(1993) 03 SC CK 0053

In the Supreme Court Of India

Case No : Civil Appeal No. 1751 of 1975

Dhenkanal Municipal Council and another APPELLANT

Vs

A. Raja Rao and others RESPONDENT

Date of Decision : 18-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Municipal Act, 1950 — Section 295(2)

Citation : AIR 1994 SC 1648 : (1993) 2 JT 393 : (1993) 2 SCALE 81 : (1993) 3 SCC 543 Supp

Hon'ble Judges : R. M. Sahai, J;N. M. Kasliwal, J;Kuldip Singh Singh, J

Bench : Full Bench

Advocate : G.S. Chatterjee and Raj Kumar Mehta, for the Appellant;

Final Decision : Allowed

Judgement

Kuldip Singh, J.—The question before the High Court was whether the levy of fee u/s 295(2) of the Orissa Municipal Act, 1950 (the Act) was unjustified for non-compliance of the principle of quid pro quo. The High Court answered the question in the affirmative and quashed the collection of the fee and restrained the Municipal Council from enforcing the demand. This appeal by way of special leave is against the judgment of the High Court by Dhenkanal Municipal Council.

2. There is a Hat (weekly market) known as "Darbar Hat" within the jurisdiction of Dhenkanal Municipal Council. Market is held in the said Hat every Sunday. Large number of people congregate for sale/purchase of various articles like cattle, food stuffs and groceries etc. During the financial year 1973-74 sum of Rs. 36,0007- was recovered by the Municipal Council as fee from the traders who attended the market. In the year 1974-75 the fee collected by the Municipal Council was Rs. 46,600/-.

3. Raja Rao Dhanik, the respondent, challenged the levy of the fee by way of writ petition under Article 226 of the Constitution on the ground that no services were being rendered by the Municipal Council. According to him there were only three

small size tin-sheds which were constructed many years back and at the time of the filing of the writ petition the sheds were in dilapidated condition. No amenities were provided in the area and the traders were forced to look after their own conservancy and convenience. There was no electricity in the market area. According to the petitioner the fee collected was put into the general funds of the municipality and no part of it was spent in providing amenities to the traders who met at the Hat on every Sunday. The only ground alleged before the High Court was that in the absence of quid pro quo the collection of fee was unauthorised and as such was liable to be struck down.

4. The additional counter affidavit filed by the Executive Officer of the Municipal Council specifically stated that the budget estimate for the year 1974-75 included Rs. 55,000/- to be spent for providing amenities and services at the "Darbar Hat Market". The affidavit gave further details as under:

4. That in pursuance of the budget estimate, the office has made the following estimate:

i. Construction of compound wall around Hat area Rs. 35,000/-.

ii. To level the ground - Rs. 15,000/-

iii. Construction of Hat Road Rs. 5,000/-.

5. That the following amenities have been provided by the Municipality till today. The Hat road leading from National High way to the Hat which is utilised only for the purpose of Hat has been electrified at huge cost. There was an existing well which is maintained. There are three existing tin shades for the purpose of the vendors displaying their articles for sale. There are two half constructed shades meant for the above purpose.

6. That besides the above amenities supplied the Hat is regularly cleaned and for sweeping the Hat average two sweepers are maintained. The pay of each sweeper is nearly Rs. 150/- a month. Besides, during the rainy season to avoid epidemic, the hat is cleaned by use of disinfectant like bleaching powder.

7. That from out of the above expenditures, about Rs. 5,000/- is to be received as grant from the Government. Thus, the balance of about Rs. 47,000/- would be spent during the year for the purpose of the market to give facilities to the traders and the consumers of the market and accordingly the fanning out collection towards the fees collected from the market is quite reasonable and justified. Compound wall to the market area was felt to be a great necessity for the facility of the traders.

5. The High Court commented upon the affidavit reproduced above as under:

According to Mr. Mohanty, the expenditures on various heads as indicated in the counter affidavit of the Municipal Council, such as raising a wall around the market, laying roads up to the market area of completing the sheds are in the nature of capital investment and cannot be construed as expenditures on services rendered to the fee-payers. We agree with the contention of Mr. Mohanty that these are indeed in the nature of capital investment and would not come within the principle of quid pro quo or as return for the fee paid in the strict sense.

6. It is not necessary for us to go into the question as to whether the levy u/s 295(2) of the Act is a "fee" or "tax". Assuming the levy to be fee we are of the view that the High Court fell into patent error in reaching the finding that no services were being rendered for the benefit of the traders in the market area of "Darbar Hat". We are at a loss to understand how the laying of roads, leveling of ground, constructing boundary wall and providing electricity etc. are not the services rendered for the benefit of the traders.

7. this Court in Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, referred to the earlier judgments of this Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., ; H.H. Sudhundra v. Commissioner for Hindu Religious and Charitable Endowments, 1963 Supp. 2 SCR 302 ; The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, ; H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, ; Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others, and held as under:

What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hall-mark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need to be direct: a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad co-relationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax.

8. Applying the above quoted ratio to the facts of the present case we are of the view that the High Court fell into patent error in quashing the fee levied by the Municipal Council.

9. We, therefore, allow the appeal, set aside the judgment of the High Court and dismiss the writ petition filed by A. Raja Rao before the High Court. No costs.

