

(1991) 02 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 1854 of 1986

Acme Metal Industries Private Ltd.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-02-1991

Acts Referred:

Factories Act, 1948 — Section 6(1)

Citation : (1991) 3 BomCR 631 : (1991) 63 FLR 331 : (1994) 3 LLJ 104

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : V.R. Bhandare, for the Appellant; N.S. Manudhane, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Daud, J.—This petition under Article 226 of the Constitution of India takes exception to the vires of the fee recoverable u/s 6(1)(d) of the Factories Act, 1948 (Act) or in the alternative the increase in the quantum proposed to be levied vis-a-vis the notification bearing No. FAC-2085/9848/Lab-4 dated 21.5.1986.

2. Petitioner is a Company registered under the Indian Companies Act and having a factory for hot-rolling copper wire bars into flat rods and allied jobs. It has in its employ less than 50 workers and uses electric energy of less than 750 H.P. Its factory is a factory within Section 2(m) of the Act. Section 6(1) of the Act enables the State Government to make rules for various purposes, one of them being-

"(d) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licenses".

The general power to make rules is conferred upon the State Government by Section 112 of the Act which says-

"The State Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act".

Until the promulgation of the notification of 21.5.1986, the renewal fee for factories of the size and kind run by the petitioner was Rs. 1,000/- per year. The notification enhanced the renewal fee to Rs. 1,500/- per year. Petitioner contends that the levy of the fee itself is unconstitutional. Firstly, no benefits are conferred on the petitioner or any other licensee for the licence fee paid by it. Far from rendering any service to the licensees, the respondent checks and curbs the activities of licensees like the petitioner. The performance budget for the year 1986-87 brought out by the Industries, Energy and Labour Department of the respondent shows that the expenses were much less than income generated by the licence fees whether for registration of new factories or renewal of old ones. A number of posts created for the establishment looking after the implementation of the Act had been lying vacant since years. The expenditure estimated on these posts was taken into consideration. The Inspectors of Factories visit factories only once a year. This was meagre service for the exorbitant fee charged. In the year 1984-85 the surplus of income over expenditure was in the vicinity of Rs. 37,86,000/-. Industrial accidents in Maharashtra were very few and insignificant. Right from the year in which a licence and a renewal fee had been prescribed, there had been a constant increase in the revenue over the expenditure. The inspecting staff was not even available for the full time at the office. Most of the time the Inspectors were out of office. Petitioner's right to carry on a trade or vocation without reasonable fetters was violated as a result of the imposition of a fee u/s 6(1)(d) of the Act. At any rate, the enhancement by as much as 50% was wholly unreasonable. Hence a declaration that the respondent had no power to levy any licence fee, or, at any rate, increase the same.

3. The return filed by the respondent justified the impost. It is contended that the impost is justified under the Act and the same gives the respondent the power to vary, amend, alter or rescind the scale of fees prescribed.

4. The first question to be decided is whether the fee prescribed by Section 6(1)(d) of the Act is a tax or a fee? The fact that the two terms signify different things is indisputable. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, the distinction between a tax and a fee was brought out. The Court after quoting Latham C.J. in *Matthews v. Chicory Marketing Board* 60 CLR 263 said:-

"A tax" according to learned Chief Justice, is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment "for services rendered". This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the

taxpayer's consent and the payment is enforced by law...Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some Governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay".

Under Section 6(1)(d) of the Act the Government has been given power to prescribe the fees payable for registration and licensing and for the renewal of licences. However, the Act makes no provision for the fees collected being credited to a separate fund. The collections go to the general revenues. The Act also does not lay down that collections made are to be used only for the enforcement of the Act. However, the fact that the charges are described as a fee may be taken as an indication that the legislature intended some form of return in the shape of services rendered or expected to be rendered. It is petitioner's case that far from rendering any service, respondent checks its activities and in general, create difficulties for it. This is to be expected from employers critical of the intrusion of the Welfare State into their profit making devices. However, we have to see things from the Society's point of view. Factories employ labour which can be exploited and carry on trades which are hazardous in nature and affect the convenience and comfort, if not, the safety of the people in the vicinity of the places where they are located. The State in the interests of Society has to enact laws to exercise an effective supervision lest the running of factories result in exploitation of labour or result in a danger or nuisance to the residents of the neighbourhood. One who carries on an occupation of this nature cannot be expected to be free from curbs and restraints legally enforceable. That is why the Act was brought into force. Being a beneficial measure, a large staff is required to enforce its provisions: This staff has to be provided office and residential accommodation and various other facilities. The enactment levied a certain charge upon the owners and occupiers of the factories so as to reimburse the State for the expenditure incurred or expected to be incurred in the implementation of the Act. Counsel for the petitioner contends that even if it be believed that some form of service is rendered to the factory owners, the quantum must have some sort of correspondence to the expenditure incurred in the rendition of service. In support of this submission he relies upon *Om Parkash Agarwal and Others Vs. Giri Raj Kishori and Others*, . In that case though a fund had been created by the statute to which fund the cess collectable under the enactment had to be credited. It was held that the collections were so disproportionate to the likely expenses that they in fact amounted to a tax. The Court said:-

"The relevant entry in the case in question in entry 28 dealing with Markets and Fairs but the amount so levied should be truly a fee and not a tax with the mask of a fee. As there exists no correlation between the amount paid by way of cess under the Act and the services rendered to the person from whom it is collected

i.e. dealer, the impost lacks the essential qualification of a fee namely "that it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering services". The levy of cess under the Act is not a fee but it is a tax not leviable by the State. The levy of the cess u/s 3 is, therefore, liable to be quashed".

