

(1993) 06 MAD CK 0022

In the Madras High Court

Case No : W.Ps. No's. 1899 to 1902 and 1686 to 1697 of 1984

Pullar Chettiar and others

APPELLANT

Vs

The Commissioner, Connoor Municipality and another

RESPONDENT

Date of Decision : 25-06-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Tamil Nadu District Municipalities Act, 1920 — Section 250, 260(2), 261

Citation : AIR 1994 Mad 37

Hon'ble Judges : Mishra, J

Bench : Single Bench

Advocate : A.S. Kailasam, for the Appellant; C. Chinnaswami, for the Respondent

Judgement

1. The petitions aforementioned are directed against the proceedings of the respondents, calling upon the petitioners and the other merchants to

pay at Rs. 15/- per diem in respect of single stalls and at the rate of Rs. 30/- per diem in respect of double stalls of municipal market in the town of

Connoor District, the Nilgiris. According to the petitioners, they were holding on lease either single stall or double stall out of the number of stalls

owned by the respondents at Connoor and paying rent of Rs. 1.70 to Rs. 2.00 per day for a single stall and Rs. 3.40 to Rs. 5.00 for a double stall.

The stalls, however, were sought to be reconstructed and accordingly the petitioners vacated their respective stalls to enable the respondents to

demolish the old buildings. The old buildings were demolished accordingly, according to the petitioners, on the firm understanding that the

respondents would give the stalls back to the concerned persons who were occupying them as soon as the reconstruction was over. After the

reconstruction was completed, however, the respondents wanted to auction the

stalls. Treating this as a violation of the undertaking seven merchants together filed a suit in O.S. No. 17 of 1983 of the District Munsif Court, Connoor and prayed for a permanent injunction restraining the respondents from in any manner allotting or auctioning the stalls by public auction to any third persons. In the said suit, it is said an understanding is reached between the plaintiffs therein on the one hand and the respondents herein on the other hand, under which the respondents gave a firm undertaking that the stalls would be allotted to the same persons, who were occupying the stalls originally before reconstruction. The respondents, it appears, however proposed to reinduct in the stalls the petitioners and others who were there from before on a new rent per day fixed by them at Rs. 15/- per day for single stall and Rs. 30/- per day for double stall. Calling the rate fixed per day arbitrary and against the rules for fixation of rent or for a licence fee, the petitioners have moved this court seeking a writ of certiorari to quash the proceedings, under which the new rate of rent has been fixed and/or licence fee by the respondents.

2. In a common counter affidavit, the respondents have said that 28 new stalls have been constructed under Integrated Urban Development

Programme Scheme with the Central Government's assistance by way of loan, which is repayable within 25 years along with interest at 5 1/2%

per annum which is subsequently revised to 6 1/2% per annum. The construction work was taken up by the Public Works Department and

executed with an estimated cost of Rs. 8.95 lakhs. The buildings were completed and handed over to the Municipality on 1-8-1983. The

respondents admitted in the counter affidavit that some of the merchants went to the court of the District Munsif, Connoor and obtained interim

injunction, but it is said -- "the suit was dismissed on 30-11-1983 by the Hon'ble District Munsifs Court as the suit was not pressed by the

petitioners, in view of the memo of settlement filed by both parties and as resolved by the Council in its Resolution No. 237/83 dated 12-11-1983

to allot the stalls to the petitioners at the rate of daily fee of Rs. 30/- and Rs. 60/- for single and double stalls respectively subject to the conditions

to pay six months deposit and subject to the approval of the rates so fixed by the Director of Municipal Administration Madras". It is said further in

the counter affidavit that the Municipal Council in its Resolution No. 237 dated

12-11-1983 resolved to allot the new stalls to the previous stall

holders on daily licence fee of Rs. 30/- and Rs. 60/- for each of the single and double stalls respectively subject to the approval by the Director of

Municipal Administration, Madras and on payment of six months deposit in advance and to pay the daily licence fee promptly. Subsequently, the

