**(2004) 07 KAR CK 0039**

**In the Karnataka High Court**

**Case No :** Writ Appeal Nos. 8040 of 2003 (LB-RES) and 1102 of 2004 connected with Writ Appeal Nos. 1549 to 1558, 3527, 5370 to 5459, 3526, 5176 to 5214, 3528, 5460 to 5498, 5608 to 5616, 3489 and 5341 to 5369 of 2001

Bangalore Mahanagara Palike APPELLANT

Vs

Shanbhag Restaurant, Bangalore and Another RESPONDENT

**Date of Decision :** 14-07-2004

**Acts Referred:**

Karnataka Municipal Corporation Act, 1976 — Section 148

**Citation :** (2004) 6 KarLJ 373

**Hon'ble Judges :** N. K. Jain, C.J.;Ajit J. Gunjal, J

## Judgement

N.K. Jain, C.J.-Hubli-Dharwad Municipal Corporation, Hubli has filed Writ Appeal Nos. 1549 to 1558 of 2001 against the common order dated 23-1-2001 passed by the learned Single Judge in W.P. Nos. 30896 and 30897 of 1997 and connected matters (Hotel Ayodhya, Hubli v Hubli-Dharwad Municipal Corporation, Hubli). The learned Single Judge quashed the enhancement of licence fee under Annexure-A, dated 28-6-1997 and the notification under Annexure-B, dated 28-8-1997 and gave liberty to take steps by following the procedure specified under the Act in the light of Chapter X, Chapter XVII and Chapter XXI as well as Section 148 of the Karnataka Municipal Corporations Act, 1976 (for short, ''the KMC Act'').

W.A. Nos. 3527 and 5370 to 5459 of 2001; W.A. Nos. 3526 of 2001 and 5176 to 5214 of 2001; W.A. No. 3528 of 2001 along with W.A. Nos. 3526 and 5460 to 5498 of 2001; and W.A. Nos. 3489 and 5341 to 5369 of 2001 are filed by the Bangalore Mahanagara Palike against the common order dated 28-2-2001 passed in W.P. Nos. 6677 to 6716 of 2001 and connected matters. The learned Single Judge following the decision in W.P. Nos. 30896 to 30897 of 1997 disposed of the writ petitions and quashed the Notification dated 17-5-2000.

W.A. Nos. 8040 of 2003 and 1102 of 2004 is filed by the Bangalore Mahanagara Palike against the order dated 13-11-2003 passed by the learned Single Judge in

W.P. Nos. 7409 and 7410 of 2002 disposing of the writ petitions in terms of the order dated 23-1-2001 passed in W.P. Nos. 30896 to 30897 of 1997 and quashed the notification dated 17-5-2000.

W.A. Nos. 5608 to 5616 of 2001 are filed by the Bangalore Mahanagara Palike against the order dated 7-9-2001 passed in W.P. Nos. 37058 to 37066 of 2000. The learned Single Judge following the order in W.P. Nos. 30896 to 30897 of 1997 and connected matters and also the order in W.P. Nos. 6677 to 6716 of 2001 and connected matters, allowed the writ petitions in terms of the order passed therein and quashed the Notification dated 17-5-2000.

2. Since all the appeals involve common question of law, as agreed they are taken up together and disposed of by this common order. For the sake of convenience, we consider the facts in W.A. Nos. 1549 to 1558 of 2001 pertaining to Hubli-Dharwad Municipal Corporation.

3. The relevant facts, as stated in the appeal, are that the respondents herein were running hotel business obtaining licence getting it renewed from time to time. It is stated that prior to 1997 the respondents were paying licence fee of Rs. 100/- in respect of DOT licence and the highest amount that was to be collected was Rs. 5,000/-. Similarly, in respect of hotel licence the minimum fee to be paid was Rs. 300/- and maximum licence fee was Rs. 1,000/-. The licence fee was to be collected on the basis of the annual rateable value of the building. It is stated that the Corporation by passing a resolution has fixed the licence fee for various items including enhancement of the licence fee pertaining to DOT licence and hotel licence. The same was challenged by the respondents. The learned Single Judge had set aside the resolution and the notification at Annexures-A and B as stated.

