

(2007) 07 MAD CK 0163

In the Madras High Court

Case No : W.A. No's. 920, 982, 983, 984, 1199 and 1359 of 2002 and 311, 458 and 2356 of 2003 and W.A.M.P. No. 385 of 2003

Sree Vadivambigai Textile Mills Ltd.

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Constitution of India, 1950 — Article 266
Factories Act, 1948 — Section 112, 6, 6(1), 6(91)
Tamil Nadu Factories Rules, 1950 — Rule 4(1), 4(3)

Citation : (2007) 07 MAD CK 0163

Hon'ble Judges : S.J. Mukhopadhaya, J;S. Tamilvanan, J

Bench : Division Bench

Advocate : M. Elumalai, for the Appellant; R. Viduthalai, AG for K. Elango, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—In all these appeals as common question of law raised and almost all of them arise out of common order/similar

order, they were heard together and are being disposed of by this common judgment.

The appellants have their factories, having obtained their respective licence under the Factories Act, 1948, (hereinafter referred to as the "Act").

Licence Fee having been increased, they challenged the impugned notification in G.O. Ms. No. 176, Labour & Employment Department dated 5th

Dec., 1996.

2. The plea as taken by the appellants are:

a) The respondents have erroneously chosen to levy different fees for factories based on the number of persons employed and the horse power of

the machinery installed, although the nature of service rendered by the factory inspectorate are in no way different from one factory to another, nor

the services of the inspectorate increase or decrease with the size or strength of a factory.

b) Notwithstanding the aforesaid fact, the respondents, by impugned notification, has chosen to revise the fees substantially not only increasing the

burden on the factory and the employer, but also such fee is grossly disproportionate when compared to the nature of service which is being

rendered for collection of such fees. The services rendered is not at all commensurate with the fees paid and the volume of service have in fact

gone down after various other bodies have come into existence such as Pollution control Board, etc.

c) Clause (d) of Sub-section (1) of Section (6) of the Factories Act, 1948 and Sub-rule (3) of Rule 4 of the Tamil Nadu Factories Rules, 1950,

(hereinafter referred to as the "Rules") ultra vires the Constitution of India inasmuch as no guidelines whatsoever have been provided under the said

provision mentioned above. The State Government has been given unbridled power to fix and revise annual licence fees, and as such the aforesaid

provision is liable to be struck down as ultra vires the Constitution of India.

3. Learned single Judge, while held that an element of quid pro quo is not required for revision of licence fee, further held that the revision of

licence fee, as made vide impugned G.O. Ms. No. 176, Labour & Employment Department dated 5th Dec., 1996, is not arbitrary. It appears that

no specific challenge having been made in respect of Clause (d) of Sub-section (1) of Section (6) of the Act and Sub-rule (3) of Rule 4 of the

Rules, nor any argument was advanced, therefore, nospecific decision was rendered in respect of the validity of such rules.

4. Learned Counsel for the appellants submitted that a licence fee under the Act being a statutory requirement and as violation of the same would

attract prosecution apart from other penal action contemplated under the Act, the respondents have forced the appellants to pay revised licence

fee, as revised arbitrarily. The fee which was being levied upto 1991 to the tune of Rs.8,000/= was increased to Rs.22,000/= from 1992 and not it

stood revised to Rs.66,000/= per annum. The revision which is made much after the application for renewal of licence for the year 1997 and the

concerned factories have been informed that unless the difference in the fee is paid, the licence would not be renewed. The present revision in the licence fee is disproportionate and exorbitant, inasmuch as separate fees are being paid by the appellants for testing safety of machinery, stability of building and for obtaining consent in respect of pollution. It is reiterated that the principle of "quid pro quo" is applicable and any fees which is being levied by the authorities should be proportionate and balance to the limited services, which are being rendered by them and they ought not to levy the fee more than the services being rendered by them.

Learned Advocate General, while referred to the impugned judgment and submitted that the principle of "quid pro quo" is not applicable for fixing licence fee or revision of licence fee, not being a tax, referred to different orders and letters as submitted with the typed set.

5. It appears that in exercise of the powers conferred by Sections 6 and 112 of the Act, the Governor of Tamil Nadu made amendment to the

Tamil Nadu Factories Rules, 1950, and revised the schedule prescribing licence fee vide G.O. Ms.241 dated 13th Sept., 1991. It was informed

by the learned Advocate General that such revision of fee on the basis of need is made every five years taking into consideration the different

factors and after obtaining objections. By the aforesaid Government Order dated 13th Sept., 1991, revision of fee was made prior to impugned

Government Order issued on 5th Dec., 1996. Licence fee is prescribed on the basis of the number of persons employed in any date during the

year in a factory and the capacity of the factory based on horse power. For example, if maximum 9 persons have been engaged in a factory having

"Nil" horse power, Rs.100/= was the fee fixed, but if the number of persons exceeds 9 and upto 20, in such factories the licence fee will be

Rs.200/=. Similarly, in a factory having horse power upto 10, if 9 persons are engaged, it is to pay a fee of Rs.200/=: but if there are more than 9

persons and upto 20 persons, then the factory is to pay Rs.300/= as licence fee. The formula of fixing licence fee based on number of employees in

the factory and working capacity of factory is continuing since long and no objection was made by any of the factory owners, including the

appellants in respect of principle followed by the respondents.

