

(1976) 01 CAL CK 0027
In the Calcutta High Court
Case No : C.R. No. Nil of 1976

Ramchandra Pande

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 09-01-1976

Acts Referred:

Constitution of India, 1950 — Article 213, 25, 265, 27
Ganga Sagar Mela Ordinance, 1975 — Section 3, 4

Citation : AIR 1976 Cal 164

Hon'ble Judges : Bimal Chandra Basak, J

Bench : Single Bench

Advocate : S.K. Acharya and S.N. Mukherji, for the Appellant; P.K. Sengupta, Sr. Govt. Pleader and Samarjit Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Bimal Chandra Basak, J.—In this application under Article 226 of the Constitution of India the petitioner is praying for appropriate writs directed against The West Bengal Ordinance No. XXI of 1975 promulgated by the Governor of West Bengal and against the Notifications, Notices, Directions, Rules and/or Orders, if any pursuant thereto. The facts of the case as would appear from the petition lie in a short compass.

2. In the petition it has been alleged that the petitioner is a citizen of India and that he is a Hindu by religion following religious festivals and occasions honestly. In Paush Sankranti every year the Ganga Sagar Mela is held in the sangam of Ganga and Sagar at the Sagar Island on the occasion of Ganga Sagar Mela every year, hereinafter referred to as the said Mela. The petitioner and other Hindus observing the said Mela visit the said Sagar Island in paush sankranti every year and also the Kapil Muni Temple and worship and perform Pujas, Darsan etc. with great religious belief and regard. It is alleged that the petitioner and such other visitors leave their places from different parts of India and reach the said Mela by launches, buses, rickshaws and also on foot and they spend a lot of money by

such visit and stay at Ganga Sagar and return from such place after their worship. It is alleged that every visitor spends a sum of at least Rs. 50/-. Nearly about five to six lakhs of people in the minimum visit the said Mela and make worship, pujas etc, with great regard and faith each year. None of such visitors were ever required to pay any fee to any officer of the State Government for visiting the said Mela. Even Sadhus, sanyasees, beggars and other persons of other organizations and pilgrims all visit the Ganga Sagar Mela for such purposes without any fee for such visits. The paush sankranti and Ganga Sagar Mela will be held on the 13th, 14th and 15th January, 1976 and a very large number of pilgrims will visit the Mela for such purpose from different parts of India incurring huge expenses.

3. The grievance of the petitioner is directed against the Ganga Sagar Mela Ordinance, 1975 made and promulgated by the Governor of West Bengal in exercise of the power conferred by Clause (1) of Article 213 of the Constitution of India (hereinafter referred to as the said Ordinance). Being aggrieved by the said Ordinance the petitioner applied to this Court under Article 226 of the Constitution of India for issue of a writ and also for ad interim order of injunction. The said petition was admitted and a Rule issued by Amiya Kumar Mookerji, J. on the 5th January, 1976. However, his Lordship did not grant any ad interim injunction but gave liberty to the petitioner to move for interim order with notice to the respondents Nos. 1 and 2 and also to the Government Advocate without filing any fresh application in Court. The application for injunction was ultimately moved before me and on the 7th January, 1976 after hearing the learned Advocates, I refused the prayer for interim injunction. However, by consent of the parties, I gave directions for an early hearing of the Rule and fixed the main Rule for hearing on the next day, that is, on the 8th January, 1976. On the 8th January, 1976 the main Rule came up before me during the course of which some "statement of facts" were filed to which I would refer to later.

4. Before referring to the respective arguments of the learned Advocates it is necessary to set out the said Ordinance.

"THE GANGASAGAR MELA ORDINANCE, 1975.

