
(1999) 01 MAD CK 0096

In the Madras High Court

Case No : Writ Petition No's. 2950 and 2951 of 1991

Periyar District Hotel Sangam and Another

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 08-01-1999

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 249

Citation : AIR 2000 Mad 9

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : T.R. Mani for T.M. Hariharan, for the Appellant; S. Gopinathan, Government Advocate (for No. 1) and Arivudai Nambi, (for No. 2), for the Respondent

Judgement

P. Sathasivam, J.—Aggrieved by the Resolution No. 638 dated 30-10-90, particularly Serial No. 14 of the said Resolution passed by the second respondent Municipality, Periyar District Hotel Sangam. Erode by its President K. Vivekanandan has filed W. P. No. 2950 of 91 for quashing serial No. 14 of the said Resolution and also for direction directing the second respondent to-forbear from levying and collecting licence fees from hotels or boarding houses run by the members of the first petitioner Sangam at the enhanced rates pursuant to the said Resolution. In W. P. No. 2951 of 91 Erode Lodge Association represented by its Secretary S. Govindarajan and one R. K. V. Nathan challenging G.O. Ms. No. 1452 Health, Indian Medicine and Homoeopathy and Family Welfare dated 7th August, 1990 and also seeking direction directing the third respondent Erode Municipality to forbear from levying and collecting licence fee/registration fee from the members of" the first petitioner Association at the enhanced rates pursuant to its Resolution No. 918 dated 29-1-91 based on the said Government Order. Since the claim in both the writ petitions is one and the same, they are disposed of by the following common order.

2. For the convenience I shall refer the case of the petitioner in W.P. No. 2950 of

91. According to them, the first petitioner Sangam was started in January, 1987 by persons doing hotel business in Erode Town for the betterment and welfare of the Hoteliers and the Sangam is registered under the Societies Registration Act. Towards the cost of services rendered by the Municipality which consists of supervision connected with the grant of annual licences for conducting hotel business in the town, a sum of about Rs. 50/- to Rs. 75/- was levied and collected as licence fee from the hoteliers. However, the Erode Municipality by its Resolution No. 638 dated 30-10-90, resolved to enhance the licence fees levied on hoteliers, lodge-keepers and other businessmen. Serial No. 14 in the said Resolution prescribes revised rates of licence fees for Hotels shown to be on a grade scale and the rates prescribed vary from Rs. 30/- to Rs. 1.200/- based on the annual rental value of the buildings in which the hotels are run, graded from Re. 1/- to Rs. 120/- at the lowest scale to Rs. 4.201 /- and above at the highest slab. For the sale of coffee and tea alone, a licence fee of Rs. 10/- will be charged. This levy is sought to be made in purported exercise of power u/s 249 of the District Municipalities Act. V of 1920 (hereinafter referred to as "the Act") read with Entry (j) of Schedule V thereto. The Resolution states that these increased rates of licence fees would come into force with effect from 1-4-91. The steep increase in the annual licence fee for boarding houses is unwarranted and illegal and the present hike would work great hardship on the hotel business in Erode Town. These proposed" steep rise in the licence fees is out of all proportion to the cost of services rendered and the levy is in the nature of a toll and there is no indication, much less justification, to show on what basis the levy has been raised to 2400 per cent 1600 per cent as the case may be. In the absence of proper justification to show that what is proposed to be levied is by way of reimbursement of the costs involved, the proposed increase in the licence fees is liable to be struck down. The essential characteristic of a fee is quid pro quo. The supervisory staff concerned perform several functions and are required for a number of purposes of the Municipality, and the 2nd respondent should indicate a reasonable apportionment of the costs incurred. The increase of licence fee is in any event, arbitrary and unjustifiable and there is no nexus between the charges proposed to be levied and the service rendered.

