

(1967) 08 MAD CK 0059
In the Madras High Court

M. Pitchaiah Reddiar and Others

APPELLANT

Vs

The Municipal Council

RESPONDENT

Date of Decision : 25-08-1967

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 249(1)

Citation : (1968) ILR (Mad) 127 : (1969) 1 MLJ 44

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—The above batch of writ petitions have been filed by persons who are running hotels within the municipal limits of Madurai, praying for the issue of a writ of certiorari, calling for the records of the Municipal Council, Madurai represented by the Commissioner, relating to its resolution No. 2413, dated 28th December, 1965, and published in the Madurai District Gazette Supplement, dated 8th January, 1966 and quash the same in so far as it relates to Hotels.

2. By the impugned resolution as published in the Gazette persons who were carrying on business as mentioned in the notification were required to pay a licence fee as specified in the notification and to conduct their business according to the conditions laid down in the licence. The notification is purported to have been made by virtue of the powers conferred u/s 249 (1) of the Madras District Municipalities Act (V of 1920). Clause (j) relates to hotels and a licence fee is prescribed according to the annual rental value of the property. In the petitions it is alleged that the fee has been increased by several times.

3. The resolution of the municipal council was challenged on the ground that the power to levy a licence fee u/s 249 of the Madras District Municipalities Act, 1920 is without any guidance by the Legislature and, therefore, invalid. It was also submitted that the licence fee levied was not commensurate with the cost of service rendered by the municipality.

4. The municipality contended that the municipal council was entitled to fix licence fees as contemplated in the Act and the fee was not intended to be a fee for services rendered and the condition that the fee should be commensurate with the services rendered had no application to the licence fee imposed. In any event, it was contended that the fee imposed has a reasonable relation with the expenditure incurred by the municipality in rendering services. The stand taken by the municipal council in the counter affidavit was that the levy is nothing but a fee in the instant cases and not in the nature of a tax as alleged.

5. When the petitions were taken up for sharing, the municipality, as a result of the decision rendered by the Supreme Court in *Corporation of Calcutta and Another Vs. Liberty Cinema*, found itself unable to take the stand that the licence fee in question was a fee and not a tax. It sought to support the levy as a tax which it was competent to levy.

6. Section 249 (1) of the Madras District Municipalities Act provides that the Council may publish a notification in the District Gazette that no place within the municipal limits shall be used for any of the purpose specified in schedule V without a licence and except in accordance with the conditions specified therein. Use of a place as a hotel is prohibited under schedule V, Clause (j) and, therefore, it is necessary that a licence should be obtained u/s 249 (1) of the Act. Section 249 (2) of the Act requires the owner or occupier of any such place to apply for a licence for the use of such place for purposes of hotel business. The executive authority may grant or refuse to grant such a licence. The licence is to be valid for a year and may be renewed from year to year as specified. Section 321 of the Act requires that every licence granted shall specify the period for which, and the restrictions, limitations and conditions subject to which, the same is granted. Sub-section (2) of Section 321 provides:

Save as otherwise expressly provided in or may be prescribed under this Act, for every such licence or permission, fees may be charged on such units and at such rates as may be fixed by the municipal council.

The view taken by this Court in a series of decisions was that the licence fee is a fee and cannot be imposed for the purpose of taxation but should only cover the reasonable expenses entailed by granting the licence and collecting the fees and exercising such supervision as may be necessary to see that the terms of the licence are complied with (Vide *V.R. Ramanatha Aiyar Vs. The Corporation of Madras*, . In *Corporation of Calcutta and Another Vs. Liberty Cinema*, , the Supreme Court was considering the question whether a licence fee on the cinema house was a fee or tax, and if it was tax, whether it could be legally maintained as a tax. In construing Section 548 of the Calcutta Municipal Act which is more or less similar to the provisions of Section 321 of the Madras District Municipalities Act, the Court held that the levy authorised by the section was not a fee in return for services to be rendered by the corporation. The Court found that the Act did not provide for service of any special kind being rendered, resulting in benefit to the persons on whom it is imposed, and the work of inspection done by the

corporation which is only to see that the terms and conditions of the licence are observed by the licensee, is not a service rendered to the licensee, and therefore, there was no question of correlating the amount of the levy to the costs of any service. Negating the contention that the levy u/s 548 should be considered as a fee and not as a tax as all provisions as to taxation are contained in part IV of the Act, while this section occurred in Chapter XXXVI headed procedure in part VIII the Court held that consideration as to where the sections are placed in the Act were irrelevant for determining whether the levy imposed is a fee or a tax. The Court observed at page 1116:

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.... If that levy cannot be a fee because there is no provision for service being rendered in respect of it, it would indisputably be a tax.