Whereas it is expedient in the public interest to provide for the taking of measures with a view to safeguarding the health, safety and welfare of the pilgrims attending the Gangasagar Mela and for matters connected therewith or incidental thereto;

AND WHEREAS the Legislative Assembly of the State of West Bengal is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

The Governor is pleased, in exercise of the power conferred by Clause (1) of Article 213 of the Constitution of India, to make and promulgate the following Ordinance, namely:--

1. Short Title.-- This Ordinance may be called the Gangasagar Mela Ordinance, 1975.

2. Definitions.-- In this Ordinance, unless the context otherwise requires,-

(a) "Gangasagar Mela" means the fair held at the Sagar Islands in the district of 24-Parganas on the occasion of the pous Sankranti every year;

(b) "notified area" means the area declared as such by notification under Sub-section (1) of Section 3.

3. Power of the State Government on the occasion of the Gangasagar Mela--(1) If the State Government is satisfied that as a result of the influx of too many pilgrims at a time at the Sagar Islands on the occasion of the Gangasagar Mela the health, safety and welfare of these pilgrims are likely to be endangered the State Government may, by notification, in the Official Gazette, declare that the whole or any portion of the area within the Sagar Islands shall be a notified area.

(2) Upon the publication of a notification under sub-section (1) it shall be competent for the State Government to take such measures for safeguarding the health, safety and welfare of the pilgrims as the State Government thinks necessary.

(3) The details of the measures to be taken under Sub-section (2) and the manner in which they shall be executed shall be laid down by the State Government by rules made in this behalf.

(4) An order made under Sub-section (1) shall remain in force for such period as may be specified in the notification.

4. Imposition of fee:-- (1) The State Government may impose such fee not exceeding rupees two per head per year, as may be determined by the State Government by notification, upon every pilgrim visiting the Gangasagar Mela:

Provided that no such fee shall be imposed upon Government servants on duty, children under the age of twelve years, Sadhus, Sannyasis, Beggars and such other persons including members of organisations as may be specified by the State Government by notification issued in this behalf,

(2) The fee imposed under sub-section (1) shall be realised in such manner as may be prescribed by rules made by the State Government.

5. Repeal of West Bengal Act IV of 1953.-- The Gangasagar Mela Act, 1963 is hereby repealed.

6. Power to make rules.-- (1) The State Government may, by notification in the Official Gazette make rules for carrying out the purposes of this Ordinance.

(2) In "particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which may be or has to be prescribed by rules.

ANTHONY L. DIAS, Governor of West Bengal. The 17th December, 1975.

5. Mr. Acharyya, learned Advocate appearing in support of the Rule, made three-fold submissions before me. Firstly, he submitted that the said Ordinance is hit by Article 25 of the Constitution of India. He submitted that it cannot be disputed that the pilgrimage to the said Mela, taking a bath in the Ganges there and going to the Kapil Muni Temple for worship and religious pujas etc. is a religious practice. By promulgation of the said Ordinance there has been interference with the exercise of the petitioner's right to said practice and the same interferes with the freedom of religion guaranteed by Article 25 of the Constitution of India. In any event, Mr. Acharyya submitted that even if the said Ordinance as a whole is not ultra vires Article 25, in any event, Section 4 of the said Ordinance, which imposes a levy described as "fee" certainly interferes with such right and such interference with the exercise of religious practice cannot be justified under the provisions of the said Article. In this connection he relied on a decision in the case of *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, and he relied on some passages of the same. Mr. Acharyya in this connection also placed reliance on the case of *Seshammal and Others, Vs. State of Tamil Nadu*,

6. The second submission of Mr. Acharyya was that though described as "fee", the levy imposed u/s 4 of the said Ordinance was in substance a tax and, accordingly, the same could not be imposed by the said Ordinance. He submitted that it is not a fee "because there is no service rendered to the pilgrims. There is no quid pro quo. In this context he relied on the decisions in the cases of *Nagar Mahapalika Varanasi Vs. Durga Das Bhattacharya and Others*, . *Indian Mica Micanite Industries Vs. The State of Bihar and Others*,

7. The third and last submission of Mr. Acharyya was that the Ordinance is vague and it cannot be given effect to. According to him the expressions "pilgrims", "Sadhus" and "Sannyashis" used there have not been defined and the same are vague expressions. There is no definite meaning of the same and, accordingly, the provisions of the said Act cannot be carried out. However, Mr. Acharyya made it clear, that he is not challenging the validity of the Ordinance on that ground.

