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Delivered on: 19.10.2012

Case :- WRIT - C No. - 19014 of 2012

Petitioner :- Tempo Taxi Sewa Samiti, And Another

Respondent :- State Of U.P. And Others

Petitioner Counsel :- Chandra Bhan Gupta

Respondent Counsel :- C.S.C., M.C Tripathi, Vivek Saran

Hon'ble Ashok Bhushan, J.

Hon'ble Abhinava Upadhya, J.

(Delivered by Hon'ble Abhinava Upadhya, J.)

Heard Sri U.N.Sharma and Sri Chandra Bhan Gupta, learned counsel appearing for the petitioners and Sri M.C.Tripathi and Sri Vivek Varma, learned counsel appearing for the Nagar Nigam.

The Kanpur Municipal Corporation, within its municipal area, for the convenience of the public, has allowed plying of taxi, buses, tempo, auto rickshaws as well as cycle rickshaws.

In this writ petition the dispute raised by the Tempo and Auto rickshaws Association is with regard to the bye laws of the Corporation empowering it for realization of user charges from them.

It is alleged that the Kanpur Municipal Corporation does not provide any facility to charge user fee as such the bye laws promulgated through notification dated 29.3.2006 and Gazette publication dated 22.7.2006 is against the G.O. dated 18.7.1998 (Annexure-6 to the writ petition) and violative of Section 54 Clause (42) of the U.P. Municipal Corporation Act, 1959 (in short the Act) and is arbitrary and, therefore, the same be quashed.

Brief facts, as narrated by the learned counsel for the parties, are that by a resolution of the Municipal Corporation being resolution no.1 dated 28.1.2006 it proposed bye laws for imposition of user charge within the Municipal Corporation Limits. A publication was made for information/ and inviting objection and suggestion from the public in general regarding the framing of said bye laws. Thereafter the bye-laws were framed and notified by notification dated 29th March, 2006 and were made applicable from the date of its publication in the official Gazette which was published on 26.7.2006.

In the aforesaid notification in Clause-5 user charge fee has been defined to be a charge for use and utilization of any service and facility of the Corporation within the municipal limits. The rate, at which the same has to be charged, has been indicated in the chart annexed with the bye laws. It is further provided that the user charge will be levied for use of park land as well as green belt for providing means of removing dustbin and other public convenience facility, such as toilets, urinals and for providing other utilities and for the use of land for such purposes within the Municipal area.

In exercise of the aforesaid power and for the aforesaid purpose the Municipal Commissioner issued an advertisement dated 8.4.2012 specifying the routes and spots for halting, setting down and picking up passengers by four thousand tempo and three thousand auto rickshaws charging Rs. 5/- per day from the aforesaid tempo and auto rickshaws for plying from one point to another for the remainder period of financial year 2012-2013.

At this juncture it was pointed out that pursuant to

the aforesaid bye laws earlier also by advertisement dated 24.3.2012 tenders were invited but the same was withdrawn by the Corporation upon receiving certain complaints and was directed to be re-advertised.

Learned counsel for the petitioners further points out that the petitioners have been agitating this issue earlier also pursuant to the tender invited for user charge for the year 2008-2009 in which the petitioners were also granted contract. However, with regard to dispute relating to parking fee the petitioners filed Writ Petition No. 53357 of 2008 and another writ petition being Writ Petition No. 42177 of 2008. Both these writ petitions are said to be still pending. The petitioners are said to have filed another writ petition being Writ Petition No. 15902 of 2012 challenging the earlier advertisement dated 24.3.2012 but once the advertisement itself was withdrawn the said writ petition was dismissed as withdrawn with liberty to file afresh writ petition. Consequently, the present writ petition has been filed challenging the said advertisement. It is further stated that another writ petition being Writ Petition No. 66059 of 2011 was filed challenging the earlier tender granted in favour of other persons relating to the year 2011-2012 which published on 8.4.2012 but has been dismissed as infructuous on account of subsequent advertisement, namely, advertisement dated 24.3.2012 and 8.4.2012.

Petitioner no.1 is an association of Tempo Taxi Owners, a registered society and petitioner no.2 is the President of petitioner no.1.