3. It is further stated that the first petitioner Sangam filed a Revision petition on 22-2-91 to the State Government u/s 36 of the Act seeking to set aside the Municipal Resolution aforesaid as illegal and beyond the competence of the Municipality and otherwise not justified. They also applied for stay of operation of the impugned resolution pending the revision petition. Even though the stay application was heard, no order of stay was granted, nor any final order is passed in the revision filed by them. In view of Section 249(5) of the Act application for renewal of licences has to be made not less than 30 days before the end of the year i.e., by 1st March each year. In view of the urgency of the matter and in the absence of any stay by the first respondent in the revision petition, the petitioners have filed the above writ petition before this Court.

3-A. Identical averments have been made in W.P. No. 2951 of 91. In addition to

the said averments, the petitioners therein also contended that G.O. Ms. No. 1452 Health, Indian Medicine and Homoeopathy and Family Welfare dated 7-8-90 are liable to be quashed.

4. In W. P. No. 2950 of 91 the second respondent has filed a counter-affidavit disputing various averments made by the petitioner. They highlighted the various activities of the Municipalities and the steps taken by them in providing drinking water, maintaining proper drainage and road facilities etc. It is further stated that on account of the mounting expenditure in providing the amenities, the Municipality has no other option except to increase its income by increasing the taxation. The old fee had been fixed long ago as far back in 1976 and the gradual rise in the expenditure during the succeeding 14 years is properly reflected. The resolution No. 638 dated 30-10-90 the representations by the hotel owners were considered and rejected as no merits and they have not been simply ignored as alleged. It is further stated that the licence fee is in the nature of a tax and does not require to satisfy the norm of Quid Pro Quo. The municipality is concerned only with the suitability of the location and services rendered in maintaining the requisite standard of hygiene like maintaining sanitary conditions, removal of rubbish from the vicinity etc. With these averments, the 2nd respondent prayed for dismissal of the writ petition. The first respondent filed a counter-affidavit adopting the same stand taken by the second respondent Municipality.

5. In W. P. No. 2951/91 on behalf of the respondents 1 and 2, second respondent has filed a counter-affidavit disputing various averments made by the petitioner therein. It is stated that the Municipality has not neglected to provide necessary civic amenities. On account of the mounting expenditure in providing the amenities, the third respondent has no other option except to augment its income by increasing the taxation. Enhancement of tax is not an unique feature peculiar to third respondent, but the same is prevalent in all the other Municipalities all over the State. On account of the increase in expenditure by way of salary to staff etc., the increase in the cost of supervision becomes inevitable. Therefore, there is nothing arbitrary or illegal in proposing an enhancement in the licence fee. There is no steep increase in the annual licence fee. The old fee had been fixed long ago as far back as 1976 and the gradual rise in the expenditure during the succeeding 14 years is properly reflected in resolution No. 638 dated 30-10-90. The representation by the lodge owners were considered and rejected as they had no merits. The resolution of the Municipal Council is made only under the provisions of the Tamil Nadu District Municipalities Act, 1920. The G.O. Ms. No. 1432, Health, Indian Medicine, Homeopathy and Family Welfare Department, dated 7-8-90 was relied upon only to fix the rates of licence fees. It is true that the Association gave a petition dated 22-2-91 requesting the Government to stay the resolution No. 918. dated 29-1-91 of the Erode Municipality. While the request was being examined with reference to the provisions in Section 36 of the Tamil Nadu District Municipalities Act, 1920 the Association filed the said writ petition. In passing the impugned resolution, the Erode Municipal Council was fully aware that a licensee fee is

imposed for covering the probable expenses which may have to be incurred for the regulation of the particular trade or business in respect of which the licence is required. A licence fee is charged to defray the costs, involved in the regulation and administration of the trade. What is levied is only a licence fee and not a registration fee. The impugned levy is perfectly legal and quite in conformity with the provisions contained in the said Tamil Nadu District Municipalities Act. There are periodical inspection by the public Health staff every month. The rubbish and other refuse materials gathered from the lodges are removed by the conservance staff for no extra charges. In addition to the above mentioned services, the Municipality is also applying disinfectants around the lodges every day. Again, anti-cholera and anti-typhoid inoculations are also given to the workers and inmates of lodges whenever necessary. The calculations furnished by the petitioner are not correct or realistic. Although the services rendered need not be equal to the fee levied in mathematical accuracy. It is not correct to state that the Municipality is making any profit out of the collections of licence fee. The licence fee is in the nature of a tax and does not require to satisfy the norm of quid pro quo. With these averments they prayed for dismissal of the writ petition.