Section 321 of the Madras District Municipalities Act does not provide for any service of a special kind to be rendered by the municipality for the benefit of the person on whom the licence fee is imposed. The work done by the corporation to supervise and see whether the terms of the licence are observed is not a service rendered to the person paying the licence fee, and, therefore, the licence fee cannot be upheld as a fee and as held by the Supreme Court, as there is no provision for services being rendered, it should be considered as a tax.

7. As the decision of the Supreme Court conclusively establishes that the licence fee is a tax, the learned Counsel appearing for the petitioners questioned the validity of the levy as a tax. It was contended that it is beyond the powers of the State Government to impose a tax on the business of running a hotel and, therefore if, the licence fee is construed as a tax, it is beyond the competence of the State Legislature. It was further submitted that even if the State Government had power to impose a tax on hotel business, the delegation of such a power to the municipality without fixing the rate of taxation would be excessive delegation of the functions of the Legislature and as such invalid. In any event, it was submitted that no sufficient guidance in the Act is given to the municipality for imposing the tax.

8. The entry regarding the Local Government is List II, Entry 5 which relates to the constitution and powers of municipal corporations, and other local authorities, for the purpose of local self government or village administration. It was submitted that the power of taxation is dealt with by Entries 45 to 63 in List II and none of the entries would empower imposing a tax on the issue of a licence for running a hotel on the basis of the annual rental value of the building. The municipality submitted that the tax imposed would be one under Entry 49, List II being a tax on lands and buildings. In support of this contention, the municipality relied on a recent decision of the Supreme Court in *Ajoy Kumar Mukherjee Vs. Local Board of Barpeta*, . The Local Board of Barpeta, within whose jurisdiction the Kharma Market was held, issued a notice to the appellant

before the Supreme Court to take out a licence on payment of Rs. 700 for the year 1965-66 for holding a market. The appellant challenged the constitutionality of the impost on the ground that the Assam Legislature had no legislative competence to tax the market. The Supreme Court laid down that the entries in the List have to be interpreted in the widest amplitude and if a tax can reasonably be held to be a tax on land, it will come within Entry 49 of List II. The Court observed at page 1562:

...It is equally well-settled that tax on land may be based on the annual value of the land and would still be a tax on land and would not be beyond the competence of the State Legislature on the ground that is a tax on income.... It follows, therefore, that the use to which the land is put can be taken into account in imposing a tax on it within the meaning of Entry 49 of List II, for the annual value of land which can certainly be taken into account in imposing a tax for the purpose of this entry would necessarily depend upon the use to which the land is put.

Relying on this decision, it was contended on behalf of the municipality that though the licence fee is sought to be levied for using the building for running a hotel, it is in effect a tax on the building. Though the municipality issued a notice directing the appellant to take out a licence on payment of licence fee for holding the market, the Supreme Court on an examination of the facts of the case came to the conclusion that the tax was one on land and not on the market. The charging provision in the Assam Local Self-Government Act (XXV of 1953) was Section 62, and Sub-section (2) of the said section is as follows:

On the issue of an order as in Sub-section (1) the board at a meeting may grant within the local limits of its jurisdiction a licence for the use of any land as a market and impose an annual tax thereon and such conditions as prescribed by rules.

In construing the sub-section, the Court came to the conclusion that the tax was on the land," but the charge arose when the land was used as a market. Similarly, Section 249 of the Madras District Municipalities Act empowers licensing fee to be levied on a place sought to be used for the purpose of a hotel. The licence fee is not on the hotel; but on the place and would depend on the use of the place as a hotel. The owner or an occupier of the land or building may be asked by the local board to take out a licence for his use of any place as a hotel. The levy is an annual levy and not a levy for each day on the hotel business. The levy is not imposed on any transaction in the hotel business or on persons who come there as patrons of the hotel. The levy in this case can only be construed as a levy on the land and building and not on the hotel business. Thus, the licence fee imposed could be sustained as a tax on a building within Entry 49, List II of the Constitution of India.