8. Mr. Sen Gupta, Senior Government Pleader appearing on behalf of the respondents, has very strongly refuted each and every contention of Mr. Acharyya. On the question as to whether the Ordinance is ultra vires Article 25, Mr. Sen Gupta did not seriously contend that the activities in question of the visitors to Mela did not amount to "religious practice" within the meaning of the said Article, though he sought to make some submissions regarding the same. However, he submitted that Article 25(1) itself provides that the right granted there was subject to public order, morality and health. Further, under Article 25(2) it has been made clear that it would not prevent the State from making any law providing for social welfare and reform amongst others. He drew my attention in this context to the language of the Ordinance itself and submitted that it is clear that it relates to public order, morality and health. Accordingly, this

Ordinance cannot be held ultra vires Article 25. So far as provisions of Section 4 are concerned he drew my attention to the Ordinance again and submitted that the main provision of the Ordinance is contained in Section 3 which comes within the object of public order, morality and health. The fee levied u/s 4 of the Ordinance is incidental thereto with the object of carrying out the same. This incidental provision must also be within the scope of the object of the Ordinance.

9. On the second submission of Mr. Acharyya, Mr. Sen Gupta has relied on various decisions of the Supreme Court including the cases of Ratilal Panachand Gandhi Vs. The State of Bombay and Others, and also the cases of Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, , The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, , Corporation of Calcutta and Another Vs. Liberty Cinema, and The State of Maharashtra and Others Vs. The Salvation Army, Western India Territory, and submitted that the levy imposed was a fee and not a tax, He submitted that the services to be rendered are clear from the Ordinance itself, This is to safeguard the health, safety and welfare of the pilgrims. There was in fact quid pro quo. In this context he also relied on the "statement of facts" submitted by him at the time of hearing wherein it was stated as follows:

(a) The Government provides for jetties, roads, 1000 of latrines, pilgrim shades, office and shades for voluntary organisations. Government provides for water supply, electricity, sanitation facilities etc. at a cost of lakhs of rupees. This year the cost is over Rupees Ten Lakhs rising from 5 Lakhs in 1970. Life savers, doctors and nursing staff personnel have been provided for. Several different personnel, mobile and civil engineering forces, police are to be posted to safeguard public order, morality and health and to regulate the political and secular activities associated with the religious practice of the pilgrims.

(b) The collections of fees are meant for defraying the expenses incurred and the services rendered in connection with or for the safeguard of health, safety and welfare of the pilgrims attending the Gangasagar Mela and to enable the pilgrims to profess and practise their beliefs without disturbance. The Government has to keep an eye in respect of health, safety and welfare of the pilgrims.

(c) The pilgrims do expect the basic amenities, such as sanitary arrangements, prevention of the break-out of infectious diseases to safeguard their health, safety and their welfare. Elaborate arrangements as far as practicable shall have to be made for the pilgrims.

(d) The amount realised by imposition of Rs. 2 per person as fees would go absolutely for the safety, security and for providing amenities for the pilgrims themselves. Over and above lakhs of rupees shall have to be paid by the State Government out of its own coffer.

10. Regarding the third submission of Mr. Sen Gupta, Mr. Acharyya disputed that the expression used in the Ordinance was vague.

I shall first set out Article 25 of the Constitution upon which the first contention of Mr. Acharyya is based:

"Right to Freedom of Religion.

25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.--The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.-- In Sub-clause (b) of Clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

Article 25 has been the subject-matter of various decisions of the Supreme Court. I must first refer to the judgment of Bijan Kumar Mukherjea, J. in the case of *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, It was observed by Mukherjea, J. that Article 25 secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious beliefs, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. In this connection it was also observed as follows:--

"Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

The guarantees under our Constitution not only protect the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in Article 25."

