

(1999) 12 PAT CK 0105
In the Patna High Court
Case No : C.W.J.C. No. 129 of 1994

M/s. Saraogi Paper Mills

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-12-1999

Acts Referred:

Bihar Cinemas (Regulation) Act, 1954 — Section 8, 9
Constitution of India, 1950 — Article 110(2)
Factories Act, 1948 — Section 59, 6(1)(d), 61, 72

Citation : (2000) 1 PLJR 1010

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Ramesh Kumar Agrawal, Raj Kumar Bhargava and Smt. Rajni Tekriwal, for the Appellant; Azfar Hassan and Mrs. Asha Verma, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—The petitioner is a partnership firm and has set up a factory for manufacturing of paper at Kishanganj in the district of Kishanganj. It is stated that the petitioner's firm holds a factory licence bearing no. 10979 issued under the provisions of the Factories Act, 1948 and the Bihar Factories Rules, 1950. Under the Factories Act, 1948 (hereinafter called the said Act) rules have been framed for registration and grant of licence. Under Rule 5 there is provision for making application for licence to work a factory in specified form. Such grant of licence shall remain valid up to 31st December every year and after that it has to be renewed. Under Rule 7 an application for renewal of licence shall have to be made in the specified form on payment of particular fee. There is provision under Rule 10 for payment of fee.

2. Petitioner's case is that they have deposited Rs. 1575/- out of that Rs. 675/- has been paid towards licence fee, Rs. 400/- for transformer fee and Rs. 500/- for generator fee vide treasury challan dated 4.12.1990 along with renewal

application for renewal of aforesaid licence for the year, 1992. But the petitioner found that the schedule of fee has been enhanced by new schedule vide notification no. S.O. 1143 dated 20th May, 1992.

3. The petitioner's grievances are that by the impugned notification by which licence fee has been enhanced is excessive. As a result of enhancement of fee the old transformer fee of Rs. 400/- has gone up to Rs. 700/-, and old generator fee has gone up to Rs. 750/-. As a result of enhancement of fee, the petitioner received notice dated 26.11.1992 from the respondent Factory Inspector in which it has been directed that the petitioner has to pay total Rs. 6,200/- at enhanced rate instead of Rs. 1575/-. The petitioner's case is that such enhanced amount was deposited by him under protest and the said enhancement of rate has been challenged by the petitioner in this writ petition on various grounds.

4. In respect of the enhancement of fee, the petitioner has mostly confined his challenge to the enhancement of licence fee. The said challenge is mostly based on two grounds. The first ground is that there is no quid-pro quo" in respect of enhancement of such fee. In other words, the challenge is that in fact no service is rendered in the factory by the State Government, but the aforesaid fee is taken. Therefore, it becomes tax in the guise of a fee which is not permissible under law.

5. The second challenge is that the rate of fee which has been enhanced from Rs. 675/- to 4750/- amounts almost to seven times increase. Such increase is excessive and the court should strike it down.

6. In this connection a supplementary affidavit has been filed by the petitioner in which it has been alleged that the amount which is collected by the respondent by way of fee is neither kept in separate account nor accounts are maintained separately to show the income and expenditure in this respect, rather the fee collected is mixed with the general revenue of the State and used for the purposes other than services to the payees.

7. In this case a counter affidavit and supplementary affidavit have been filed by the State respondents. In the first counter affidavit which has been filed the stand of the State is that the licence fee has been enhanced after a lapse of 16 years after due consideration of all the facts and circumstances and also after providing opportunity to the owners of the different factories by publishing the same in the Bihar Gazette. It has been stated that the said notification was published in the Bihar Gazette and three months time was given to file objection, and after considering all these things, the fees have been enhanced.

8. In the second counter affidavit which has been filed in this case the stand of the State is that the State Government is empowered to enhance the licence fee and renewal fee u/s 6(1)(d) of the Factories Act, 1948, and the enhancement has been made after 16 years. It has been stated that there is an independent Inspectorate under the administrative control of the Chief Inspector of Factories to enforce the regulatory and statutory provisions of the Factories Act, 1948.