In this writ petition the petitioners have challenged the validity of the bye laws notified vide Notification dated 29.3.2006 (Annexure-2 to the writ petition) and have prayed for

quashing of the advertisement inviting tenders dated 8.4.2012 published by the Municipal Commissioner, Kanpur (Annexure-18 to the writ petition) on the ground that the bye laws empowering the Corporation to levy/user charge from the members of its association for plying the autos and tempos within the Corporation limit is illegal, arbitrary in view of the fact that no service or facility is provided by the Corporation to impose such a charge.

Learned counsel for the petitioners submits that the autos, tempos have already paid road tax to the Regional Transport Authority and have also paid registration fee and since no facility or service is provided by the Municipal Corporation, no extra user charge can be demanded from its members.

According to the learned counsel for the petitioners Section 542 Clause (42) of the Act specifically provides for.....“regulating charges for service rendered by any Municipal Authority.” According to him, the tempos and the autos plying within the city limits on the streets which are maintained by the PWD and merely pick up and settle down passengers from point to point and only for halting briefly for the said purpose on the street, no user charge in the shape of parking fee can be imposed by the Corporation as no services are rendered by the Corporation to demand any charge where off.

Sri Sharma, learned Senior Counsel has placed reliance on a Government Order dated 18.7.1998 (Annexure-6 to the writ petition) to assert that the current bye laws framed by the Corporation is contrary to the said G.O. and, therefore, deserves to be set-aside. He submits that in paragraph-3 of the G.O. it is clearly provided that any bye laws framed by the local

body with regard to charging of parking fee will be valid only if two conditions are fulfilled:

(A) The parking area should be clearly specified and no parking fee shall be charged from vehicles other than in the parking area. It is further provided in the G.O. that no parking fee will be charged from the vehicles for briefly halting on the PWD roads.

(B) Where parking fee is charged the local body will provide the facilities of drinking water, waiting sheds and ladies toilets.

The said G.O. further authorizes the District Magistrate to decide whether the local body for charging parking fee have complied with the conditions mentioned above and in case of any dispute regarding the same, the District Magistrate of the area would be the competent authority to decide.

It is submitted that since the auto and tempo owners are already paying annual licence fee to the Nagar Nigam, they cannot be restricted in plying their vehicles on any route, especially when the RTO itself has not fixed any route for plying the vehicle.

The contention of the learned counsel for the petitioners is that for the realization of user charge, the appointment as agents by inviting tenders for the purpose by the impugned advertisement is colourable exercise of power as the bye laws itself do not provide for any route and as such the bye laws as well as the advertisement dated 8.4.2012 deserve to be set aside. It has further been alleged that none of the municipalities or the municipal corporation within the State are charging such user charge but only the Kanpur Municipal Corporation is charging the same without any authority of law.

Learned counsel has relied upon various judgments of the Hon'ble Apex Court with regard to vesting of streets and pavements in the municipalities and the right of the user qua

the municipalities, namely, ***AIR 1980 SC 1785 (State of U.P. Vs. Ata Mohd.)***, ***AIR 1989 SC 1988 (Sodan Singh Vs. New Delhi Municipal Committee and another)***, ***JT 1992 (2) SC 363 (Ahmedabad Municipal Corporation Vs. Dilbagsingh Balwantsingh and others)***, ***AIR 1993 SC 2313 (M/s. Gobind Pershad Jagdish Pershad Vs. New Delhi Municipal Committee)*** and the judgment of this Court passed in ***Writ Petition No. 3119 of 1987 (Sanjay Agarwal and another Vs. Nagar Mahapalika, Allahabad and others)*** dated 20.4.1999.

On the strength of the aforesaid judgments it has been emphasized that the streets can not be encroached by any one including the Corporation, inasmuch as, the tempo stands cannot be allowed to be made either on the road or on the pavement/foot path as the same is impermissible in law as such no user charge can be demanded for use of such streets and land.