This observation was also repeated by Mukherjea, J. in his judgment in the name of Ratilal Panachand Gandhi Vs. The State of Bombay and Others,

The main principles underlying the provisions of Articles 25 and 26 were laid down in the majority judgment in the case of Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, as follows .

"The first is that the protection of these Articles is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances; ceremonies and modes of worship which are integral parts of religion, The second is that what constitutes an essential part of a religion or religious practice has to be decided by the Courts with reference to the doctrines of a particular religion and include practices which are regarded by the community as a part of its religion."

11. These observations were relied upon in a subsequent decision of the Supreme Court in the case of Seshammal and Others, Vs. State of Tamil Nadu,

12. This point also came up for consideration in the case of Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, After referring to the decisions in the case of The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., and Ratilal Panachand Gandhi Vs. The State of Bombay and Others, Gajendragadkar, J. observed as follows :

"Articles 25 and 26 constitute the fundamental rights to freedom of religion guaranteed to the citizen of this country. Article 25(1) protects the citizen's fundamental right to freedom of conscience and his right freely to profess, practise and propagate religion. The protection given to this right is however, not absolute. It is subject to public order, morality and health as Article 25(1) itself denotes. It is also subject to the laws, existing or future, which are specified in Article 25(2):

"It would thus be clear that religious practice to which Article 25(1) refers and affairs in matters of religion to which Article 26(b) refers, include practices which are an integral part of the religion itself and the protection guaranteed by Article 25(1) and Article 26(b) extends to such practice."

"In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion."

"In this connection it cannot be ignored that what is protected under Articles 25(1) and 26(b) respectively are the religious practices and the right to manage

affairs in matters of religion. If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Article 25(1) or Article 26(b) has been contravened. The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion."

The facts stated in the petition show that the said Mela is held in Paush Sankranti every year in the Sangam of Ganga and the Sagar at the Sagar Island. Nearly 5 lakhs of people belonging to the Hindu religion visit the said Sagar Island on such occasions when they visit the Kapil Muni Temple situate there and worship and perform pujas, Darshans etc. as part of their religious belief and regard. These facts are not disputed by Mr. Sen Gupta. Following the principles laid down in the abovementioned cases, I must hold that this is a religious practice within the meaning of and protected by Article 25 of the Constitution. This is an integral part of the Hindu religion. This will also find support from the Ordinance itself. The Preamble to the Ordinance shows that it was promulgated to enable the State Government to take measures for safeguarding the health, safety and welfare of the "pilgrims" attending the said Mela. The fee is also levied on the said "pilgrims". Therefore these persons are treated as "pilgrims" and this is treated as a pilgrimage, A pilgrim is a person who travels to a shrine or holy place as a devotee. Therefore these activities and practices are protected by Article 25. I should also point out that Mr. Sen Gupta in his usual fairness practically conceded the same.

13. The main question is whether this freedom of religion which is guaranteed by Article 25 has in any way been violated by the said Ordinance. The main object of the Ordinance is to take measures for safeguarding the health, safety and welfare of the said pilgrims. This in my opinion cannot and does not affect the freedom of the religion guaranteed under Article 25 of the Constitution. On the other hand, the Ordinance enables them to exercise this freedom in a more beneficial manner. This is in aid of the freedom guaranteed by Article 25 and not in derogation of the same.

14. There is another aspect of the matter. As would appear from the said Articles and as made clear by the aforesaid judgments, this right is not an absolute right. This is subject to public order, morality and health. This is also subject to the right of the State to make laws providing for social welfare and reform. The object of the said Ordinance is to take measures with a view to safeguarding the health, safety and welfare of the said pilgrims. This object in my opinion comes within the scope of the restrictions permissible under the said Article.

