

(1997) 11 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3470 of 1982

Federation of Punjab Small Scale Industries Association and Others APPELLANT

Vs

Municipal Corporation and Another RESPONDENT

Date of Decision : 28-11-1997

Acts Referred:

Punjab Municipal Corporation Act, 1976 — Section 343(1)

Citation : (1998) 118 PLR 168 : (1998) 1 RCR(Civil) 725

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : R.S. Mittal and Arti Gupta, for the Appellant; B.R. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Bedi, J.—Petitioners Nos. 2 to 12 are either firms or companies running small scale industries at Ludhiana whereas the petitioner No.1 is a Federation of Small Industries Association in the State. The Ludhiana Municipal Corporation was established on 1.4.1977 in super-session of the Municipal Committee which had been constituted under the Punjab Municipal Act, 1911. u/s 121 of the Punjab Municipal Act, the Municipal Committee was entitled to regulate the conduct of offensive and dangerous trades within the municipal area and for that purpose a licence was required to be taken out imposing conditions for safeguarding the public interest and public health. Section 343(1) of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as the Act) also provided that no person would be permitted to use any premises for certain purposes without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf and Section 343(3) of the Act further authorised the Corporation to fix a scale of fees to be paid in respect of premises licensed under Sub-section (1) with the provision that no such fee would exceed rupees five hundred per annum. It is the admitted position that the industries that are

being run by the petitioners are governed by the provisions of Section 343 of the Act. The Municipal Corporation accordingly fixed the licence fees charged u/s 343 of the Act as follows :-

a) Premises where manufacturing is carried At Rs. 1.50 per H.P. with on with a machinery of 1 H.P. to 10 H.P. a maximum of Rs. 10/- b) Premises where manufacturing is carried At Rs. 2/- per H.P. on with a machinery of 11 H.P. to 25 H.P. c) Factories where manufacturing is carried At Rs. 2.50 per H.P. on by using 26 H.P. to 50 H.P. d) Premises where manufacturing is carried At Rs. 3.00 per H.P. on by using 51 H.P. to 100 H.P. e) Premises where manufacturing is carried At Rs. 4.00 per H.P. with on by using 101 H.P. or more. maximum of Rs. 5.00/- per annum. These rates were increased w.e.f. 4.6.1982 under notification Annexed P-1 and a different method of assessment was provided as follows :-

"Licence fee under second schedule Part-I is as under :-

(A) Where a person works alone manually - exempted.

(B) Unregistered factories or processing Houses or manufacturers Rs. 50/-.

(C) Registered Factories or processing House or manufactories where more than 10 and upto 15 persons are engaged? Rs. 150/-.

(D) The registered factory or processing House or manufactories where more than 15 and upto 50 persons are engaged Rs. 200/-

(E) Registered Factories or processing House or manufactories where more than 50 persons are working Rs. 500/-.

The notification Annexure P.1 has been impugned by the petitioner on the ground that the Municipal Corporation was already flush with funds and the different method for assessing licence fee which had enhanced it substantially was, infact a means of augmenting the general revenue of the Corporation and was in the nature of a tax as no additional facility was being provided by the Municipal Corporation to the petitioners.

2. Notice of motion was issued in this case way back on 16.8.1982 and on September 1, 1982 this Court had also stayed the recovery of the enhanced amount The writ petition was admitted on 11.11.1982 and the stay was permitted to continue subject to certain conditions and it is the admitted position that the same is still in operation.

3. A reply has been filed by the Municipal Corporation in which it has been pleaded that the hike in the licence fee was fully justified on account of the fact that the Municipal Corporation had provided additional facilities like roads, street lights, water and sewerage connections as a means of fighting pollution and had also set up a fire fighting unit in the Industrial Area, consisting of 3 large sized vehicles and other equipment and a separate building with the requisite staff. It has also been pointed out that a considerable amount of money had been spent on account of the maintenance of the facilities already existing and by way of

illustration it has been averred that in the year 1981 the Corporation had collected a sum of Rs. 12 lacs by way of licence fee whereas by a revision of the rates it was likely to collect Rs. 20 lacs and against the increase of Rs. 8 lacs that was envisaged, the Corporation had already spent a much larger amount on the facilities which had been provided to the petitioners. It has further been pointed out that the rise in the costs of the material, labour rates etc. and the additional fact that certain exemption from payment had been granted to certain units in order to make them viable required an enhancement in the licence fees.

4. Shri R.S. Mittal, the learned Sr. counsel appearing on behalf of the petitioners has argued that in the light of judgment of the Hon"ble Supreme Court in Kewal Krishan Puri and Others Vs. State of Punjab and Another, it was required that the licence fee could not be enhanced until and unless there was an increase in the nature of facilities that were being made available to the licensee and as the Corporation had not been able to spell out the details with regard to the additional facilities no case for enhancement was made out.

5. As against this Dr. Balram Gupta, learned counsel for the respondents has referred to the contents of the written statement which had been produced above to justify the enhancement.

6. After considering the arguments raised by the learned counsel for the parties, I find no merit in the petition.

7. In K.K. Puri's case (supra), the Hon"ble Supreme Court itself observed that a good and substantial portion of the amount collected on account of the fee that may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering service to the licencees. In the present case, however, I find that even with the enhancement proposed the Municipal Corporation would still be running at a deficit. Moreover, the Hon"ble Supreme Court in Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, observed that the enhancement could not be struck down as invalid, merely because the sum actually to be realised by way of enhanced fee, would exceed the direct expenditure to be incurred for that purpose as the expenditure need not be incurred directly nor even primarily in connection with the special benefit or advantage conferred and there need not be any fastidious balancing of the cost of the services rendered with the fees collected and at best a general assessment was all that was required.

8. The tests laid down by the Hon"ble Supreme court will now have to be applied to the facts of the present case. First of all it is to be noted that the increase is only marginal and can hardly have any effect on a thriving city such as Ludhiana. Nevertheless in paras No. 5, 6 and 10 of the reply the Municipal Corporation has spelt out the reasons as to why the additional higher licence fee was required. As a matter of fact from the details given in para No.5 and already reproduced above it is apparent that even with the enhancement of the fee the Municipal Corporation would still be running in deficit.

9. Shri R.S. Mittal, the learned counsel for the petitioners, has however, pointed out that nature of the facilities as visualised in the reply would be available to all the citizens of Ludhiana but it was the petitioners only who had been singled out for the higher imposition. To my mind, this argument is without merit. It is well known that industrial development in Ludhiana has not been confined to any particular parts of the city but there has been a haphazard growth with residential as well as industrial units tumbled together in almost all areas. It is, therefore, evident that the facilities that are being provided would perhaps be available throughout the city which would include the industrial units as well as residential premises. It is further evident that most of the pollution and the refuse that has to be lifted by the Corporation would be created by the Industrial Units and they, therefore, must pay for the services that they receive. I, therefore, find no merit in this writ petition. The same is hereby dismissed. It is further directed that the petitioners shall pay to the Municipal Corporation, within a period of four months from today, the entire enhanced fee due in lumpsum alongwith the interest at the rate of 12 per cent per annum. It is, however, directed that no penalty would be leviable on the petitioners. There will be no order as to costs.