6. The third respondent Municipality has not chosen to file counter-affidavit in this writ petition.

7. In the light of the above pleadings, I have heard Mr. T. R. Mani, learned Sr. counsel for the petitioner in both the writ petitions, Mr. S. Gopinathan, learned Government Advocate for the State and Mr. P. Arivudainumbi learned counsel for Erode Municipality in both the cases.

8. Mr. T. R. Mani after taking me through the impugned resolution of the Erode Municipality, various particulars furnished in the affidavit filed in support of the above writ petitions as well as the relevant provisions in the District Municipalities Act, has contended that the impugned Resolution is bad in law because it does not satisfy what extra cost incurred to sustain the levy. He also submitted that the second respondent failed to indicate a reasonable apportionment of the cost Incurred. According to him, the steep increase of licence fee is arbitrary, unjustifiable and there is no nexus between the charges proposed to be levied and services rendered. He also pointed out that the increase is not based on proper principle. On the other hand, learned Government Advocate as well as the learned Counsel for the Municipality while justifying the resolution of the Municipality stoutly contended that inasmuch as the petitioner in both the writ petitions have filed a revision petition on 22-2-91 to the State Government u/s 36 of the Act seeking to set aside the impugned Municipal Resolution and the same are pending before the Government, as on date, it is not open to this Court to go into the merits of the impugned resolution; accordingly they prayed for dismissal of both the writ petitions.

9. I have carefully considered the rival submissions.

10. Among other provisions in the Tamil Nadu District Municipalities Act, we are

concerned with Section 249 which deals with licences in respect of premises mentioned in Schedule V of the Act. The said section is as follows :--

"249. Purposes for which places may not be used without licence.-- (1) The Council may publish a notification in the district gazette and by beat of drum that no places within municipal limits or at a distance within three miles of such limits shall be used for any one or more of the purposes specified in Schedule V without the licence of the executive authority and expect in accordance with the conditions specified, therein.

Provided (hat no such notification shall take effect

(a) until sixty days from the dale of publication, and

(b) except with the previous sanction of the State Government in any area outside the municipal limits.

(2) The owner or occupier of every such place shall within thirty days of the public action of such notification apply to the executive authority for a licence for the use of such place for such purpose.

(3) The executive authority may by an order and under such restrictions and regulations as he thinks fit grant or refuse to grant such licence.

(4) Every such licence shall expire at the end of the year unless for special reasons the executive authority considers it should expire at an earlier date, when it shall expire at such earlier date as may be specified therein.

(5) Applications for renewal of such licences shall be made not less than thirty and not more than ninety days before the end of every year and applications for licences for places to be newly opened shall be made not less than thirty and not more than ninety days before they are opened.

xxx xxx".

Schedule V of the Act provides premises which may not be used without a licence u/s 249 of the Act. Among other clauses, Clause (j) in Schedule V speaks about hotel, restaurant ealing house etc. It runs as follows :--

(f) Keeping a public halting place, choultry or other rest-house for travellers (other than a choultry or rest-house maintained by the . Government or local authority), a hotel, restaurant, eating-house, coffee house, boarding house or lodging house (other than a student"s hostel under public or recognised control)."

The above mentioned provision makes it clear that without a valid licence by the concerned authority, the premises mentioned in Schedule V cannot be used. It is also clear that it is open to the municipal council to impose fee as licence fee.

11. By the impugned Resolution No. 638 dated 30-10-90, the Erode Municipality resolved to enhance the licence fee levied on hoteliers, lodge-keepers and other businessmen. Among other clauses, we are concerned with clauses 14and 15.