All these judgments have elaborately dealt with vesting of streets and encroachment upon the same and regulation of parking as well as the rights of the traders using pavements of the streets for such trading. Since there can be no dispute with the aforesaid pronouncements of this Court as well as the Apex Court, it is not necessary to quote the relevant portion of the aforesaid decisions. Therefore, upon the aforesaid assertions the pleadings in the writ petition and the aforesaid judgments, the claim of the petitioners is that the Municipal Corporation was not within its right to promulgate the bye laws and charge user charge from the auto and tempo vehicles for plying in the State of U.P. within the limits of Municipal Corporation, Kanpur.

Sri M.C.Tripathi, learned counsel appearing for the Corporation, on the other hand, submits that the petitioners' association itself was involved in collection of user charge in

the earlier year and was also granted contract for the same which is the subject matter of Writ Petition No. 53357 of 2008 for the year 2008-2009 and Writ Petition No. 42177 of 2008 filed by the petitioners.

It is submitted by the learned counsel for the respondents that when the petitioners did not deposit the amount under the contract for realization of user charge, the recovery proceedings were initiated which is subject matter of Writ Petition No. 1415 of 2011. Therefore, now his challenge is to the very imposition of user charge for which he himself was agent appointed by the Nagar Nigam for collection is not justified as on one hand he has drawn benefit from imposition of user charge and now on the other hand having not participated in the tender he is precluded from challenging the same. In order to demonstrate that the petitioners were themselves agents of the Corporation for collection of user charges, Annexure-13 of the writ petition has been relied upon by the learned counsel for the respondents which is a list of various operators and fee collected by the petitioner no.2 from them and deposited with Corporation.

Learned counsel for the Corporation further submits that by virtue of Section 272 of the Act the streets within the municipal limits have vested in the Corporation and is under control of the Municipal Commissioner. Under Sections 273, 274 and 277, the Municipal Commissioner has been fully empowered to manage, maintain the streets and can also regulate vehicular traffic thereon.

It is submitted that in the already congested Kanpur city there are more than 8000 autos/ tempos and in order to maintain smooth traffic flow the Corporation has to regulate the movement and parking of these autos/tempos. For

convenience of the public their routes have been assigned from point to point and at the terminal of each route parking areas has been assigned. In some place facilities for public convenience like shed, Benches Urinals etc. have been provided and in other places they are being installed and it is an on going process. In order to maintain the upkeep and for further providing facility, 'user charge' @ Rs. 5/- per day is levied as per bye laws of the Corporation promulgated in exercise of power under Section 541 (42) of the Act.

It has been alleged by the learned counsel for the respondents that by a recent decision of this Court in the case of **Manju Singh Vs. State of U.P. and others, 2007(4)AWC 3733** vide decision dated 16.7.2007 this Court has given elaborate direction for regulating traffic within the local areas of the municipalities and have directed that the Regional Transport Officer and the Additional Regional Transport Officer shall prepare a scheme for respective districts in the State of Uttar Pradesh to provide parking slots, halting places for buses, taxis and other vehicles in consultation with the local body, like Nagar Nigam, Nagar Palika and other authorities expeditiously preferably within a period of two months and the competent authority shall take appropriate and effective steps to enforce the same.

It is submitted that pursuant to the aforesaid direction elaborate plan was drawn and to regulate the tempos and autos etc. 31 places were identified for the said purpose which included existing 21 places which were already in use since 2001. The said identification of places was in consultation with all the relevant authorities which included the District Magistrate and Executive Engineer of Public Works Department and vide letter dated 27.12.2007 no objection certificate was also

granted by the Public Works Department and as such the places have been identified for parking and halting of the aforesaid tempos and routes have also been allocated to streamline their movement. Learned counsel has relied upon Annexure-6 to the writ petition which is a letter of the Assistant Regional Transport Authority, Kanpur Nagar being letter dated 4.1.2008 for submitting that the aforesaid proposal was drawn after meeting with the various association in which the petitioner and his association also participated and the same is also accepted by the petitioner himself in paragraph-12 of the rejoinder affidavit. It is submitted by the learned counsel for the respondents that the documents filed by the petitioner as Annexure-7 to the writ petition, which is in response to the information sought by the petitioner under RTI Act vide letter dated 12.9.2008 discloses that various facilities have been provided at various places. However, there are still places where work is in progress for providing required facilities and as such, upon the own showing of the petitioner it cannot be said that the Corporation does not provide any facility to entitle it to charge user charge from the tempos and taxi operators.

