

(1979) 03 MAD CK 0028
In the Madras High Court
Case No : L.P.A. No. 26 of 1974

Coimbatore Municipality

APPELLANT

Vs

C.G. Subbiah

RESPONDENT

Date of Decision : 09-03-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Tamil Nadu District Municipalities Act, 1920 — Section 25D, 260

Citation : AIR 1980 Mad 130 : (1980) ILR (Mad) 153 : (1979) 92 LW 696

Hon'ble Judges : Varadarajan, J;Gokulakrishnan, J;Balasubrahmanyam, J

Bench : Full Bench

Advocate : K. Alagiriswarnt, for the Appellant; R.R. Sivaramakrishnayya, for the Respondent

Judgement

Gokulakrishnan, J.—The defendant in O-S. No. 1417 of 1965 on the file of the District Munsif Court, Coimbatore is the appellant in this

Letters Patent Appeal. The respondent herein filed a suit for declaration that the levy of fees by the defendant at Rs. 2.50 per day in respect of stall

No. 164 in the occupation of the plaintiff in Tyagi Kumaran Market at Coimbatore is illegal and void, for a permanent injunction restraining the

defendant Municipality and its subordinates from collecting the said enhanced fees from the plaintiff in respect of the said stall Rs. 164 and for costs

of suit.

2. The plaint allegations are as follows: The respondent herein is the occupier of Stall No. 1,64 in Thyagi Kumaran Market in Coimbatore, town,

which is a public market run by the Coimbatore Municipality. The respondent-plaintiff is one of the earliest occupiers in the said market, having

come there over 25 years prior to suit. What was originally rented to the plaintiff

was only an area of vacant ground without any stall or superstructure thereon. Stall bearing No. 164 was put up by the plaintiff at his costs on the area of ground rented to him and is in his occupation.

He has made improvements to it at his own cost. The ground area occupied by the plaintiff is 312 sq. ft. In 1951, the fee for the ground area of the stall was fixed at Rs. 18 per mensem, and the plaintiff was paying at that rate.

3. On 1-4-1964, the defendant Municipality made a general increase in the fees by 25 per cent for all the stalls in the market. The plaintiff was

required to pay Rs. 0.78 per day for the area of stall No. 164 and accordingly he has been paying at that rate. By another resolution of the

Municipality, which is Resolution No. 1309 dated 23-1-1965, the defendant-Municipality has sought to increase the fees for stall No. 164, which

is in plaintiff's occupation from Rs. 0.78 per day to Rs. 2.50 per day. By notice dated 20-3-1965, the plaintiff was called upon to pay the

increased levy with effect from 1-4-1965. It is the further case of the plaintiff-respondent that in respect of other stalls also in the said market the

defendant-Municipality by the above said resolution sought to make some increase. Some of the stall holders have already filed a suit O. S. No.

110 of 1965, against the Municipality in the Sub-Court, Coimbatore, objecting to the increase of fees and obtained interim injunction.

4. It has been further alleged in the plaint that the new increase from Rs. 0.78 per day to Rs. 2.50 per day for the plaintiff's stall No. 164, is

arbitrary, exorbitant, unjust and illegal. The stall in question was put up by him and the Municipality never provided amenities, such as electric

lights, nor attended to the maintenance of the plaintiff's stall, while the stalls put up by the Municipality have been given electricity connection and

are repaired regularly by the Municipality. The plaintiff has alleged that it is neither just nor proper to fix fees in respect of stall No. 164 at the same

rate as in the case of stalls put up by the Municipality.

5. On 12-7-1965, the plaintiff sent a reply to the notice of demand by the Municipality stating that the increase from Rs. 0.7-8 per day to Rs. 2.50

per day was very arbitrary, exorbitant, unjust and, illegal and requested the Municipality to cancel the increases. It is also alleged in the plaint that

the plaintiff met the Chairman, Coimbatore Municipality and requested that the increased fee in regard to his stall should not be insisted upon and

that he was prepared to be bound by the decision of the court in the suit already filed by certain, other stall holders, against the Municipality

objecting to the increase of fees. In spite of this request and also a letter given by the plaintiff to the Chairman as early as 15-7-1965, the

Municipality sent a reply dated 16-10-198-5 stating that the plaintiff had already paid fees at the older rate up to 31-3-1966 and he should pay the

sum of Rs. 627.80 representing the difference calculating the fee at the rate of Rs. 2.50 per day for the period up to 31-3-1966.

6. It has been further alleged in the Plaint that the defendant-Municipality has not observed" any rules or standard for increasing the fees, that the

present levy is opposed to principles of natural justice, that the Municipality cannot exercise its powers in such an arbitrary and capricious manner

and that there is no justification whatever to raise the fees by three times and more. Inasmuch as no rules have been made by the Government in

respect of levy of fee the plaintiff has submitted the present levy is ultra vires and illegal.

7. With the above allegations, the plaintiff filed G. S. No. 1417 of 1965 in the court of the District Munsif, Coimbatore, for the reliefs aforesaid.

8. The defendant-Municipality inter area contended that the plaintiff is a licensee of stall No. 164 in the Municipal Public Market, that the period of

the licence is from 1st of April, to the end of March of the succeeding year, that the same was being renewed annually so long as the licensee was

regular in the payment of fees fixed by the Council and observing the terms and conditions of the licence issued to him and also complying with the

market by laws framed by the Council from time to time and that the Council as per the terms of the agreement is the owner of the entire stall and

not of the site alone,; as, contended by the plaintiff in his plaint it has been further averred written statement that plaintiff is, a licensee of the stall, the

fees being fixed by the Council, and the, terms and conditions of the licence fixed by the agreement between the Council and the stall-holder that

after, the of the year if the stall holder is willing to pay the fees fixed by the council, he has to give up posses-Am of the stall, power which were to

come 1-4-1964, were fixed after careful consideration of the facts and circumstances applicable to the case, that the were enhanced so as to meet