4. Sri Ashok Haranahalli, learned Counsel appearing for the appellant submits that the learned Single Judge without considering the matter in right perspective and merely on the definition of ''Tax'' under Section 2(41) of the KMC Act has quashed the resolution dated 28-6-1997 and the notification dated 28-8-1997. The appellant-Corporation has got every right to levy hotel licence fee as well as DOT licence fee. The learned Counsel submits that though the fee is included in the definition of ''Tax'', the learned Single Judge has not considered the element of quid pro quo for the levy of such fees and erred in holding that the Chapter X and Section 148 of the KMC Act is attracted. No procedure is required as held by the learned Single Judge as it is the fee which is collected and not the tax, and the learned Single Judge wrongly relied on the decision in Corporation of Calcutta and Another v Liberty Cinema, AIR 1965 SC 1107. Therefore the direction to follow the general procedure where the tax is to be imposed is not necessary to be followed in these matters and the order of the learned Single Judge is liable to be set aside. He relied on the decision in Delhi Cloth and General Mills Company Limited v The Chief Commissioner, Delhi and Others, AIR 1971 SC 344, wherein it was held that imposing of fees for grant of a licence and renewal, the levy would be in the nature of a fee and not a tax. He also relied on the decision in

 

Secunderabad Hyderabad Hotel Owners Association and Others v Hyderabad Municipal Corporation, Hyderabad and Another, AIR 1999 SC 635, wherein their Lordships observed that the licence fee for lodgings and eating houses is regulatory-cum-compensatory fee for monitoring activities for which licence is given. The element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive. The learned Counsel further submitted that the learned Single Judge has erred in quashing the resolution enhancing the fee and the notification dated 17-5-2000 following the decision in W.P. Nos. 30896 and 30897 of 1997.

5. Sri F.V. Patil, learned Counsel for the respondents submits that the definition of ''Tax'' under Section 2(41) of the KMC Act includes the term ''fee'', and therefore, the procedure has to be followed and the enhancement of the licence fee without following the procedure is bad. He also submits that there is a correlation between the fee levied by an authority and the services rendered by it; that the said question has been considered by the Supreme Court in the case of Government of Andhra Pradesh and Another v Hindustan Machine Tools Limited, AIR 1975 SC 2037. He further submits that licence fee is leviable under Section 353 read with Section 443 of the KMC Act with corresponding Schedule X of the Act. Therefore, the order of the learned Single Judge needs no interference and more so, the Corporation has been permitted to reconsider the matter after following the procedure.

6. We have heard the learned Counsels for the parties and perused the material on record, the relevant provisions of the KMC Act and the case-law cited. We have also considered the affidavit dated 12-7-2004 filed by the respondents on 13-7-2004 as per the direction of this Court given on 5-7-2004, in which it is stated that licences have been renewed as per the original rate.

7. It will be relevant to refer to the following provisions of the KMC Act:

"2. Definitions.-In this Act, unless the context otherwise requires-

(41) ''Tax'' includes toll, rate, cess, fee or other impost leviable under this Act".

Section 2 begins with the words ''unless the context otherwise requires''. The definition of ''Tax'' as per Section 2(41) of the KMC Act includes the toll, rate, cess, fee or other impost leviable. Though the term ''Tax'' includes the fee charges, it has to be read with regard to the facts of the case on hand.

Section 103

"103. Taxes which may be imposed.-Subject to the general or special orders of Government, a Corporation shall.-

(a) after observing the preliminary procedure required by Section 104; and (b) with the sanction of the Government and at rates not exceeding those specified in Schedules IV and VIII levy any one or more of the following taxes".

Section 103 empowers the Corporation to impose tax, which is subject to the general or special orders of the Government. The Corporation while imposing any tax under Section 103 is required to observe the preliminary procedure prescribed under Section 104 and with the sanction of the Government, and any tax imposed should not exceed the rates specified in Schedules IV and VIII. Section 104 requires the Corporation to follow the procedure before imposing any tax specified under Section 103 and to pass the resolution, which shall be published in the Official Gazette and in such other manner as may be prescribed. Section 105 deals with the power of the Government to sanction, modify, refuse or impose conditions on the resolution submitted by the Corporation. Section 106 deals with the publication of sanctioned resolution with notice. The Corporation, under Section 148, is empowered to revise any tax imposed by it once in every five years or whenever the Corporation feels it necessary to enhance the tax, after following the procedure prescribed for imposition of tax.

Section 443 deals with the general provisions regarding licences, registrations and permissions, and it is necessary to refer to the relevant sub-section (2)(a), which reads as follows.-

"(2)(a) Save as otherwise expressly provided in or may be prescribed under this Act for every such licence or permission fees shall be paid in advance on such units and at such rates as may be fixed by the Corporation:

Provided that not more than one fee shall be levied in respect of any purpose specified in more heads than one of Schedule X if such head form part of a continuous process of manufacture and the fee so charged shall not exceed the highest fee chargeable in respect of any of the said purposes".

