
(1984) 10 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 1118, 1193, 1260 and etc. of 1984

Om Prakash and Others

APPELLANT

Vs

Giri Raj Kishore and Others

RESPONDENT

Date of Decision : 13-10-1984

Acts Referred:

Central Sales Tax Act, 1956 — Section 15

Haryana Rural Development Fund Act, 1983 — Section 2, 3(3), 4(5), 6, 6(1)

Haryana Rural Development Fund Rules, 1984 — Rule 4(1), 4(2)

Citation : AIR 1985 P&H 52

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

Bench : Single Bench

Judgement

S.P. Goyal, J.—This judgment will dispose of Civil Writ Petitions Nos. 1118, 1193, 1260, 1318, 1424, 1467, 1501, 1515, 1522, 1523, 1555, 1556 to 1568, 1575 to 1580, 1589, 1590, 1592, 1597, 1598, 1599, 1600, 1604, 1635, 1647 to 1649, 1651 to 1653, 1656, 1698, 1710 to 1722, 1729 to 1732, 1737 to 1740, 1756, 1789, 1794 to 1796, 1814, 1815, 1822, 1837 to 1842, 1844, 1869 to 1873, 1881, 1893, 1894, 1904, 1913, 1921, 1935, 1949, 1962, 1980 to 1984. 1986, 1988, 2007 to 2009, 2024, 2025, 2038 to 2044, 2064, 2065, 2067, 2069, 2080 to 2094, 2109, 2111 to 2113, 2118, 2120, 2126, 2150, 2154, 2173, 2180, 2181, 2206, 2231, 2235, 2236, 2254, 2255, 2268, 2315, 2338, 2354, 2378, 2475, 2489, 2518, 2527, 2528, 2560, 2563, 2643, 2647 to 2649, 2684, 2709, 2710, 2724, 2898 and 3202 all of 1984, which have been filed to challenge the vires of the Haryana Rural Development Fund Act, 1983 (hereinafter referred to as "the Act).

2. The Act imposes cess on ad valorem basis at the rate of one percentum on the sale proceeds of agricultural produce bought or sold or brought for processing in the notified market area. The cess is payable by the dealer which term as defined in s. 2(c) means any person who within the notified market area sets up, establishes or continues or allows to be continued any place for the purchase, sale, storage or processing of agricultural produce, or in the notified market area

purchases, sells, stores or processes such agricultural produce. The dealer as provided in S. 3(3) in turn is entitled to pass on the burden of the cess paid by him to the next purchaser of the agricultural produce from him and to add the same in the cost of agricultural produce or the goods processed or manufactured out of it, if he so desired. The fund so collected is to be called the Haryana Rural Development Fund and is to vest in the State Government. The purpose of the fund is contained in S. 4(5) of the Act which provides that it shall be applied by the State Government to meet the expenditure incurred, in the rural areas, in connection with the development of road, hospitals, means of communication, water supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of rural areas. The Fund may also be utilised to meet the cost of administering the Fund.

3. In exercise of the powers conferred by S. 6, the Governor has framed rules called the Haryana Rural Development Fund Rules, 1984, which were later on amended by a notification dated July 6, 1984. According to sub-rule (1) of Rule 3 the cess is to be levied on the dealer. Sub rule (2) provides that the responsibility of payment of the cess under sub-rule (1) shall be of the dealer who is the buyer and if he is not a licensee under the Punjab Agricultural Produce Markets Act, 1961 (for short "the Marketing Act") then of the dealer who is the seller and that the cess shall be leviable as soon as an agricultural produce is brought or sold. Every dealer is required as provided in R. 4(1) to submit to the assessing authority return in form "A" showing his purchases and sales of each transaction of agricultural produce or each transaction of agricultural produce brought for processing, on the following day, but not later than four days of the day of transaction. Sub-rule (2) of R. 4 enjoins the dealer to deposit in cash with the assessing authority or the person authorised by him in this behalf in writing the cess that has become due from him on the basis of the return filed by him under sub-rule (1) on the following day of the filing of the return.