Director of Municipal Administration was addressed in this respondent's Office Rec. No. 7214/81-A4 dated 5-12-1983 for allotting the said

stalls to the old stall holders at Rs. 30/- per single stall per day dispensing with the public auction. It is thus said, "after the dismissal of the said suit

on 30-11-1983 all the vendors decided not to pay any tax or fees with effect from 15-12-1983 until the stalls are handed over to them with a

reasonable rent since the daily fee fixed at Rs. 30/- per single stall per day was considered to be on the high side. The Commissioner and the

Special Officer discussed the problem with the stall holders on 17-12-1983. The vendors demanded to hand over the stall with lesser rent without

collecting any amount from them but the Commissioner would not agree to consider the request before the receipt of the orders from the Director

of Municipal Administration and also as it was not found possible to hand over the stalls without remitting the six months deposit. On the

representation made by the vendors, the District Collector convened a meeting with Municipal Officials, stall holders, local M.L.A. etc. and after a

prolonged discussion, the District Collector obtained permission from the Director of Municipal Administration to settle the matter. Then the

District Collector after examining carefully all the aspects of total expenditure for the construction of the above stalls, repayment of annual

instalment of principal with interest to be repayable within 25 years maintenance, establishments and the prevailing circumstances for the actual

plinth area of the individual stalls taking into account of the neighbouring stalls auctioned recently and arriving to a conclusion and suggested to

reduce the daily fee of Rs. 30/- to Rs. 15/- per single stall per day. The District Collector also requested the Municipal Commissioner to obtain the

Council Resolution and to hand over the stalls immediately with an undertaking that the stall holders should pay Rs. 15/- per single stall per day

promptly and pay six months deposit as per conditions; after taking assurance from the vendors for the withdrawal of the token fast and band on

the same day. Accordingly on the suggestions and decision arrived at by the District Collector, the Commissioner placed the entire discussion

before the Council and the Council resolved to hand over the stalls accepting the rate of daily fee of Rs. 15/- for single stall and Rs. 30/- for double

stall per day as suggested by the Collector, subject to the approval of the Director of Municipal Administration, Madras in its resolution No.

295/83 dated 27-12-1983. Consequently the Municipal Commissioner has issued orders allotting the stalls in his proceedings A4/7214/81 dated

2-1-1984 to the petitioners. Accordingly the said stalls were taken over by the individuals on 9-1-1984 giving an undertaking in writing and

accepting to remit the daily licence fee then and there and to remit the six months deposit of Rs. 2,700/- for a single stall and of Rs. 5,400/- for

double stall within 15 days in one instalment." It is alleged in the counter affidavit that the stall holders failed to pay the daily fees promptly and also

defaulted in payment of the deposit aforementioned. As the conditions stipulated in the office proceedings No. 7214/81 dated 2-1-1984 were

violated and also the assurance given by the vendors to pay the six months deposit within 15 days also failed and the stall holders defaulted in

payment of daily fee. action was taken to lock up the stalls on 2-2-1984 evening with the assistance of the police and the stalls were locked and

sealed for the failure of non-payment of six months deposit amount and also daily fee promptly from the date of occupation, i.e. from 9-1-1984 to

2-2-1984 with a view to realising the dues. All the stall holders have represented the matter to the District Collector again on the next day. The

District Collector after discussing with the Municipal authorities advised the stall holders to remit Rs. 500/-immediately and to remit the daily fee

promptly without any further default and to pay the balance of six months" deposit within thirty days. On the advice and suggestions made by the

District Collector, the stall holders have remitted Rs. 500/- on 4-2-1984 and took over possession of the shops again on the same day i.e. 4-2-

1984. After taking possession of the above stalls the vendors instead of clearing the arrears of daily fees and the six months deposit, however

according to the respondents, the petitioners have approached this Court to evade payment and to make the Municipality suffer with financial

constraints. There is a calculation in the counter affidavit how the daily fee has been fixed in these words:

"Under the I.U.D.P. Schemes under Phase III 52 new shops have been constructed by the Coonoor Municipality (single stall 18 numbers and double stalls 34 numbers). When the stall holders have been requested to take over possession on a daily fee of Rs. 11.25 (45 sq. ft.) and Rs.