15. Accordingly, in my opinion the Ordinance does not unlawfully interfere with the freedom of religion guaranteed by Article 25 of the Constitution and it is not ultra vires the said Article,

16. The next question is that even if the said Ordinance as a whole is not ultra vires Article 25 of the Constitution whether the imposition of the fee referred to

in Section 4 of the said Ordinance interferes with such freedom and violates Article 25. I have already pointed out that the main object of the Ordinance is to take measures as specified therein. As a part of or incidental to the said object and in connection with services so rendered, the said fee is being imposed. I have held that the main object of the Ordinance does not violate the right guaranteed by Article 25. This incidental measure, accordingly, cannot be ultra vires Article 25. Merely because certain fees have been imposed cannot by itself amount to violation of freedom of religion guaranteed by the Constitution of India.

17. For the aforesaid reason I reject the first contention of Mr. Acharya. I hold that no part of the said Ordinance is ultra vires Article 25 of the Constitution of India. Freedom of religion guaranteed by the said Article has not in any way been infringed by the said Ordinance.

18. Regarding the second submission of Mr. Acharyya, whether a particular levy is a tax or fee has" been the subject-matter of controversy for quite a long time. There is a clear distinction between a tax and a fee which would appear from the Constitution itself, This distinction would appear from the Seventh Schedule of the Constitution which deals with the distribution of legislative powers "between Parliament and the State Legislatures. Each of the Union and the State Lists, which, are Lists I and II, start by enumerating first the Entries conferring general legislative power. Thus items 1 to 81 of List I deal with the exclusive general legislative powers of Parliament while 82 to 92 enumerate the taxes which Parliament may impose. Item 96 empowers Parliament to legislate in respect of "fees in respect of any of the matters in this List, but not including fees taken in any Court". This would clearly demonstrate that while "fees" may be levied in respect of or as incidental to legislation on the topics set out in the other entries in the List, the power to levy a, tax is not to be taken as conferred by entries conferring general legislative powers. Thus though a fee may be levied as incidental to a legislation, be it general as in respect of entries 1 to 81 or the entries conferring taxing powers-- 82 to 92, or in respect of the miscellaneous matters enumerated by such an entry like 94, no taxes may be imposed by virtue of the general legislative power under entries 1 to 81. In this connection reference may be made to the case of Corporation of Calcutta and Another Vs. Liberty Cinema, There are various decisions of the Supreme Court laying down the tests to ascertain whether a particular levy is a tax or a fee.

19. In the case of Ratilal Panachand Gandhi Vs. The State of Bombay and Others, it was pointed out by B.K. Mukherjee, J. that although there is no generic difference between a tax and a fee and in fact they are only different forms in which taxing power of a State manifests itself, the Constitution has made a distinction between those for legislative purpose. It was further observed that a tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. The other characteristic of tax is that the imposition is made for public purposes to meet

the general expenses of the State without reference to any special advantage to be conferred upon the payers of the tax. It follows therefore that although a tax may be levied upon particular classes of persons or particular kinds of property, it is imposed not to confer any special benefit upon individual persons and the collections are all merged in the general revenue of the State to be applied for general public purposes. Tax is a common burden and the only return which the tax-payer gets is a participation in the common benefits of the State. Fees, on the other hand, are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of "quid pro quo" which is absent in a tax. It may not be possible to prove in every case that the fees that are collected by the Government approximate to the expenses that are incurred by it in rendering any particular kind of services or in performing any particular work for the benefit of certain individuals. But in order that the collections made by the Government can rank as fees there must be correlation between the levy imposed and the expenses incurred by the State for the purpose of rendering such service. This can be proved by showing that on the face of the legislative provision itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering those services. Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes. Too much stress should not be laid on the presence or absence of what has been called the "coercive" element. It is not correct to say that as distinguished from taxation which is compulsory payment, the payment of fees is always voluntary, it being a matter of choice with individuals either to accept the service or not for which fees are to be paid. It is not necessary that the services should be rendered only at the request of particular people. It is enough that payments are demanded for rendering services.

