

(1978) 11 MAD CK 0013

In the Madras High Court

Case No : Writ Petition 2405 of 1976

M/s. Dojraj Textile Mills Ltd., Madurai

APPELLANT

Vs

The Electrical Inspector, Madurai and others

RESPONDENT

Date of Decision : 06-11-1978

Acts Referred:

Electricity Rules, 1956 — Rule 46(1)(a)

Citation : (1978) 11 MAD CK 0013

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : K. Parasaran for M/s. Subbaraya Iyer, Padmanabhan and Ramamani, for the Appellant; V. Ramajagadeesan, for Govt. Pleader, for the Respondent

Judgement

Natarajan, J.—The question that falls for consideration in this petition is whether the respondents were justified in increasing the inspection

fee payable by consumers for the extra high voltage and high voltage installations inclusive of their medium voltage and low voltage installations for

periodical inspections carried out by the Electrical inspectorate. The petitioner is a textile mill engaged in carrying on the business of manufacturing

textile goods. In the mills of the petitioner, two transformers, 275 motors, 65 capacitors and other electrical equipment are installed for the purpose

of running the machinery installed in the mill premises. The two transformers are of 500 KVA; the 275 motors are of varying Horse Powers, and of

the 65 capacitors, 40 are of 5 KVA while 25 are of 4.5 KVA. Under Rule 46(1) (a) of the Indian Electricity Rules, 1956, various electrical

installations such as transformers, motors, capacitors, etc. have to be periodically inspected by the Inspector appointed for the purpose. Rule 46

(2) (a) provides that the fees for inspection and testing shall be determined by

the Central or State Government, as the case may be, with regard to each class of consumers, and the fees have to be paid by the consumers in advance. So far as the petitioner mill is concerned, during the years 1972, 1973, 1974 and 1975, Inspections were carried out by the officers belonging to the electrical inspectorate. By way of fees on account of inspection, the petitioner was called upon to pay a sum of Rs. 370, per year during each of the years 1972, 1973 and 1974. However, as regards the inspection carried out in 1975, the petitioner was called upon to pay a consolidated sum Rs. 4,646. This demand was made on the basis of the revised inspection rules contained in G.O. Ms. No. 1172 dated 26th July, 1973. It is this Government Order which is impugned in these proceedings.

2. The fixation of inspection fees in the earlier years was in accordance with G.O. Ms. No. 1437, Public Works, dated 18th May, 1963. As per that Government Order, the Inspection fee for transformers of above 250 KVA and upto and inclusive of 500 KVA was fixed at Rs. 100. For electrical motors and capacitors the rate of fees fixed by the Government ranged from Rs. 10 for motors upto 20 KVA to Rs. 100 for motors of above 500 K.V.A. The Government Order, however, stated that while the rates specified were for individual units, every additional unit of the same capacity shall be charged at half rate. It would appear that applying the directions contained in another portion of the Government Order, the collection of fees for inspection of motor was limited to a maximum of Rs. 250. Thus, on the basis of the rates prescribed in the Government Order of 1963, the petitioner was called upon to pay an inspection fee of Rs. 120 for the transformers and Rs. 250 for the other electrical equipment, in all amounting to Rs. 370.

3. In the impugned Government Order issued on 26th July, 1975, the Government have refixed the rates of inspection fee. The rates have been increased for inspection of transformers as well as motors and capacitors and an upper limit of Rs. 5,000 has been fixed.

4. The petitioner challenges the validity and correctness of the new rates contained in the impugned Government Order, on the ground that the Government have not furnished details for justifying the abnormal increase in the rates of inspection fee. It is pointed out that the nature of the work

has not changed in any manner and even today the time taken for inspection continues to be what it was in the previous years. Nevertheless the

respondents, by adopting the revised rates of fee prescribed in the impugned Government Order, have arbitrarily raised the demand and

consequently, as against a sum of Rs. 370 the petitioner was paying during the previous years, it is now called upon to pay a sum of Rs. 4,646.

5. In the affidavit filed by the petitioner, is stated that the South India Mill Owner Association, Coimbatore, of which the petitioner is a member,

made a representation to the second respondent on behalf of its members that "as against" the earlier fees of Rs. 32,000 being paid in the case of

about 62 mills for which information was readily available which accounted for 17.02 lakhs spindles constituting 36.5 per cent of the installed

capacity in Tamil Nadu, by reason of the enhanced rate, an inspection fee of Rs. 2,37,745, will have to be paid and such a steep increase in the

inspection fee was neither warranted nor justified....". The petitioner, therefore, contends that though there may be some justification for a

reasonable increase or modification in the fees, on account of the rise in cost, there can be no justification whatever for demanding such a steeply

increased fees as the increase is not warranted in view of the fact that inspection services continue to be the same as before.