tax and licence fee, held that in this the increased cost of the administration case, the fee collected by the Municipality and with a view to improve

quality from the stall holders is sort the amenities given to the users of rent for that area and it was collect ,of the public market, is used as a

consideration for allowing the neither arbitrary nor capricious as stall holder to occupy that portion and contended by the plaintiff that he vend his

goods in that portion. The increase of fees has been effected In learned District Judge, after considering accordance with, the provisions of the

evidence on record, and observing Municipal laws and is intra vires that there is a definite rationale in fixing of the powers of the Council. It the fee

payable by the various stall holders been further averred that the holders in accordance with the extent of the Council is meeting the cost of main-

trade carried on in that stall and the market of the stalls in the marketing into consideration the rent fetched that the filing of O. S. No. 110 of by

similar stalls owned by private per 1965 by some of the stall holders is not "to pay the enhanced fees and that the Council will refund the amount in

case "the plaintiff succeeded ultimately. The said that Municipality justified its fixing of the fees by stating that the fee is reason the Municipality has

arbitrarily or able when compared to the rents pre-capriciously or in contravention of the valent in that locality.

9. The learned District Munsif, after" the learned District Munsif and disconsidering the oral and documentary evidence in this case-the plaintiff has

not adduced any oral evidence on his 11. Aggrieved by the judgments and side observed that the Finance Committee decrees of the two courts

below, the committee of the defendant-Municipality plaintiff preferred S.. A. No. 1259 of had gone into the matter, inspected the 1968 in this

court. in the second as stall and taken into consideration all peal, it was contended that the basis the circumstances before fixing the rate for the

enhancement, viz, the nature of Rs. 2.50 per day and that there is of the business or the turnover of the no circumstance warranting any con- stall

holder or comparison of licence fee conclusion that this rate of Rs. 2.50 per with similar stalls outside the market day is excessive, though it may be

should not be taken as the basis for many times more than the previous rate levying the licence fee for stalls in the plaintiff was paving. With these

public market owned by the Municipal observations, the trial Court found that Council, that the fees charged by the there is no ground to interfere

with the Municipal Council has to be correlated rate fixed by the Finance Committee and to the services rendered and no add the defendant-

Municipality. Accordingly it dismissed the suit with costs.

10. On appeal, the learned District Judge of Coimbatore, on a consideration Municipal Council to stalls having more Judge subserve the interests

of the Municipal fund and particularly the public health of the Municipality and to gain a safe and reasonable return for its investments on the

construction, establishment and maintenance of the Public market, the Municipality is entitled to review the situation and in the absence Of any

maximum prescribed in the statute, it has the right to increase it. The only possible restriction which equity will bring to bear upon the exercise, of

such power is that" an opportunity should be given to the person affected before the increase is effected. In this case, such opportunity was given

and it was only after such negotiation that the fee has been fixed"".

11. It should not be related to either the nature of the business carried on by the stall holders or the income derived by such stall holders and that

the imposition of different rates of levy on different stall holders results in discrimination. Projections the above contentions, the learned counsel

appearing in the second appeal for the plaintiff, contended that the levy is not justifiable under the provisions of Sec.260 of the District

Municipalities Act, 1920.

12. While disposing of the said second, appeal, Raghavan J. considered the difference between "tax and "licence fee by referring to various

decisions and ultimately accepted the reasoning given by Ramaprasada Rao, J. (as he then was) in W.P. Nos. 913 etc. of 1970 (A. S.

Ramalingam. v. Tirunelveli Municipality In the above said writ petitions, the learned Judge dealing with levy of fees in public market run by -the

Tirunelveli Municipality after discussing" various decisions cited by the respective counsel in that case, held

In conclusion I have to hold that the impost in the instant case is not a tax; but certainly it is not fee which is governed by the doctrine of quid pro

quo but it is a compulsory exaction sanctioned by statute and being annexed with the right of ownership of property, the owner of the public

market has the right to vary it by increasing or diminishing it after notice and after such fixation recover the same from the stall. holders. In the cases

before me, the complaint that they are arbitrary and capricious is without any substance, because there is enough data to find that the licence fee

was increased after negotiation. This would mean that the "increase was made as a result of an implied contract between the parties concerned.

13. The learned Judge observed in his judgment in those writ petitions thus:

As was stated by the learned Judge in *Attorney General v. Colchester Corporation* 1952 2 All ER297, it is for the convenience of the stall holders

that he chooses to remain in the public market in spite of the fact it is averred that cheaper stalls are available outside the market. The various

problems confronting a Municipality are not rigid and cannot be iron jacketed. They are flexible, varied and many. In order. To the last argument of

the learned counsel for the petitioner is of course convincing and ought to be accepted. I have already held that the Municipality has the power to

increase the totality of the fees in the manner it did. It raised the quondam fee by a sum of Rs. 51,000 in all but while distributing the same to the

various stall holders, it did not apply an uniform principle, but for reasons known to the Municipality it chose to levy a lower fee from stall holders

dealing in retail business and a higher fee from those dealing in commission agency. After all on a close scrutiny of the sketch of the public market,

which was produced before me no such difference in rate based on the class of trade can be made, as it would prima facie violate "Art. 14 of the

Constitution of India, The Municipality once it chooses to let out its stalls in a public market to enable the sellers therein to bring together the

persons interested in the articles vended by him for purposes of purchase, etc. can not make further inroads into the absolute right of the occupant

to adopt an avocation or trade of his choice. May be the turnover of a commission agent is more than that of a retailer. But that would not enter

into the computation of the licence fee because it is an irrelevant consideration. Licence fee in the circumstances of the case has no impact upon the

nature of the trade conducted by the stall holder. In those circumstances, Mr. Venugopal is perfectly justified when, he says that as invidious.

