APPELLATE CIVIL

Before Justice Sir Edward Bennet and Mr. Justice Verma

MUNICIPAL BOARD, SAHARANPUR (DEFENDANT) *v.* JAGDISH SARAN (PLAINTIFF)* 1939 *January*, 9

Municipalities Act (Local Act II of 1916), sections 128(1)(iv); 298, List I, H(c)—Vehicles plying for hire within municipality—Tax—Licence fee—Tax may include licence fee—Power to impose tax may be exercised by bye-law compelling the taking out of licences on payment of prescribed fees—Jurisdiction—Municipalities Act, sections 160, 164—Suit in respect of licence and licence fee imposed by municipality.

The power to impose taxes on vehicles and other conveyances plying for hire within a municipality has been conferred on the Municipal Board by section 128(1)(iv) of the Municipalities Act. It is open to the Board to make bye-laws and rules for the realisation of these taxes in any manner that may be permissible under the Act. Under section 298, List I, heading H, clause (*c*), Municipal Boards are authorised to frame bye-laws imposing on the proprietors of such vehicles and conveyances the obligation to take out a licence, and fixing the fee payable for such licence. That is only the method in which the Board realises the tax on the vehicle or conveyance, and the fee levied on such licence is nothing but the tax which the Board is authorised by section 128 to impose. The adoption of this method for the collection of the tax cannot make it any the less a tax. A suit in respect of such licence and licence fee is, therefore, a suit in respect of a tax lawfully imposed by the Municipal Board; and in view of sections 160 and 164 of the Municipalities Act the suit is not maintainable.

It is clear that there are taxes which are collected by means of licence fees. It is obvious that all "fees" are not "taxes", but it is equally obvious that it is incorrect to say that a fee payable for a licence can never be a "tax".

Mr. *A. M. Khwaja*, for the appellant.

Mr. *G. S. Pathak*, for the respondent.

BENNET and VERMA, JJ.:—This is a second appeal by the defendant, the Municipal Board of Saharanpur.

*Second Appeal No. 492 of 1936 from a decree of N. L. Singh, 2nd Subordinate Judge of Saharanpur, dated the 11th of December, 1935, modifying the decree of Ilias Ahmad, Munsif, City of Saharanpur, dated the 31st of May, 1935.

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The suit was for a declaration that "the order of the defendant dated 4th April, 1934, and other connected orders imposing a tax in the shape of licence fee on the brick carts of the plaintiff was against law and procedure, improper, invalid and penal and was not binding." It was also prayed that a perpetual injunction be issued restraining the defendant Board from passing any such order in the future. There was also a prayer for the recovery of a certain sum of money. The court of first instance dismissed the suit but the lower appellate court has decreed it.

The plaintiff has a brick-kiln outside the limits of the Municipal Board of Saharanpur. He has got six bullock carts and these carts are used by the plaintiff for carrying the bricks to the houses of persons within the limits of the municipality who purchase bricks from the plaintiff. The Municipal Board has ordered the plaintiff to take out a licence for plying these carts for hire within the municipality and to pay the fee prescribed therefor under the bye-law made by the Municipal Bord under section 298. List I, H(*c*). The fee fixed for the type of cart used by the plaintiff is Rs.4 per cart per quarter. The plaintiff paid Rs.24 on account of the six carts for one quarter and brought this suit, his main allegation being that no hire for the carts is charged from the purchasers of the bricks and it cannot therefore be said that the plaintiff's carts ply for hire within the limits of the Municipal Board. He contended that he was consequently not liable to pay anything on account of these carts. The Board, besides raising other pleas, contended that the suit was barred under the provisions of sections 160 and 164 of the U. P. Municipalities Act (No. II of 1916) and that the plaintiff did charge hire for the carts from the purchasers of the bricks and the carts therefore did ply for hire within the municipal limits. Both the courts below have agreed in holding that the plaintiff did charge hire from the purchasers of the bricks for the