Under the said Inspectorate there are Deputy Chief Inspectors of Factories and Inspectors of Factories are also posted. It has been stated that after last 16 years there has been considerable increase in the establishment cost and the cost of the maintenance of the Inspectorate. The revenue received through renewal of licence and other source is very much inadequate to cover the cost of increasing establishment expenditure of the Factories Inspectorate. It has also been stated that various technical and non-technical services are provided for safety, health and welfare of the workman. Information and advice to be needed by owner, occupier are being rendered to the owner, occupier by the Inspector of Factories. It has also been stated that various provision laid down under the Factories Act, 1948 for safety, welfare, working conditions of the workers are enforced by the Inspector of Factories and for the aforesaid services rendered by the Inspector of Factories licence fees are charged as laid down in the Factories Act, 1948. So it is not correct to say that no service is rendered.

9. Further supplementary affidavit has been given in which certain particulars have been given as to the expenditure which are incurred for enforcement of various provisions of the Factories Act, and also the amount which is collected by way of fee.

10. These being the rival contentions of the parties, the Court has to decide whether the fees which have been increased can be levied by the State in the manner it has been done and whether such levy of fee is excessive or not.

11. In support of his case learned counsel for the petitioner has relied upon a few judgments.

The first judgment on which reliance has been placed is in the case of *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, . In *Indian Mica* (supra) the subject matter of challenge was whether the fee levied under Rule 111 of Bihar and Orissa Excise Act on denatured spirit used and possessed by the Indian Mica has sufficient "quid pro quo" for that levy. In the facts of that case, the learned Judges of the Supreme Court held that the fee levied under Rule 111 of the Bihar and Orissa Excise Act is a fee which requires service to be rendered by the State Government and the court held in para 17 that, prima facie the levy appears to be excessive compared to the service rendered. But the Supreme Court held that the sufficient materials were not placed before the Supreme Court to establish that the value of the service rendered by the State and its "reasonable co-relationship on the fee charged" and as such the matter was remitted before the High Court to enable the State to produce additional evidence to establish that the value of the services rendered by the State has a reasonable co-relationship with the fee charged.

12. Learned counsel for the petitioner further submitted that after the matter was remanded to the High Court, the High Court heard the matter and even after the materials were furnished before the Court, the High Court came to the conclusion that the fee were excessive and there is no co-relationship between

the levy of fee and the services rendered and the levy was struck down as disproportionate by the Division Bench of the High Court which is reported in 1974 B.B.C.J. 699.

13. Learned counsel for the petitioner has also relied upon another judgment of the Division Bench of the Patna High Court in the case of *Rajni Ranjan & ors. vs. State of Bihar & ors.* reported in 1983 PLJR 321. In the said judgment a notification u/s 9 of the Bihar Cinema (Regulation) Act, 1954 was challenged. By the said notification an amendment was made in Bihar Cinema Regulation Act, 1974. By the said amendment licence fee which was levied upon the petitioner was increased up to 1400/-. Learned Judges of the Division Bench held that there is no quid pro quo in the field and the levy was unjustified.

14. The learned counsel also relied on another judgment in the case of *Ranchi Thok Khadya Vyapari Sangh vs. The State of Bihar & ors.* reported in 1987 PLJR 46. In the said judgment the matter which came up for challenge as the licence fee under Bihar Trade Articles (Licences Unification) Order, 1984. A learned single Judge of Ranchi Bench of the Patna High Court held relying on the decision in *Indian Mica* (supra) that in the imposition of the said fee there is no co-relationship between the services rendered and the fees collected. Even though the same is a question of fact, the learned Judge held that the levy of fee is bad as there was no sufficient quid pro quo in respect of the said levy.

15. Learned counsel for the respondent on the other hand, urged that in the instant case the levy which is imposed as licence fee has not been imposed as a compensatory fee but by way of a regulatory fee. Learned counsel further submitted that in respect of regulatory fee which has been imposed in this case there is no requirement for "quid pro quo." Such fee can be imposed for regulating activities for which licence has been granted. Of course, the learned counsel has accepted that such fee should not be excessive.