4. The petitioners in most of these petitions, are licensees under the Punjab Market Act and they purchase agricultural produce, like cotton, wheat, sarson, paddy, gram, barley, etc, and by processing them produce, ginny cotton, oil, rice, Dal etc. Sometime they sell the agricultural produce purchased in the market to other customers as well. The purchases of the agricultural produce are made by them through Kacha Arhtia who charges from them the above cess at the rate of 1 percentum on the sale proceeds of agricultural produce. They have challenged its vires on the ground that if the cess is a tax on the sale or purchase of agricultural produce, it offends S. 15 of the Central Sales Tax Act because the maximum tax which can be levied stands already imposed and in the alternative if it is a cess or a fee then there is no quid pro quo so far as the dealers are concerned, since not a penny of the fund is to be spent on any privilege or service to be conferred on or rendered to them and the whole of the fund is meant for development of hospitals means of communication, roads, water-supply, sanitation facilities and for the welfare of the agricultural labour or for

any other scheme approved by the State Government for the development of rural areas.

5. The State in its written statement has taken the stand that the cess imposed is not tax but fee. To sustain its validity three-fold defence has been set up. The impugned legislation, it is pleaded has been validly enacted to fulfil the objectives contained in Arts. 46, 47, 48 and 48-A of the Constitution. Secondly, it is averred that the dealer is only a collecting agent and the burden of the cess is passed on to the next purchaser and that 80 per cent of the population being comprised of the persons living in rural areas, the major burden of the cess is borne by them. Lastly, it is stated that out of 91 notified areas, 61 are located in the rural areas and as such the majority of the dealers will be directly benefited by the objectives for which the cess has been levied. However, no one of the grounds, the constitutional validity of the cess imposed can be upheld.

6. The nature of the fee and on whom it can be imposed was authoritatively settled by the Constitutional Bench of the Supreme Court in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, in the following terms:

"Generally speaking a fee is defined to be a charge for a special service rendered to individuals by some governmental agency. A question arises "special service" rendered to whom, which kind of individuals? The argument that service rendered must be correlated to those on whom the ultimate burden of the fee falls in neither logical nor sound. The impost of fee and the liability to pay it is on a particular individual or a class of individuals. They are under the obligation to submit accounts returns or the like to the authorities concerned in cases where quantification of the amount of fees depends upon the same. They have to undergo the botherations and harassment, sometimes justifiably and sometimes even unjustifiably, in the process of discharging their liability to pay the fee. The authorities levying the fee deal with them and realize the fee from them. By operation of the economic laws in certain kinds of impositions of fee the burden may be passed on to different other persons one after the other. The authorities more often than not, almost invariably will not be able to know the individual or individuals on whom partly or wholly the ultimate burden of the fee will fall. They are not concerned to investigate and find out the position of the ultimate burden. It is axiomatic that the special service rendered must be to the payer of the fee. The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee. it may be so intimately connected or interwoven with the service rendered to others that it may not be possible to do what amount of special services was rendered to others that it may not be possible to do what amount of special services was rendered to the payer of the fee and what proportion went to others. But generally and broadly speaking it must be shown with some amount of certainty, reasonableness or

preponderance of probability that quite a substantial portion of the amount of fee realised is spent for the special benefit of its payers.

The following are the principles for satisfying the tests for a valid levy of market fees on the agricultural produce brought or sold by licensees in a notified market area:-

(1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.

(3) That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensees, it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably, it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees may be in neighborhood of two thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above".

In view of the law laid down by the Supreme Court, before imposition of the fee can be upheld, the element of quid pro quo vis-a-vis the services rendered must be established between the payers of the fee and the authority charging it. The first ground urged by the State that the fee has been imposed to carry out the purposes contained in Arts. 46, 47, 48 and 48-A of the Constitution, therefore, has no bearing on the validity of its imposition because the petitioners have

never challenged that the cess has been imposed for any unauthorised purpose. The second ground that the dealer is entitled to pass on the burden to the next purchaser and in fact it is he who bears the burden of the fee has also to be rejected because a similar argument was raised in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, but did not find favour for sustaining a fee or cess.

