
(1971) 08 MAD CK 0059
In the Madras High Court

A.R. Damodara Mudaliar and Company, by partner A.R. Damodaran

APPELLANT

Vs

The Commissioner, Nellikuppam Municipality

RESPONDENT

Date of Decision : 03-08-1971

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 249

Citation : (1973) 86 LW 28 : (1972) 1 MLJ 389

Hon'ble Judges : K.S. Palaniswamy, J;K.S. Palaniswami, J

Bench : Division Bench

Judgement

K.S. Palaniswamy, J.—The petitioner is a firm carrying on the business of storing and dealing in diesel oil, kerosene, petrol and other petroleum products as the agents of Burmah Shell at Nellikuppam in South Arcot District. The petitioner has got a petrol bunk at Nellikuppam within the limits of the Nellikuppam Municipality, the respondent herein. On 12th December, 1969, the respondent-municipality passed a resolution enhancing the licence fee in regard to storing or selling kerosene oil and petrol among; other things. The resolution was passed purporting to be in exercise of the powers, u/s 249 and some other sections of the Madras District Municipalities Act, 1920 (hereinafter referred to as the Act). The notification containing the resolution was published in the South Arcot District Gazette, dated 12th December, 1969. The item relating to storing or selling kerosene oil or petrol was item 33 of the notification.. It reads:

Storing or selling kerosene Rs. P. oil or petrol- (a) Large scale. .. 200.00 (b) Medium. .. 50.00 (c) Small scale. .. 15.00.

The petitioner challenges the validity of this notification on several grounds. Though in the affidavit filed in support of this petition allegations have been made challenging the vires of Section 249 of the Act, no argument was advanced in that respect. The other contentions urged to show that the notification is invalid may be dealt with seriatim.

2. Sub-section (1) of Section 249 reads:

249(1). The council may publish a notification in the district gazette and by beat of drum that no place within municipal limits or at a distance within three miles of such limits shall be used for any one or more of the purposes specified in Schedule V without the licence of the Executive Authority and. except in accordance with the conditions specified therein.

(proviso not relevant.)

Chapter XVI of the Act deals with procedure and miscellaneous matters. Section 321 lays down the general provisions regarding licence and permissions. Sub-section (1) of that section reads:

321(1). Every licence and permission granted under this Act or any rule or by-law made under this Act shall specify the period, if any, for which and the restrictions, limitations and conditions, subject to which the same is granted, and shall be signed by the Executive Authority.

Schedule V enumerates the purposes for which premises cannot be used without a licence u/s 249. The clause with which we are concerned is Clause (q), which reads:

Storing any explosive or combustible materials:

Provided that no licence shall be required for storing petroleum and its products in quantities exceeding those to which the operation of this Act is limited by the provisions of the Petroleum Act, 1934, or the rules or notifications issued thereunder.

This provision corresponds to the relevant entry in Schedule VI of the Madras City Municipal Corporation Act, 1919. There, the relevant entry reads:

Petroleum products--Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever:

Provided that no licence under this Act shall be required for storing petroleum and its products in quantities exceeding those to which the operation of this Act is limited by the provisions of the Petroleum Act, 1934, or the rules or notifications issued thereunder.

3. It would be seen from a reading of Section 249 of the Act with Clause (q) of Schedule V that without a licence u/s 249, no premises could be used for storing any explosive or combustible material. It is, however, subject to the proviso that no licence is required for storing petroleum and its products in quantities exceeding those to which the operation of the Act is limited by the provisions of the petroleum Act or the rules or notifications issued thereunder. As per the rules framed under the Petroleum Act of 1934, the authority to levy the licence fee and grant the licence in respect of storage of petroleum in a tank in connection with the pump out-fit for fuelling motor conveyance when the quantity to be stored

exceeds 1,000 gallons but does not exceed 5,000 gallons, is the Chief Inspector or Inspector of Explosives authorised by the Chief Inspector. It is not in dispute that the petitioner's storage capacity exceeds 1,000 gallons. The storage capacity is 2,000 gallons for diesel and petrol. By reason of the proviso to Clause (q) of Schedule V read with the rules under the Petroleum Act, it follows that no licence shall be required under the District Municipalities Act for storing petroleum and its products in quantities exceeding 1,000 gallons. It is contended on behalf of the petitioner that by reason of this provision, it is incompetent on the part of the respondent-municipality to insist on the taking of a licence by the petitioner whose tank storage capacity is 2,000 gallons. No argument was advanced on behalf of the respondent to meet this objection, except pointing out that previously the petitioner was taking out licence without demur and that, therefore, the petitioner is not entitled now to object to the increase in the rate of licence fee. There is substance in this argument. There can be no estoppel against the petitioner. Even if the petitioner had taken out licence previously without protest, it is open to the petitioner to refuse to take out licence as required under the impugned notification, if the petitioner is able to show that the demand for licence is unwarranted by law. On this simple ground the impugned notification has to be quashed.