carts which carried the bricks to the houses of the purchasers. On the other contention of the defendant the trial court held that the suit was not barred by sections 160 and 164 of the Act, but it dismissed the suit on the finding that the plaintiff's carts did ply for hire within the limits of the Municipal Board. On appeal by the plaintiff the lower appellate court, while agreeing as stated above with the trial court that the plaintiff did charge hire for the cartage of the bricks, allowed the appeal of the plaintiff on the ground that "plaintiff's carts are not open to hire within the limits of the municipality to anybody and for any purpose whatsoever." It further observed that as "these carts are exclusively used by the plaintiff himself for cartage of bricks from his brick-kiln to the places of his customers inside the municipality", the Board was not entitled to impose the fee in question. The court did not record any finding on the question whether the suit was barred under the provisions of sections 160 and 164 of the Act.

The first point raised by the learned counsel for the defendant appellant before us is that the suit was barred under the provisions of sections 160 and 164 of the Act and the civil court had no jurisdiction to entertain it. The contention is that the fee imposed is a tax on the carts, which are vehicles plying for hire within the municipality, and that the provision requiring persons plying such carts for hire to take out a licence before commencing to do so is only a method for the realisation of the tax imposed. Now, the power to impose taxes is conferred on Municipal Boards by section 128 of the Act which is the first section in chapter V, headed "Municipal Taxation—Imposition and Alteration of Taxes." Sub-section (1) (iv) authorises Municipal Boards to impose a tax on "vehicles and other conveyances plying for hire or kept within the municipality or on boats moored therein." Chapter IX is headed "Rules, Regulations and Bye-laws" and section

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298 occurs in this chapter. Sub-section (2) of that section is as follows: "In particular, and without prejudice to the generality of the power conferred by sub-section (1), the Board of a municipality wherever situated, may, in the exercise of the said power, make any bye-law described in List I below and the Board of a municipality, wholly or in part situated in a hilly tract, may further make, in the exercise of the said power, any bye-law described in List II below." In List I there is a heading H, clause (*c*) of which authorises the Board to make a bye-law "imposing the obligation of taking out licences on the proprietors or drivers of vehicles . . . plying for hire . . . and fixing the fees payable for such licences and the conditions on which they are to be granted and may be revoked." The contention of the learned counsel for the plaintiff respondent is that the fee imposed by the Municipal Board on the plaintiff is not a tax and that fees for licences for which provision can be made by means of bye-laws framed under section 298 of the Act must be distinguished from taxes properly so called. He contends that as this fee is not a tax, sections 160 and 164 of the Act are not applicable, and therefore a suit is maintainable. We consider that the contention of the learned counsel for the defendant appellant is well founded. The power to tax vehicles and other conveyances plying for hire within the municipality has been conferred by section 128(1) (iv). It is open to the Board to make bye-laws and rules for the realisation of these taxes in any manner that may be permissible under the Act. Section 298 authorises Municipal Boards to impose on the proprietors and drivers of such vehicles and conveyances the obligation of taking out a licence before they so ply the vehicles or conveyances within the municipality and to fix the fee payable for such a licence. That in our opinion is only the method in which the Board realises the tax on the vehicle or conveyance and the fee levied on this licence is nothing

but the tax which the Board is authorised by section 128 to impose. It is not suggested that besides this fee the Municipal Board has demanded, or can demand, from the plaintiff, or any other proprietor or driver of such carts, any further sum of money on account of tax under section 128(1) (iv). The imposition of this obligation to take out a licence and to pay a fee therefor makes the collection of the tax, which is authorised by section 128(1) (iv), simpler than it might otherwise be; but the adoption of this method for the collection of the tax cannot make it any the less a tax. The learned counsel for the plaintiff respondent has cited the case of *Emperor* v. *Brij Mohan Lal* (1). In that case the applicant was convicted for the infringement of a bye-law framed by the Agra municipality with reference to motor lorries plying for hire and a fine was imposed on him by the Magistrate. The Sessions Judge made a reference to this Court recommending that the fine be reduced. It was contended on behalf of the applicant that no offence had been committed because the bye-law which the accused had infringed was void, being *ultra vires* of the Municipal Board. It was argued that the licence fee was in substance a tax and that the Municipal Board could not impose a tax without the sanction of the Local Government. It was found in that case that the bye-law in question had been sanctioned by the Commissioner and it was observed that "the licence fee has not been imposed and sanctioned in the manner provided for a tax." In the case before us there was no allegation made by the plaintiff that the bye-law in question had not been sanctioned by the Local Government. On the contrary, we find from the Manual containing the Saharanpur Municipal Bye-laws that the bye-law in question was sanctioned by the Local Government by notification No. 1746/XI—48-H, dated the 3rd of May, 1917. The case before us is thus distinguishable from the case cited. We cannot accept the general proposi-

