

(1984) 11 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No's. 393 of 1973 and 7547 of 1980

Hanuman Transport Co.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-11-1984

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 120 (4)
Motor Vehicles Act, 1939 — Section 132 (A)

Citation : (1985) ILR (Kar) 1315

Hon'ble Judges : Puttaswamy, J; Narayana Rai Kudoor, J

Bench : Division Bench

Advocate : M. Rangaswamy, for the Appellant; S. Rajendra Babu, for the Respondent

Final Decision : Dismissed

Judgement

Puttaswamy, J.—As common questions of law arise for determination in these cases, we propose to dispose of them by a common order.

2. The Hanuman Transport Company (P) Limited, Udipi, a private limited company incorporated under the Companies Act, which is the common Petitioner before us, is engaged in the business of providing passenger transport facilities in the State of Karnataka in accordance with the permits issued by the Transport authorities functioning under the motor Vehicles Act of 1939 (Central Act TV of 1939) ("the Act") and the Karnataka Motor Vehicles Rules, 1963, ("the Rules") framed thereunder by Government. For carrying on and augmenting its business, the Petitioner makes applications under the Act and the Rules before the transport authorities.

3. In the Rules that came into force on 1-7-1963 (vide Rule 2 of the Rules) fees for making different applications had been prescribed by Government at the rates stipulated therein. In notification No.GSR 353 dated 25-10-1972 published in the Karnataka Gazette dated 2-11-1972, Government has promulgated the Karnataka Motor Vehicles (9th Amendment) Rules, 1972 ("the 1972 Rules")

substantially increasing the rates of fees for making applications under the Act and the Rules. In Writ Petition No. 393 of 1973, the Petitioner has challenged the 1972 Rules. While the said Writ Petition was pending, Government in its notification No. HD 13 TMR 79 dated 20-4-1979 published in the Karnataka Gazette (Extraordinary) dated 20-4-1979 has promulgated the Karnataka Motor Vehicles (4th Amendment) Rules, 1979 ("the 1979 Rules") marginally increasing the rates of fees prescribed in the 1972 Rules. In Writ Petition No. 7547 of 1980 the Petitioner has challenged the 1979 Rules.

4. Among others, the petitioner has urged that the fees prescribed in the 1972 and 1979 Rules are disproportionate to the services rendered or to be rendered to the applicants and they are really taxes and not fees.

5. In Writ Petition No. 393 of 1973 the Respondents have filed their return justifying the increases in rates of fees fixed in the 1972 Rules.

6. Sri M. Rangaswamy, Learned Counsel for the petitioner, strenuously contends that the rates of fees prescribed in the 1972 and 1979 Rules that are disproportionately excessive to the services to be rendered are not fees but are taxes, which was impermissible and unauthorised. In support of his contention Sri Rangaswamy strongly relies on the rulings of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, ; *The Municipal Council, Madurai Vs. R. Narayanan and Others*, ; and *Kewal Krishan Puri and Others Vs. State of Punjab and Another*,

7. Sri S. Rajendra Babu Learned Government Advocate appearing for the Respondents relying on the rulings of the Supreme Court in *Municipal Corporation of Delhi and Others Vs. Mohd. Yasin*, and *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, justifies the increases made by Government.

8. What are the true principles that should be applied in determining the fixation of fees under any enactment, as we apprehend, is now concluded by the rulings relied on by Sri Babu. We, therefore, first propose to notice them.

9. In *Municipal Corporation of Delhi's* case, the Municipal Corporation of Delhi enhanced the fees for slaughtering animals by 8 times, which was challenged by butchers before the Delhi High Court, which struck down the same on the ground that it was disproportionately large to the services to be rendered by the Corporation. On an appeal by the Municipal Corporation of Delhi, reviewing all the earlier cases and reversing the decision of the Delhi High Court, the Supreme Court enunciated the Principles that should govern the determination of the fees in these words :

"9. 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 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 not be direct, a mere casual 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 Correlation ship 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".

In Srinivasa General Trader's case the Supreme Court dealing with a case of enhancement of market fees by cent percent and upholding the same reiterating the principles enunciated in Municipal Corporation of Delhi's case has expressed thus :

"30. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered. If authority is needed for this proposition, it is to be found in the several decision of this Court drawing a distinction between a "tax" and a "fee". See : The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., ; H.H. Sudhundra Thirtha Swamiar Vs. Commissioner For Hindu Religious and Charitable Endowments, Mysore, ; 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 Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, ".

Bearing these principles, it is necessary to examine the challenge of the petitioner.

10. An applicant that makes an application, or a grantee of an application is required to pay the fees prescribed by the Rules. When an application is made for relief depending on the nature of that application the Transport Authority and its officers undoubtedly render service to such an applicant. What is true when an application is made is also true when an application is granted resulting either in the issue of a permit or making of an endorsement thereof on an existing "permit. The salaries and benefits allowed to the staff connected with the rendering of services to the applicants, has always seen on the increase in the State. As ruled by the Supreme Court, in determining the increases, Courts cannot take up the role of chartered accountants and ascertain the services rendered with "mathematical exactitude". All that the Court has to ascertain is whether there is a broad relationship to the services rendered and nothing more. When we so examine the impugned Rules, it is manifest they bear a reasonable or broad relationship to the services to be rendered to applicants and are beyond any reproach. We are of the view that this challenge of the petitioner is without any merit and we reject the same.

11. Sri Rangaswamy next contends that Rule 120(4) of the Rules stipulating separate fees "for endorsement thereof or "extension of the permit", in the absence of provisions in the Rules for those situations as in the States of Tamilnadu, Andhra Pradesh and Kerala, was ultra vires of the Act. 12. Sri Babu contends that the fees prescribed by Rule 120(4) being a separate and distinct fee for issue of a fresh permit or endorsement of a permit, was intra vires of the Act.

13. We first consider it proper to ascertain the true scope and ambit of Rule 120(4) of the Rules. The said Rule reads thus :

"120. Fees :

""(iv) Fee for the grant, renewal or endorsement thereof or extension of the permit shall be Rs. 50/- in respect of each vehicle."

This Rule provides for a separate fees for effectuating a grant made by a transport authority either by issue of a fresh permit or endorsing or writing of the grant on an existing permit. "Endorsement" necessarily means writing and writing is of the grant on the very existing permit of the applicant.

14. As noticed earlier, the Rules, provide for separate fees on applications to be made and for effectuating the grants, if any, made on applications. Rule 120(4) stipulates fee for the latter

15. Section 132A of the Act authorises a State Government to prescribe separate

fees for issue of permits or for making of endorsements on permits also. From this it follows that Rule 120(4) is not ultra vires of Section 132A of the Act. We see no merit in this contention of Sri Rangaswamy and reject the same.

16. What we have expressed on the sufficiency or other-wise of the fees prescribed for making applications, applies with greater force to the quantum of fees prescribed in Rule 120(4) of the Rules. Hence, the challenge of the petitioner to the portion of Rule 120(4) of the Rules is without any merit.

17. As all the contentions urged for the petitioner fail, these Writ Petitions are liable to be dismissed. We therefore dismiss these Writ Petitioner and discharge the rule issued in the cases.