26.25 (105 sq. ft.) fixed at the rate of Rs. 0.25 paise per sq. ft. by the Director of Municipal Administration, Madras, they refused to take

possession of the said stalls saying that the fee fixed is arbitrary. Hence the said 52 stalls were auctioned on 23-1-1987 in public auction and the

details of the bid amount are submitted here below :--

No. of stalls	Size	Manimum daily fee	Maximum daily fee
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18 (Single)	45 sq. ft.	Rs. 20.00	Rs. 33.50
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34 (double)	105 sq. ft.	Rs. 37.85	Rs. 63.75
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The measurement of the 28 shops covered in this case is as follows:-

No. of shops	Size	Daily fee fixed	which petition is opposing
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14 (single)	71 sq. ft.	Rs. 15.00	
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7 (double)	124.5 sq. ft.	Rs. 30.00	
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3. Both the petitioners and the respondents have accepted that the new stalls have been constructed with the financial assistance of the Central

Government under Integrated Urban Development Programme Scheme which is meant exclusively for remunerative enterprises to modernise the

market buildings. The respondents have given, however, the total expenditure for the construction of the 28 stalls as Rs. 6,15,178/-, whereas the

petitioners have said that the amount spent on the construction was Rs. 5,65,000/- only. The dispute between the parties, it is conceded, is not

fully covered by the proceedings in O.S. No. 17 of 1983 of the Court of the District Munsiff, Coonoor, which proceeding ended with a memo of

settlement filed by both parties. The said settlement created, however, an obligation upon the respondents to rein-duct the petitioners in the stalls.

The petitioners have at some places in their affidavit described the daily rate sought to be realised from them as rent and called themselves as

lessees of the stalls, but the respondents have called the daily rate of Rs. 15/- and Rs. 30/-respectively for the single and double stall as daily fee

for the stalls.

4. The Tamil Nadu District Municipalities Act, 1920 (V of 1920) has specific provisions in S. 250 to S. 261 of and for "Public markets", that is to

say all markets which are acquired, constructed, repairs for maintained out of the Municipal fund. S. 260 gives to the Municipal Council power to

provide places for use as public markets and provides in sub-sec. (2) thereof that the Council may in any public market levy any one or more of

the fees at such rates as are enumerated therein and may place the collection of such fees under the management of such persons as may appear to

it proper or may farm out such fees for any period not exceeding three years at a time and on such terms and subject to such conditions as it may

deem fit. Five kinds of fees are mentioned, one being fees for the use of shops, stalls, pens or stands in such markets.

5. A Full Bench of this Court in the case of Coimbatore Municipality Vs. C.G. Subbiah, , by a majority of 2 : 1 has said "that the Municipality

being a statutory body must follow a rational basis in fixing the fee for the various stalls in a public market." The Full Bench confirmed the judgment

of the Court in S.A. No. 1259 of 1968, in which the doctrine of quid pro quo as an essential attribute of a fee was noticed and a reference was

made to an earlier judgment in W.P. Nos. 913 of 1970 and other analogous cases of 1970, in which a learned single Judge of this Court

considered the difference between "tax" and "licence fee" and observed -- "the impost in the instant case is not a tax; but certainly it is not fee

which is governed by the doctrine of quid pro quo; but it is a compulsory exaction sanctioned by statute and being annexed with the right of

ownership of property the owner of the public market has the right to vary it by increasing or diminishing it after notice and after such fixation,

recover the same from the stallholders." The Full Bench also took notice of the observations that the various problems confronting a Municipality

are not rigid and cannot be ironjacketed. They are flexible, varied and many. In order to subserve the interests of the Municipal fund and

particularly the public health of the Municipality and to gain a safe and reasonable return for its investment on the construction, establishment and

maintenance of the public market, the Municipality is entitled to review the situation and in the absence of any maximum prescribed in the statute, it

has the right to increase it. But the most important aspect that has been adverted to by the Full Bench and which has been the corner stone of all

