

(1982) 03 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1511 of 1980

Jagir Singh Mohinder Singh and Others	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:

Punjab Municipal Act, 1911 — Section 121(1), 121(3), 61, 62

Citation : AIR 1983 P&H 315

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Judgement

1. The enhancement of licence fee imposed in terms of sub-section (3) of Section 121 of the Punjab Municipal Act, 1911, hereinafter referred to as the Act, in regard to the persons engaged in a trade or calling of the kind envisaged in sub-section (1) of S. 121 of the Act, and notified through notification dated 15-3-1980, published in the Punjab Government Gazette on 4-4-1980, has been impugned in the three writ petitions, namely, Civil Writs Nos. 1511, 1934 and 2426 of 1980 by the petitioners, bulk of whom are engaged in the trade of manufacture and sale of agricultural implements like sickle, khurpas, spade, iron plough etc., while some of them are engaged in the trade of manufacture of furniture or of iron safes etc., primarily on the ground that the amount sought to be recovered as licence fee, being a fee and not a tax, the same was excessively high and totally incommensurate with the expenditure incurred to the services rendered in lieu thereof to the petitioners by the said Municipal Committee. Since these three writ petitions involve common question of law, therefore they are proposed to be covered by a common judgment.

2. The respondent Municipal Committee took up the stand that the licence fee is an amount imposed and recovered not as a fee but as a tax and, therefore, the question of the same being commensurate or incommensurate with the services rendered by the Municipal Committee to the petitioners did not arise. In the alternative the respondent Municipal Committee urged that between 1953 and

1980, the expenditure incurred by it on various services rendered by it had tremendously increased and, therefore, it could not be said that the enhanced fee imposed by it as notified was excessive.

3. So the question that falls for consideration is as to whether the licence fee is in the nature of fee or a tax.

4. Before proceeding with the consideration of the proposition aforementioned, the relevant provisions of the statute deserves notice at the very outset. The relevant provision enabling the Municipal Committee to impose tax, and the manner or imposition thereof, is covered by Ss. 61 and 62 of the Act read with :

"61. Subject to any general or special orders which the State Government may make in this behalf, and to the rules, any committee may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely :

* * * * *

1. (a) * * * * (b) a tax on persons practising any profession or art or carrying or any trade or calling in the municipality;

Explanation : A person in the service of the Government or person holding an office under the State Government or the Central Government or a local or other public authority shall be deemed to be practising a profession within the meaning of this sub-clause.

* * * * *

Provided that a committee shall not impose any tax without the previous sanction of the State Government when-

* * * * *

(2) Save as provided in the foregoing clause, with the previous sanction of the State Government any other tax which the State Legislature has power to impose in the State under the Constitution.

(3) * * * *

Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution :

Provided that a committee which immediately before the commencement of Constitution was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by Parliament.

Explanation : In this section "tax" includes any duty, cess or fee.

62. (1) A committee may, at a special meeting, pass a resolution to propose the imposition of any tax under S. 62.

(2) When such a resolution has been passed the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.

(3) any inhabitant objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing to the committee; and the committee shall at a special meeting take his objection into consideration.

(4) If the committee decides to amend its proposals or any to them, it shall publish amended proposals, along with a notice indicating that they are in modification of those previously published for objection.

(5) Any objections which may within thirty days be received to the amended proposals shall be dealt with in the manner prescribed in sub-section (3).

(6) When the committee has finally settled its proposals it shall, if the proposed tax falls under clause (b) to (f) of sub-section (1) of S. 61 direct that the tax be imposed, and shall forward a copy of its order to that effect through the Deputy Commissioner to the State Government and if the proposed tax falls under any other provision, it shall submit its proposals together with the objection if any made in connection therewith to the Deputy Commissioner.

(7) If the proposals tax falls under Clause (a) of sub-section (1) of S. 61, the Deputy Commissioner, after considering the objections received under sub-sections (3) and (5) may either refuse to sanction the proposals or return them to the committee for further consideration, or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as he deems fit, forwarding to the State Government a copy of the proposals and his order of sanction; and if the tax falls under sub-section (2) of S. 61, the Deputy Commissioner shall submit the proposals and objections with his recommendations to the State Government.

(8) The State Government on receiving proposals for taxation under sub-section (2) may sanction or refuse to sanction the same, or return them to the committee for further consideration.

(9) x x x X

(10)(a) When a copy of order under sub-sections (6) and (7) has been received, or

(b) when a proposal has been sanctioned under sub-section (8) the State Government shall notify the imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than one month from the date of notification, on which the tax shall come into force.