(1) (1933) I.L.R. 56 All. 743.

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tion advanced by the learned counsel for the plaintiff respondent that a fee payable for a licence can never be a tax. As already observed, the imposition of an obligation to take out a licence for plying on hire within the municipality a vehicle or other conveyance on payment of a fee is only a method for the realisation of the tax which the law authorises the Board to impose on such vehicles and other conveyances. The point becomes clear by a reference to the Municipal Account Code (Volume II of the Municipal Manual, 1937 edition). Chapter II of the Code is headed "Taxes other than octroi or any similar tax payable on immediate demand, Rents and Fees." Below this heading there is a note which says: "The same general outline of procedure applies to the collection of all taxes other than octroi, terminal tax, toll or other similar tax payable upon immediate demand or *taxes such as wheel or dog tax collected by means of licences* . . . " This note does not seem to have the force of law, but it brings out the point under consideration clearly. Rule 21 in chapter II deals with "*taxes* for which no assessment lists are made and which are not *collected by means of licences.*" Above rule 30 the heading is "Collections by means of licences." Below this heading there is an explanation which says: "The following rules apply equally to both taxes and fees that are collected by means of licences . . . " It is thus clear that there are taxes which are collected by means of licences. It is obvious that all "fees" are not "taxes", but it is equally obvious that it is incorrect to say that no fee payable for a licence can ever be a tax. Reference may further be made to Volume I, Part III, "Model Rules, Bye-laws and Regulations" of the Municipal Manual. These Model Rules have been "framed by the Government for the assessment and collection of taxes under sections 153 and 296 of the Act". Section 153, which is in chapter V of the Act lays down: "The following matters shall be regulated and governed by rules except

in so far as provision therefor is made by this Act, namely,—(*a*) the assessment, collection or composition of taxes, . . . " Section 296 lays down: "(1) The Local Government shall make rules consistent with this Act in respect of the matters described in sections . . . 153 . . . " In accordance with these sections the Local Government evidently makes rules for each municipality based on the Model Rules contained in Part III of the Municipal Manual. We are not aware whether any rule has been framed by the Local Government for the Saharanpur Municipality with regard to the collection of taxes on vehicles etc., the imposition of which is authorised by section 128(1) (iv). These Model Rules, however, are of assistance in elucidating the point. In chapter I there is a heading "Model rules for the assessment and collection of a tax on vehicles or (animals)" at page 376 of the Municipal Manual. Rule 2 lays down: "Every person who becomes possessed of a vehicle (or animal) liable to the tax shall . . . apply . . . for a licence . . ." It is, therefore, clear in our opinion that the imposition of an obligation on persons plying vehicles for hire within the municipality to take out licences and to pay the fees fixed therefor is only a means of collecting the tax on such vehicles authorised by section 128.

In the view that we have taken it is not necessary to consider whether the opinion of the court below, that although the plaintiff charged hire for the carts from the purchasers of the bricks the Board was not entitled to require the plaintiff to take out licences for these carts because they were only used for the cartage of plaintiff's bricks from his kiln to the places of his customers, is correct or not. We hold that this was a suit in respect of a tax lawfully imposed by the Municipal Board, and that, in view of the provisions of sections 160 and 164 of the Municipalities Act, it was not maintainable and the civil court had no jurisdiction.

For the reasons given above we allow this appeal, set aside the decree of the lower appellate court and restore that of the court of first instance with costs throughout.