4. Mr. Krishnaswami Ayyar, appearing for the respondent, however, contended that by virtue of Section 321 of the Act, it is open to the respondent-municipality to demand the licence fee as provided in the impugned resolution. Section 321, already extracted, merely contains provisions regarding licence and permissions. It inter alia requires what the licence and permission granted under the Act should contain, namely the period for which and the restrictions and limitations and conditions subject to which the licence or permission is granted. By no stretch of logic it could be said that under the provisions of Section 321 it is open to the municipality to require a licence to be obtained either for storing or selling petroleum and its products in the face of the express prohibition contained in the proviso to Clause (g) of Schedule V.

5. What Clause (q) of Schedule V contemplates is only storing any explosive or combustible materials. It does not contemplate sale of any explosive or combustible material. But the impugned notification requires licence to be obtained not only for storing but also for "sale". It is rightly contended on behalf of the petitioner that this provision requiring a licence to be taken for sale is clearly beyond the competence of the municipality. Sale cannot be considered as an incident of storage. In the absence of express provision requiring licence to be taken for sale, it was beyond the competence of the respondent-municipality to, pass the impugned resolution, requiring licence not only for storage but also for sale.

6. The impugned resolution does not specify how much fee is payable for storing and how much fee is payable for selling. It is generally mentioned as "storing or selling kerosene oil or petrol." In the absence of any indication to show how

much is apportionable for storing and how much is apportionable for selling, the entire levy of fee is invalid, even if the fee for storing can be held to be valid for any reason.

7. Prior to the impugned resolution, the municipality was levying two rates of licence fee, one at Rs. 30 and another at Rs. 10. The former was said to be for "large scale storage", and the latter for "small scale". Under the impugned resolution, three categories are mentioned: (1) large scale; (2) medium scale; and (3) small scale for which the rates of fees have been fixed as Rs. 200, Rs. 50 and Rs. 15 respectively. It is rightly contended on behalf of the petitioner that the classification as made above is vague and indefinite without any guide-lines to determine what is large scale, what is medium scale and what is small scale, and that on account of vagueness also the notification is liable to be struck down. It is contended on behalf of the respondent that the petitioner was a dealer with storage in large scale that such persons dealing in petrol know what is large scale storage and what is small scale storage and that, therefore, there is nothing vague in the classification. I am unable to accept this argument. The classification must indicate the basis upon which the different rates are specified. What may appear large scale to one person may not appear so to another. On the ground of vagueness also the impugned rates are vitiated.

8. Lastly it was contended on behalf of the petitioner that the steep rise of the levy of Rs. 30 as originally obtaining to Rs. 200 was out of all proportion and that the levy is in the nature of tax, as there are no indications to show on what basis the levy has been raised from Rs. 30 to Rs. 200. To meet this argument, it is contended on behalf of the respondent that after the respondent-municipality was formed in the year 1966 as a result of the upgrading of the Nellikuppam Panchayat, it became necessary for the municipal council to consider various means of raising necessary funds for meeting the extra expenditure and that having regard to the services rendered and the cost thereof, it became necessary for the municipality to increase the licence fee. It is further contended that for the purposes connected with sanitation and public health works, the municipality has to expend a large amount and that the increase in the licence fee was only for the purpose of meeting the extra cost involved under these heads. A reading of the counter-affidavit filed on behalf of the respondent does not make out whether the increase in the licence fee was made for the purpose of meeting the extra cost involved in providing for sanitation and public health or whether it was made for the purpose of raising additional revenue for the municipality consequent upon the upgrading of the panchayat. Absolutely no materials are placed by the respondent to show the basis upon which the rate of Rs. 30 that was obtaining previously, was raised to Rs. 200. It is true that it may not be possible for the municipality to accurately apportion the cost involved in the maintenance of supervisory staff in connection with the petrol bunks as against the cost involved for other matters connected with public health. But certainly it is necessary on the part of the respondent to indicate a reason-fable apportionment when a supervisory agency is necessary for a number of

purposes. It would no doubt be difficult to say how much is required for one item. If a reasonable apportionment is indicated it would not be open to the Court to interfere with the apportionment. But in the absence of any indication whatsoever it has to be held that the increase from Rs. 30 to Rs. 200 is arbitrary and unjustified. What is proposed under the impugned notification is only a licence fee and not tax. In the absence of any indication to show that what is proposed to be levied is by way of reimbursement of the cost involved, the levy is liable to be struck down. The difference between tax and fee is too well known and it is needless to refer to the several authorities bearing on that point. The leading authority is the decision of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, At page 358 the distinction between fee and tax is pointed out. In substance, the essential characteristic of a fee is *quid pro quo*, whereas it is not so in the case of tax. In other words, fee is a charge for special service rendered to the individual by some governmental agency, whereas a tax is a compulsory exaction of money by public authority for public purpose enforceable by law and is not payment for services rendered. In the absence of any indication in the instant case to show that there was justification for making the steep rise in the rate from Rs. 30 to Rs. 200, the levy is liable to be struck down on that ground also.

9. For all the foregoing reasons, I accept the case of the petitioner and hold that the impugned resolution of the municipality is invalid in so far as it relates to kerosene oil, petrol and diesel oil, and other petroleum products. The writ petition is allowed. No order as to costs.