distinction has been made between stall holders and stall holder based on the nature of business done by them in the stalls. In my view, such a

differentiation has no intelligible nexus to the object of the impost, as fees or consideration for a licence, cannot be based on the character of the

trade carried on in the stall. 11 such an Impost has to be upheld, there should be statutory sanction behind it. It is doubtful whether a statute itself

can make such a differentiation. As the difference in the fee charged springs from totally irrelevant consideration, the rates must be held to be discriminatory as offending Article 14 of the constitution of India. Thus while upholding the power of the municipality to, levy the fee and increase the same after deliberation, as was done in the instant case, I am unable to agree with the rates as fixed and rationalised by it, as it undoubtedly projects a scheme of classification which cannot be sustained. The rates prescribed by the Municipality have to be held as discriminatory and therefore illegal. It is open to the Municipality to rationally refix the rates on the basis of its resolution dated 10th March 19. Except to the extent indicated at we, the writ petitions are dismissed. There will be no order as to costs,

14. In the second appeal, out of which the present Letters Patent Appeal arises, Raghavm J. has accepted as aforesaid, the view expressed by

Ramaprasada Rao, J. (as he then was) in the above said writ petitions. Accepting the said view. Raghavan, J. discussed the case of the plaintiff to

the effect that the increase of the licence fee in this case is arbitrary, unjust and illegal and that in respect of other stalls put up by the Municipality in

the occupation of other vendors lower rates have been fixed and that the Municipality has not adopted a uniform standard, but It has capriciously

fixed a fee of Rs. 2.50 per day in respect of the stall occupied by the plaintiff. After discussing the evidence of D. W. 1, Raghavan, J. observed

that "the fixation of the licence fee on the basis of leases of similar properties in the neighbourhood cannot be a proper basis, that the other basis

adopted by the Municipality, viz., the nature of the business carried on Is equally not a proper basis and the Municipal Council is not levying as tax

in the trade or the income derived by the traders who carry an their business in the public market"". Continuing the Judgment, Raghavan J. following

the reasoning given by Ramaprasada Rao J. (as he then was), In the aforesaid writ petitions, held that "the adoption of different rates for different

trades results in a capricious fixation of licence fee, which cannot be justified. Raghavan J. then concluded by stating that the finding of the learned

appellate Judge (District Judge, Coimbatore) that there is a definite rationale in fixing the fee payable by the various stall holders in accordance with

the extent of the trade carried on in that stall is not correct, as that would offend Art. 24 of the Constitution of India. Ultimately, Raghavan, J. found

that the Municipality is not entitled to collect the enhanced fee from the plaintiff in respect of the stall in his occupation, and, on this finding the

learned Judge decreed the suit as prayed for by allowing the second appeal.

15. Aggrieved by the judgment of Raghavan J. in S. A. No. 1259 of 1968 the Coimbatore Municipality represented by its Commissioner, has

preferred the above Letters Patent Appeal. The Municipality contends that just as in the case of the private owner of a property, the Municipality

can hold and transfer property and has absolute discretion to fix the rate of licence fee in such manner as it thinks fit, that the plaintiff cannot

complain about the enhancement, that it is open to the plaintiff either to take the stall on the fees fixed or leave it if he thinks that the fee charged in

the instant case is exorbitant, that the fee has been fixed only after taking into consideration the location of the stall and the extent, that it is not open

to the plaintiff who is merely a licensee, to object to such fixation, that the Municipality has power to fix the rates on the basis of the rate for similar

property in the neighbourhood and on the basis of the situation of the stalls and that the fixation of the licence fee on the basis of the nature of the

trade and the income derived by the traders is not opposed to any of the provisions of the District Municipalities Act.

16. When this Letters Patent appeal came up before Govindan Nair, C. J. and one of us, it was felt that the matter should be dealt with by a larger

Bench and accordingly the case was posted before a Full Bench consisting of Govindan Nair C. J., Ramaprasada Rao, J, (as he then was) and

one of us. At the time of the hearing of this appeal by the Full Bench, counsel for the appellant brought to the notice of the Full Bench the decision

in A. S. No. 920 of 1969 (reported in 1975Tax LR1241 (Mad) (Market Vyabarigal Sangam, Coimbatore v. Municipal Council, Coimbatore)).

That was an appeal taken from the judgment of the subordinate Judge of Coimbatore, in O. S. No. 110 of 1965, The subordinate Judge had

dismissed the suit It is seen prima facie to be a representative one from the statements in the Judgment in A. S. No. 220 of 1968. A Division Bench

of this court dismissed. A. S. No. 220 Of 1968. Counsel for the appellants in this Letters Patent Appeal urged that the very same resolution

challenged in the suit which has given, rise to this appeal, was challenged in O. S. No. 110 of 1965, on the file of the Sub Court, Coimbatore, and

that suit was a representative action and hence the respondent herein was also represented In that action and the decision in O. S, No. 110 of 965

confirmed by this court in A." S. No- 220 of 1968 on 14-2-1974, will opera. as res Judicata. Where this question of res judicata was raised, the

Full Bench called for a finding from the District judge on the question as to whether O. S. No. 110 of 1965 on the file if the Sub Court,

Coimbatore, was a representative action as envisaged by Order 1, Rule 8, C. P. C. and whether the procedure prescribed by that rule had been

complied with.

17. Accordingly, the District Judges Coimbatore by his order dated 17-1-1978, submitted his finding that O. S. No. 110 of 1965, on the file of

the Sub Court, Coimbatore was a representative action as envisaged by Order 1, Rule 8, C. P. C., in so far as the market Vyabarigal Sangam and

all its members only were concerned, but not representing the other stall holders of Thyagi Kumaran Market, who are not members of the Market

Vyabarigal Sangam.

18. As far as the present respondent is concerned, he Is not a member of the Market Vyabarigal Sangam on whose behalf O. S. No. 110 of 1965

filed. Hence In view of the finding, given by the learned District Judge find the fact that the respondent is not a member of the market sangam the

decision confirmed this respondent here in.

19. Mr. K. Alagiriswami, learned counsel appearing for the Municipality does not dispute this proposition and the correctness of the finding given

by the learned District Judge which we accept.

