
(1987) 01 KAR CK 0015
In the Karnataka High Court

Mysore Kirloskar Ltd.

APPELLANT

Vs

Hubli Dharwar Municipal Corporation and another

RESPONDENT

Date of Decision : 02-01-1987

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 433, 433 (2) (a)

Citation : (1990) 67 CompCas 405 : (1990) 3 KarLJ 124

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : R. Gururajan, for the Appellant; H.K. Vasudeva Reddy, for the Respondent

Judgement

M.P. Chandrakantaraj Urs, J.—These matters are disposed of even at the stage of preliminary hearing after notice to the respondents and after hearing counsel for parties. The respondents Hubli Dharwar Municipal Corporation has filed its statement objections.

2. The short question which arises for consideration in these batch of writ petitions is whether the levy of licence fee (renewal) in the sum of Rs.43,320 on the basis of the motor power used by the petitioner company at Rs. 2 per horse power subject to the minimum of Rs.50 as revised by resolution No.1807 of the Administrator discharging the duties and functions of the Corporation Council. The resolution is dated March 30, 1978. It is the legality and competence of this levy of licence fee for renewal of licence to carry on the trade and industry that is under challenge.

3. Briefly state, the case made out for the petitioner is that Formally a nominal fee of Rs.35 per month was being charged as the licence fee to carry on the activity of manufacturing within the limits of the Hubli-Dharwar Corporation and the present levy, enhanced on the basis of the motor power used in the industry carried on by the petitioner, it is contended, is arbitrary, exercise and beyond the competence of the Corporation.

4. In reply to the contentions noticed above, in the statement of objections filed by the respondent, the Hubli-Dharwar Corporation while not denying the facts asserted by the petitioner the Corporation has claimed that it has power to charge licence fee u/s 443(2)(a) of the Karnataka Municipal Corporation Act, 1976 (hereinafter referred to as "the Act"), and that the Corporation has enhanced the liability and financial commitment in order to discharge its obligatory functions under the Act and, therefore, the levy is made on the basis of the horse power utilised by the industry carried on within the limits of the Corporation.

5. At this stage, it must be noticed that the petitioner has raised one other contention that is that the industry carried on by the petitioner does not fall within Schedule 10 to the Act and, therefore it is not liable to take out a licence, much less pay a licence fee or fee for renewal of the licence.

6. This is repelled by the Corporation on the ground that the industry carried on by the petitioner company falls squarely within the last entry in Schedule 10. That entry reads as follows :

"Manufacturing articles from which offensive or unwholesome smell, fumes dust or noise arises."

7. Admittedly, the petitioner is a manufacturing of machine tools. Such an industry may not produce unwholesome smell fumes or dust but that it does produce noise, cannot be denied. Language of the entry read indicates that all manufacturing process of a factory which are not specifically mentioned in the preceding items or entries are covered by the residuary entry which is at the very end. Having regard to the object of section 433 of the Act, the widest interpretation must be given to the entry in the Tenth Schedule, if the Corporation is to regulate the industry carried on within its limits. Whatever is excluded by the earlier must be brought within the residuary entry and cannot be allowed to escape the need to take out a licence. In any event, that may not be necessary in this case as it is not disputed that the industry carried on by the petitioner does produce noise. Therefore the contention of the petitioner that it is not liable to take out a licence, much less pay the licence fee, must be negated.

8. Shri R Gururajan, learned counsel for the petitioner has placed reliance upon the decision of Kewal Krishan Puri and Others Vs. State of Punjab and Another, , to support his proposition that the demand of licence fee at Rs. 3 per horse power amounting to Rs.40,000 per annum does not render corresponding service to the petitioner or persons similarly situated and therefore, it is more in the nature of a tax and not a licence fee. The thrust of the argument is that since the power to tax flows from a totally different section restricted by procedure prescribed by law, they levy must be struck down and alternatively if it is held to be only a licence fee and no more. then it is far above the permitted limit of quid pro quo service for the rendered, and, therefore, it should be struck down.

9. In Kewal Krishan Puri and Others Vs. State of Punjab and Another, the

Supreme Court was concerned with the levy of market fee under the Punjab Agricultural Produce Markets Act. In that case, every case decided by the Supreme Court on the question whether a tax is a fee or a fee is tax or whether it cannot be sustained on the ground that it does not render corresponding commensurate service has been examined and dealt with. The ratio decidendi of that case in my opinion is that while it is not possible to expect the authority levying the fee to maintain a separate account of the revenue realised from the fee and render service in return to those who pay the fee with mathematical exactitude the courts must liberally construe a particular levy of the fee in such manner only to examine whether the bulk of the fee realised is spent in rendering the service to which the payer of the fee is entitled to. This has been the position from the first *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, in 1954 till the latest decision in the case of *Om Parkash Agarwal and Others Vs. Giri Raj Kishori and Others*,

10. I have already held that the Corporation is competent to levy the fee and, therefore, the question is whether the levy on the basis of horse power :

(1) renders corresponding service to the payer of the fee in a manufacturing unit within the Corporation limit ;

(2) is discriminatory as the service rendered as claimed by the Corporation is not uniform to all units falling within that last entry carrying on such manufacturing activity within the limits of the Corporation.

11. In the statement of objections filed, certain figures are given showing the salaries that are required to be paid to the staff of the health department, the sanitation department and the conservancy staff who have to render service not only to the payers of the fee but to all people living within the limits of the Corporation and therefore therefore the levy on the basis of horse power is justifiable. It is not for the court to quarrel with the amount of liability financially which the Corporation shoulders in order to maintain the city clean and healthy for its inhabitants. This court will not even question the correctness of the claim made by the employees as they are likely to demand more and more salary on account of the inflationary tendency which is generated and over which the Corporation has no control. This liability will fluctuate; but then the Corporation has other sources from which it has to raise revenues for carrying out its obligations under the Act. They have power to levy tax on houses. They have power to levy fees in respect of several other items which also give additional revenue. Therefore it is the sole obligation of the Corporation to so adjust its finances that it does not infringe the rights of others by imposing a licence fee which does not render commensurate service to the people in general and to the payer of the fee in particular.