A bare reading of the above provision makes it clear that for every licence or permission, fee has to be paid in advance on such units and at the rates fixed by the Corporation, save as otherwise expressly provided in or may be prescribed under the Act. Proviso to sub-section (2) clearly states that the fee so levied by the Corporation shall not exceed the highest fee chargeable in respect of any of the said purposes.

8. In other words, it is clear that while enhancing the licence fee, one has to see the conditions of the licence and the relevant provisions of law. It is also to be seen that the collection of enhanced licence fees and its requirement depends upon the size of the premises, direct nexus to the activities, turnover and the extent of activities and at the same time, the fee should not be excessive.

9. No doubt, tax can be levied or collected by authority of law and collection of tax without authority of law is bad. For imposition of tax, the procedure has to be followed. Sri Ashok Haranahalli, learned Counsel for the appellant, has not disputed the legal position to this extent. The main contention is that in the instant case, it is a simple enhancement of licence fees and not a tax as there is a distinction between tax and fees for rendering a specific benefit and service. Therefore, the direction to follow the general procedure is not required.

 

10. We find that ''Tax'' is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment ''for services rendered''. A ''fee'' is a charge for special service rendered to an individual by some Governmental agency. Whether a levy is fee or not, has to be determined by a test as to whether the primary and essential purpose is to render specific services to a specified area or class. The distinction between ''Tax'' and ''Fee'' lies primarily in the fact that a tax is levied as part of a common burden, while a fee is a payment for a special benefit or privilege. Fee is paid for performing a function and is regarded as a sort of return or consideration for services rendered. If the amount collected is very large and the costs incurred by the Government for granting of licences is small and the amounts are used for matters of general public utility, the fee cannot but be regarded as a tax. When the fee collected is merely to compensate for services rendered, it cannot be called a tax but if the object of the fee has no relation to the value of services, it will amount to a tax.

11. As stated, while imposing tax the required procedure has to be followed. In the instant case, what is to be seen is whether the levy is fee or tax, which has to be determined by a test as to whether the primary and essential purpose is to render specific services as stated. Considering the facts of the case, the writ petitioners are running hotel business obtaining licence by making payment of licence fee and the authority has power to enhance the same, and since the appellant-Corporation has issued notification enhancing the fee pertaining to DOT licence and hotel licence, in our view as stated, the procedure as indicated by the learned Single Judge is not required to be followed.

12. The argument of the learned Counsel for the appellant also has some substance which is clear from the definition as it starts unless the context otherwise requires and if we consider and take note of this, we find that the meaning assigned to the definition clause has been wrongly followed mechanically as mandatory and therefore the direction of the learned Single Judge on the basis of Section 353 read with Section 443 of the KMC Act with corresponding Schedule X of the Act is not sustainable and the cases relied upon are not helpful.

13. As the licence fee for lodgings and eating houses is regulatory-cum-compensatory in nature, enhancement of such fee from time to time is necessary. In the absence of satisfying this Court that an element of quid pro quo is required, issuance of notification enhancing licence fee cannot be said to be erroneous, and therefore as suggested, the procedure is not required to be followed while imposing enhancement of licence fee. However, what is necessary to be seen is that the licence fee should not be excessive. Therefore, direction to follow the general procedure before enhancing the licence fee is not necessary in these matters. While quashing the respective notifications, the learned Single Judge has issued the said direction, which is liable to be set aside and is accordingly set aside.

14. In State of Maharashtra v Indian Medical Association and Others, AIR 2002 SC 302, their Lordships referred to the decision in K. Balakrishna Rao v Haji Abdulla Sait, AIR 1980 SC 214, wherein it was held that a definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. Their Lordships also referred to the case in Printers (Mysore) Limited v Assistant Commercial Tax Officer, (1994)93 STC 95 (SC), wherein it was held that it should be remembered that the provisions which define certain expressions occurred in the Act open with the words "in this Act unless the context otherwise requires" which shows that wherever the word so defined occurred in the enactment, it was not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in the definition clause. It was observed that ordinarily where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied.

15. Applying the above case-law to the facts of the given case and as discussed above, we are of the view that while setting aside the enhanced licence fee, the direction to follow the procedure is not necessary in these cases.

16. Under the circumstances, in view of what we have stated, the direction to follow the procedure as required for imposition of tax is not sustainable. Writ Appeal Nos. 1549 to 1558 of 2001 and connected appeals are allowed setting aside the respective orders passed by the learned Single Judge in the writ petitions quashing the respective notifications as indicated above.

17. All the writ appeals are allowed. Writ petitions are dismissed. However, the Municipal Corporation/Mahanagara Palike is free to consider the respective cases independently and pass appropriate orders in accordance with law. Costs are made easy.

 