Learned counsel for the respondents has relied upon a Division Bench decision of this Court in the case of **Tika Ram Yadav and another Vs. State of U.P. and others**, reported in **2003 (6) AWC 5245** in which the Division Bench has quoted certain decisions of the Hon'ble Supreme Court wherein it was observed that there is no need for any element of quid pro quo in a regulatory fee. It is submitted that in order to regulate the traffic of city of Kanpur and also in pursuance of the direction of this Court in the case of **Manju Singh (supra)** fee being charged is in fact for regulating the traffic and movement of 8000 tempos and taxis plying in the city and therefore, the

principles of quid pro quo would not apply although the Nagar Nigam do provide certain facilities at the places identified.

According to the learned counsel for the respondents, similar view was also taken by another Division Bench of this Court in the case of **Dr. Chankresh Kumar Jain and others Vs. State of U.P. and others**, reported in **2001 (4) AWC 2696**. According to him, there is no illegality in framing of the bye laws which is in consonance of the statutory provisions and have been framed in accordance with the due procedure prescribed and since the Nagar Palika provides for facility and has also to continuously improve the facility inviting tenders for collection of user charge by way of advertisement dated 8.4.2012 is totally justified and does not call for any interference by this Court and the writ petition deserves to be dismissed.

From the aforesaid submissions, the question that arises for consideration is that (I) whether the Municipal Corporation was within its capacity to frame its bye laws? (II) whether the action of the respondents-corporation in issuing the advertisement for calling for tender from the agents so appointed for realizing user charge from the tempos, taxis plying within the limits of Kanpur is illegal and arbitrary and the same is contrary to Government Order dated 18.7.1998.

The city of Kanpur being larger area is covered by the provisions of U.P. Municipal Corporation Act, 1959. The power to make bye laws is referable to Section 541 (42) which lays down that the corporation may from time to time make bye laws with respect to the matters, apart from others, fixing of fees for any licence, sanction or permission to be granted under the Act. So the statute itself provides for the corporation to have power to make bye laws. Section 541 of the Act is quoted herein below:

“541. Bye laws for what purpose to be made.- The Corporation may from time to time make bye-laws, not inconsistent with this Act and the rules, with respect to the following matters, namely:

.....
.....
.....

Sub-clause (42) of Section 541 is quoted herein below:

“regulating the charges for services rendered by any municipal authority;”

Sections 542 to 545 provide for procedure for making the bye laws. The aforesaid provisions are quoted herein below:

“542. Municipal Commissioner to lay draft bye-laws before the Corporation for its consideration.-- It shall be the duty of the Municipal Commissioner from time to time to lay before the Corporation for its consideration a draft of any bye-law which he shall think necessary or desirable for the furtherance of any purpose of this Act.

543. Hearing by Corporation of objections to proposed bye-laws.- No bye-law shall be made by the Corporation unless:

(a) a notice of the intention of the Corporation to take such bye-law into consideration or on after a date to be specified in the notice shall have been given in the official Gazette and in the Bulletin of the corporation, if any, before such date;

(b) a printed copy of such bye-law shall have been kept at the chief Corporation office and make available for public inspection free of charge by any person desiring to peruse the same at any reasonable time from the date of the notice given under clause(a);

(c) printed copies of such bye -law shall have been delivered to any person requiring the same on payment of such fee for each copy as shall be fixed by the Municipal Commissioner;

(d) all objections and suggestions which may be made in writing by any person with respect thereto before the date of the notice given under clause (a) shall have been considered by the Corporation.

544. Bye-laws to be published.- The bye-laws made under Section 541 shall be published in the Official Gazette.

545. Printed copies of bye-laws to be kept on sale.-(1) The Municipal Commissioner shall cause all bye-laws from time to time in force to be printed, and shall cause printed copies thereof to be delivered to any person requiring, the same, on payment of such fee for each copy, as he may fix.