9. The next challenge against the validity of the tax that is not a valid delegation of the legislative power and that the delegation without fixing the rates of tax is

excessive and invalid. This question is concluded against the petitioner by the Supreme Court in *Corporation of Calcutta and Another Vs. Liberty Cinema*, . The Court quoted with approval at page 1117 the observation of the Court in *Rajnarain Singh v. Chairman, Patna Administration Committee* (1954) S.C.J. 661 : (1954) 2 M.L.J. 344 1 S.C.R. 290 thus:

Now, the authorities are clear that it is not unconstitutional for the Legislature to leave it to the Executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be" charged in respect of different classes of goods, and the like.

Regarding the contention the no guidance is provided for in the Act for fixation of the rates, the Supreme Court observed (page 1118):

It seems to us that there are various decisions of this Court, which support the proposition that for a statutory provision for raising revenue for the purposes of the delegates, as the section now under consideration is, the needs of the taxing body for carrying out its functions under the statute for which alone the taxing power was conferred on it, may afford sufficient guidance to make the power to fix the rate of tax valid.

Explaining the above statement, the Court observed at page 1119 as below:

It (the corporation) has to perform various statutory functions. It is often given power to decide when and in what manner the functions are to be performed. For all this it needs money and its needs will vary from time to time with the exigencies. Its power to collect tax, however, is necessarily limited by the expenses required to discharge those functions. It has, therefore, where rates have not been specified in the statute, to fix such rates as may be necessary to meet its needs.

The challenge to the validity of the tax on the ground that the rate of tax has not been fixed and that the Legislature has not given sufficient guidance has to be rejected in view of the pronouncement of the Supreme Court referred to above.

10. Mr. Chellaswami, the learned Counsel appearing for the municipality submitted that the licence fee levied under the Madras District Municipalities Act, being one prior to the commencement of the Constitution of India, should be considered as having been saved under Article 277 of the Constitution of India. In the view I have taken that the levy could be sustained as a tax, it is unnecessary to consider this question.

11. The stand of the municipality when it imposed the licence fee and at the time when it filed the counter affidavit in the writ petitions was that the levy is nothing but a fee in the instant cases and not in the nature of a tax as alleged. The levy is now upheld on the ground that it is a tax imposed by the Legislature under Entry 49, List II, that is a tax on property. So far as imposing a tax on property, the Madras District Municipalities Act, 1920 has made elaborate provisions. The levy of property tax is dealt with in Chapter VI of the Act. A property tax can be

levied on all buildings and lands within the municipal limits. It is provided that the tax shall be levied as such at such percentage of the annual value of the land or building as may be fixed by the municipal council subject to the provisions of Section 78 of the Act. The levy on lands not used for agricultural purposes is provided for under Sub-section (3) to Section 81 of the Act. The method of assessment is provided u/s 82. Schedule IV of the Act prescribes procedure for taxation and Rules (6) to (15) relate to the assessment of the tax. Provisions are made in the rules for collection of tax and a provision for preferring an appeal against the assessment is also provided for.

12. So far as the levy of the licence fee that is imposed u/s 321 of the Act is concerned, there is no elaborate procedure prescribed under the Act or the rules. Though Chapter VI and the Taxation and Finance Rules have made elaborate provisions relating to levy of property tax under the various heads mentioned in Section 81 of the Madras District Municipalities Act, the levy u/s 321 of the Act though held to be a tax on property, the procedure that has to be followed is not, one under Chapter VI, as it does not fall under any of the clauses enumerated u/s 82. The fixation of the licence fee is left to the municipal council after taking into account the various factors. The fee that is leviable u/s 321 of the Act was understood to be a fee for services rendered by the municipality and on that basis, the fee was being levied. Now that it has been held to be a tax, it is not necessary that the fee levied should be commensurate with the services rendered by the municipality. Though the validity of the levy which is held to be a tax cannot be questioned, the levy of the fee is not regulated by the elaborate procedure for the imposition of tax on property. The non-applicability of the procedure under Chapter VI is due to the fact that all along the licence fee was considered to be a fee and not a tax. Though the validity of the tax imposed u/s 321 of the Act cannot be challenged on the ground that it is excess delegation of legislative powers, it is needless to point out that the non-applicability of the procedure laid down for imposing the property tax is accidental. It is desirable that the Government should provide the procedure for levy of tax under this head as in the case of other levy of property tax under Chapter VI. On a consideration of the materials on record, I am satisfied that the levy imposed by the municipality can be maintained as a tax. The municipality will not be entitled to costs as the levy is upheld as a tax and not as a fee as initially contended by it. These writ petitions are dismissed; but in the circumstances without costs.