Serial No. 14 in the said resolution prescribed revised rates of licence fees for hotels show to be on a graded scale and the rates prescribed vary from Rs. 50/- to Rs. 1,200/- based on the annual rental value of the buildings in which the hotels are run, graded from Re. 1 /- to Rs. 120/- at the lowest scale to Rs. 4,201/- and above at the highest slab. For the sale of coffee and tea alone, a licence fee of Rupees 10/- will be charged Likewise, Serial No. 15 in the said resolution prescribed the revised rates of licence fee for lodges on a graded scale based on the annual rental value of the buildings in which the lodging houses, with or without boarding facilities, are run and higher rates are prescribed for boarding and lodging houses. The rates prescribed vary from Rs. 50 and Rs. 75 to Rs. 900 and Rs. 1100/- depending on the annual rental value of the buildings in which the lodging houses are run, ranging from below Rs. 240/- to above Rs. 4,801 /-. The resolution also states that this increased rates of licensee fee would come into force with effect from 1-4-1991. It is also clear from the resolution that the said levy is sought to be made as per Section 249 of the District Municipalities Act read with Entry (j) of Schedule V thereto.

12. It is the main contention that the steep increase in the annual licence fee for the boarding and lodging houses is unwarranted, illegal and it would work great hardship on the hotel and lodging business in Erode Town. It is also the case of the petitioners that the essential characteristic of a fee is quid pro quo. In the absence of any particulars regarding the expenditure, maintenance etc., such steep increase is unwarranted is the main claim of the petitioners. No doubt, it is defended that in the light of the activities of the Municipality and taking note of public health, hygienic general administration etc.. they are justified in enhancing the same. By pointing out that the essential characteristic of a fee is quid pro quo and in the absence of any details either in the counter-affidavit or before this Court, Mr. T. R. Mani. learned senior counsel for the petitioners vehemently contended that the increase of licence fee is unjustified and there is no nexus between the charges proposed to be levied and the services rendered. In order to highlight the distinction between the tax and fee, he very much relied on the following decisions ;--

- (1) Nagar Mahapalika Varanasi Vs. Durga Das Bhattacharya and Others, ;
- (2) The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., .;
- (3) H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, ;
- (4) Kewal Krishan Puri and Others Vs. State of Punjab and Another, .

Even though the learned counsel has demonstrated the distinction between tax and fee and the saying characteristic of a fee is quid pro quo by citing the above mentioned decisions, I am of the view that there is no dispute with regard to the above aspect, particularly in the light of Section 249 read with Clause (j) in Schedule V of the District Municipalities Act. Accordingly, it is unnecessary to

refer the conclusion and the law laid down by their Lordships in the above referred decisions. However, as rightly contended by the learned senior counsel, in spite of furnishing specific particulars regarding inefficient service of the municipality and details regarding the expenditure towards maintenance, public health etc.. Erode Municipality has not taken any care or effort to meet those points by providing necessary information either in the form of counter-affidavit or by placing the materials before this Court at the time of argument. As a matter of fact, in the counter-affidavit sworn to by one N. Gopalasamy, Commissioner, Erode Municipality (not attested and without any date of execution). without looking into the provisions in the District Municipalities Act and without bothering about the particulars furnished in the affidavit filed by the petitioner in the above writ petition, in a cavalry manner it is stated that the licence fee is in the nature of a tax and does not require to satisfy the norm of quid pro quo. As stated earlier, the deponent of the affidavit has not taken any care to meet the points raised by the petitioner. Likewise, the first respondent / Government has merely filed a counter-affidavit adopting the counter filed by the 2nd respondent. In the other writ petition, namely, W.P. No. 2951 of 91, Erode Municipality has not filed any counter-affidavit. However, on behalf of the respondents lands 2, one P. M. Chokalingam, Deputy Secretary to Government, Municipal Administrations and Water Supply Department has sworn to an affidavit dated 28-4-93. Here again, there is no denial with reference to various particulars mentioned in the affidavit. It is clear that neither the Erode Municipality nor the first respondent, Government have taken any efforts to meet the challenges particulars in thn affidavit. In a matter like this, when a person asserts that the action of the Municipality or the Government is contrary to the statutory provisions and opposed to all canons of justice and approached this Court with facts and figures duty is caste on the said authorities to explain the same as to how they are justified in their action. After going thro, gh the various details furnished in the affidavits, the argument of the learned senior counsel for the petitioner and the counter-affidavits of the respondents and the arguments of their counsel, I am of the view that both the respondents failed in their duty to explain their stand before this Court.