(2) Printed copies of the bye-laws for the time being in force shall be kept for public inspection in some part of the municipal office to

which the general public has access and in such other places, if any, like places of public resort, markets, slaughter-houses and other works or places affected thereby, as the (Municipal Commissioner) thinks fit, and the said copies shall from time to time be renewed by the (Municipal Commissioner)."

From the bye laws annexed as Annexure-2 to the writ petition, it appears that the same has been framed in exercise of the power vested in the corporation under Sections 296, 298, 302 and 541 (42) of the Act for levy of user charge. By Resolution no.1, after the approval of the Municipal Commissioner dated 28.1.2006, draft bye laws were framed and the notice of the intention of the corporation to make such bye laws was made public for its consideration, suggestions and objections were invited after due publication. By a resolution of the corporation being resolution no.2 on 11.3.2006 the said draft bye laws were approved and were sent for publication in the official gazette which was to be enforced from the day of its publication in the official gazette. The said bye laws were finally published in the official gazette on 22.7.2006 and are enforced since then.

Considering the provisions of the Act, the procedure prescribed for framing bye laws to our view, appears to have been complied with and we hold that the corporation was well within its rights to frame the aforesaid bye laws. Therefore, the first question is answered in affirmative.

Now having held that the Municipal Corporation was competent to frame the aforesaid bye laws, we have to see whether imposition of user charge under the aforesaid bye laws is valid and the advertisement inviting tenders for appointment of agents for collection of the said user charge is justiciable in law or not.

Chapter XII of the Municipal Corporation Act is with regard to construction, maintenance and improvement of

streets. Section 272 of the Act provides for vesting of the public streets in the Corporation. Section 273 of the Act further empowers the Municipal Commissioner to manage the aforesaid streets and Section 274 of the Act empowers the Municipal Commissioner to make new public streets. For ready reference provisions of Sections 272,273 and 274 of the Act are quoted herein below:

“272. Vesting of public streets in Corporation.-(1)

Subject to any special reservation made by the State Government from time to time all streets within the City being, or which at any time become, public streets, excepts streets which on the appointed day vested in the State Government or the Central Government or after the said day may be constructed and maintained by an authority other than the Corporation, with the soil, sub-soil and the side drains, footways, pavements, stones and other materials thereof, shall vest in the Corporation and be under the control of the Municipal Commissioner.

(2) The State Government may after consulting the Corporation by notification withdraw any such street with the soil, sub-soil, and the side drains, footways, pavements, stones and other materials thereof from the control of the Corporation.

273. Power of Municipal Commissioner in respect of public streets.- *(1) the Municipal Commissioner shall from time to time cause all public streets vested in the Corporation to be levelled, metalled or paved, channelled, altered and repaired, as occasion shall require, and may also from time to time widen, extend or otherwise improve any such street or cause the soil thereof to be raised, lowered or altered and may place and keep in repair fences and posts for the safety of pedestrians:*

Provided that no widening, extension or other improvement of a public street, the aggregate cost of which will exceed five thousand rupees or such higher amount as the Corporation may, from time to time fix, shall be undertaken by the Municipal Commissioner unless or until such undertaking has been authorised by the Corporation.

(2) With the sanction of the Corporation given in accordance with the rules and bye-laws in force in that behalf, the Municipal Commissioner may turn, divert, discontinue the public use of, or permanently close the whole or any part of a public street vested in the Corporation and upon such closure may, subject to the previous sanction of the State Government and the Corporation dispose of the site of such street, or of the portion thereof which has been closed, as land vesting in the Corporation.

274. Power to make new public streets.- *The Municipal Commissioner, when authorised by the Corporation in this*

behalf, may at any time-

(a) lay out and make a new public street;

(b) agree with any person for the making of a street for public use through the land of such person, either entirely at the expense of such person or partly at the expense of such person and partly at the expense of the Corporation, and may further agree that such street shall, on completion, become a public street and vest in the Corporation;

(c) construct tunnels, bridges, causeways and other works subsidiary to the layout and making of a new public street;

(d) divert or tun an existing public street vested in the Corporation or a portion thereof.”

