
(2007) 07 AHC CK 0064
In the Allahabad High Court

Phool Chand Gupta and Others

APPELLANT

Vs

Nagar Nigam, The Officer Incharge, Licensing/Advertisement,
Nagar Nigam and The Excise Commissioner

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Uttar Pradesh Municipal Corporation Act, 1959 — Section 541

Citation : (2008) 1 AWC 610

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—In all these writ petitions the petitioners, who are licensees of retail vend of country liquor and beer in the various districts of State of Uttar Pradesh, have challenged the levy and demand of licence fee by the concerned Nagar Nigam/Nagar Palika Parishad. Civil Misc. Writ petition No. 2435 of 2002 is being treated as the leading case. The facts giving rise to Civil Misc. Writ Petition No. 2435 of 2002 are as follows:

2. The said writ petition has been filed by 8 persons who are holder of licence in form FL-5B for retail vend of beer/country liquor at various places in the Municipal limit of Nagar Nigam, Allahabad. the licence relating to the Excise Year 2001-2002 i.e. the period from 1.4.2001 to 31.3.2002 has been issued by the Collector, Allahabad after obtaining sanction from the Excise Commissioner, U.P. Allahabad. According to the petitioners they are required to pay licence fee to the State Government for obtaining the licence as consideration for parting with the exclusive privilege. Their activities of selling country liquor and beer are governed and controlled by the provisions of U.P. Excise Act, 1910 (hereinafter referred to as the Excise Act) and the Rules framed thereunder. The Officer Incharge Licensing/Advertisement, Nagar Nigam, Allahabad- respondent No. 2 issued separate notice dated 1st August, 2002 to each of the petitioners by which they were directed to obtained licence from the Nagar Nigam, Allahabad

after paying the licence fee of Rs. 6,000/- for running the liquor shops. The Nagar Nigam, Allahabad has framed bye-laws on 13th January, 1999 which has been published in the Official Gazette on 30th January, 1999 under which Item No. 3 of Category-C pertains to the licence fee for a beer shop which has been fixed at Rs. 6,000/- per shop, Item No. 6 relates to country liquor shops for which licence has been fixed at Rs. 6,000/- per year per shop and Item No. 7 pertains to foreign liquor shops for which licence has been fixed at Rs. 12,000/- per year shop. The aforesaid bye-laws have been framed u/s 541 of the Uttar Pradesh Municipal Corporations Adhiniyam, 1959 (hereinafter referred to as the 1959 Adhiniyam). The demand notice as also the bye-laws relating to Item Nos. 3, 6 and 7 of Category-C have been challenged on the ground that they do not empower the Nagar Nigam to charge any fee on excise shop which are exclusively covered by the provision of the Excise Act and further Sub-sections (26), (36), (41) and (43) of Section 541 are not attracted in the case of excise licence. The provisions of Sections 199- to 203 of the 1959 Adhiniyam have not been compliance with and further no service whatsoever is being rendered by the Nagar Nigam Allahabad to the petitioners and as there is no element of quid pro quo the licence fee is wholly illegal, arbitrary and without any authority of law. The excise business is being regulated under the provisions of the excise Act and the Nagar Nigam cannot exercise any power to regulate the business of the petitioners.

3. In the counter affidavit filed by the Nagar Nigam it has been stated that the bye-laws framed by the Nagar Nigam, Allahabad is absolutely in accordance with law. Same bye-laws, wherein the licence fee has been challenged by owners of Nursing Home, has been upheld by this Court holding that the Nagar Nigam has rightly imposed the licence fee for regulating the business of the petitioners therein in any Nagar Nigam area and the bye-laws have been framed strictly in accordance with law. Reliance was also placed upon a Division Bench decision of this Court in Civil Misc. Writ Petition No. 37686 of 2002 Radhey Charan Gupta and Ors. v. State of U.P. decided on 9th September, 2002 wherein the writ petition filed by the other liquor licence challenging the levy and demand of licence fee has been dismissed. It has further been stated that the Nagar Nigam has to incur considerable amount for keeping the vicinity and the locality clean where these shops are situated. So far as the licence fee imposed by the Nagar PaliKa Parishad in other districts are concerned it has been imposed under the bye-laws framed u/s 298 of the Municipalities Act, 1916 (hereinafter referred to as the 1916 Act).

4. We have heard the learned Counsel for the parties.

5. Learned Counsel for the petitioners submitted that u/s 541 of the 1959 Adhiniyam the Nagar Nigam has no power to regulate the trade of beer/ country liquor as the same is being regulated by the provisions of the Excise Act. Thus the question of payment of licence fee does not arise. He submitted that in any event as no service was being rendered by the Nagar Nigam to the petitioners"

trade and there was no element of quid pro quo the levy and demand of licence fee was wholly unjustified, in support of the aforesaid pleas they have relied upon the following decisions:

- 1 Nagar Mahapalika Varanasi Vs. Durga Das Bhattacharya and Others,
- 2 Kamaljeet Singh and others Vs. Municipal Board, Pilkhwa and others,
3. A.P. Bankers and Pawn Brokers Association Vs. Municipal Corporation of Hyderabad,