6. The respondents have filed a counter-affidavit, wherein the increase in the inspection fee is justified on the ground that the previous rates were

fixed about 12 years ago and on account of the lapse of time and the increase in cost, there was justification for increasing the inspection fee. It is

then stated that a ceiling limit of Rs. 250 for the inspection of the medium voltage equipment was fixed in the Government Order, issued in the year

1963 after taking into consideration the then prevailing conditions. But, such a position did not exist at the time of the revision of fees in the year

1975, because most of the industries had grown up by installation of additional equipment and as an industry grows bigger in size, the quantum of

inspection work in respect of the installations therein has increased correspondingly. It is also stated that it was not equitable to treat the super big

industries having hundreds to thousands of medium voltage equipment on par with other high voltage consumers and collect the same amount of

Rs. 250 as the maximum inspection fee for all. The earlier practice of charging at half rate on additional units had also to be discontinued, because

in practice it was found that the concession was meaningless and in respect of additional units also the same amount of inspection had to be done.

In justification of the increase in the fees, it is stated that the cost of inspection had been steadily increasing year after year. Lastly, it is pointed out

that taking into consideration the present state of things, the maximum inspection fee has been fixed at Rs. 5,000 and it is open to the petitioner to

install more equipment and drive the benefit of the maximum fee prescribed by the Government.

7. Mr. Parasaran, learned counsel for the petitioner, argues that the Order of the Government, on the basis of which the inspection fees have been

increased, is clearly not sustainable, because the Order does not disclose the grounds on which the increase has been effected in the rates of

inspection fees, He argues that inasmuch as the charges are collected as fees, it must have some relation to the services rendered by the

respondents. Such being the case, it is for the respondents to correlate in some acceptable measure the enormous increase they have made in the

fixation of rates. Learned counsel points out that neither the Government Order nor the counter-affidavit filed on behalf of the respondents, affords

any material for taking the view that it is with reference to the increase in the expenditure the Government were forced to revise the rates at the

figures contained in the Government Order. In support of his contention, Mr. Parasaran relies upon two decisions. The first one is that of this court

in *P. R. Sriramulu v. The Registrar, High Court, Madras and others* 88 L.W. 181. That was a case which arose under the Madras Court-fees and

Suits Valuation Act and the Madras High Court-fees Rules. The first Bench of this Court to which I was a party, in dealing with the case, held as

follows:

“We recognise that in order to uphold the validity of the levy, it is not necessary that the levy should have direct correlation to the actual services

rendered in each case to an individual called upon to pay. Nor it is necessary, in order to uphold its validity, that the person who is called upon to

pay receives the same service as any other comparable person. What is, however, necessary to see in testing the validity of the levy is, its essential

character, as to whether it satisfies the concept of fee. Considering the circumstances we have so far mentioned, we are of opinion that the impost

inherently bears within it more the concept of tax than fee. We are also of the view that the levy imposing, as it does, on a particular section of

litigants a grossly disproportionate part of the burden, is unreasonable and arbitrary"".

The second case is the Chief Commissioner,-- Delhi v. Delhi Cloth and General Mills Co. Ltd. and others 1978-2 S.C.C. 367. The collection of a

registration fee of Rs. 1,25,157, was questioned in those proceedings, and while sustaining the objection of the objector, the Supreme Court

observed that the fee realised must be correlated with the expenditure incurred on registration so as to be spent on maintenance of the registration

organisation, and as that test was not satisfied, the imposition of the fee could not be justified. Applying the ratio in these two decisions, if we

examine the facts of the instant case, we find that the respondents have not justified the increase with reference to any tangible material. They have

not given any particulars, nor have they even stated that on account of the increase in work the Electrical Inspectorate has been considerably

expanded and more number of inspecting officers have been appointed and as such the establishment cost of the inspectorate has vastly increased.

Likewise, they have not stated that the emoluments of the officers and their allowances have also been increased, and in addition the travelling

expenses and the daily allowances paid to officers, who go on inspection duty, have been increased, and on account of these factors, there was

necessity and justification for increasing the inspection fee rates. The only reason given in the counter-affidavit to justify the increase is that the old

rates were fixed 12 years before, and thereafter there has been a general increase in the cost of things. No doubt, as a general proposition, this

statement has to be accepted. But, when we are dealing with a question relating to the fixation of fees, there has to be some correlation between

the fee fixed and the services rendered in return for it, however indirect the correlation may be. Since this material is not forthcoming in this case,

the petitioner's contention has to be sustained, and the increased inspection fee bated on the rules contained in the impugned Government Order

(G.O. Ms. No. 1172 dated 26th July, 1975) has to be struck down, so far as the petitioner is concerned. The rule nisi will, therefore, be made

absolute. There will, however, be no order as to costs.