(11) A tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July or on the first day of October

in any year, and if it comes into force on any other day than the first day of the year by which it is leviable, shall be leviable by the quarter till the first day of such year then next ensuing.

(12) A notification of the imposition of a tax under the Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act."

5. Provisions of Section 121 of the Act envisages issuance of a licence and power to prescribe licence fee and the relevant portion thereof is in the following terms :

"121. (1) No place within a municipality shall be used for any of the following purposes-

* * * * *

as any other manufactory, engine-house, store-house or place of business from which offensive or unwholesome smells, gases, noises or smoke arise :

Provided that * * * *

* * * *

(3) The committee may charge any fees according to a scale of the approved by the Deputy Commissioner for such licences, and may impose such conditions in respect thereof as it may think necessary. Among other conditions it may prescribe that any furnace used in connection with such trade shall, so far as practicable, consume its own smoke.

* * * * *."

Provisions of clause (b) of sub-section (1) of Section 61 of the Act authorises the Municipal Committee to impose a tax on persons, inter alia, carrying on any trade in the municipality. The petitioners are, undoubtedly, carrying on a trade within the municipality and, therefore, the Municipal Committee was competent to impose a tax on them.

6. The next question is as to what form such a tax should tax and in what manner it is to be realised from the persons upon whom it is imposed.

7. Provisions of S. 61 of the Act are only enabling provisions to impose a tax on the given categories of persons etc. Whenever a sum is demanded from such persons, it would have to be seen whether such a sum constitutes a tax or something else. So far as the licence fee is concerned, the matter is not res integra. Their Lordships of the Supreme Court had to pronounce on the very question in the Corporation of Calcutta and Another Vs. Liberty Cinema, , which pertained to levy of licence fee on cinema u/s 548(2) of the Calcutta Municipal Act (33 of 1951). Before their Lordships, the question posed by the petitioner and refuted on behalf of the Municipal Committee was in the following terms :

"The levy authorised by Ss. 443 and 548 was a fee in return for services to be

rendered and not a tax and it had therefore to be commensurate with the costs incurred by the Corporation in providing those services. The present levy of Rs. 6,000/- per year was far in excess of those costs and was for that reason invalid. The Corporation's answer to this contention is that the levy was a tax and not a fee taken in return, for services and no question of its being proportionate to any costs for services arose." Their Lordships repelled the contention advanced on behalf of the petitioner with the following observations :

"Now, on the first question, that is, whether the levy is in return for services, it is said that it is so because Section 548 uses the word "fee". But, surely, nothing turns on words used. The word "fee" cannot be said to have acquired a rigid technical meaning in the English language indicating only a levy in return for services. No authority for such a meaning of the word was cited. However that may be, it is conceded by the respondent that the Act uses the word "fee" indiscriminately. It is admitted that some of the levies authorised are taxes though called fee. Thus, for example, as Mitter, J. pointed out, the levies authorised by Ss. 218, 222 and 229 are really taxes though called fees, for no services are required to be rendered in respect of them. The Act, therefore, did not intend to use the word fee as referring only to a levy in return for services.

* * * * *

It may also be stated that a statute has to be read so as to make it valid and, if possible, and interpretation leading to a contrary position should be avoided; it has to be construed *ut res magis valeat quam pareat* : see Broom's Legal Maxims (10th Edn.), p. 361, Craie on Statutes (6th Edn.), p. 95 and Maxwell on Statutes (11th Edn.), p. 221. Therefore again, the word "fee" in S. 548 should be read as meaning a tax, for, as we shall show later, it made no provision for services to be rendered; any other reading would make the section invalid. A construction producing that result has to be avoided. We do not also think that by reading the word as referring to a tax we would be doing any violence to the language used.

If the word "fee" is not conclusive of the question that it must be in return for services, as we think it is not, then the question whether the fee contemplated in S. 548 is a fee in return for services, can only be decided by reference to the terms of the section and for this purpose we have to consider that section along with S. 443. We have earlier summarised the sections but now propose to set them out so far as material :

S. 548.--(1) Every licence granted under this Act shall specify
.....
.....

(e) the tax or fee, if any paid for the licence

(2) Except when it is otherwise expressly provided for, every

such licence A fee may be charged at such rate as may from time to time be fixed by the Corporation The sections do not refer to the rendering of any service by the Corporation. Looking at them we do not find anything to lead to the conclusion that they make it incumbent on the Corporation to render any service in return for the fee imposed. Stopping here, therefore, there is no reason for saying that the levy is a fee in return for services.

