

(2005) 09 AHC CK 0260

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30281 of 2003

Sangam Eent Nirmata Samiti and Pratap Eent Udyog APPELLANT

Vs

Zila Panchayat, Commissioner, Allahabad Mandal and State of RESPONDENT
Uttar Pradesh

Date of Decision : 12-09-2005

Acts Referred:

Constitution of India, 1950 — Article 110, 110(2), 199(2), 226
Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section
239(2), 239(2)(E)

Citation : (2006) 1 AWC 482

Hon'ble Judges : R.K. Agrawal, J;M. Chaudhary, J

Bench : Division Bench

Advocate : R.N. Singh and Vishnu Behari Tewari, for the Appellant; W.H, Khan
and A. Singh and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioners, Sangam Eent Nirmata Samiti, Allahabad through its President Sri Uma Shanker Ailwani and Pratap Eent Udyog, Andawa Village, Phoolpur, Allahabad through its partner Devendra Pratap Singh, seek the following relief:-

"(i) a writ, order or direction in the nature of mandamus declaring the enhancement of licence fee from Rs. 2000/- to Rs. 10,000/- vide notification dated 01.10.2002 (Annexure -1) as ultra vires and unconstitutional;

(ii) a writ, order or direction in the nature of prohibition restraining the respondents from realising enhanced licence fee of Rs. 10,000/- instead of Rs.2000/- for renewal of petitioners licence for running its brick kiln vide notification dated 01.10.2002 published in U.P.Gazette dated 12.10.2002 (Annexure-1);

(iii) any other suitable writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case; (iv) award the cost of writ petition to the petitioners."

2. Briefly stated, the facts giving rise to the present petition are as follows:-

According to the petitioners, the petitioner no.1 is an association of brick-kiln owners of Allahabad and is registered under the provision of the Societies Registration Act, 1860. It has been formed with an object to promote and safeguard the legitimate interest and privilege of brick-kiln owners of Allahabad and to take steps that may be for the general good of the trade. The petitioner no.2 is a partnership firm duly registered under the Indian Partnership Act. The members of the petitioner no.1 association as also the petitioner no.2 are carrying on the business of manufacture and sale of bricks. Their brick-kilns are situate within the limits of the Zila Parishad, Allahabad (hereinafter referred to as "the Parishad"). The Parishad had framed the bye laws on 28.11.1992 in which it had prescribed for a licence fee of Rs.2,000/-per annum for running the brick-kiln. The bye laws had been framed u/s 239(2)(E)(a)(iv) of the U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as "the Adhiniyam"). The bye laws have been amended on 1.10.2002 whereby the licence fee has been increased from Rs.2,000/- to Rs.10,000/- per annum. The increase of licence fee from Rs.2,000/- to Rs. 10,000/- is under challenge in the present writ petition.

3. We have heard Sri R.N.Singh, learned Senior Counsel, assisted by Sri Vishnu Bihari Tiwari, Advocate, on behalf of the petitioner, and Sri W.H.Khan, learned Senior Counsel, assisted by Sri A.Singh, Advocate, on behalf of the Parishad.

4. Sri R.N.Singh, the learned Senior Counsel, submitted that the Parishad is not spending any amount for the purpose of rendering any service for which they could charge the licence fee and enhancement has been made without any reason. According to him, supervising, checking and issuing of licence cannot be said to be the service rendered. In the circumstances, the amount of licence fee being realised from the members of the petitioner no.1 association or the petitioner no.2 is in the nature of a tax and not a fee. He further submitted that if the fee is held to be regulatory in nature, it is highly excessive and the Parishad has not justified it by placing sufficient material and evidence on record so as to enable the Court to uphold the enhancement of licence fee. He has referred to a decision of the Apex Court in the case of Kewal Krishan Puri and Others Vs. State of Punjab and Another, . Relying upon paragraphs 54 and 55 of the judgment, he submitted that enhancement of the licence fee from Rs.2,000/- to Rs. 10,000/- is wholly illegal and unjustified. He also relied upon a Division Bench decision of this Court in Civil Misc. Writ Petition No. 43220 of 2002, Uttar Pradesh Udyog Vyapar Pratinidhi Mandal and Ors. v. State of U.P. and Ors., decided on 7.2.2003, wherein this Court has declared bye-law no. 19 framed by the Zila Parishad, Agra, providing for imposition of charge paid on every trip of the vehicle from Agra district to outside and from outside the district to Agra

carrying Gitti, Patthar Boulder, Coal, Marble, Yamuna Sand and Balu etc. which were to be utilised for providing drinking water facility to the vehicle owners and drivers and medical facilities at the point of loading or any other specified place. Sri Singh submitted that these facilities, as held by this Court in the aforesaid case, is the statutory duty of the Parishad to provide and for incurring expenditure on these facilities the impost of the present levy cannot be justified.

