

(1972) 10 AHC CK 0017
In the Allahabad High Court
Case No : Special Appeal No. 816 of 1968

State of U.P. and Another

APPELLANT

Vs

Bharat Nath Seth

RESPONDENT

Date of Decision : 27-10-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 265
Mirzapur Stone Mahal Act, 1886 — Section 6

Citation : AIR 1973 All 187

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : B.L. Yadav, for the Appellant; R.N. Bhalla, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—The State of Uttar Pradesh is the appellant. It is aggrieved against the decision of a learned Single Judge holding that the enhancement of the licence fee from Rs. 4/- to Rs. 10/-under the Stone Mahal Rules was invalid.

2. Section 6 (2) of the Mirzapur Stone Mahal Act, 1886 provides that a person may, so far as the rules made under this Act permit, acquire an exclusive right to open quarry, or quarry stones, within certain local limits in any part of the district and may retain the right so long as these rules permit the same. Section 7 Clause (c) of this Act authorised the local Government to frame rules regarding the conditions on the fulfillment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits and how that right will cease to exist. In exercise of this power the local Government framed the Stone Mahal Rules, 1944. Rule 8 of the Rules provided that no person shall prospect for a stone quarry or open a new quarry or work an existing quarry either in person or through an agent, unless he is duly authorised to do so by a licence granted by the Superintendent. The fee for such licence shall be Rs. per annum. The licence shall be in form No. T annexed. The licence shall be in force for the financial year (April 1 to March 31) in which they are issued and

must be issued duly on the payment of the fee.

3. Bharat Nath Seth, the respondent held several licences from the Superintendent Stone Mahal, Mirzapur under these rules. His licences were renewed each year for the several years past.

4. Initially the licence fee was Rupee 1/- per year. In 1944 it was enhanced to Rs. 2/- per annum; and in the year 1954 it was enhanced to Rs. 4/- per annum. On 2nd January, 1963, the State Government published a notification proposing to enhance the fee of Rs. 10/-. Objections were invited by 30th January, 1963. The District Stone Traders Association, of which the respondent was a member, filed objections but the objections were unsuccessful. The State Government ultimately fixed the licence fee at Rs. 10/-. This fixation was challenged by the respondent by a writ petition in this Court.

5. In support of the writ petition it was urged that the licence fee was not a fee properly so-called because the authorities were not rendering any service to the estate and as such it was a levy of tax and not a fee. The learned Single Judge went into the accounts and ultimately came to the conclusion that the annual average income is Rs. 4,60,685/- while the average annual expenditure is Rs. 72,170/-. The income being far in excess than the actual expenditure made in rendering services to the licences the fee could not be validly held to be a fee as known to the constitution. In this situation the enhancement of licence fee from Rs. 4/- to Rs. 10/- does result in augmentation of revenue and therefore the rules were unconstitutional.

6. The learned Single Judge did not permit the State to raise an alternative submission that the charges made for the issue of licence as fees were in the nature of fees but with no element of quid pro quo between the licensee and the appellant and as such the appellants were not liable to render any service in lieu of the licence fee, on the ground that this specific line of defence was not taken in the counter-affidavit.

7. In the appeal before us the alternative ground has been pressed. In our opinion the ground raises a pure question of law as to the legal nature of licence fee. In our opinion, it was for the respondent, who has come to this court for relief, to establish the true nature of the licence fee, the enhancement of which was the cause of action. The submission relating to the true nature of the licence fee raised on behalf of the State could not be repelled on the technical ground that appealed to the learned Single Judge.

8. The Supreme Court has in Corporation of Calcutta and Another Vs. Liberty Cinema, specifically dealt with the true nature and character of licence fee. Section 548 of the Calcutta Municipal Act, 1951 provided for levying of a fee for every licence issued under the Act. The nature of this licence fee was discussed by the Supreme Court. Before the Supreme Court it was argued that the fee for the licence was really not a fee because the services were not rendered in lieu thereof. It was imposition of a tax pure and simple. The Supreme Court

observed:--

"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. 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. In *Shannon v. Lower Mainland Dairy Products Board* 1938 AC 708 : AIR 1939 PC 36) it was observed at pp. 721-722 (of AC) = (at pp. 38-39 of AIR):

"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 for the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered."

This decision completely covers the point. It is not denied that the appellant State charged the fee for the issuance of the licence. Under the licence the respondent acquired by virtue of Section 6 of the Mirzapur Stone Mahal Act 1886 an exclusive right of opening quarry or quarrying stone within the local limits of the district of Mirzapur. If the State charges some fee for granting this privilege the levy cannot be held to be unconstitutional on the ground that it was not in the nature of fee.

9. In this view of the matter it is not necessary to go into the accounts.

10. In the result the appeal succeeds and is allowed. The judgment of the learned Single Judge is set aside and the writ petition is dismissed with costs.