20. In 4 S. 220 of 1969, which 12 reported in Market Vyabarigal Sangam Coimbatore v. Municipal Council, (1975)87Mad LW 697, a Division

Bench of this court dealt with the very same resolution passed by the Coimbatore Municipal Council which is also involved in this Letters Patent

Appeal, and held

The fee or the levy of the impost made under Sec. 266 of the Tamil Nadu District Municipalities Act has a peculiar characteristic, in that it is

collection made by virtue of the powers in a statute and incidentally it is a necessary power annexed to ownership of properties vested in the

owners. If this conclusion is reached, viz, that the Municipality has the right to levy such a fee, then the licence being, Yearly one it has also the

incidental right to enhance the fee in view of the circumstances stated in the written statements to wit to augment the resources of the Council and

to meet the increased cost of the maintenance and upkeep of the market. Such a levy is not only unassailable but is certainly within the powers of

the Municipality to levy increase the same whenever occasion demands it.

The Division Bench stated that it is not correct to say that the fee in question should be understood in the sense of fee demanded or collected in lieu

of certain services rendered by the Municipality. The Division Bench then considered the decision rendered by Ramaprasada Rao J. (as he then

was), in *we P. Nos, 913 etc. of 1970 W S. Sivalingani V. Tirurielveli Municipality* and accepted the principle laid down by the learned judge. The

Division Bench then considered the evidence on record in respect of the enhancement made by the Council which was the subject matter of *O. S.*

NO. 110 Of 1965 After discussing the evidence of *D. W. 1*, it :Observed that more clinching-evidence -is required for them to feel satisfied than

the testimony brought before them that when the Municipality made a different levy over the different stalls situate within the market, the only

consideration which weighed with the Municipality was the turnover on the trade carried on in the stalls. On the other hand, the Division Bench

read from the written statement filed by the Municipality that the Council, when it fixed the fees uniformly, took into consideration the nature,

location and the business conducted in the stalls. The Division Bench also felt that that was "the evidence of *D. W. 1* also. As such the Bench

observed that the levy cannot be discriminatory or arbitrary in respect of the stall holders represented by the Sangam in *O.S. No.110 of 1965*, and

dismissed the appeal upholding the resolution passed by the Council.

21. As far as the present case is concerned, no doubt, the levy is based upon the resolution which as so the as asked to pay a fee of Rs. 2.50 per

day on and from, 1-4-1965. Prior to that, the plaintiff was paying Rs. 0.78 per day for his stall. 1968 aforesaid. But the plaintiff herein was not

represented in *O. S. No. 110 of 1966*, and he is questioning the increase of fee for his stall in this action on the basis that it is arbitrary, unjust and

illegal.

22. No doubt, the plaintiff has not examined any witness on his side. But we have on record Resolution No. 1309, passed by the Municipal

Council, Coimbatore, on 23-1-1966, enhancing the fees for the stalls. The same has been marked as Ex. B-1, in the suit. The Municipal Council,

as we see, has fixed the fee for the various stalls inside the market and there is nothing on record to show that they followed any rational basis in

fixing the fee in its resolution No. 1309. The suit market is a public market within the meaning of the District Municipalities Act. The power to levy

fee by the Municipality cannot be questioned in view of Sec. 260 of the District Municipalities Act. The Municipality by its resolution dated 12-2-

1964 uniformly increased the fee by 25 per cent and such a fee was collected from each stall from 1-4-1964 until the resolution dated 23-1-1965

was passed. This resolution of 23-1-1965 has come into force from 1-4-1965. As per this later resolution, the plaintiff. for his stall No. 164 in the

Thyagi Kumaian" Market in Coimbatore town,

23. The Market Superintendent of the, defendant-Municipality by name, Venkatesan, was examined as D." W. I in the present suit. He deposed

that the Finance Committee inspected each stall and fixed the rate. The same was approved by the Council as per Ex. B-1,"The location of stall,

extent and nature of trade and rent in the neighbourhood were considered in fixing the rate. This witness has stated that the plaintiff is having a

grocery shop in the suit stall and his daily turnover is good. According to this witness, the plaintiff was paying Rs. 0.78 per day prior to the increase

and as per the increase, he has to pay Rs. 2.50 per day. The area of the shop is 312 sq. ft. Even though this witness has stated that all stalls like the

suit stall now fetch Rs. 2.50 per, day, in cross-examination he has admitted that the fee for certain shops which are of the same area as that - of - -

the plaintiff, is lower than that of the plaintiff as per Resolution No. 1309. The evidence of D. W. 1 in cross-examination is that there are 450 stalls

in Thyagi Kumaran Market, that the suit stall is a tile-roofed one situate inside the market, that the fee for stall No. 162, which is in the same row

as the plaintiffs stall and which has more area than that of the plaintiffs stall is" only a rent of Rs. 0-78 per day as per the resolution in question, that

stall No. 153, which is a hotel and which will be about two or three times more in area than that of the plaintiff, is levied a fee of Rs. 3.50 per day

only, that for a vessel shop which will be about two times bigger than the plaintiff's stall, a fee of Rs. 2.50 per day has been levied by the resolution

in question and that he is not able to say about the fee for the stall which is to north of Stall No. W. In cross-examination D. W. I has specifically stated that in front of the plaintiff's shop new stalls are put up (by) the defendant, that oil and grocery shops are there, that some of the shops may be of "the same size as that of the plaintiff's shop and that the rates for those shops are fixed between Rs. 1.25 to Rs. 1.64 per day. This witness is not able to say whether the plaintiff's stall is repaired by the defendant or not. Nor is he in a position to say whether plaintiff, has service-connection to his stall.

24. From a reading of the evidence of D. W. 1, it is clearly seen that resolution No. 1309 passed by the defendant-Municipality after inspection of

the stalls, fixes the rates of fee payable by each stall individually and it is not on an uniform basis as the Council used to do in previous resolutions.