judgments on this subject, which are referred to in the judgment of the Full Bench, is that restriction which equity will bring to bear upon the

exercise of such power is that an opportunity should be given to the person affected before the increase is effected, that increase of the licence fee

should not be arbitrary and unjust or illegal otherwise. It is, however, essential to bear in mind, as indicated above, that the Municipality has dual

role in such matters, one of the statutory authority and the other of the owner of the building. Its powers as a statutory authority extend to realise

rent from the owners of the buildings and/from the tenants who are in occupation of the buildings by way of tax and levy fee if there is any trade or

business or any other act involved at any place within its local limits for which it has been empowered to impose a fee. It is difficult to accept that

what may be reasonable for fixation of a fair rent for a building to be realised from a tenant by the landlord where the relationship of lessor and.

lessee is created will be fair where there is no right of a lessee available but only its use is permitted and for which user fee is claimed.

6. This Court in the case of Arumugha Kone Vs. The Palayamcottai Municipal Council and Others, , has taken the view that "the fees referred to

in S. 260(2)(b) of the Act means only fees for the occupation of the particular stall situate in the market of which the Municipal Council is the

owner and therefore there can be no question of quid pro quo in the sense of the said fee being commensurate with the services rendered by the

Municipal Council either to the stallholders or to the markets as a whole." In this judgment it is also indicated that the fee contemplated by S.

260(2)(a) and (b) of the Act can include an element of return to the Municipal Council on the investment, which it has made in acquiring or

constructing the market in question. In that event, there is absolutely nothing in the Act to put a limit on the said element of return. What should be

the proper rent payable in respect of the lease of the stalls in the market or the fees payable in respect of a licence granted by the Municipal

Council for the use of stalls will have necessarily to be variable and flexible depending upon the demand for such place in the particular locality at a

particular time. The instant problem, however, is of a dispute of a reconstruction of stalls resulting in more than 300/400% increase in the rate of

fee per day based entirely upon the alleged investment in the reconstruction without it appears taking into account the market potential and the

trade return of the "vendors who have been doing the same business before demolition of the building and reconstruction and who are involved in a

dispute as to the reasonableness of the rate of fee per day claimed by the respondents.

7. The Municipality is a local self Government, which fulfils the democratic aspirations of the people residing within its limits: It is they who govern

the Council and it is they who determine how to distribute the activities of the Municipality and how to share the burden of the Municipality. Those

who enter Municipalities as Administrators or Commissioners for the reason of the supersession of a municipality or otherwise to assist the

municipal administration are expected to remember this aspect of the law which has been stated so candidly by the Supreme Court in one of its

judgments in the case of Baldev Singh and Others Vs. State of Himachal Pradesh and Others, in these words (at p. 1241 of AIR):

"Ours is a democratic polity. At every level, from the villages up to the national level, democratic institutions have been introduced. The villages are

under Gram Panchayats, urban areas under Municipalities and Corporations, districts are under Parishads; for the State there is a Legislature and

for the entire country, we have the Parliament. People residing within Gram Panchayats have their electoral rights to exercise and in exercise of

such rights, they have elected their representatives. Citizens of India have a right to decide, what should be the nature of their society in which they

live -- agrarian, semi-urban or urban. Admittedly, the way of life varies, depending upon where one lives."

8. Since ordinary distinction which is kept in mind in understanding as to whether a particular levy is a tax or a fee is diluted in respect of a statutory

provision like one in Sec. 260(2)(a) and (b) of the Act, with which we are concerned, it is necessary to note that in respect of taxes too a certain