20. In the case of Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, this was again repeated by B.K. Mukherjea, J.

21. In the case of The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, it was observed by Gajendragadkar, J. as follows:

"It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the (person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or

in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas, a cess levied by way of fee is not intended to be, and does not become a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. Cases may arise where under the guise of levying a fee legislature may attempt to impose a tax and in the case of such a colourable exercise of legislative power courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a correlation between the service and the levy, or whether the levy is either not correlated with service or is levied to such an excessive extent as to be pretence of a fee and not a fee in reality, in other words, whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case."

22. In the case, *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, Hegde, J. referred to the relevant decision on this aspect and observed, inter alia, that it is clear that before any levy can be upheld as a fee, it must be shown that the levy has reasonable relationship with the services rendered by the Government. In other words the levy must be proved to be a quid pro quo for the services rendered. However, it was pointed out that in these matters it would be impossible to have an exact relationship. The relationship expected is one of a general character and not as of arithmetical exactitude.

23. In the case of *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, the distinction between a fee and a tax again came up for consideration. After referring to the various decisions of the Supreme Court on this point Sikri, C. J. (as he then was) observed that even if the meaning is the same what is "fees" in a particular case depends on the subject-matter in relation to which the fees are imposed. It was, inter alia, pointed out that the fact that one item of revenue is being credited to the Consolidated Fund is not conclusive to show that the item is a tax.

24. In the case, *The State of Maharashtra and Others Vs. The Salvation Army, Western India Territory*, (supra), it was observed by Mathew, J. as follows:

"A tax is a compulsory exaction of money by a public authority for a public purpose enforceable by law and is not a payment for any specific service

rendered. The levy of a tax is for the purpose of general revenue which when collected forms part of the public revenues of the State. There is no element of quid pro quo between the tax payer and the public authority. A fee is generally defined to be a charge for a special service rendered to individuals by the Government or some other agency like a local authority or statutory corporation. The amount of fee levied is supposed to be based on the expenses incurred by the Government or the agency in rendering the service though in many cases the costs are arbitrarily assessed. Fees are ordinarily uniform but absence of uniformity is not a criterion on which alone it can be said that a levy is in the nature of tax. In the case of a fee, no account is taken of the varying abilities of different recipients of the service to pay. As a fee is regarded as a sort of return or consideration for services rendered, it is necessary that the levy of fees should be correlated to the expenses incurred by the agency in rendering the services."

"It is also generally necessary that the payments demanded for rendering of such services must be set apart or specifically appropriated for that purpose and that they should not be merged in the general revenue of the State to be spent for general public purposes. It may not be possible to prove in every case that the fees that are collected by the Government or the agency always approximate to the expenses that are incurred by it in rendering the particular kind of services or in performing any particular work for the benefit of certain individuals."

"Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accept either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering that service and must not go to the general revenue of the State to be spent for general public purpose."

25. Keeping the aforesaid principles in mind, let us examine the said Ordinance to ascertain whether the levy imposed by Section 4 is a tax or a fee. Mere use of the expression "fee" in the Ordinance is not conclusive. Now the main object of the said Ordinance is to take measures with a view to safeguarding the health, safety and welfare of the pilgrims attending the said Mela. Taking of such measures is provided by Section 3 of the said Ordinance. Sub-section (1) of Section 3 provides for a declaration of the whole or any portion of the area within the Sagar Islands to be a notified area if the State Government is satisfied that as a result of the influx of too many pilgrims at a time, at the Sagar Islands on the occasion of the Gangasagar Mela, the health, safety and welfare of these pilgrims are likely to be endangered. Under Sub-section (2) of Section 3 the State Government is authorised, after publication of a notification under Sub-section (1), to take such measures for safeguarding the health, safety and welfare of the pilgrims as the State Government thinks necessary. Sub-section (3) of Section 3 provides that the details of the measures to be taken and the manner in which they shall be executed shall be laid down by the State Government by rules made in this behalf. These are the main provisions. The

