuccessful representation before the Council followed by unsuccessful appeal before the Court of Appeals (1990 2 WLR 1294), which was challenged. House of Lords, on examining the power and function of the Local Authority came to a conclusion that fee within the contemplation of the Act, 1980 relates only to planning application and not to any pre-application inquiries or consultations. It was accordingly held that local government cannot charge for services unless it is required by statute to provide such services.

6. Charging provisions in any statute are strictly construed. It was conceded by the learned ASC for the Appellant-Cantonment Board that any pecuniary burden, by whatever nomenclature it may be inflicted may it be in the name of tax, cess, fee, toll, or rate etc could only be inflicted, provided it has a valid statutory sanction.

7. Mr. Anwar Mansoor Khan, learned Sr.ASC for the appellant has placed reliance on Section 200 of the Cantonment Act, 1924, which according to him provides legal backing for the subject fee. The said provision for ease of reference is reproduced as under:-

"200. Levy of stallages, rents and fees.- A [Board] may-

(a) charge for the occupation or use of any stall, shop, standing, shed or pen in a public market, or public slaughter-house, or for the right to expose goods for sale in a public market, or for weighing or measuring goods sold therein, or for the right to slaughter animals in any public slaughter-house, such stallages, rents and fees as it thinks fit; or

(b) with the sanction of the [Competent Authority], farm the stallages, rents and fees leviable as aforesaid or any portion thereof for any period not exceeding one year at a time; or

(c) put up to public auction, or with the sanction of the [Competent Authority], dispose of by private sale, the privilege of occupying or using any stall, shop, standing, shed or pen in a public market or public slaughter-house for such term and on such conditions as it thinks fit."

8. Extraction of money in any form may it be a tax, cell, toll fee, charge or rate or levy by whatever nomenclature it is classified could be extracted by the government and or public authority under a valid legislative instrument by the competent legislature (*one may refer to Article 70 read with Article 73 (1A)(3) (a), Article 77 read with Article 141 read with Entry No.54 of the Federal Legislative List*). A bare perusal of the provision of Section 200 of the Act, 1924 as reproduced above, shows that it is "*levy of stallages rent and fee*" for providing stall, shop, standing shed, pen and for other defined commercial activities on the vendors dealing in goods and for the slaughter of animals in public market or public slaughter houses respectively and that too subject to sanction by the competent authority. Parking fee is not envisioned under the referred provision. Cantonment Board has no authority to enlarge the scope of charging section and include, conjecture and or read some activity which is not envisioned or is not the contemplation of the charging Section 200 *ibid* as relied upon by the learned ASC for the appellant-Cantonment Board.

9. In a case reported as "*Exide Pakistan Limited Vs. Cantonment Board* (2012 CLC 1124)", imposition of "Shop Board Fee" under Section 200 of the Cantonment Act, 1924 was challenged. The High Court examined various provisions of the Act of 1924 and came to a conclusion that "*Shop Board Fee*" appears to be an entirely different genre of fee more akin to advertisement/Signboard [fee] of the shop, which did not fall within the contemplation of stallages, rent and fee within the sanction of Section 200 of the Cantonment Act, 1924."

10. Learned counsel was not able to point out any other provisions of Cantonment Act, 1924 that could empower and or authorize the Cantonment Board to charge the subject parking fee. Mr. Anwar Mansoor Khan, learned ASC for the appellant-Cantonment Board, vainly attempted to argue that under the Cantonment Ordinance, 2002, the Cantonment Board is specifically empowered to levy parking fee in terms of Section 243 read with

Entry No.9 of the first schedule which provides *“fee for parking of vehicles on site provided by the Cantonment administration”*.

11. Indeed, such power to impose parking fee is available under the Cantonment Ordinance, 2002. But it is of no avail to the Appellant for the simple reason that such Ordinance has not as yet been enforced. In terms of subsection (3) of section 1 of the Ordinance, 2002, the Ordinance, or any provision thereof, will become operational only on such date as may be notified by the Federal Government. Mr. Anwar Mansoor Khan has fairly conceded that no such notification has been issued so far. Such arguments failed before the High Court. That being the legal position, he cannot rely on any law to justify impugned parking fee, which is still in hibernation and not implemented as yet. No other contention was raised. No infirmity in the impugned judgment is found.

12. The appeal is accordingly dismissed.

Judge

Judge

Judge

ISLAMABAD, THE

20th of May, 2015

Not Approved For Reporting

M.Zubair/*