As a matter of fact, D. W. I has specifically stated that from 1-4 1964 there was a general increase by 25 % in the fee payable by the stalls Hence

it is clear from the resolution marked as Ex. B-1 and also from the evidence of D. W. I the Market Supdt that different rates were fixed for

different stalls within the market and that the location of the stall, the extent and nature of trade and the rent, in the neighbourhood ..were taken into

consideration for fixing the Increased fee.

25. Attorney-General v. Colchester Corpn., 1952-2 All ER 297, which was considered by Ramaprasada Rao, J (as he then was) in W. P. 913

etc. of 1970 (Mad), makes it clear that the Municipality has a right to increase the totality of the fees in a particular market. "This" principle was

correctly upheld by Ramaprasada. Rao, J. (as he then was), in the writ petitions aforementioned. But while distributing the totality of the fee to the

various stall holders, Ramaprasada Rao, J. (as he then was), held, the Municipality did, not apply an uniform principle and therefore left it open to

the Municipality to rationally re-fix the rates on the basis of its resolution. The Municipality being a statutory body, it is bound to act on a rational

basis and. must apply uniform principles in levying the fee. We are not against the policy of the Municipality in generally" increasing the totality of

the fees in a market to augment its income. As correctly observed in Attorney-General v. Colchester Corpn., (1952)2 All ER297, it is for the

convenience of the stall holder that he chooses to remain in the public market in

spite of the fact that there may be cheaper stalls available outside the market. Therefore, a stall holder cannot question the increase of fee levied by the Municipality on a rational basis unless he makes arbitrariness on the part of the Municipality in apportioning the fee as among the various stall holders within the market

26. The principles laid down by Ramaprasada Rao, J. (as he then was) in W. P. 913 etc. of 1970, have been upheld by a Division Bench of Court

consisting of Ismail and, Rajan, JJ in Arumujha" Kone v. Palayamcottai Municipal Council, 1974 Mad Li 258. The learned Judges upheld the levy

of fee by the Municipality and accepted the principle that it is not on the quid pro quo doctrine that such a fee is levied. An element of income to

the Municipality is contemplated by such levy, and the learned Judges in to accepted the principle laid down by Ramaprasada Rao, J. (as he then

was) in the aforesaid writ petitions.

27. Mr. Alagiriswami the learned counsel appearing for the Municipality, tried to interpret the judgment of Ramaprasada Rao, J. (as he then was),

in the writ petitions, in favour of the Municipality by stating that the Municipality has ample power to enhance the fee of a particular stall and if

that stall holder is not willing to pay the same he could as well quit the place. The learned counsel also submitted that the Municipality has ample

power to auction each stall and as such the rate of fee leviable will differ from stall to stall if such auction is held and that once the Municipality is

entitled to get certain income from the property which it owns, the stall holder cannot question the fee levied by the Municipality municipality for

granting licence for them to vend articles in such stalls.

28. Mr. Sivaramakrishniah, the learned counsel appearing for the respondent Plaintiff, basing his argument on the very same decision rendered by

Ramaprasada Rao, J. (as he then was), concluded that inasmuch as the Municipality has fixed different rates for different stall holders without any

rationale behind, it, the fixation of the fee has to be struck down as arbitrary, discriminatory and opposed to the principles of natural justice. The

learned counsel further submitted that it is clear from the evidence of the Market Supdt. D. W. 1, that the location of stall, the extent and nature of

the trade and rent in neighbourhood were taken into consideration in fixing the rate of levy. Mr. Sivaramakrishniah submitted that the fee cannot be

said to have been fixed on a rational basis if it is fixed on the basis of extent of the trade and also on the rent prevalent in the neighbourhood and

that stalls located in a particular place, having the same measurements, must be subjected to the same amount of fee and the extent of the trade

carried on should not be the criterion for fixing the fee. The Municipality may take the rate prevailing in the locality in fixing the fee. The learned

counsel admitted that it is open to the Municipality to charge different rates of fee for similar extent of stalls to different classes of trade, such as

trades in vegetables, fruits, foodgrains, bullion, in the same market and contended that it is not open to the Municipality to treat differently persons

engaged in the same kind of business in the matter of the levy of the fee for similar extent of stalls occupied by them on the basis of the extent or

volume of the trade or the, turnover of the same.

29. We have carefully considered the decisions referred to above and also the arguments advanced by the learned counsel appearing on either

side. The Municipality being a statutory body must follow a rational basis in fixing the fee for the various stalls within the market. No doubt, it has

the Power to increase the totality of the fees, but while distributing the same to the various stall holders, it must apply a uniform principle and should

not depend upon the extent of the trade carried on in each stall. In the decision rendered in W. P. 913 etc. of 1970, aforementioned,

Ramaprasada. Rao, I (as he then was) has specifically held that difference in the rates of levy of fee should not be on the basis of the class of trade,

since it would prima facie violate Art. 14 of the Constitution of India. The learned Judge has he her held "in that decision that the Municipality once

it chooses to let out its stalls in a public market to enable the seller therein to bring together the persons interested in the articles vended by him for

purposes Of Purchase etc. cannot make further inroads into the absolute right of the occupant to adopt an avocation or trade of his choice, The

learned Judge has further held that may be the turnover of a commission agent is more than that of a retailer but that would not enter into the

computation of the licence fee because it is an irrelevant consideration. We are of the opinion that though the nature of the trade carried on in the

stalls may be taken as a basis for fixing the fee having regard to the extent of the stall, the extent of the trade carried on in the stall cannot be held to

be a rational basis for fixing the fee.

30. As far as the present case is concerned, it is clear from the evidence of D. W. I the Market Supdt., that the extent of the trade also has been

taken into consideration for fixing the levy of fee. It is also clear "from the evidence of D. W. I that in respect of the shops which are in front of the

plaintiffs stall and which are grocery shops like that of the plaintiff and are also of the same size as the plaintiff's stall, the rates fixed range from Rs.