6. The respondent-State, before revision of licence fee, called for objection vide

G.O. Ms.41 dated 29th March, 1996. It was proposed to hike the licence fee about 15 times the original one. For example, the licence fee of Rs.100/=, which was fixed for a factory having "Nil" horse power and less than 9 employees, it was proposed to increase the fee to Rs.1,500/= per annum. A large number of objections were filed by the owners of different factories, which were noticed by the Chief Inspector of Factories, Tamil Nadu. He, after going through the different objections and other factors, such as facility given by State Government to the factories, other expenses incurred by the factories towards its employees, by its letter No. B1/14575/95, dated 12th July, 1996, recommended to reduce the proposed enhancement of licence fee. For proper appreciation of the case, it is desirable to notice the ground shown in the letter No. B1/14575/95, dated 12th July, 1996, relevant portion of which is quoted hereunder:

1. The purpose of levying licence fee is to meet the cost of services rendered, to licence the factories, under the purview of Factories Act, 1948, to make it safe to protect the rights and privileges of the working class which brings industrial peace and also an orderly growth of the industries in the State. Once the factory is registered under the Factories Act, the factory can avail financial assistance from the Nationalised Banks, Financial Institutions, Central and State Aid, etc., and avail concessions for import and export, etc.
2. The increase is not abnormal one, but there is reasonable relationship between the levy of fee and the services rendered as detailed below:
 - a. The Major Hazard Control Division of the Department of Factory Inspectorate advises the Factory Managements on preparation of Off-site and On-site emergency plans, which prevents major industrial disasters.
 - b. Safety courses are conducted by the Inspectorate of Factories for the benefit of the workers/supervisors of the Factory, free of cost.
 - c. In order to enthuse the workers to increase the production and to find out new ways and means to improve productivity, productivity training classes are conducted by the productivity cell of the department. This is also free of cost.
 - d. To reduce the industrial accidents, safety surveys are conducted and to prevent recurrence, all the serious accidents are investigated and suitable

remedial measures are suggested.

e. Safety journals are published.

f. The workers engaged in dangerous operations are medically examined by the Assistant Surgeons of the Department of the Inspectorate of

Factories for a very nominal fee.

g. Pressure vessels in factories are tested by the Department of Inspectorate of Factories periodically and regularly. Here again, the testing fees are

very nominal.

Thus, the Department of Inspectorate of Factories is rendering the above assistances for the welfare of the workers of Small Scale Industries as

well as big factories, which ultimately helps to the growth of industry.

Further, licence fee alone is collected from the factories and the plans are approved without levying any fee, whereas in City Corporations,

Municipalities and Panchayat Unions, plans are approved only after levying a fee.

Moreover, revision of rates of licence fees is normally done once in 5 years only, which cannot be told as a burden even to Small Scale Industries.

Though Pollution control Board has been created to protect the environment, this has in no way reduced the work of the Department of

Inspectorate of Factories.

The licence fees are paid only once in a year and hence there is no base for arguing that the proposed increase of licence fees will cause severe

financial burden to the companies.

In view of the above reasons only, the rates of licence fees have been increased.

It is informed that thereafter, the State of Tamil Nadu scaled down from its proposed licence fee and issued the impugned G.O. Ms. No. 176,

Labour & Employment Department, dated 5th Dec., 1996. The proposal as was made vide G.O. Ms. No. 41, Labour & Employment

Department dated 29th March, 1996, for enhancing fifteen times of the earlier fee i.e., Rs.100/= to Rs.1500/= for a factory having "Nil" horse

power and maximum 9 employees was brought down to Rs.200/= by the impugned notification. Thus, in some of the cases, while the licence fee

was raised twice the principal rate, in case of big factories it has been raised three times.

7. The aforesaid fact was highlighted by the learned Advocate General to suggest

that the State Government, after consideration of the matter and after due appreciation of the objections, issued the impugned G.O. Ms. No. 176, Labour & Employment Department, dated 5th Dec., 1996. and the proposal to enhance 15 times of the pre-revised fee was brought down to 2 to 3 times of the existing fee.

8. Section 6 of the Factories Act, 1948, deals with approval, licencing and registration of factories. u/s 6(1)(d), the State Government is empowered to frame rules requiring the registration and licencing of factories or any class or description of factories and prescribing fees payable for such registration and licencing and for the renewal of licence. Rule 4 (1) of the Tamil Nadu Factories Rules, 1950, compels the factory to register and take licence. Under Rule 4 (3), the fee payable for registration and grant of licence to a factory is required to be specified in the schedule thereunder and the application in the requisite format is to be accompanied by a treasury receipt evidencing payment of appropriate fee specified in the schedule.