Considering the aforesaid provisions it is clear that the streets within the Municipal Area vests with the Corporation and the Municipal Commissioner has power to manage the said streets.

Section 277 refers to the power of the Municipal Commissioner to prohibit use of public streets for certain kinds of traffic which is quoted herein below:

“277. Power to prohibit use of public streets for certain kinds of traffic.- (1) *It shall be lawful for the Municipal Commissioner with the sanction of the Corporation to-*

(a) prohibit vehicular traffic in any particular public street vesting in the Corporation so as to prevent danger, obstruction or inconvenience to the public by fixing up posts of both ends of such street or portion of such street;

(b) prohibit in respect of all public streets, or particular public streets, the transit of any vehicle of such form, construction weight, or size or laden with such heavy or unwieldy objects as may be deemed likely to cause injury to the roadways or any construction thereon, or risk or obstruction to other vehicles or to pedestrians along or over such street or streets, except under such conditions as to time, mode of traction or locomotion, use of appliances for protection of the roadways, number of lights and assistants and other general precautions and the payment of special charges as may be specified by the Municipal Commissioner generally or specially in each case.

(2) Notices of such prohibitions as are imposed under sub-section (1) shall be posted up in conspicuous places at or near both ends of the public streets or portions thereof to which they relate, unless such prohibitions apply generally to all public streets.”

Sections 292 and 293 of the Act deal with the power of the Municipal Commissioner with respect to prohibition and imposition of projection upon the streets etc. Sections 294, 295 and 296 of the Act provide for power to the Municipal Commissioner in regulating and managing the streets which has vested in the Municipal Corporation. From these provisions it is clear that the Municipal Commissioner also has the power to manage, regulate and control vehicular traffic on the streets.

Section 117 of the Motor Vehicles Act, 1988 provides for the power of the State Government or any authority authorized by it for providing parking places and halting stations. Section 117 of the Motor Vehicles Act is quoted herein below:

“117. Parking places and halting stations-. The State Government or any authority authorised in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.”

Rule 195 of the U.P. Motor Vehicles Rules, 1998 empowers the District Magistrate with the authority of the State Government in consultation with the local authority to specify places for parking and halting and for prescribing fee for the said purpose. Provision of Rule 195 of the Motor Vehicles Rules, 1998 is quoted herein below:

“195. Stands and halting places.-(1) District Magistrates are authorised by the State Government to take action under Section 117 of the Act and may, in consultation with the local authority having jurisdiction in the area concerned, by the creation, of traffic signs or notices-

(a) specify places within the territorial area of a municipality or Cantonment Board or within such other limits as he may define where alone public service vehicle or any specified class or

classes of public service vehicles and /or goods carriages may stand indefinitely or for such period as may be specified or public service vehicle may stop for a longer time than is necessary for the taking up and setting down of passengers: or

(b) conditionally or unconditionally prohibit the use of any specified place, or any place of a specified nature or class as a stand or halting place:

Provided that no place which is privately owned shall be specified as a stand or halting place without the previous consent in writing of the owner thereof.

(2) When a place has been specified by traffic signs or notices, as being a stand or halting place for the purpose of this rule, then, notwithstanding that the land is in possession of any person the place shall, subject to the provisions of these rules, be deemed to be a public place within the meaning of the Act and the District Magistrate may enter into an agreement with or grant a licence to any person for the provision or maintenance of such place including the provision or maintenance of the buildings or works necessary thereto, subject to the termination of the agreement licence forthwith upon the breach of any condition thereof and may otherwise make rules or give directions for the conduct of such place including rules or directions:-

(a) prescribing the fees to be paid by the owners of public service vehicle using the place and providing for the receipt and disposal of such fees;

(b) specifying the public service vehicles or the class or classes of public service vehicles which shall use the place or which shall not use the place;

(c) appointing a person to be the manager of the place and specifying the powers and duties of the manager;

(d) requiring the owner of the land, or the local authority, as the case may be, to erect such shelters, lavatories, and latrines and to execute such other works as may be specified in the rules or in the direction and other works as may be specified in the rules or in the direction and to maintain the same in a serviceable, clean and sanitary condition;

(e) prohibiting the use of such place by specified persons or by other than specified persons.