16. Learned counsel in support of his submission relied on the provision of the Constitution to illustrate his points. The attention of this Court was drawn to Art. 110(2) of the Constitution. The said provision of the Constitution is set out below:?

A bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

17. The learned counsel also drawn attention of this Court to Art. 199(2) of the Constitution. The said provision is set out below:?

A bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it

provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

18. With reference to these two provisions learned counsel submits that the Constitution provides that there are two kinds of fees one kind is a fee for licence and another kind of fee for the services rendered, and the Constitution makes it clear that they are two different kinds of levy, and they are not the same. In fact, learned counsel urged that the distinction has been made in the Constitution itself between the fees which are imposed for services rendered, and the fees which are regulatory in nature.

19. In support of his submission learned counsel for the respondent relied on the Constitution Bench judgment of the Supreme Court in the case of Corporation of Calcutta and Another Vs. Liberty Cinema, . Relying on that judgment, the learned counsel urged that the word licence fee does not necessarily mean fees for rendering of services. He further pointed out relying on para 8 of the judgment in Liberty Cinema (supra) that in our Constitution the fee for licence and the fee for the services rendered are contemplated as two different kinds of levy, and the first kind of fee is not intended to be the fee for service rendered, and in support of this contention he has relied upon the provisions of Arts. 110(2) and 199(2) of the Constitution. Learned counsel very much relied on the conclusion recorded in para-8 of the said judgment that the provisions for imposition of licence fee does not necessarily lead to the conclusion that the fee imposition is only for services rendered.

20. The next judgment on which the learned counsel relied is in the case of Vam Organic Chemicals vs. State of U.P., reported in 1997 (2) S.C.C. 750. Relying on para 18 of the judgment in Vam Organic Chemicals (supra), the learned counsel submitted that there can be two kinds of fee, namely, regulatory fee like licence and the fee for the services rendered as compensatory fee. Therefore, the learned counsel submitted that the fee in the instant case is a licence fee and is in the nature of a regulatory levy.

21. In support of his contention learned counsel for the respondent has relied upon yet another judgment of the Supreme Court in the case of State of Tripura and others Vs. Sudhir Ranjan Nath, . Learned counsel submitted with reference to para-14 of the said judgment in the case of State of Tripura (supra), that the dictum in the case of Liberty Cinema has been reiterated and it has been stated that the licence fee is not charged in lieu of service and that in case of regulatory fee no quid pro quo is required to be established.

22. To the same effect is the judgment of the Supreme Court in the case of Secunderabad Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another, . In the said decision of Hotel Owners (supra), the Supreme Court considered it's earlier judgment of Indian Mica (supra) and held that in that case fee imposed was for service rendered. Relying on the said findings of the Supreme Court in para 11 of the Hotel Owner

(supra), learned counsel submitted that in view of the aforesaid findings of the Supreme Court the ratio in the case of Indian Mica cannot be applied to the present case. Since, the ratio in Indian Mica (supra) has been held by the subsequent Supreme Court judgment to be confined to cases where fee was charged for the services rendered.

23. Considering the rival contentions, this court finds that the argument advanced by the learned counsel for the respondent is correct. In the instant case the fee has been imposed under Rule 10 of the Bihar Factories Act, which provides that every application for licence under the said rule shall be accompanied by treasury challan showing that the appropriate fees have been deposited in one of the treasury of the State of Bihar. Under the Factories Act, there are elaborate provisions for inspection of the factories and under sec. 8 Chapter-II of the said Act, provisions have been made for appointment of the Inspecting staff.

24. It has been held in the *The Delhi Cloth and General Mills Co. Ltd. Vs. The Chief Commissioner, Delhi and Others*, that in course of discharge of duties during inspection by the Inspectors under the Act, the Inspector gives proper advice and guidance to the factory owners so that there are due compliance of the provisions of the Act, and such guidance contains a good deal of technical advice.