12. No material is placed before the court to show that any special service is rendered to the petitioner company as was found by the Supreme Court in the

case of *The Delhi Cloth and General Mills Co. Ltd. Vs. The Chief Commissioner, Delhi and Others*, . In that case the appellant Delhi Cloth and General Mills Co. Ltd., complained that the licence fee charge for renewal of licence issued under the Factories Act was a tax and not a fee. But that was repelled by the Supreme Court on the ground that the State Government incurs considerable expenditure in maintaining the Labour Department and appointing Labour Inspector who give timely advice in regard to the conditions of works for the labourers employed in the factory not only prevent mishaps and safeguard the health of the workers but also give timely advice to the owners or management of the factory in regard to their duties and function which improves ultimately its productively and, therefore a heavy fee levied for renewing the factory licences would not be said to be not commensurate with the service rendered by the State.

13. In the instant case, we are not dealing with a factory which is required to take out a licence which the petitioner company must have. We are concerned with the licence which it is required to take out under the Act for purpose of carrying on the manufacturing activity within the limits of the Corporation. Therefore, we cannot equate the functions of the State through its Labour Department with that of the functions of the Corporation in maintaining cleanliness, health and sanitary conditions in the city. There is no direct benefit even to a small extent to the petitioner company which is commensurate to the fee which it is required to pay as renewal fee for renewing the licence.

14. No doubt, Shri H K Vasudeva Reddy learned counsel for the Corporation, drew my attention to two decisions of the Supreme Court which, according to him, favours the stand taken by the Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, In the said case, a Bench of two learned judges have held after discussing the earlier cases on the subject as follows (at pages 620 of AIR and at page 743 of ITR) :

"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 a compulsory advantages to classes of taxpayers whereas a fee is a payment for services rendered benefit provided or privilege conferred. Compulsion is not the hallmark 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 causal 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 os 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 co-

relationship is all that is necessary. Quid pro quo in the strict is not the one and only true index of a fee; nor is it necessarily absent in a tax." (underlining* is mine).

15. The passage, extracted above, does no more than trace the development of the law declared by the courts from 1954 to date. What the learned judges were concerned in *Municipal Corporation of Delhi and Others Vs. Mohd. Yasin*, was the hike in the fee in the fee in regard to sheep and buffaloes kept within the municipal limits of the city of New Delhi for slaughter. The hike there was from 50 paise per small animal to Rs.2 and in respect of large animals from Re.1 to Rs.8. The courts sustained the raise having regard to the cost of construction and maintenance of slaughter houses which in itself was the direct service rendered to the owners of the animals which were brought for slaughter. That element of service to the owners of the animals is absent in the present levy with which we are concerned.

16. Similarly, in the case of *City Corporation of Calicut Vs. Thachambalath Sadasivan and Others*, the court observed as follows (at pages 758) :

"It is thus well settled by numerous recent decisions of this court that the traditional concept of quid pro quo in a fee is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct a mere causal relation may be enough. It is not necessary to establish that those who pay the fee receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee.

Applying the ratio of these decisions, it is incontrovertible that the Appellant - Corporation is rendering numerous services to persons within its areas of operation and that, therefore, they levy of the licence fee as fee is fully justified. Soaking coconut-husk emits foul odour and contaminates environment. The Corporation by rendering scavenging services, carrying on operations for cleanliness of city, to make habitation tolerable is rendering general service of which, amongst others, the appellant are beneficiaries. levy as a fee is thus justified." (underlining* is mine).

17. It is not possible to take a different view. First, for the reason that it is the law declared by the Supreme Court. Second there is excellent rationale in what is stated in the passages extracted above. The petitioner company here is not complaining that it has no general benefit from the obligatory activities of the Corporation in so far as it relates to sanitation and health. But the question is whether it should be penalised because it uses more motor power by demanding an amount which is an abnormal fee when the service he obtains in return is the same as any other inhabitant who does manufacturing in the city. It is that

aspect which is stressed to point out the discriminatory nature of the levy. The decisions of the Supreme Court relied upon by learned counsel for the Corporation can be distinguished on the above basis.

18. It should, however, be said to the credit of learned counsel for the Corporation that he brought to the notice of the court the latest decision in the case of Om Parkash Agarwal and Others Vs. Giri Raj Kishori and Others, where again a Division Bench of the Supreme Court has held that in determining a levy as fee, the rule test must be whether its primary and essential purpose is to render specific services to a specified area or class, it being of no consequence that the State may ultimately and indirectly be benefited by it. Therefore, the dominating feature of services rendered must be with reference to the payer of the fee and not that which is meant for general utility only. In that sense the basis chosen on the impugned resolution at entry 71 of levying renewal fee on the basis of horse power utilised is undoubtedly discriminatory and does not result in any direct benefit commensurate with the service rendered to the fee charged to the petitioner company.

19. Therefore, the levy on the petitioner-company is liable to be struck down for the three years in question namely 1980-81 1981- 82 and 1982-83. Consequently the fee that the company was liable to pay before the revised demand as per resolution No.1807 at annexure-A to the petition shall be retained by the Corporation and the balance refunded for the relevant years to the petitioner-company.

20. This court will not preclude the Corporation from revising afresh the licence fee payable under entry 71 to Schedule 10 of the Act in accordance with law.

Rule will accordingly issue and be made absolute.

21. In the circumstances of the case, the parties are directed to bear their own costs.