(3) Nothing in sub-rule (2) shall require any person owing the land, which has been appointed as a stand or halting place, to undertake any work or to incur expenditure in connection therewith without his consent and in the event of any such person declining to carry out such work or to incur such expenditure or failing to comply with any rule or direction made or given to him under this rule, the competent authority may prohibit the use of such a place for the purpose of this Rule.”

The aforesaid provision empowers the District Magistrate

in consultation with the local authority to identify and specify places where public vehicle which is primarily used for transportation or carrying passengers from one place to another can be allowed to stand or halt on the footpath. From the aforesaid provision it is also clear that it is the obligation of the corporation to maintain the streets, pavements and footpath and also to restrict and regulate vehicular traffic on the same.

This Court vide its judgment in the case of **Manju Singh Vs. State of U.P. and others (supra)** dated 16.7.2007 has given elaborate directions for regulating and identifying places for parking and regulating vehicular traffic within the municipal area in a planned and streamlined manner.

The relevant direction contained in the judgment are quoted herein below:

"XIX. XIX. The State shall ensure that in every city, places should be earmarked for the bus and tempo-taxi stand. The drivers of buses and tempo-taxi should not be permitted to stop their vehicles at the place of their choice creating hindrance to traffic movement. The bus and tempo-taxi stand should be made disabled-friendly. No encroachment should be permitted adjacent to the place near tempo-taxi and bus stand for keeping a water trolley or other radies.

XX The State shall immediately remove the hazardous boards, neon signboards and other fixtures keeping in view the Supreme Court's judgment in M.C. Mehta's case (supra).

XXII. The State authorities are further directed to constitute a Committee consisting of members of the local bodies like Nagar Nigam or Nagar Palika, Transport Department, Traffic Department, Developmental Authority and Lok Nirman Vibhag and if necessary, a nominee of the District Magistrate in every district of the State to monitor the removal of roadside encroachment, hazardous boards, new neon light etc. and also find out the places to earmark parking slots, tempo and taxi, bus-stand and create prohibited parking zone, one way driving etc. keeping in view the necessity for smooth vehicular movement.

So far as State capital, Lucknow is concerned, let a Committee, headed by Mr. D.S. Bhatnagar, Former Director General of Police, Municipal Commissioner, Lucknow or his nominee, Secretary, Lucknow Development Authority, Superintendent of Police (Traffic) and Regional Transport Officer, Lucknow (R.T.O.) be constituted. Mr. Farid Ahmad, an advocate of this Court shall be member of the Committee and shall also be an amicus curiae to assist the Court and he shall be entitled for fee and expenses in accordance with rules. The Committee may hold its meeting minimum once in a month either in the premises of Lucknow Nagar Nigam or Lucknow Development Authority after mutual discussion. Lucknow Nagar Nigam or Lucknow Development Authority, as the case may be, shall provide necessary assistance to convene and regulate the meeting. In the absence of Sri D.S. Bhatnagar, Municipal Commissioner shall preside the meeting of the Committee."

It has been alleged that pursuant to the aforesaid direction and in consultation with the District Magistrate, PWD, RTO, Municipal Corporation, Traffic Department as well as Associations of Tempo and Taxi Owners, certain places were identified for halting, setting down and taking up passengers by tempos and taxi drivers.

Annexure-6 to the writ petition is one such letter to the District Magistrate, Kanpur Nagar by the Regional Transport Officer dated 4.1.2008 indicates that 31 places for halting and parking have been identified for which the District Magistrate has been authorized under the Motor Vehicles Act, 1988 and Rules 195 of the Motor Vehicles Rules, 1998, therefore, it was well within the domain of the Municipal Corporation in consultation with the concurrence of the District Magistrate and other departments to identify places from where the tempos and taxi would be allowed to halt for the purposes of setting down and taking up passengers and specific places where they can park their vehicle upto a specified time.

It is undisputed fact that there are about more than 8000 such auto rickshaws and tempos within the city of Kanpur which are used for the purposes of transportation of public from one place to another upon charging fare from the passengers.