13. No doubt, Mr. Arvinudai Nambi, learned Counsel appearing for the Municipality by referring to two decisions of the Supreme Court, namely,

(i) State of Tripura and others Vs. Sudhir Ranjan Nath, ;

(ii) Vam Organic Chemicals Ltd. and Another Vs. State of U.P. and Others, .

would contend that inasmuch as the fee is regulatory in nature, the Municipality is justified in enhancing the same. However, I am of the view that there is no need to consider this aspect, namely, whether the licence fee is in the nature of a tax or fee and whether the Municipality is justified in enhancing the same several times, in view of the revision petitions filed by both the petitioners on 22-2-91 to the State Government, first respondent herein u/s 36 of the Act seeking to set aside the resolution No. 638 dated 30-10-90. There is no dispute with regard to

the filing of the said revision petitions on 22-2-91 by the petitioners. It is specifically stated in para 9 of the affidavit filed in support of W. P. No. 2950 of 91 and in para 10 of the affidavit filed in support of the W. P. 2951/91. Further, in the adoption, counter-affidavit filed by the first respondent in W. P. 2950/91 in para 3 it is stated that "the petitioner has submitted a petition to the Government on 22-2-91 and it was examined, however before passing any orders in the matter, the petitioner has filed this writ petition. Therefore, no orders have been passed on his petition dated 22-2-91". Apart from this, at the time of hearing, the learned Government Advocate on instructions reported that both the revision petitions are pending with the Government in view of pendency of the above writ petitions.

14. Section 36 of the Tamil Nadu District Municipalities Act enables the State Government to suspend or cancel Resolutions passed by the Municipalities. Section 36 is as follows :--

"36. Power to suspend or cancel resolutions, etc., under Act.-- (1) The State Government may. by order in writing-

(i) Suspend or Cancel any resolution passed, order issued, or licence or permission granted, or

(ii) Prohibit the doing of any act which is about to be done or is being done in pursuance or under colour of this Act, if, in their opinion,

(a) Such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised, or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Court or any other law, or

(c) the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act. is likely to. cause danger to human life, health or safety, or is likely to lead to a riot or a affray :

Provided that the State Government shall before taking action under this Section on any of the grounds referred to in Clauses (a) and (b) give the authority or person concerned an opportunity for explanation.

Provided further that nothing in this subsection shall enable the State Government to set aside any election which has been held."

In the light of the admitted position, namely, pendency of the revision petitions filed by the petitioner u/s 36 of the Act before the first respondent Government and in view of various factual details furnished therein, it would be inappropriate for this Court to go into the very same averments made in these writ petitions. No doubt, Mr. T. R. Mani, learned senior counsel for the petitioner by referring to the averments made in para 9 of the affidavit (in W. P. No. 2950/ 91) would contend that, in view of the attitude of the officers of the department concerned, the petitioners may not get any justice at the hands of the Government in the

said revision petitions. He also stated that those averments have not been denied by the first respondent. It is true that the averments in para 9 of the affidavit mentioned above have not been specifically controverted by the first respondent. However, when the statute enables the State Government to interfere in the Resolution, order, licence, permission or Act of the Municipalities, it is not open to any one to undermine the authority of the Government. The State Government is expected to consider and pass appropriate orders, more particularly with reference to Sub-clause (a) (b) and (c) to Sub-section (1) of Section 6 of the Act. In the light of the said statutory provision. I am unable to accept the apprehension of the learned senior counsel for the petitioner.

15. In the light of what is stated above, preserving the right of the petitioners with regard to all the contentions raised, I am of the view that interest of justice would be met by directing the first respondent-State Government to consider and pass orders in the revision petitions filed by the petitioners on 22-2-91. Accordingly, the first respondent is hereby directed to pass orders in the revision petitions as stated above within a period of three months from the date of receipt of a copy of this order after affording opportunity to the petitioners. Writ petitions are disposed of on the above terms. No costs.