6. Learned Counsel for the Nagar Nigam, on the other hand submitted that under Sub-sections (26), (36), (41). and (43) of Section 541 of the 1959 Adhiniyam the Nagar Nigam is entitled to charge licence fee as services are being rendered. Further the, Nagar Nigam is regulating the business of country liquor by imposing the conditions that the proprietors/owners of such business would be liable to remove the garbage and other waste materials etc. connected with their business and also ensures that the have to carry on business on their own premises without encroaching upon the Nagar Nigam footpath, drainage, road and without causing any hindrance to the general public. The fee in effect is the regulatory tee and the some is liable to be upheld. In support of his pleas he has relied upon the following decisions:

1. Doctors" Jan Kalyan Society, Mirzapur Vs. State of U.P. and others,
2. M.D. Chauhan and Another Vs. State of U.P. and Others,
3. United India Insurance Co. Limited v. Nagar Nigam, Allahabad Civil Misc. Writ Petition No. 14037 of 1999 decided on 19th May, 2003.

7. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties.

8. We find that u/s 541 of the Adhiniyam, 1959 the Nagar Nigam has been, empowered to make bye-laws with respect to certain matters specified therein. Sub-sections (26), (36), (41) and (43) empowers the Nagar Nigam to make bye-laws for the following:

(26) securing the efficient inspection of the markets and slaughter-houses and of shops in which articles intended for human food are kept or sold.

(36) securing the protection of public markets, gardens public parking place and open places vested in or under the control of the Corporation from inquiry, or misuse, regulating their management and the manner in which they may be used by the public and providing for the proper behaviour of persons in them.

(41) fixing of fees for any licence, sanction or permission to be granted by or under this Act.

(43) regulating admission to and use by members of the public of Corporation hospitals dispensaries, infirmaries, homes and similar institutions and the levy of

fees therein.

9. The bye-laws dated 13th January, 1999 has been framed by the Nagar Nigam after following the provisions of Sections 542 and 543 of the Adhiniyam, 1959. The proposals were made on 11th July, 1998 and 28th October, 1998 and as no objection has been received, the proposes were accepted and had been published in the, official gazette on 30th January, 1999. The Apex Court in the case of the The Municipal Board, Maunath Bhanjan Vs. Swadeshi Cotton Mills Co. Ltd. and Others, has held that with the publication of the proposals in the official gazette it would be deemed that the procedure prescribed under law has been complied with. We further; find that under the bye-laws the petitioners are required to observe the following conditions for carrying on their business:

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10. In the case of Doctor's Jankalyan Society (supra) this Court has upheld the levy of licence fee on nursing homes, clinics etc. by the Nagar Palika Parishad, Mirzapur u/s 298(1)/List I Section 1 item (h) of the Municipalities Act, 1916. The same view was taken by this Court in the case of Dr. Chakresh Kumar Jain (supra) wherein the licence fee has been held to be regulatory and reasonable.

11. In the case of United India Insurance Co. Limited (supra) this Court following the decision in the case of Dr. Chakresh Kumar Jain (supra) has held that for a regulatory fee quid pro quo is not necessary. The Court has taken note of the fact that the Nagar Nigam is rendering a lot of service to the residents and due to business transaction of the petitioners they are crowded by the customers at their business place and there are sanitation problems disproportionate to the other areas and for this the Nagar Nigam bears extra cost. This Court has distinguished the decision of the Apex Court in the case of A.P Bankers and Pawn Brokers Association (supra).

12. In the case of Durga Das Bhattacharya (supra) the Apex Court has held that the imposition of annual licence fees at the rate of Rs. 30/- on each rickshaw owner and Rs. 5/- on each rickshaw driver by the Nagar Mahapalika, Varanasi

cannot be justified as there is no sufficient quid pro quo. The Apex Court has not considered the question of being regulatory in nature.

13. In the case of Kamaljeet Singh (supra) the Apex Court has held that the expenditure incurred on maintenance of the connecting road and the nallah cannot be justified as quid pro quo for levy of toll tax by the Municipal Board from vehicle and other conveyance passing through the municipal limit.

14. In the case of A.P. Bankers and Pawn Brokers Association (supra) the Apex Court has struck down the levy of licence fee on money lending and pawn broking on the ground that there is no provision empowering the Municipal Corporation to either carry out inspections or to take any measures to ensure that such trade and operations are run properly and that exploitation is avoided nor the said trade is dangerous or likely to create nuisance. However, in the present case we find that certain obligations have been placed upon the persons engaged in the business of country liquor and beer/foreign liquor which are necessary in the maintenance of public health and safety. The fee of Rs. 6,000/- per year cannot be said to be unreasonable or highly excessive; The mere fact that the liquor trade is being controlled by the Excise Commissioner under the provisions of U.P. Excise Act, 1910 would not come in the way of the Nagar Nigam Authorities from levying licence fee as a regulatory measure for maintaining sanitation and other allied matters in the interest of general public residing in the locality where such shops are situated. Moreover, we find that this Court in the case of Radhey Charan Gupta and Ors. v. State of U.P. (supra) which involved similar controversy has been pleased to dismiss the writ petition by following the judgment of this Court in the case of Dr. Chakresh Kumar Jain (supra). The present cases are fully covered by the decisions of this Court in Dr. Chakresh Kumar Jain (supra) and Radhey Charan Gupta (supra). We are in respectful agreement with the view taken by this Court in the aforesaid decisions.

15. In view of the foregoing discussions, we do not find any merit in these writ petitions which are dismissed with costs.