

(1954) 07 AHC CK 0009

In the Allahabad High Court

Case No : Special Appeal No. 39 of 1954, connected with Special Appeals No's. 53, 54, 55, 56, 57, 59, 60, 63 and 65 of 1954

Ram Adhar and 21 others

APPELLANT

Vs

The District Board of Allahabad and another

RESPONDENT

Date of Decision : 12-07-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1954) 24 AWR 615

Hon'ble Judges : B. Malik, C.J;R.N. Gurtu, J

Bench : Division Bench

Advocate : M.M. Lal Hazela, for the Appellant;

Final Decision : Dismissed

Judgement

B. Malik, C.J.—These Special Appeals against the orders passed in writ petitions under Article 226 of the Constitution have been filed by various kankar-lime kiln owners. The District Board of Allahabad has under the bye laws enhanced the license fee for running a lime kiln from Rs. 5/- to Rs. 50/-. The above noted amendment to the bye laws was printed in the U.P. Gazette dated December 1, 1951. Some of the applicants who owned these kilns did not take out a license as required under Notification No. 934/XXI-37(2) 50, dated November 23, 1951, and they were prosecuted for having run these kilns without a proper license. The contention on behalf of these applicants was that the imposition of Rs. 60/- as license fee per year was not a license fee but was a tax and was beyond the powers of the District Board.

2. One of these petitions-Writ Petition No. 108 of 1953-came up before Mr. Justice Bhargava, who dismissed it on the 22nd of February, 1954, on the ground that remedy by way of a regular suit was much more appropriate and consequently the writ petition could not be entertained.

3. A number of these petitions on identical grounds were heard by Mr. Justice

Chaturvedi-Civil Miscellaneous Writ No. 398 of 1953, connected with Civil Miscellaneous Writ Nos. 399 to 406 and 678 to 681 of 1953. The learned Judge entertained these applications and ordered that "a direction be issued to the District Board of Allahabad through the Chairman of the said Board (Respondent No. 1) Prohibiting the Board from taking any steps to recover the fees fixed by the amendment mentioned above from the Petitioners".

4. The learned Judge followed the decision of a Division Bench of this Court in Writ Petition No. 7735 of 1951 -Ata Tel Udyoga Katra Sangh. v. District Board, Allahabad decided on 6th March, 1953.

5. A further point was taken before Mr. Chaturvedi after the agreements were concluded that as the Petitioners had not moved the District Magistrate u/s 186 of the District Boards Act they were not entitled to move the present petitions. This prayer was not allowed as there was nothing to show whether an appeal lay to the District Magistrate and whether an appeal had or had not been in fact filed and rejected.

6. Against the decision of Mr. Justice Chaturvedi the District Board has filed appeals, while in the case decided by Mr. Justice Bhargava the Petitioners have filed appeals before us.

7. u/s 106 of the District Boards Act (No. X of 1922) "The board may charge a fee to be fixed bye-law for any license, sanction or permission which it is entitled or required to grant by or under this Act."

8. The question then arises whether the Board is entitled or required to grant a license sanction or permission for running a Kankar-lime kiln. Obviously Section 105 does not help the Board as that section provides that:

The Board may charge fees to be fixed by bye-law or by public auction or by agreement, for the use or occupation (otherwise than under a lease) of any immovable property vested in, or entrusted to the management of, the board including any public road or place of which it allows the use or occupation whether by allowing a projection thereon or otherwise.

9. Reliance has been placed on Section 174(1) and Clauses (k) and (2) of Sub-section (2). The relevant provisions are as follows:

174(1)-"A board by special resolution may, and where required by the State Government shall, make by laws applicable to the whole or any part of the rural area of the district, consistent with this Act, and with any rule, for the purpose of promoting or maintaining the health, safety, and convenience of the inhabitants of such area and for the furtherance of the administration of the district under this Act."

(2)-" In particular, and without prejudice to the generality of the power conferred by Sub-section (1), a board may, in the exercise of the said power, make any bye-laws described in the list below:

... ..

(k) regulating slaughter-houses and offensive dangerous or obnoxious trades, callings, or practices and prescribing fees to defray the expenditure incurred by a board for this purpose;

... ..

(r) prohibiting or regulating any act which occasions, or is likely to occasion, a public nuisance for the prohibition or regulation of which no provision is made elsewhere by or under this Act.

10. If the license fee has been imposed, as was urged by learned Counsel, u/s 174 for regaining an offensive, dangerous or obnoxious trade, then the fee that can be charged must be more or less commensurate to defray the expenditure incurred by the Board and it cannot be any arbitrary sum with the object of making it a general source of revenue.