amount of liberty is given to impose compensatory taxes. While considering in what way a compensatory tax can be justified, the Supreme Court in the case of Kamaljeet Singh and others Vs. Municipal Board, Pilkhwa and others, , has said --The toll tax in question however cannot be treated to be a compensatory tax for the use of trading facilities. The Municipal Board provides no facilities whatever to the owners of vehicles like stage carriages making use of National Highway No, 24. The township of Pilkhwa is off the National Highway and is quite at some distance. It is connected by a road and a part of the National Highway has been included within the municipal limits. Merely because stage carriage operators like the appellant ply their stage carriages on permits issued on the inter-State route Delhi-Garhumukteshwar which falls on the National Highway and stop their buses for the facility of passengers going to and coming from Pilkhwa, or that the Municipal Board has set up two electric poles at the toll barriers for facility of collection of the toll tax, does not justify the imposition of a toll tax. Usually, the consideration for a toll is some amenity, service, benefit or advantage which the person entitled to the toll undertakes to provide for the public in general or the persons liable to pay the toll. The National Highway is being maintained by the Government and the approach road built by the Public Works Department. There is a nallah constructed by the Municipal Board for flow of the sewage water from the town of Pilkhwa, but that does not entitle the Board to levy a toll tax on stage carriage operators like the appellants as a compensatory tax. Even assuming that the Municipal Board has to incur expenditure on maintenance of the connecting road and the nallah, but there are facilities provided for the residents of the town for which it recovers various taxes. Furthermore, maintenance of roads, bridges, etc, are statutory duties of the Municipal Board under S. 7 of the Act. The levy of the toll tax by the Municipal Board must therefore be struck down as ultra vires." We get some idea how the problem of this kind can be approached from the minority judgment of the Full Bench in the case of Coimbatore Municipality Vs. C.G. Subbiah, , wherein it is said --"The proper way to understand the scope of the power would be to construe the provision, not in isolation, but in association with the other provisions and in the context of the general scheme of the enactment." In this one can pose a question. Is the Municipality only a property owning authority or is a

responsible local authority which has also to take into account its obligations towards the people who have created it ? If this aspect is not taken into account, and it is left entirely at the discretion of the Municipality to demand any amount of fee in the sense that it should go by the highest bid and to the person who gives the highest offer, then it will cease to be a service for the benefit of the residents and shall become a short of a trading activity of the local authority and unguided and unabridged this power under Sec. 260(2)(a)(b) of the Act will be violative of Article 14 of the Constitution. In the majority judgment also it is indicated that difference in the rates of levy of fee should not be on the basis of class of trade since it would prima facie violate Article 14 of the Constitution and it is said in that decision that the Municipality once it chooses to let out its stalls in a public market to enable the seller therein to bring together the persons interested in the articles vended by him for purposes of purchase etc. cannot make further inroads into the absolute right of the occupant to adopt an avocation or trade of his choice. The majority judgment of the Full Bench has also pointed out that may be the turnover of a commission agent is more than that of a retailer but that would not enter into the computation of the licence fee because it is an irrelevant consideration. The majority has said -- "We are of the opinion that though the nature of the trade carried on in the stalls may be taken as a basis for fixing the fee having regard to the extent of the stalls, the extent of the trade carried on in the stall cannot be held to be a rational basis for fixing the fee." Thus, what I have been able to gather thus far it is indeed necessary for the Municipality in fixing rates for stall-holders to have a definite and clear basis for the determination and fixation of the fee meaning there should always be a rationale behind the fixation of the fee otherwise it will be arbitrary and discriminatory. It is possible to take into account the location of the stall and the size and look of the stall, but it cannot be a just fee if it is realised from the traders to recompensate the cost of construction of the building. Since I have taken the above view, I have no hesitation in interfering with the proceedings of the Council and to direct the respondents to redetermine the rate of fee keeping in view the rational and after affording an opportunity of being heard to the petitioners so as to comply with the requirements of the principles of natural justice. In the result, the Writ Petitions are allowed and the impugned proceedings Nos. Na.Ka.A.4/ 7214/81 dated 2-1-1984

are quashed. The respondents are directed to issue notice to the petitioners calling upon them to show cause why the rate of fee, which the respondents propose, should not be realised from them and thereafter to decide as to what may be the reasonable and proper rate of fee that should be realised from the petitioners as well as the other merchants in the stalls of the public market. Until such determination, any fee realised from the petitioners shall be subject to adjustment or refund as the case may be.

9. Petitions allowed.