The primary reason for coming to this conclusion was that the fund created by the Haryana Rural Development Fund Act (12 of 1983) resulted in the vesting of the same in the State. The amounts credited to the fund could be as freely spent as were the amounts credited to the Consolidated Fund of the State. But there is a great difference between the position in the Haryana case and the position in the instant case. First, it is necessary to look into the facts. Petitioner refers to three posts viz. that of a Lady Inspector of Factories, an Inspector of Notified Factories (Artist) and a Project Operator, two of which according to the petitioner have been in existence for years together without any steps having been taken to recruit persons thereto. The third post is that of an Inspector of Notified Factories for drawing pictures to publicise safety measures. Since 1962 the said Inspector has drawn only four pictures. This is trotting out an extreme case to support an extreme argument. Petitioner next says that the Inspector of Factories visit factories barely once a year. Factory visits are not the only tasks assigned to Inspectors, of Factories and, it is not possible to believe that all factories are visited only once a year. There may be many which are visited more than once and the number of visits made to different establishments would differ from trade to trade, area to area and establishment, to establishment. Much is made of the fact that the State has been making a surplus of Rs. 37,86,000/- in the collections over the expenditure by way of fees u/s 6(1)(d) of the Act. A surplus generated by the existing revenue so says counsel for the petitioner certainly did not justify the enhancement of the renewal fees. Does the law require an exact correlation between the impost and the service rendered ? In *Municipal Corporation of Delhi v. Mohd. Yasin Chinnappa Reddy J.* had this to say:-

" Apparently the High Court was under the impression that the fees collected, should be shown to be related to expenditure incurred directly and exclusively in connection with the slaughtering of animals in its slaughter houses and also, shown as such in the municipal budget. This was a wholly erroneous approach, in the light of what we have said earlier. We have explained earlier that the expenditure need not be incurred directly nor even primarily in connection with the special benefit or advantage conferred. We have also explained that there need not be any fastidious balancing of the cost of the services rendered with the fees collected".

Municipal Corporation of Delhi and Others Vs. Mohd. Yasin,

In The State of Maharashtra and Others Vs. The Salvation Army, Western India Territory, , the Supreme Court quoted with approval an earlier decision of the said Court in The Delhi Cloth and General Mills Co. Ltd. Vs. The Chief

Commissioner, Delhi and Others, where it was held that services worth 61 per cent of contribution would be sufficient quid pro quo to make the levy a fee. Following this the Supreme Court in the Salvation Army case (supra) said:-

"So when we find that in this case the organisation has been rendering services worth 62 per cent of the contribution, it cannot be said that there is no correlation between the fee levied and the services rendered".

It was argued that when the levy at the old rate was yielding a surplus there was hardly any need to make a further increase in the renewal fees. This contention cannot be accepted. The need for the additional staff accrues year after year. This is because not only is the number of factories increasing, but also because it is becoming more and more necessary to stream line the services. The provision of facilities like transport etc. is required to police the factories more effectively. The dangers of Courts attempting to interfere with economic legislation has often been commented upon. What the proper levy should be in a matter for the Legislature to decide. It was for this reason that the Supreme Court in P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, overruled the long prevailing earlier decisions of the Bombay High Court in Indian Organic Chemicals v. Chemtax Fibres 83 Bom. L.R. 406 and the Madras High Court in Zenith Lamp and Electrical Ltd. v. The Registrar, High Court, Madras ILR 1968 1 Mad. 247. After a review of the cases on the subject Venkatachaliah J. speaking for the Bench said.

"Nor does the concept of a fee-and this is important - require for its sustenance the requirement that every member of the class on whom the fee is imposed, must receive a corresponding benefit or degree of benefit commensurate with or proportionate to the payment that he individually makes. It would be sufficient if the benefit of the special services is available to and received by the class as such. It is not necessary that every individual composing the class should be shown to have derived any direct benefit. A fee has also the element of a compulsory section which it shares in common with the concept of a tax as the class of persons intended to be benefited by the special services has no volition to decline the benefit of the services. A fee is, therefore, a charge for the special service rendered to a class of citizens by Government or Governmental agencies and is generally based on the expenses incurred in rendering the services".

To sum up the fee levied u/s 6(1)(d) of the Act cannot be said to be an unconstitutional impost. Services are rendered and a fee can be recovered for the said service. Next, the law does not require that there should be an exact correlation between the revenue and the expenditure to justify the levy of any fee. Third, the alleged disproportion between the revenue and the expenditure is not such as to invalidate the fee. Last, the enhancement in the renewal fee is not totally unjustified having regard to the increasing wage bill and other charges payable by the Government for the staff and other requirements of an efficient discharge of its responsibilities under the Act. For all these reasons the petition is without merit and hence the order.

ORDER

Rule discharged with parties being left to bear their own costs.