11. The contention of learned Counsel for the Petitioners is that a license fee of Rs. 50 per year per kiln for running a kankar lime kiln is excessive and is really intended to be a source of general revenue and not to meet any special expenditure incurred in connection with this trade.

12. Mr. Justice Chaturvedi accepted this contention and held that the charges made were excessive. The learned judge pointed out that in 1950 the District Board proposed an amendment to the bye-law No. 7 and it wanted to enhance the license fee for a brick-kiln from Rs. 15 to Rs. 600, and for a lime kiln from Rs. 5 to Rs. 150, per kiln, but ultimately the figures were reduced and for a lime-kiln it was fixed at Rs. 50 per kiln.

13. We went through the affidavits filed by the Petitioners as also the counter affidavit filed on behalf of the Board and were not satisfied that sufficient material had been placed before the Court to enable it to come to a conclusion whether the rates fixed were or were not excessive. In the affidavits filed by the Petitioners it was pointed out how the amount had been increased and there was a general assertion that it was much more than was necessary to meet the expenses. In the counter-affidavit, paragraph 21, filed on behalf of the Board, it was said that "the District Board took good care in fixing the license fee at a figure which is just sufficient to meet the expenses which the District Board expected to incur in working out the bye-laws." In paragraph 23 it was said that "the bye-laws were framed for the first time in 1937 and a nominal license fee was imposed at that time. In subsequent years it was found that the expenses have gone up. It is a matter of common knowledge that prices went up by ten times during the war and, therefore, the District Board was compelled to enhance the licence fee." In paragraph 24 it was urged that "the licence fee imposed by the amendment is just sufficient to meet the expenses which the District Board thought was reasonable to incur on this object. The objections are false." Paragraph 25 of the counter affidavit is as follows:

That the District Board has to incur expenses on the following heads for the enforcement of the bye-laws and on account of the Pay Commission Report the salary of the various persons employed by the District Board had to be raised.

Heads of expenses:

1. Clerks for issue and maintenance of registers.
2. Postage and stationery.
3. Salary of the staff.
4. T.A. of the said staff.
5. Litigation charges for enforcing the bye-laws.
6. Printing of "forms and registers."

14. No figures were mentioned on behalf of the Board. This bye-law came into force in 1951 and by the time the matter came up for hearing the Board must have had actual figures of the amount received as income and the amount spent under the various heads.

15. It is true that under Article 226 of the Constitution this Court does not generally interfere if other suitable remedies are open to the applicants but where, as in this case, a tax or a licence fee is imposed which is challenged as improper, and it affects a large number of people the Court has the right to see if the complaint is justified. It is not possible, nor is it desirable, that, that we should in such cases examine the figures in any detail to judge whether the licence fee was or was not excessive, but the affidavits must prima facie show that the licence fee was not unreasonable. The affidavits in these cases have not been drafted with the care with which they should have been drafted and we have, therefore, no option but to direct the District Board to file a supplementary affidavit furnishing such details as any prima facie show that their contention that they had to raise the licence fee to meet the necessity expenses was justified.

16. We give the Board one month's time to file a supplementary affidavit. The Petitioners thereafter are given ten days' time to file affidavits in reply if they so desire.

Malik, C.J.

17. On 12th July, 1954, we dictated a detailed order and, for the reasons given in that order, we gave the District Board of Allahabad one month's time to file a supplementary affidavit. The supplementary affidavit was filed on the 11th of August, 1954. A copy of that affidavit was given to counsel for the applicants who filed a counter-affidavit on 23rd August, 1954. On account of certain allegations made in that counter-affidavit about oil and flour mills, the District board filed a rejoinder affidavit on 7th September, 1954 and sent a copy of it to counsel for the applicants by registered post. We have, however, not looked into

the rejoinder affidavit filed on 7th September, 1954, as we do not consider it necessary to do so. From the affidavit filed by the Board, it appears, that the total income from the lime and brick kilns during the years 1950-51, 1951-52, 1952-53, 1953-54 was not very much. In 1950-51 the total income was Rs. 2,055/ -; in 1951-52 it was Rs. 1,8050 1; in 1952-53 it was Rs. 3,935/ -; and it was Rs. 2,675/ - in 1953-54. The details of the expenditure incurred during these years under various heads have also been given. It is not possible in this writ petition to go into these figures in detail but, prima facie, it cannot be said that the income from the licence fee is such that it is necessarily in excess of the expenditure and is being used by the Board for purposes of augmenting their general revenue. In these summary proceedings, it is not possible to hold that the licence fee, that was fixed by the District Board, was excessive.

18. This petition has no force and is dismissed but we make no orders as to costs.