25. Therefore this court finds that services are also rendered for the fee which are levied even though the fees being regulatory no service is required to be rendered.

26. It appears from the notification that there are various Inspectors of the factories with different zones and headquarters specified by the notifications issued u/s 8 of the said Act. The powers of Inspector as specified under Rule 13 of the said Act are very comprehensive.

27. Rule 13 provides that all Inspectors shall, for the purpose of giving effect to the provisions of the Act, have powers to do many things enumerated in the said rules. The Inspector shall also in order to satisfy himself at the inspection have regard to the following matter. Some of which are quoted below:?

(i) the provisions of the Act and of these rules regarding the health and safety of the workers employed in the factory are observed;

(ii) the adolescent and children employed in the factory have been granted certificates of fitness and that no adolescent or child is employed who is obviously unfit;

(iii) the register of all workers employed in such factory, of their hours of work and the nature of their employment, is in the prescribed form;

(iv) the periods of rest and the holidays provided by the Act are granted, and that the limits of hours of work laid down therein are not exceeded;

(v) the provisions of section 59 and of the rules relating to the payment of overtime are duly observed and

(vi) the notices required by sections 61 and 72 and the abstracts required by these rules are properly maintained.

28. Keeping in mind the aforesaid statutory provisions, if this Court considers the criteria fixed by the Supreme Court in the case of Hotel Owner (*supra*) this court finds that the licence fee in this case is regulatory in nature and is not a compensatory fee.

29. In order to decide whether the fee is a regulatory fee or not, it is necessary to see the nature of licence granted. In the instant case, apart from imposition of certain restrictions and obligations on the factory owners in the licence, the said Act provides for, detailed inspection of factory premises in question in order to see that the conditions of running a factory safely and by maintaining proper health and hygiene are enforced by the inspecting staff. Therefore, the inspecting staff is responsible for inspecting and supervising the running of a factory, and they have a duty to enforce the compliance with the various requirements fixed by its Inspectorate. The same will appear from Rule 13 (e) (f) (g) (h) and other provisions of the rules framed under the Act.

30. So, in the context of these statutory provisions, this Court is of the opinion that the contentions raised by the learned counsel for the respondent is correct and the fee which has been imposed here is a regulatory one and for which no services are required to be rendered even though it has been proved from the relevant provisions of the Act and the facts of this case that some services are in fact provided by the Inspectorate.

31. In the instant case in the supplementary counter affidavits filed by the State it has been specifically stated in that the different technical and non-technical services, i.e. safety, health and welfare of the workman, information and advice to be needed by owner/occupier are being rendered to the owner/occupier by the Inspector of Factories. So in this context raising of licence fee was sought to be justified.

32. In the last affidavit which has been filed in this case in para 5 various tables have been referred to in order to show the amount of fees realised prior to enhancement and the expenditure incurred for the enforcement of machinery under the Factories Act in the corresponding year and further table 2(A) reflects the amount of fee realised and table 2(b) reflects the expenditure incurred on enforcement machinery of the factory Inspectorate in the corresponding year. Table 1(a) shows that the fee realised in 1991-92 was Rs. 39,40,000/- and the expenditure incurred up to 1991-92 was to the tune of Rs. 1,15,44,054/-. Then after enhancement the fee realised up to 1993-94 is Rs. 1,11,96,719/- and in 1993-94 the expenditure incurred is Rs. 1,52,17,469/- .

33. The aforesaid facts and figures are not challenged before this Court.

Therefore, considering the aforesaid facts and figures, this Court comes to the conclusion that the fees which has been enhanced in not an excessive one. This Court is of the opinion that the paying capacity of the subject on which levy is imposed is also to be considered.

34. Since in the instant case the licence fees are to be paid by the factory owner, this Court does not, in view of the facts and circumstances disclosed in the supplementary affidavit consider the same to be excessive. Therefore, considering the case from all angles, this court is of the opinion that there is no merit in this case and the same is therefore dismissed. There will be no order as to costs.