7. The only matter that remains to be considered is as to whether it can be said with some amount of certainty, reasonableness or preponderance of probability that quite a substantial proportion of the amount realised is spent for the special benefits of its payer, i.e. the dealer. In this regard the plea raised by the State is that out of 91 market committees 61 are located in rural areas and as such the majority of the dealers will be directly benefited by the objectives for which the cess has been levied. As provided in S. 4 of the Act, the amount of the cess paid to the officer is to be credited to the Haryana Rural Development Fund to be applied by the State Government to meet the expenditure incurred, in the rural areas, in connection with the development of roads, hospitals, means of communications, water supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of rural areas. The Fund can also be utilised to meet the cost of administering the fund. None of the purposes for which the fund can be utilised can be said to satisfy the element of quid pro quo so far as the dealers are concerned. According to the rule laid down by the Supreme Court in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, the amount if realised must be earmarked for rendering service to the dealers in the notified market area and quite a substantial portion of it must be shown to be expended for this purpose. Secondly, the services rendered to the dealers must be in relation to the transaction of purchase or sale of agricultural produce. Thirdly, some special benefits must be conferred on the dealers which have direct reasonable correlation between them and the transaction though it may not be necessary to confer the whole of the benefit on the dealers. None of these tests is satisfied in the present case. The amounts spent on development of roads, hospitals, means of communications, water supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of rural areas do not confer any benefit on the dealers in the market area at all nor this purpose has any correlation with the sale or purchase on which fee is levied. The learned Advocate-General for the State, however, urged that the theory of quid pro quo has since undergone a great change and in the later decisions of the Supreme Court it has been laid down that the element of quid pro quo in the strict sense is not sine qua non for the fee. Reliance in support of this contention has been placed on the three decisions of the Supreme Court in *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, *Municipal Corporation of Delhi and Others Vs. Mohd. Yasin*, and *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, . Firm *Sreenivasa General Traders* case (supra) reference was made

to the following observations:-

"The Traditional view that there must be actual quid pro quo for a fee has undergone a sea of change subsequent to decision in Kewal Krishan Puri and Others Vs. State of Punjab and Another, . Correlationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable relationship between the levy of the fee and the services rendered. Moreover, there is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of service. It is now increasingly realized that merely because the collections for the services rendered or grant of a privilege of license are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. It is also increasingly realised that the element of quid pro quo in the strict sense is not a sine qua non for a fee".

However, if the observations relied upon are understood with reference to the context in which they were made it would be found that the same in no way affect the requirements of the principle of quid pro quo as enunciated in Kewal Krishan Puri and Others Vs. State of Punjab and Another, , In this case, the increase of the market fee was challenged and the argument raised was that there was no correlation between the services and the increase in the rate of market fee from 50 paise to Re. 1/- per hundred rupees of the price because there were amounts already in surplus with almost all the market committees and there was no lawful justification for the increase in the rate of market fee. Relying on Kewal Krishan Puri and Others Vs. State of Punjab and Another, it was further urged that there must be actual correlation between the services rendered by a market committee and the payer of the market fee and that such service must be in relation to each transaction. It was in this context that the above observations were made. Otherwise, it was an admitted position that the purpose of the market fee was to render specific services to the licencees and in the market area. The only departure made from the rule laid down in Kewal Krishan Puri's case (supra) was that strict correlationship between the persons liable to pay fee and the services rendered may not be required which is evident from the following observations made in para 30:-

"In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class, it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by

the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable relationship between the levy of the fee and the services rendered.

The decision in *Municipal Corporation of Delhi and Others Vs. Mohd. Yasin*, also relates to the enhancement of fee for use of the slaughter house and proceeds exactly on similar basis as the decision in *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, and as such is also of no help to the State, Again in *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, , reliance is placed on similar observations that the element of quid pro quo in stricto sensu is not always a sine qua non of a fee. this observation was made to repel the argument that the fee collected was taken to the consolidated fund of the State and not separately appropriated towards the expenditure for services rendered or the grant of privilege or licence. Otherwise the following passage would show that the principle laid down in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, was accepted as the correct enunciation of law as to the nature of the imposition of fee and the power to levy it:-

"Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the government in rendering the service, though in many cases the costs are arbitrarily assessed. "Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

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If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services ".

Thus in none of the decisions relied upon by the learned Advocate General there has been any departure from the basic requirements of the element of quid pro quo between the fee imposed and the services rendered to its payers.

8. Consequently, even though 61 per cent of the dealers and 80 per cent of the population may be living in the rural area, as defined in the Act, yet the purpose as enumerated in the Act for which the Development Fund is to be utilised has no quid pro quo so far as the dealers and the transaction on which the fee is levied as defined in the Act, are concerned.

9. For the reasons recorded above, these petitions are allowed with costs and the

Haryana Rural Development Fund Act 1983 and the Rules made thereunder are declared to be unconstitutional and void. It is further declared if any cess has been recovered or got deposited, the petitioners shall be entitled to recoer back the same.

10. Order accordingly.