1.25 to Rs. 1.64 per day. Thus, it is clear that the fixing of Rs. 2.50 per day as fee for the plaintiff's stall from the fee of Rs. 0.78 per day he was

previously paying, in our view, is arbitrary in nature since it is based also on the extent of the trade carried on by him A statutory body like the

appellant herein is expected to adopt A rational basis and should not discriminate simply on the ground of the extent of the trade. Further, as we

have already seen, for the very same nature of trade which is conducted just opposite to the stall of the plaintiffs, a lesser rate of fee has been

levied by the Municipality though that stall is of the same extent as that of the plaintiff. In these circumstances, we are definitely of the opinion, that

the levy made by the Municipality in the case of the plaintiff is arbitrary, illegal and discriminatory and hence opposed to the principles of natural

justice. It to always open to the Municipality even now to rationally re-fix the rate. As it is, the rate of fee for the plaintiff's stall cannot be sustained

31. Therefore, the decision rendered by Raghavan, J. in S. A. No. 1259 of 1968 is confirmed. The Utters Patent Appeal is dismissed with costs.

Balasubrahmanyam, J.

32. With respect, I do not agree. 1, dissent from the view that a municipal council, while fixing the rates of stallage fees leviable from stall holders a

a Municipal market must not take into consideration the nature of their trade and the quantum of their turnover. In my view, these considerations

are relevant and can be taken into account by the Municipal Council for the purpose.

33. A Municipal Council under the Tamil Nadu District Municipalities Act, 1920 bears a dual character it is at once a local authority armed with

statutory powers and sanctions, and an organised economic entity holding and enjoying rights of ownership over property. The two aspects are

inextricably mixed. For instance, S, 6 of the Act declares a Municipal Council to

be a body corporate with a perpetual succession; it also confers on the Council the capacity to hold and transfer property, both moveable and immovable. The statute vests the entire Municipal Administration in the Council under S. 19 and clothes it under S. 78 with power to levy local rates and taxes as sources of revenue. There are various other provisions in the Act, too numerous for detailed enumeration in this judgment, which entrust the Council with functions and responsibilities as a local authority which confer on the Council rights and obligations as owner of property. The issue in the present case has, therefore, to be considered and resolved in, this statutory milieu,

34. Under the Act, the Municipal Council can run markets of its own, as well as permit private markets to be run by others in the private sector.

Municipal markets owned and maintained out of Municipal funds are called public markets, because they are open to everybody without

distinction of caste or creed. See S. 259. As for the stalls in the public market, it is open to a Municipal Council to tell them out to tenants on a

rental basis. There is nothing in the statute to suggest that this cannot be done, although there is no express, positive, provision in the Act, enabling

the Council to do so. It has been held that this right of leasing out the stalls on a rental basis flows from the Council's legal capacity as a property

owner, owning and maintaining the market as public market vide *Arumugha Kone v. Palayamokktai Municipal Council*, 1974 1Mad LJ258

35. Section 260(2), however, specifically mentions another method of raising revenue from public markets. It expressly empowers the Council to

levy various kinds of fees from persons who use the market. One of them is the levy of a fee from those to whom the Council grants licences for the

use of the stalls in the market. Under this licensing system, the stall holders gain no tenancy rights whatever in the stalls, under their occupation, they

only have the right of use over the stalls for running their business subject to the licence conditions, and subject to the payment of the fees fixed by

the Council. The fees, which I shall call stallage fees, are usually fixed at so much per day, and they remain in force for a year at a time, for the stall

licence itself is usually an annual licence. Stallage fee is a direct levy by the Council on the stall holders. There is no intermediary in between.

Section 260(2) however, contemplates another, alternative mode by which the

Council can realise revenue from its stalls in a public market. That is by farming out the right to collect market fees to independent contractor. This is usually done by auctioning the right and giving it to the highest bidder for periods not exceeding three years at a time. Where the fees are farmed out in this way, there is no direct privity between the stall holders and the Council. They only have to look to the intermediary contractor, who, while paying the Council the amount at which his bid is accepted, can impose his own terms on the stall holders so as to clear a margin of profit for himself

36. In the case of *Arumugha Kona v. Palayarnkottai Municipal Council*, 1914 1Mad LJ258, the Council concerned followed the latter method of

farming out the right to collect stallage fees. In the present case, the relationship "between the stall holders and the Municipal Council, is direct.

Their use of the stall is under licences issued by the Council, and in consideration of stallage fees levied from them by Council.

The Council which figures in this case is the Coimbatore Municipal Council. It maintains out of its funds :a public market called Tiruppur Kumaran

Market which contains about 450 stalls. They are allotted to various stall holders under annual licences on payment of fees fixed by resolution in-

1965 the Council "resolved on a general revision of the stallage fees in this market. Before it did so, the question was examined by its Finance

Committee, The members of the Committee conducted a local survey. They went round the stalls, noted down the location, the dimensions and

other physical features of each and every stall in the market. They also took note of three other factors which they considered relevant (1) the

ruling rents prevailing in the neighbourhood for comparable shopping accommodation, (ii) the nature of the trade being carried on by the stall

holders from their stalls, and out the turnover and quantum of business turned out in the stalls. They then recommended certain rates of increase in

the existing rates of stallage fees. These rates had remained unchanged for many years, although the licences had been renewed by the stall holders