9. It is not in dispute that the licence fee is not tax. Though originally while deciding the substantiality of the quantum of fee the Courts have held that the element of quid pro quo between the service rendered and fee charged should exist, it further held that such a licence fee, though may be commensurate with the cost of rendering service, the exact arithmetical equivalent is not necessary. The licence fee may be of two categories, such as regulatory or compensatory based on service rendered. When licence is issued to regulate for better control, such a fee charged is a regulatory one. For such levy, while element of quid pro quo is not required, but such levy should be reasonable and not excessive. On the other hand, if the fee is charged for special services, based on the expenses incurred by the State in rendering services, an element of quid pro quo is necessary and there has to be a co-relation of a general character between the cost of rendering such service and the fee charged.

10. A neat definition of "Tax" and "Fee" was discussed by the Supreme Court in the case of The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., , wherein the Constitution Bench observed as follows:

A neat definition of what "tax" means has been given by Latha, C.J., of the High

Court of Australia in *Mathews v. Chicory Marketing Board*

(1938) 60 CLR 263. "A tax", according to the learned Chief Justice is a compulsory exaction of money by public authority for public purposes

enforceable by law and is not payment "for services rendered". This definition brings out, in our opinion, the essential characteristics of a tax as

distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion,

that is to say, is imposed under statutory power without the tax payer's consent and the payment is enforced by law.... The second characteristic

of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is

expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State.

As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of "quid pro quo" between

the tax payer and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the

tax payer depends generally upon his capacity to pay.

Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The

amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs

are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay.... These are

undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be

applicable to all cases.

The traditional view of quid pro quo was noticed by the Supreme Court in the case of *Sreenivasa General Traders and Others Vs. State of Andhra*

Pradesh and Others, wherein distinction between a tax and fee, while discussed, the following observation was made:

The traditional view that there must be actual quid pro quo for a fee has undergone a sea change. The distinction between a tax and a fee lies

primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special

advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee or a tax, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation between the levy and the services rendered is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable "relationship" between levy of the fee and the service rendered. (SCC p.380, para 31).

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There is no generic difference between a tax and a fee; both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realized that merely because the collections for the services rendered or for grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., , was not drawn to Article 266 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not to the consolidated fund. The element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. (SCC pp.380-81, para 32)

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It is not always possible to work out with mathematical decision the amount of fee required for the services to be rendered each year and to collect

only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income of a market committee by way of

market fee and licence fee may exceed the expenditure and in another year when the development works are in progress for providing modern

infrastructure facilities, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into

consideration to decide whether the fee is commensurate with the services rendered. An overall picture has to be taken in dealing with the question

whether there is quid pro quo i.e., there is correlation between the increase in the rate of fee from 50 paise to rupee one and the service rendered.

(SCC p.362, para 7).

The Constitution Bench of the Supreme Court, in the case of Corporation of Calcutta and Another Vs. Liberty Cinema, held that the expression

"Licence Fee" does not necessarily mean a fee in lieu of service and that in the case of regulatory fees, no quid pro quo need to be established.

In the case of Vam Organic Chemicals Ltd. and Another Vs. State of U.P. and Others, , the Supreme Court held that in case of regulatory fee by

way of licence fee, existence of quid pro quo is not necessary, though it is necessary that reference of the fees for service rendered is

compensatory fee.

Similar was the view of the Apex Court in the case of State of Tripura and others Vs. Sudhir Ranjan Nath, .

In cases where licence fee is levied for regulating or controlling companies/factories, it is regulatory in nature. It is not a tax although no service is

rendered. In such cases element of quid pro quo for levy of such fee is not required. This was the view of the Supreme court in Secunderabad

Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another, ., as quoted hereunder:

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 classifiable 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. In the present case, there is nothing on the record to suggest that the State Government is charging licence fee for rendering any special services. No such decision was taken by the State nor any such undertaking was given to any of the company/factory. The purpose of licence is to enable the authorities to supervise, regulate and monitor the activities relating to factories with a view to secure proper enforcement of the provisions. For enforcing such statutory provision and for giving certain benefits, a step has been taken by the State, as already been mentioned by the Chief Inspector of Factories, Tamil Nadu, by his letter dated 12th July, 1996, as quoted above. It appears that a major hazard control division of the Department has asked the factory management to prepare off-site and on-site emergency plans to prevent major industrial disaster. Safety courses are conducted by the Inspectorate of Factories for the benefit of the workers and supervisors of the factories, free of cost. In order to enthuse the workers and increase the production of the factory and to find out new ways and means to improve productivity, training classes are conducted by the State Government free of cost. For reduction of industrial accidents, safety surveys and to prevent recurrence, including serious accidents, inspection and suitable remedial measures are taken. Apart from publishing of safety journals, medical examination of the workmen is being undertaken for nominal fee, other tests are done by the State, all at the cost of the State and no separate charge is taken from the factories.

12. From the abovesaid fact it will be evident that the amount so collected is not a tax, nor it is a charge granting a specific benefit, but a fee, regulatory in nature and not compensatory. Mere increase of licence fee, two or three times of the fees as was earlier prescribed five years back, cannot be held to be excessive nor there is any reason to hold the same arbitrary. The submission made on behalf of the appellants cannot be

accepted nor we find any ground to differ with the finding of the learned single Judge. There being no merit, all the appeals are dismissed.

Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.