

(1959) 08 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 253 of 1958

Pravulal Patadia

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 13-08-1959

Acts Referred:

Constitution of India, 1950 — Article 265
Orissa Grama Panchayat Act, 1948 — Section 44, 49A, 49G

Citation : AIR 1960 Ori 43 : (1959) 25 CLT 509

Hon'ble Judges : R.L. Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : Ranjit Mohanty and S.C. Ghose, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.

This is a petition under Article 226 of the Constitution challenging the validity of the order of the Gram Panchayat of Gati Rout Patna directing the petitioner to pay license fee at Rs. 20/ per lakh of bricks manufactured in his kiln within the jurisdiction of the said Panchayat.

2. Chapter V-I of the Orissa Gram Panchayat Act, 1948, contains various provisions dealing with regulation and control over industries, and factories (including dangerous and offensive trades, occupations and processes) within the jurisdiction of Gram Panchayat) Section 49-G confers powers on a Gram Panchayat to levy fees in respect of any licenses granted under that Chapter, subject to certain maximum, to be determined by the State Government by notification in that behalf. In exercise of the powers conferred by this section the State of Orissa in the local Self-Government Department Notification No. 1283 L. S. O. dated the 1st December, 1950, fixed the maximum fees leviable per annum in respect of licenses granted to various trades and industries or occupations mentioned in the Table appearing in that Notification. Item M-I of the Table says

that for the burning of bricks the maximum fee payable is Rs. 50/- per lakh. In exercise of the power conferred by this notification the Gram Panchayat levied a license fee at Rs. 20/- per lakh of bricks manufactured by the petitioner in his kiln.

3. The main point urged against the validity of the said levy by Mr. Ranjit Mohanty was that, in essence, it was not a "fee" but a "tax" and as such in excess of the powers conferred on the Gram Panchayat by Section 49-G of the Gram Panchayat Act. On behalf of the State of Orissa a counter affidavit was filed in which it was admitted that the amount collected from owners of brick kilns was not set apart for controlling that trade or for rendering service to persons who may take out license for the purpose, but was absorbed in the general revenue of the Panchayat, and utilised for "all-round improvement of sanitation, communications, education and other activities of Government undertaken from time to time (paragraph 10) and also "for construction of grain godowns, agricultural improvements and many other such subjects" (paragraph 11).

4. The main distinction between "Fee" and "Tax" is well known--see the decision of their Lordships of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, ; *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, and *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, . In view of this decision, the learned Advocate General quite properly conceded that the levy in question must, in essence, be held to be a tax and not a fee.

5. The next question is whether such a levy can be justified under the provisions of the Orissa Gram Panchayat Act. The taxing power of a Panchayat is described separately in Section 44. Chapter V-A confers only regulatory powers on Panchayats to control certain specified trades and professions and authorises them to require persons to obtain licenses and charge fees for that purpose. When the legislature used both the expressions "fee" and "tax" in the Act, it must be presumed to have understood the distinction between the two expressions. Once it is found, on the facts of this case, that the levy is a "tax" and not a "fee" it is obvious that it is outside the scope of section 49-G.

6. The learned Advocate General then ingeniously contended that notwithstanding the use of the expression "fee" in section 49-G, if the entire context of the various provisions of Chapter V-A of the Act be carefully scrutinised, it must be held that the legislature really meant to confer taxing power on the Gram Panchayat though that power was mistakenly described as a power to levy a fee. We are unable to accept this construction of Section 49-G. The language of this Section is clear and unambiguous.

What sections 49-A and 49-G confer is only a power to regulate the carrying on of a particular trade or occupation by issuing licenses. They do not confer a general taxing power on the Panchayats for increasing their revenue for which separate provision exists in Section 44. If the intention of the Legislature, was

that taxes should be levied on owners of brick kilns it would have said so in clear terms and would have made the necessary provision in the Act itself. We must therefore, hold that the expression "fee" was deliberately used in Section 49-G with a view to distinguish it from tax as generally understood.

7. In view of the admission made in the counter affidavit filed by the State that the income realised from the levy was not used for controlling and regulating the trade of brick-burning but was also utilised for other purposes and thus merged in general revenues of the panchayat, we must hold the levy to be in excess of the powers conferred by Section 49-G of the Gram Panchayat Act and, as such, invalid.

8. The application is allowed. Let a writ issue quashing the demand notice dated the 7th August, 1958 served on the petitioner by opposite party No. 2 on a declaration that the levy imposed by the Gram Panchayat of Gati Rout Patna on him for manufacture of bricks in his kiln is invalid and inoperative.

The petitioner is also entitled to his costs. Hearing fee is assessed at Rs. 100/- (Rupees one hundred only).

Das, J.

9. I agree.