* * * * *

It is however said that the bye-law earlier quoted requires inspection of the cinema houses by the Corporation and that that was the service that the Corporation had to render in return for the licence fee. We are unable to accept this contention. The inspection was not certainly a service to the licensee; it was necessary only to make sure that he carried out the conditions on which something to be done to control the licensee's activities and to make him observe the conditions of the licence on pain of cancellation of the licence. This is clear from sub-section (8) of Section 548 which states that "any licence granted under this Act may at the time be suspended or revoked if any of its restrictions or conditions is infringed or evaded by the grantee". Thus non-observance of the conditions of the licence would expose the licensee to penalty u/s 537 of the Act. The inspection was therefore necessary also for enforcing the conditions of the licence by penalising a breach of them by a licensee. We cannot imagine that an inspection by the Corporation for such purposes can at all be said to be rendering of service to the licensee.

* * * * *

It was also contended that the levy u/s 548 must be a fee not a tax, for all provisions as to taxation are contained in Part IV of the Act. while this section occurred in Chap. XXXVI headed "procedure in Part VIII which was without a heading. It was pointed out that Part V dealt with "Public Health, Safety and Convenience" and Section 443 which was included in Chap. XXVI contained in this part was headed "Inspection and Regulation of Premises, and of Factories, Trades and Places of Public Resort". A cinema house, it is not disputed, is included in the words "places of public resort". It was, therefore, contended that a levy outside Part IV could not be a tax and hence must be a fee for services. This contention was sought to be supported by the argument that S. 443 occurred in a part concerning public health, safety and convenience and therefore the intention was that the levy authorised by the section would be in return for work done for securing public health, safety and convenience and was hence a fee. We are wholly unable to accept this contention. Whether a particular levy is a fee or tax has to be decided only by reference to the terms of the section as we have earlier started. Its position in the Act cannot determine its nature; an imposition which is by its terms a tax and not a fee, which in our opinion the present imposition is, cannot become a fee by reason of its having been placed in a certain part of the statute. The reference to the heading of Part

V can at most indicate that the provisions in it were for conferring benefit on the public at large. The cinema house owners paying the levy would not as such owners be getting that benefit. We are not concerned with the benefit, if any, received by them as members of the public for that is not special benefit meant for them. We are clear in our mind that if looking at the terms of the provision authorising the levy, it appears that it is not for special services rendered to the person on whom the levy is imposed, it cannot be a fee wherever it may be placed in the statute. A consideration in the Act is irrelevant for determining whether the levy imposed by them is a fee or a tax.

* * * * *

The conclusion to which we then arrive is that the levy u/s 548 is not a fee as the Act does not provide for any services of special kind being rendered resulting in benefits to the person on whom it is imposed. The work of inspection done by the Corporation which is only to see that the terms of the licence are observed by the licensee is not a service to him. No question here arises of correlating the amount of the levy of the costs of any service. The levy is a tax. It is not disputed, it may be stated, that if the levy is not a fee, it must be a tax."

In view of the above authoritative decision, one cannot but hold that the licence fee imposed upon the petitioners in terms of the impugned notification is a tax and not a fee.

8. It was then contended on behalf of the petitioners that the impugned notification was invalid, as the Municipal Committee has not secured the prior sanction of the State Government, as envisaged by sub-section (8) of S. 62 of the Act, for the resolution to impose the licence fee.

9. In my opinion, the conclusion is wholly misconceived. Sub-section (8) of Section 62 of the Act envisages sanction of the State Government in regard to a proposal for taxation under sub-section (2) of S. 61 of the Act and not in regard to a proposal for taxation which is covered by the provisions of clauses (b) to (f) of sub-section (1) of S. 61 of the Act. The proposal regarding imposition of taxes under clauses (b) of (f) of sub-section (1) of S. 61 of the Act, when finally settled, after following the due procedure envisaged by the provisions of sub-sections (1) to (5) of S. 62 assumes a final shape and is merely to be transmitted to the State Government through the Deputy Commissioner of notifying in terms of S. 62(10) of the Act.

10. The learned counsel failing in his above submission then canvassed that the notification was invalid, as it violated the provisions of clause (b) of sub-section (10) of S. 62 of the Act, in that while the said provision envisages that the notification shall specify the date not less than one month from the date of the notification on which the tax should come into force, the impugned notification enforced the tax with effect from 1-4-1980, although the notification was published on 4-4-1980.