only other relevant section is Section 4 which empowers the State Government to impose fees upon the pilgrims visiting the Gangasagar Mela. Sections 3 and 4 are the main substantive sections. Though it is not so specifically mentioned, it is clear from the said Ordinance that the imposition is in connection with the measures taken u/s 4. It is incidental to the measures to be taken and it is connected therewith. This levy is correlated to the services rendered to the pilgrims by way of measures taken u/s 3. This imposition is not for public purposes or to meet all general expenses of the State. This is for some specific services or some special work done for the benefit of the pilgrims visiting the said Mela, There is an element of quid pro quo. As pointed out earlier it is not necessary to show that the fees collected approximate to the expenses incurred by the State in rendering such services. From the Ordinance itself it is clear that it is earmarked to meet the expenses of rendering those services. It is impossible to have an exact correlation-ship. The "statement of facts" submitted by Mr. Sen Gupta also established the same. The measures are taken and fees collected for the "benefit of the pilgrims concerned. There is a quid pro quo. These fees are levied under Sec. 4 for services rendered u/s 3. The "statement" categorically records that the amount realised by imposition of fees @ Rs. 2 per person would go absolutely for such measures being taken. It is stated that some more amount was to be spent "by the Government for the said purpose. In this connection it may be pointed out that admitted position is that the number of pilgrims would be about 5 lakhs. Fees are @ Rs. 2 per pilgrim and the total amount collected would be about Rs. 10 lakhs. It is stated in "statement of facts" that the total costs for the. measures to be taken would be more than 10 lakhs. Mr. Acharya did not dispute the facts contained in the said "statement of facts", but he merely submitted that these arrangements are meant for all persons and not confined only to the pilgrims. In my opinion, that does not make any difference. Moreover, all persons who attend the Mela are treated as pilgrims. The measures are taken in respect of all. For the aforesaid reasons I hold that the levy imposed u/s 4 is a fee and not a tax. Accordingly, I reject this contention of Mr. Acharya.

26. The last submission of Mr. Acharya does not require any serious consideration. He is not challenging the provisions of the said Act to be ultra vires on the ground of alleged vagueness of several expressions used therein. He is merely stating that as a result of such vagueness the Ordinance cannot be given effect to. In my opinion, that is not a matter for consideration of this Court. The absurdity of a legislation is not a matter of consideration for the Court. It should be pointed out that the provisions of a statute, if vague, may under certain circumstances be challenged on the ground that it violates the fundamental rights guaranteed under the Articles 14 and 19 of the Constitution. However, this is not the contention of Mr. Acharyya in the present case. Rightly so, because Articles 14 and 19 cannot be enforced in view of the Proclamation of Emergency and the Presidential Orders made therein. However, I make it clear that I do not hold that any expression used in the said Ordinance is vague. The

expressions used therein viz. "pilgrims", "sadhus", "Sannyasis" are well known expressions used in common parlance. Further the Court is entitled to look into the Dictionaries for the purpose of ascertaining the natural and ordinary meaning of the expressions used in a Statute. According to Websters, the expression "pilgrim" means "one who travels to a shrine or a holy place as a devotee". The expression "Sadhus" and "Sannyasis" both have the same meaning which is "a Hindu mendicant ascetic". According to Chambers "pilgrim" is one who travels to a distance to visit a holy place, and a "Sadhu" is "a Hindu holy man, a mendicant or ascetic". Therefore, it is clear that not only these expressions are well known in the Indian language; but they are also expressions recognised by the English Dictionaries published in foreign countries. Accordingly I am unable to accept the contention of Mr. Acharyya that these expressions are vague. I hold that the expression "pilgrims", "Sadhus" and "Sannyasis" used in the said Ordinance are not vague.

27. For the aforesaid reasons I dismiss this application and discharge the Rule. There will be no order as to costs.