:every year. On a former occasion, which was some years back the Council had raised the stallage fees at a fiat rate all along the line, for

augmenting its revenues. But this time, the Council accepted the Finance Committee's recommendation and increased the fee for stall on the basis

of the Committee's individual proposals. Even in earlier periods the stallage fees were not uniform in this market; they differed widely. Under the 1965 revision the rates of increase also differed from stall to stall. This result was inevitable having regard to the criteria adopted by the Committee and the Council, which yielded different figures for different stalls. As might be expected, there were loud protests against the enhancements of the rates. And though their impact on the stall holders differed from individual to individual, some of them, who were organised in a sangarn or association made common cause with each other against the action of the Municipal Council, and instituted a representative suit against the Council for injunction and other reliefs. We are not here concerned with those proceedings. The present appeal had its origin in a different action at law filed against the Council by an individual stall holder having a stall, stall No. 164, in the market. Under the Council resolution of 1965, the fee payable by him for the stall under his use had increased a more than threefold - from 78 Paise a day to Rs. 2 50 per day to suing the Council for relief, this stall holder was minded to protect nobody's interest but his own but, even so, he put his case, not on the ground that the hike in the stallage fee in his case was all too sudden and excessive, but on the theoretical ground that the enhancement was based on wrong criteria. Earlier, before the trial Court, he did contend that there was no basis at all for the levy of Rs. 2.50. It was in that context that he dubbed the enhancement as arbitrary and capricious. But his line of argument in this Court has been slightly different. The contention is not that the action of the Council lacked any basis whatever but it had no rational basis. This shift in the emphasis is presumably the result of the acceptance by him of the findings of the Courts below that the Council's resolution was based on the Finance Committee's survey which, in turn, was based on various factors which were regarded as relevant. These very factors are now assailed as irrational and irrelevant for the purpose of setting aside the Council's action,

37. Section 260(2)(b) is the provision to which can be traced the relative power of a Municipal Council to fix the rates of stallage fees. Shorn of unnecessary words, and in a condensed form, the section lays down that a Municipal Council "may levy the following fees at such rates as may

appear to it proper.

38. The section gives the Council a very wide berth in the matter of levy of licence fees. What is more, the standards of propriety to be observed in

fixing the rates of fees are also left entirely in the hands of the Council. And yet, the Council discretion cannot be constructed as arbitrary or

unguided. To do so would be to shipwreck the section on the bedrock of Art 14 of our Constitution. The proper way to understand the scope of the

power would be to construe the provision, not in isolation, but in association with the other provisions and in the context of the general scheme of

the enactment. On the latter aspect, I have earlier explained how the statute itself views the status of a Municipal Council to be. As I said, it is not

just a property owning Corporation, but a responsible local authority. In this context, therefore, the Council's discretion in the matter of levying

stallage fees can in no circumstance be thought of as an unguided or misguided discretion. Contrarywise, the Council cannot justify the propriety of

a given levy, but its ipse dixit. It has got to pass the test of objective standards,

39. The complaint of the stall holder in this case is that the criteria which the Council adopted cannot lead to an objective rate-fixing on the basis

of rational standards, susceptible of uniform application. This argument had been earlier accepted by Raghavan, J. who decided the second appeal

in the stall holder's favour. Of the criteria adopted by the Council in this case, the learned Judge said very little about the neighbourhood rentals as

providing an objective standard. But he examined "the other two criteria which the Council took into consideration, namely, the nature of the trade

and the volume of trade turned out by the individual stall holders from their stalls. As to these factors, the learned Judge expressed the view that

these are variable quantities, differing from stall holder to stall holder, irrespective of the location, the floor area and other physical features of the

respective stalls. He said at these considerations were not only irrelevant in the fixation of rates of stallage fees, but they introduce an element of

discrimination in the treatment accorded between one stall holder and another.

40. In this Letters patent Appeal, the stall holder's learned counsel, Mr. Sivaramakrishniah, adopts these reasonings, for his argument. He did not

contend that the Council's action is bereft of any basis. Nor did he address any argument on the comparison afforded by rents realised just outside

the market in privately let shops. He concentrated rather on the other two criteria which had gone into the decision of the council.

41. Mr. Alagiriswami, for the Municipal Council, said that the power to levy fees from stalls in a public market is a right annexed to the Council's

ownership of property, and stall holders cannot raise any objection to an enhancement of the rates so long as they do not affect the current

licensing period. Learned counsel derived these arguments from *Arumugha Kene v. Palayamkottai Municipal Council*, 1974 1Mad LJ258.

42. That decision, however, is of no help to us, for an answer to our present problem. For the Court in that case did not have to go into the

question as to what criteria would be reasonable and what criteria would be discriminatory in the determination of rates of fees. The Court, no

doubt, expressed the view that stallage fees were akin to rent and the power to levy them was a power annexed to ownership of the property,

rather than a fiscal power to levy taxes, rates and fees. The discussion, indeed, covered a wide ground, but the ultimate decision if the Court was

considerably influenced by the circumstance that the enhancement in question related to a future period to which the current licences did not

extend.

43. The question then would seem to be almost one of first impression. But before entering into the discussion, I would like to discover what the

limits of judicial review might be in cases of this kind. I start with the position that running public markets is the business of Municipal Councils and

the Legislature has entrusted them with powers to realise fees from the users of these markets. At the same time they are local authorities,

accountable as such. The concern of the Court must, therefore, be a nice balancing of considerations. On the one hand, the Court cannot sit, in

judgment over the decisions of the Municipal Councils as some kind of a self-constituted rates tribunal of appeal. On the other hand, the stall

holders cannot be exposed to the tender mercies of Municipal Councils which exercise a virtual monopoly of market space in many areas.

44. In a case where a Municipal Council is unable to justify its fixation of a stallage fees on any ground, the duty of the Court is clear and definite.

Such a levy must be set aside without ceremony, as arbitrary. But where the fees imposed are claimed to be based on some data or criteria, it

might be open to the Court to see if they exist, but there the Court may cry halt. The Court cannot, as I understand its role, go further into the

subject and see how it might have decided the question on those materials. On any view of the Court's jurisdiction, it is not for the Court to refix

the rates. It can either uphold the Council's decision or set it aside.

45. I, however, hasten to add that where judicial review is sought in a given case on the touchstone of Constitutional limitations or fundamental

rights, not only has this Court undoubted jurisdiction to review the action of the Municipal Council concerned, but it is its positive duty to do so. It

is in this latter sense that I have to examine the factors which the Municipal Council had taken into consideration in this case, and which Raghavan,

J. had regarded as leading to discriminatory levies.

46. The two important factors the Council applied for fees all round were extent of the stall compared to previous criteria which the council applied for

enhancing the fees all round were the nature and the holder's trade as a year. The stall holder, in this case, is a dealer in grocery. It is not suggested

that the nature of his grocery business is such that he cannot hide any enhancement. That would be no argument at all, for with such an argument he

can claim complete exemption for all grocery shops. Nor is it suggested that his turnover is such that he cannot afford to pay Rs. 2.50 per day.