11. Here too, the matter is not res integra. In Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, , before their Lordships, the infraction of the provisions of S. 131(3), read with Section 94(3), of the U. P. Municipalities Act (2 of 1916) was highlighted. Sub-section (3) of S. 94 of the U. P. Act was in the following terms :

"94(3). Every resolution passed by a Board at a matter shall, as soon thereafter as may be published in a local paper published a Hindi and where there is no such local paper, in such manner as the State Government may, by general or special order, direct."

Provisions of S. 131(3) of the U. P. Act were considered by their Lordships, in two parts. The first part was said to be laying down that the Board shall publish proposals and draft rules along with a notice inviting objections to the proposals or the draft rules so published within a fortnight from the publication of the notice. The second part was said to be providing for the manner of publication and that manner was according to Section 94(3) of the U. P. Act. Their Lordships held that the second part dealing with the manner of publication was not mandatory but directory in nature. The publication of the notice in a local newspaper, though not a Hindi paper, as required by sub-section (3) of S. 94, was considered to be substantial compliance thereof.

12. Their Lordships earlier in a case reported as Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. Corporation of the City of Bangalore, by its Commissioner, Bangalore City, , where there was non-compliance of Section 98(2) of the City of Bangalore Municipal Corporation Act (69 of 1949) in that taxation proposal was not notified in the Government Gazette, held that the said non-compliance with the provision in question was not fatal to the legality of imposition of tax. In that case, their Lordships pressed into service the provisions of S. 38(1) of the Bangalore Act, the relevant portion whereof read :

"No act done, or proceeding taken under this Act shall be questioned merely on the ground-

(a)
.....

(b) of any defect or irregularity in such act or proceeding, not affecting the merits of the case."

The following observations of their Lordships in this regard are instructive :

"It is unnecessary in this case to discuss the relevance of marginal notes in the construction of S. 38(1)(b) because in our opinion the language is unambiguous and clear and it validates any defect in any act done or proceedings taken under the Act and makes it immune from being questioned on the ground of any defect or irregularity in such act or proceedings not affecting the merits of the case and merely because it is in a chapter dealing with Municipal Authorities or other parts of the section dealing with another subject is no reason for confining its

operation to the defects contended for by the appellants.

The resolution was published in newspapers and was also communicated to those affected by it and thus it was well known. The failure to publish it in the Government Gazette did not affect the merits of its imposition. The answer to question No. 2 referred therefore is that the mere failure to notify the final resolution of the imposition of the tax in the Government Gazette is not fatal to the legality of the imposition."

The material portion in Section 37 of the Act is in pari materia with the similar portion of Section 38 of the Bangalore Act relied upon by their Lordships in the case of the Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. Corporation of the City of Bangalore, by its Commissioner, Bangalore City, . Section 37 of the Act is in the following terms :

"37. No act done or proceeding taken under this Act shall be questioned on the ground merely of the existence of any vacancy in any committee or joint committee, or on account of any defect or irregularity not affecting the merits of the case."

13. In the present case, the resolution of the Municipal Committee imposing enhanced fee was duly published in the Government Gazette. The only infraction, if any, was that the date of enforcement of the taxation proposal should have been separated by a month from the date of the notification. Such a defect, in my view, would not invalidate the enhanced licence fee in view of the provisions of S. 37 of the Act.

14. Mr. R. L. Batta, learned counsel for the petitioners, lastly contended that the case of such petitioners, as manufacturer of furniture, is not covered by sub-section (1) of S. 121 of the Act and, therefore, they would not be required to take a licence for being engaged in the trade of manufacturing furniture and, consequently, not liable to pay any licence fee as well.

15. The learned counsel stressed that the manufacturing of furniture would not involve carrying on a business from which offensive or unwholesome smells, gases, noises or smoke arise.

16. Here again, there is no merit in the contention of the learned counsel. In my opinion, the noise arising from sawing, cutting and hammering of wood, which the manufacturing of furniture would involve, would certainly be a noise which would be offensive and also unwholesome to a normal man living nearby. Hence, such petitioners as are engaged in the manufacture of furniture are also covered by the terms of sub-section (1) of S. 121 of the Act and cannot carry on the same without a licence.

17. For the reasons aforementioned, I find no merit in all these Writ Petitions Nos. 1511, 1934 and 2426 of 1980 and dismiss the same, but with no order as to costs.

18. Petitions dismissed.