

(1968) 07 KL CK 0025

In the High Court Of Kerala

Case No : Writ Appeal No. 148 of 1967

Commissioner, Municipal Council, Tellicherry and Another

APPELLANT

Vs

Ramesh S.M. Prabhu and Another

RESPONDENT

Date of Decision : 12-07-1968

Acts Referred:

Kerala Municipalities Act, 1960 — Section 100, 101, 102, 103, 104

Citation : AIR 1969 Ker 109

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;M. Madhavan Nair, J;K. Sadasivan, J

Bench : Full Bench

Advocate : M.M. Abdulkhader, for the Appellant; V.M. Nayanar, K. Prabhakaran and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sadasivan, J.—In this, as in Writ Appeals Nos. 107 and 108 of 1967 = (AIR 1960 Ker 99) (FB), which we have already disposed of, the questions are common. The present appellant is the Municipal Council, Tellicherry represented by its Commissioner. The Municipality demanded from one Ramesh S. M. Prabhu, Proprietor of Medical & Allied Supplies, Tellicherry. licence fee for running the medical shop. The demand was made u/s 284 of the Kerala Municipalities Act (hereinafter to be referred to as "the Act") which reads:--

"284. Purposes for which places may not be used without licence. -- (1) The council may publish a notification in the Gazette and by beat of drum that no place within municipal limits shall be used for any one or more of the purposes specified in Schedule III without the licence of the Commissioner and except In accordance with the conditions specified therein and where the licence is for keeping hostels, restaurants, eating houses, coffee houses, laundries or running barber saloons the licence issued by the Commissioner shall always contain and be deemed to contain a condition that admission or service therein shall be available to any member of the public:

X X X X X".

In the respondent's medical shop he has stored chemical preparations which would fall under Item 20 of Schedule III. The item reads:--

"Chemical preparations -- Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever." So, u/s 284 read with Item 20 of Schedule III, a person running a medical shop where chemical preparations are stored, packed or manufactured has to take a licence on payment of a licence fee. The Municipality seeks to justify the levy, as a fee for licence imposed for raisins revenue for the Municipality, and also for the regulation of the trade in question. In the alternative, the Municipality would also contend that the levy is sustainable as a "tax". But according to the respondent, the levy is unsustainable either as a fee for licence, or as a tax. As a fee it is wanting in quid pro quo and as a tax it is beyond legislative competence, and cannot be brought under any of the legislative entries in the State List of the Constitution. In Writ Appeals Nos. 107 and 108 of 1967= City Corporation of Calicut Vs. Thachambalath Sadasivan and Others, , we had occasion to advert in detail to these questions, and there we have held that a fee for licence like the one under consideration cannot be sustained either as a "fee" or as a "tax" or "fee in the nature of a tax". There the fee impugned was fee sought to be imposed on soaking of husks. We have held in that case on the authority of relevant decisions of the Supreme Court that without quid pro quo a fee can on no account be sustained.

"Fees are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of "quid pro quo" which is absent in a tax. (Ratilal Panachand Gandhi Vs. The State of Bombay and Others, ".

This has been reaffirmed by the Supreme Court in subsequent decisions like the Corporation of Calcutta and Another Vs. Liberty Cinema, and the recent case of Nagar Mahapalika Varanasi Vs. Durga Das Bhattacharya and Others, . The Municipality was not able to point out any service being rendered to the respondent, to justify the exaction of the fee from him. The levy cannot be justified on the ground, that to meet the statutory needs of the municipality money is required and unless its revenue is augmented from such sources, the day to day administration of the municipality would be difficult. Licence fee cannot be imposed for reimbursing the cost of the ordinary municipal services which the municipality is bound under the statute to provide to the general public. Unless special service is rendered to the payer of the fee, the levy cannot be justified. Section 135 of the Act provides that all moneys received by the municipal council shall constitute a fund which shall be called the municipal fund and shall be applied and disposed of subject to the provisions of the Act". The fee collected from the impugned source would also go to the municipal fund which is a common fund utilised for common purposes and it is not enough it along with

other residents of the municipality, the petitioner is also benefited.

2. For the municipality, it was also contended that the element of quid pro quo need not be present when the fee is viewed merely as a "fee for licence". The fact of the issuance of the licence is itself the service rendered to the payer of the fee. But there, only the actual cost incurred by the municipality in issuing the licence can be collected. The fee attached to the licence in such cases should be the specific sum of money necessary to cover the expenses of the licence. More than that if collected, the tax element will predominate since the excess so collected will go to the general fund to be utilised for matters of general public utility and in such cases the levy would assume the character of a tax and not fee. We have no data before us by which the expenses incurred in issuing the licence could be measured. It is difficult, therefore, to sustain the levy under this head. We have also held in Writ Appeals Nos. 107 and 108 of 1967= City Corporation of Calicut Vs. Thachambalath Sadasivan and Others, that it is not possible for the Municipality to levy a tax in the guise of a fee. For the imposition of a tax it is mandatory that the procedure contemplated under Sections 96 to 151 of the Act should be complied with. The Supreme Court has observed in Civil Appeal No. 558 of 1967= Nagar Mahapalika Varanasi Vs. Durga Das Bhattacharya and Others, :--

"It is therefore not permissible for the Municipal Board to impose a tax on the respondents under the guise of a licence fee without following the mandatory procedure for imposition of the taxes prescribed by Sections 131 to 135 of the Act; otherwise there will be a circumvention of the provisions of Sections 131 to 135 of the Act."

It was conceded on behalf of the Municipality that the procedure contemplated in Sections 96 to 151 of the Act was not complied with in imposing the levy. So the impost cannot be justified on the above head also.

3. The decision of the learned Single Judge, in the circumstances, is correct and in confirmation of it, this appeal is dismissed. No costs.

Madhavan Nair, J.

4. I concur. In view of the dicta of the Supreme Court in the decisions cited by my learned brother, no other conclusion appears possible, even though the Supreme Court had not to consider a provision like Section 135 of the Kerala Municipalities Act, 1960 that reads:

"All moneys received by the Municipal Council shall constitute a fund which shall be called the municipal fund and shall be applied and disposed of subject to the provisions of this Act or other laws."

T.S. Krishnamoorthy Iyer, J.

5. I agree.