Indeed, inability or incapacity to pay has never been pleaded as an answer to the enhancement. As I earlier mentioned, the arguments are put

forward only on the basis that they raise a point of principle. I am, however, not in a position to see how there can be any objection on principle to

the adoption of these two factors as criteria for the fixation of stallage fees. It must be remembered that we are dealing with a public market and the

use of shopping space in stalls housed in that market. The use of the stalls is not for all and sundry objects, but is meant only for carrying on trade

or businesses. In these events, it must be held that there is a rational relation or nexus between the business conducted in a stall and the rate of

stallage fees recoverable from it.

47. There is even less point in the criticism that stallage fees should not be adjusted according to the quantum of business turned out in a stall. For

very many purposes, business turnover is taken as a standard, because it reflects, by and large, the trader's ability to pay. When taking note of the

trades turnover in this case, therefore, the Council really took note of his ability to pay him the field the taxation for instance, ability to pay offers a

reasonable basis for adjusting the liability. Even in private trade, this is not an irrelevant consideration. In haulage contracts, for instance, where the

question of space is important, rates are often fixed on the principle as much as the traffic can bear; which really reflects ability to pay Courts

cannot, therefore, reject this consideration out of hand as irrelevant or irrational.

48. It was add that the adoption of these criteria resulted, not in uniformly but in a diversity of rates even where other things remained equal. The

answer to this objection is not fair to seek. The rule against discrimination is only one aspect of the principle of equality and it applies only where

placed persons are visited with unequal burdens or liabilities. But there is another aspect to this idea of equality, which is that where there an

essential differences between man and man, the law cannot compel the application of Procrustean standards for bringing about an unnatural

uniformity. Although stallage fees are statutory levies, they are quite akin to rentals and may be regarded as rent substitutes. As such, they are

susceptible to variations. If those variations are fairly relatable, to the variations in the stall holder's own trading conditions the result cannot be held

to offend Art. 14 of the Constitution.

49. As I indicated earlier, not much was heard in argument about the wisdom of adopting the prevailing rents in the variety as a criterion for fixing

the rates of stallage fees in the Municipal Market. Presumably, it was accepted on all hands that rents in the neighbourhood are a dependable

economic indicator for the supply and demand position for shopping accommodation In the locality. If this were the assumption, then it is, in my

opinion, well founded. It also effectively answers the other points raised by the stall holder in this case. Landlords, if may be observed, will not be

unalive to such things as the tenant's line of trade, his turnover, his ability to pay and the like, while bargaining for rent. These considerations would

equally be present to the minds of those who hunt for accommodation. In this sense, therefore, the state of private letting In the neighbourhood not

only affords a good guide in itself for the fixation of stallage fees, but it also tends to validate the other criteria which the Council had taken note of

in this case, namely, the stall holder's line of trade and its turnover.

50. While analysing Sec. 260(2) of the Act, I had adverted to the difference between stall holders who take under a direct licence from the

Municipal Council and those who take under a sub-licence from an intermediary. At the end of the present discussion, it seems to me

inconceivable that a case such as the present can arise at all under the latter dispensation. Even if it does, I wonder if it would be open to a stall

holder, as a sub-licensee, to object to the levy by the contractor on the grounds which have been urged in this case. I see no difference in the

merits of the position as between the two kinds of cases, excepting that stall holders under a direct licence from the Municipal Council can invoke

the principles of public law and constitutional law in their argument.

51. I have so far dealt with the merits of each and every one of the criteria which the Municipal Council had adopted in this case. But the argument

for the stall holders was also addressed, broadly, in the form of a general proposition. It was to the effect that while a Municipal Council is at

liberty to raise additional revenues to any extent it likes by enhancing the licence fees in its public markets, it is nevertheless under a duty to

distribute the burden equitably as between the different stall holders. I do not accept as correct the basic approach behind this proposition. The

idea of distribution of burdens as between different persons is a peculiarity of fiscal jurisprudence, and it applies only to fiscal burdens, properly so

called; it does not apply to non-fiscal revenues. As I mentioned earlier, it is now well-settled that the fees levied by a Municipal Council under Sec.

260(2) of the District Municipalities Act is by no means a fiscal levy. It is only in the nature of a licence fee demanded by the Council from the

users in a public market. Accordingly, it does not lend itself to the same treatment as a tax or a local rate levied in a Municipality, where the

Municipal Council first thinks about the overall increase in revenue and in that context, and only in that context, proceeds to examine subsidiary

questions like the incidence of the levy, the distribution of the burden as between different sections, and the like. I do not also accept the

assumption behind this argument that there is no limit, in theory, to the Council's power to increase the licence fees, so long as the distributional

aspect is taken care of by the adoption of some device or "other of equitable distribution. In my view, the proper conception of stallage fees and

other levies effected by a Municipal Council under Sec. 260 (2) is to regard them as fees payable by license-holders Under this system, each stall

holder is the object of an individual levy. Any Increase in that levy must also be on an individualistic basis. It is in this light that the discussion has

proceeded earlier, and rightly so.

52 For the reasons stated above, I hold that the impugned resolution of the Coimbatore Municipal Council is quite valid. I accordingly allow this

appeal, with costs, setting aside the Judgment of Raghavan J. in the second appeal restoring the decree and judgment of the court below.

Gokulakrishnan, J

53. In view of the majority opinion of the Full Bench, the decision rendered by Raghavan, J. in S. A. No. 1259 of 1968 is confirmed and the

Letters Patent Appeal is dismissed with costs.

54. Appeal dismissed.