5. Sri W.H.Khan, on the other hand, submitted that the licence fee of Rs.10,000/- levied by the Parishad is, in fact, in the nature of a regulatory fee for which no services are required to be rendered. In the alternative, he submitted that if it is held to be a fee co-related with the services rendered, the Parishad is spending huge amount towards facilities being offered by way of maintenance of road, approach road, allowing parking, providing drinking water etc. and also for maintaining sufficient staff to regulate the trade. He, thus, submitted that the enhancement of licence fee to Rs. 10,000/- is perfectly justified. He further submitted that out of the about 271 brick-kiln owners operating within the limits of the Parishad, 218 brick-kiln owners have already deposited the licence fee and the renewal fee and, therefore, the plea that the petitioner no.1 is espousing the cause of its members, is not correct. For justifying the levy of the licence fee, Sri Khan has relied upon the following decisions :-

(i) Commissioner, Agra Division, Agra and Anr. v. Durgesh Prasad Bhargava and Anr. 1974 ALJ 37;

(ii) Zila Parishad, Budaun v. Shiv Lal and Ors. 1980 UPLBEC 148;

(iii) Secunderabad Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another, ; and

(iv) Chakresh Kumar Jain and Others Vs. State of Uttar Pradesh and Others, .

6. It is not necessary to go into the question as to whether the petitioner no.1 represents the interest of its members or not, viz., the stand taken by the Parishad that 218 brick-kiln owners have already deposited the licence fee and renewal fee. We find that the petitioner no.2 who is a partnership firm and is engaged in brick-kiln trade and since brick-kiln has challenged the levy of licence fee, therefore the Court has to adjudicate upon the questions raised in the writ petition.

7. Having given our anxious consideration to the various pleas raised by the learned counsel for the parties on the question as to whether any services are required to be rendered or there should be an element of quid pro quo where the fee charged is regulatory in nature, we find that the Apex Court in the case of P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED], , has held as under:-

"36...Even in the matter of fees, it is not necessary that element of quid pro quo should be established in each and every case, for it is well settled that fees can be both regulatory and compensatory and that in the case of regulatory fees, the

element of quid pro quo is totally irrelevant. (See Corporation of Calcutta and Another Vs. Liberty Cinema,)."

8. In the case of Vam Organic Chemicals Ltd. and Another Vs. State of U.P. and Others, , the Apex Court has held as follows: -

"18. The High Court in the impugned judgment has drawn a distinction between fees charged for licences, i.e., regulatory fees and the fees for services rendered as compensatory fees. The distinction pointed out by the High Court can be seen in clause (2) of Article 110:

"110(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, emission, alteration or regulation of any tax by any local authority or body for local purposes."

The High Court has quoted from this Court's decision in Corporation of Calcutta and Another Vs. Liberty Cinema, , which was based on a Privy Council judgment in George Walkem Shannon v. Lower Mainland Dairy Products Board 1938 AC 708 . This Court said in Corporation of Calcutta and Another Vs. Liberty Cinema, :

"In fact, in our Constitution fee for licence and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Article 110(2) and Article 199(2) where both the expressions are used indicating thereby that they are not the same."

The High Court has taken the view that in the case of regulatory fees, like the licence fees, existence of quid pro quo is not necessary although the fee imposed must not be, in the circumstances of the case, excessive. The High Court further held that keeping in view the quantum and nature of the work involved in supervising the process of denaturation and the consequent expenses incurred by The State, the fee of 7 paise per litre was reasonable and proper. We see no reason to differ with the view of the High Court."