The 8000 and increasing numbers of tempos and autos cannot be allowed to operate in an unregulated manner. The Corporation is duty bound to regulate and streamline traffic on the roads. Therefore, for proper movement of these tempos and to provide utmost benefit to the passengers, routes have been specified. Identified numbers of tempos are allowed to ply only on those routes. Places and spots are also specified from where they can pick up and set down passengers. It is for the benefit of the passengers that they would know that from a particular spot they can hire an auto/tempo for a particular destination and they would also know from where they can embark and disembark the said taxi. Such identification of place is also beneficial for the tempo taxi as on a specified place passengers would be waiting to hire the tempo taxi. Such activity, so far as the corporation is concerned, is a regulatory activity and in public interest. But so far as the tempo taxi owners are concerned, it is a commercial activity as the auto and tempo drivers do their business of ferrying passengers on payment from one place to another.

In our considered view, the aforesaid activities of streamlining and regulating more than 8000 autos and tempos on the congested road of the city would require traffic regulations and manpower so that these autos and tempos do not operate in a haphazard way and clog the flow of traffic. This would necessarily mean incurring expenditure by the Corporation by providing its own man power or hiring

some agency to do it. Such an arrangement would fall within the category of regulation and facility provided to the tempo/taxi operators as well as the passengers and for regulation of such facility imposition of user charge cannot be held to be either arbitrary or illegal.

Section 541 sub-clause(42) clearly stipulates that the Corporation can frame bye laws for regulating the charges for services rendered by it. Regulating the movement of these tempos and autos would, in our view, fall within the category of services rendered and the beneficiary of such service is the tempos/autos operators.

That apart, if places are identified and specified for halting of these tempos for the purposes of taking up and setting down passengers it would mean more footfalls on that spot and the Corporation being a civic body will also be under obligation to maintain cleanliness and hygiene at such places which would require deployment of man power which in turn would incur expenditure and, therefore, that also will fall under the category of services rendered.

So far as G.O. dated 18.7.1998 prohibiting parking fee for vehicle parked at places other than the specified parking area is concerned, the same cannot be said to have been violated by framing of the aforesaid bye laws as specified area has been earmarked for specified parking for a period of time and parking fee is, accordingly, charged.

From the document filed by the petitioner himself being information given to it under the RTI Act (Annexure-7 to the writ petition) also indicates that at certain places facilities are provided and at certain places it is in the process of being provided. We have to also consider that by the advertisement dated 24.3.2012 the tenders that have been

invited are only for the purpose of realization of Rs. 5/- per tempo per day as the user charge is not in the nature of parking fee but as discussed above, providing facility of identification of places for setting down and taking up passengers on specific route at specific places and the maintenance will fall within the category of service rendered and the same cannot be said to be in any manner in violation of G.O. dated 18.7.1998 (Annexure-6 to the writ petition).

In the aforesaid G.O. dated 18.7.1998 so heavily relied upon by the petitioners, it is provided that the District Magistrate would be the authority competent to see whether at the relevant parking places the aforesaid facilities have been provided or not and in case any dispute arises with regard to the same, he will consider and pass appropriate order. Therefore, if the petitioners have any grievance with regard to the specified parking places and such facilities have not yet been provided and parking fee is being charged, they can always approach the District Magistrate, who would consider their demand and pass appropriate orders in accordance with the G.O. dated 18.7.1998.

In the present case, user charge has been fixed at Rs. 5/- per day as per vehicle which, we are of the considered view, is neither arbitrary nor vexatious. Consequently, the Municipal Corporation inviting tenders for collection of user charge from such vehicles cannot be faulted on this ground, the same in accordance with law. Thus, the question No.II is answered in the negative, against the petitioner.

However, we cannot shut our eyes to the fact of remarkable increase of population for which the authorities

have not been able to cater and meet the growing demand of stricter, regulation of traffic. They are under obligation to maintain safety and security on the streets and provide all possible facility to the commuters.

In view of the foregoing discussion, the petitioners are not entitled for the reliefs as claimed in the writ petition. The writ petition is dismissed subject to observations as made above and liberty as provided for. The parties shall bear their own cost.

Order Date :- 19.10.2012

SKM