9. In the case of State of Tripura and others Vs. Sudhir Ranjan Nath, , the Apex Court has held as follows:-

"14. We next take up the validity of the levy of application fee and licence fee of Rupees one thousand and Rupees two thousand respectively. In our opinion, the High Court was not right in holding that the said fee amounts to tax on the ground that it has not been proved to be compensatory within the meaning of clause (c) of sub-section (2) of Section 41. It is regulatory fee and not compensatory fee. The distinction between compensatory fee and regulatory fee is well established by several decisions of this Court. Reference may be had to the decision of the Constitution Bench in Corporation of Calcutta and Another Vs. Liberty Cinema, . It has been held in the said decision that the expression "licence fee" does not necessarily mean a fee in lieu of services and that in the

case of regulatory fees, no quid pro quo need be established. The following observations may usefully be quoted:-

"This contention is not really open to the respondent for Section 548 does not use the word "fee"; it uses the words "licence fee" and those words do not necessarily mean a fee in return for services. The former is not intended to be a fee for services rendered. In fact, in our Constitution fee for licence and fee for services rendered are contemplated as different kinds of levy. This is apparent from a consideration of Article 110(2) and Article 199(2) where both the expressions are used indicating thereby that they are not the same. In *George Walkem Shannon v. Lower Mainland Dairy Products Board* 1938 AC 708, it was observed (at pp.721-722 of AC):

"if licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the Province or for both purposes.... It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue."

It would, therefore, appear that a provision or the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered."

15. This decision has been followed in several decisions, including the recent decisions of this Court in *Vam Organic Chemicals Ltd. and Another Vs. State of U.P. and Others*, and *Bihar Distillery and Another Vs. Union of India (UOI) and Others*, . The High Court was, therefore, not right in proceeding on the assumption that every fee must necessarily satisfy the test of quid pro quo and in declaring the fees levied by sub-rules (3) and (4) of Rule 3 as bad on that basis. Since we hold that the fees levied by the said sub-rules is regulatory in nature, the said levy must be held to be valid and competent, being fully warranted by Section 41."

10. In the case of *Secunderabad Hyderabad Hotel Owners' Association (supra)*, the Apex Court has held in paragraph 9 as under:-

"9. It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classified as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive."

11. The Apex Court has further held that in the case of regulatory fee, no quid pro quo was necessary but such fee should not be excessive.

12. In the case of State of U.P. and Others Vs. Sitapur Packing Wood Suppliers etc., , the Apex Court has held that the question of quid pro quo is necessary when a fee is compensatory, for every fee paid quid pro quo is not necessary. In the case of regulatory fee it is not necessary to establish the factum of rendering of service. Therefore, there is no question of regulatory fee being invalidated on the ground that quid pro quo has not been established.

13 In the case of State of U.P. and Others Vs. Vam Organic Chemicals Ltd. and Others, , the Apex Court has considered the question regarding the distinction between a fee and a tax and correlation or correspondence for upholding the fee in paragraph 35 as under:-

"35. This test of correlation or "correspondence" has been repeatedly used by this Court either to uphold the fee holding that it was reasonable for the requirement of the authority for fulfilling its statutory obligations B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., ; Secunderabad Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another, ; State of Tripura and others Vs. Sudhir Ranjan Nath, ; Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. Vs. State of Gujarat and Another, and M/s. Gujchem Distillers India Ltd. Vs. State of Gujarat and another, or to strike it down on the ground that the fee charge was not established to be so commensurate. (See Indian Mica Micanite Industries Vs. The State of Bihar and Others, and A.P. Paper Mills Ltd. Vs. Government of A.P. and Another,)."

14. In the case of Sona Chandi Oal Committee and Others Vs. State of Maharashtra, , the Apex Court has held that the traditional concept of quid pro quo in a fee has undergone considerable transformation. So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It has further held that the fee charged in respect of renewal under the Bombay Money Lenders Act, 1946 is regulatory in nature to control and supervise the functioning of the money lending business to protect the debtors, the vast majority of which are poor peasants, tenants, agricultural labourers and salaried workers who are unable to repay their loans. The object of the Act is to control the money lending business and protect the debtors from the malpractices in the business by detecting illegal money lending. This exercise is a must to carry out the object of the Act for which a lot of infrastructure is required. The duty of the staff and the officers of the department is to visit the places of money lending business, inspect the accounts and other matters relating to the business, to find out illegal money lending, carry out raids in suspicious cases and do regular inspection as provided in the Act. The Act serves a larger public interest.

15. In the case of State of Bihar and Others Vs. Shree Baidyanath Ayurved Bhawan Private Ltd. and Others, , the Apex Court has held that in the case of regulatory fees, like licence fees, existence of quid pro quo is not necessary although such fees must not be excessive. It has upheld the levy of licence fee under the Bihar and Orissa Excise Act, 1915 in view of the quantum of nature of work involved in supervising the activities under the said Act.

16. We find that in the counter affidavit filed by the Parishad it has been stated that the trade of brick-kiln comes within an offensive trade as mentioned in clause E(iv) of sub-section (2) of Section 239 of the Adhiniyam and the Parishad is fully empowered to impose licence fee for regulating and controlling the trade. It has to maintain a big establishment and to employ different persons such as Inspectors, Tax Collectors, Overseers, Engineers etc. for maintaining road, construction of road, approach road and making for inspections and collecting licence fee etc. The Parishad has to spend a huge amount of Rs.30,00,000/- every year in connection with the establishment regarding collection of tax and licence fee which goes on increasing every year and, therefore, the enhancement of the licence fee from Rs.2,000/- to Rs. 10,000/- after more than 10 years cannot be said to be excessive.

17. In the case of Kewal Krishan Puri (supra) the Apex Court was considering the question about the validity of market fee of Rs.2/-levied by the Market Committees under the Punjab Agricultural Produce Market Act on the touchstone of services rendered. The question of fee being regulatory in nature was not up for consideration before the Apex Court.

18. In the case of Durgesh Prasad Bhargava (supra) this Court has upheld the levy of licence fee of rs.250/- for running the brick-kiln. This amount was levied in the year 1974.

19. In the case of Shiv Lal (supra) this Court has upheld the imposition of licence fee for brick-kiln on the ground that it cannot be challenged that there was no quid pro quo between the licence fee charged and the services rendered as the impost in question was not fee simpliciter.

20. In the case of Dr. Chandresh Kumar Jain (supra) this Court has upheld the levy of licence fee imposed on the nursing homes, Private Clinics, Pathology Centres and Maternity Homes etc. on the ground of being regulatory in nature. This Court has laid down the broad distinguishing features between compensatory and regulatory fee as follows :-

"24. The broad distinguishing features between compulsory and regulatory fee are -

1. In compensatory fee, the element of quid pro quo is necessary while in regulatory fee it is not necessary;

2. In compensatory fee the amount realised is to be spent for the services to be rendered for which the fee has been realised but this is not necessary in the case

of regulatory fee;

3. The regulatory fee is realised to regulate the activities of the persons who are to obtain licence under a bye law, rules, regulations or statute. The amount realised as regulatory fee is to be spent for regulating their activities."

21. Applying the principles laid down in the aforesaid cases to the facts of the present case, i.e., services are not required to be rendered where the fee has been imposed to regulate the trade, we are of the considered opinion that the present is a case where the fee has been imposed to regulate the brick-kiln trade. On behalf of the contesting respondents, Sri Rakesh Kumar Verma has stated in paragraph 10 of the counter affidavit that the Parishad has to spend a sum of Rs.30,00,000/- every year in connection with the establishment regarding collection of tax and licence fee, which amount goes on increasing every year. Thus, from the facts brought on record we are of the considered opinion that the enhancement of the licence fee in 10 years by 5 times from Rs.2,000/- to Rs. 10,000/- cannot be said to be excessive taking into consideration the escalation in prices, cost of living, hike in salary and maintenance of establishment for enforcing the regulations. It is in the nature of regulatory fee for which no services are required to be rendered.

22. The law laid down by the Division Bench of this Court in the case of Uttar Pradesh Udyog Vyapar Pratinidhi Mandal (*supra*) is not applicable to the facts of the present case inasmuch as in the present case the fee is being justified on the ground of being regulatory in nature, which question was not up for consideration in the said case.

23. No other point has been pressed.

24. In view of the foregoing discussions, we do not find any merit in this petition. It is dismissed with costs which we assess at Rs. 10,000/-.