

(1952) 11 MAD CK 0021

In the Madras High Court

Case No : Criminal Revision No. 505 and Cri. Revision Petition No. 474 of 1952

Subbaiah Maistry

APPELLANT

Vs

The Corporation of Madras

RESPONDENT

Date of Decision : 05-11-1952

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 287, 349(3), 357

Citation : AIR 1953 Mad 532 : (1953) 1 MLJ 92

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : S. Mohankumara Mangalam and A. Madhavan, for the Appellant;
State Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—The point taken by Mr. Mohan Kumaramangalam in this case is whether the fee of Rs. 5/- levied upon every dhoby inside

the Madras Corporation is a licence fee or a tax.

2. There is no dispute before me that if this levy is construed as a tax this revision has got to be allowed and if this is construed as a licence fee this revision has got to be dismissed.

3. In order to determine whether this sum of Rs. 5/- levied is a licence fee or a tax --I need not point out that this sum of Rs. 5/- is levied as a

licence fee -- we have got certain tests which have been elaborately gone into and laid down by my Lord the Chief Justice in -- K.C. Varadachari,

Partner, Madras Oil Mills and Products Vs. The State of Madras, by the Secretary to the Government of Madras, Food and Agriculture

Department, . The learned Chief Justice has reviewed the entire case-law on the subject and has delimited the boundary line between a licence fee

and a tax.

4. The learned Chief Justice points out: ""It is now well established that there is a fundamental difference between a tax and a licence fee. The issue

of licences to regulate particular branches of business or specified trades or occupations and other matters is part of what in American

Constitutional law is called the "police power" of the State. See -- S. Ananthakrishnan Vs. The State of Madras, . For the grant of a licence a fee

may be charged to cover probable expenses; which may have to be incurred for the regulation of the particular trade or business or calling in

respect of which the licence is required. The licence fee is not intended to raise revenues for the general purpose of the authority levying the fee.

For such purposes the levy should be in the shape of a tax. The licence fee must be reasonable, whereas, a tax need not be.

5. Courts have often dealt with the question whether a particular licence fee is reasonable or not. Though, ultimately the decision in each case must

depend upon the particular facts of that case, certain general tests have been formulated to decide whether a particular fee is reasonable in the

circumstances. In laying down these general principles Courts have always kept in view the essential difference between a licence fee and a tax,

namely, that in the case of a licence fee imposition is intended to reimburse the authority in any amount expended by it in respect of the particular

business or matter which is intended to be regulated, whereas a tax is the recognised method of raising revenues for general purposes. It is useful to

refer to some of the decided cases, on the point and we shall begin with the ruling of the Privy Council in -- AIR 1931 217 (Privy Council) . That

was given on an appeal from the judgment of the Rangoon High Court reported in - "Municipal Corporation of Rangoon v. Pazundaung Bazaar

Co., Ltd.", AIR 1930 Rang 282 (D). Under the City of Rangoon Municipal Act the Corporation had power to charge licence fees for private

markets. The question was whether the licence fee imposed was unreasonable. Hcald, Offg. C. J., rejected the contention of the owners of the

private markets who were protesting against the levy that the only charges recoverable by way of licence fees were the cost of the papers on which

the licences and receipts were printed together with the costs of printing and writing thereon and the cost of such inspection as was directly

connected with the licences themselves. He held (and Mya Bu, J. concurred with him) that the licence fee may reasonably cover the cost of all

special services necessitated by the duties and liabilities imposed on the corporation in respect of the supervision and regulation of private markets.

The Privy Council agreed with this statement of law.

6. In -- The Corporation of Madras Vs. Spencer and Co., Ltd., , this Court held that a licence fee imposed by the Corporation of Madras for

storing spirits was unreasonable because the imposition was not with a view to pay for the expenses in connection with the licences but was

obviously done to increase the revenue of the Corporation from liquor. The learned Judges accepted the view of the trial Judge, Beasley J. (as he

then was) that licence fees were leviable as compensation to the Corporation for the expenses incurred in the issue of licences and the general

regulation of the trades and other occupations which were licensed and that there must be some relation between these expenses and the amount of

fees leviable. In the case before them they found on the evidence which had been adduced that the expenses of supervising the places where

foreign liquor was stored were practically nil.

Reilly J. enunciated two general principles which may be useful to determine whether licence fees can be held to be reasonable or not, namely:

If we accept the proposition that the power of charging licence fees cannot be used for taxation, then we must say that as a whole the fees

charged by the Corporation must not be very much in excess of what the duties cast upon them and their staff in connection with the licences cost

them. There is the cost of issuing the licences; there is the cost of inspecting the premises to see whether they are suitable for the purpose

proposed; and there is the subsequent cost of inspecting the premises to see that they are being used properly and that the conditions and

restrictions imposed by the Commissioner are observed. But, roughly speaking, if the fees are charged at so high a rate that as a whole they bring

in very much more than the cost of these operations to the Corporation, then I think, we can rightly say that they are unreasonable. There is

another principle. Although it is almost impossible for the Corporation itself to ascertain, when they are issuing a number of licences to persons

engaged in different trades and occupations, exactly what is the cost of any

particular licence or of licences for persons engaged in particular trades or occupations -- and certainly we could not attempt anything of that sort -- yet, surely it would be unreasonable if they so fixed the fees that the whole cost incurred by them in connection with all the licences or a grossly disproportionate part of it was imposed on one particular trade or a few particular trades. These principles, I think, may be of help in ascertaining whether a particular fee is reasonable or not.

Of course it is not for a Court to minutely assess and fix what in its opinion is the proper fee. All that the Court can do is to hold whether a particular fee is reasonable or not.

7. Practically the same principles were reiterated in a subsequent decision of this Court in the -- *The Municipal Council, Kumbakonam Vs. Ralli*

Brothers, . It was held that the licence fee should be commensurate with the extra cost entailed by granting the licences and exercising such supervision as was necessary to see that its terms were complied with. But the fees should not be so assessed as substantially to contribute to the general revenues of the local body.

8. The decisions above cited were all discussed in -- "*Kunhambu v. Local Fund Overseer, Chirakkal*", 1932 MWN 873 (G), in which it was

again laid down that the licence fee should not be converted into a tax for the purpose of raising revenue and the licence fee should bear a definite

and well-recognised relation to the expenses incurred by the licencing authority.

9. The decision in -- *The India Sugars and Refineries, Ltd., a limited liability company Vs. The Municipal Council*, , relied upon by the learned

Advocate-General does not lay down any different principle. The following observations of Wadsworth J., are apposite :

It is, we think, well settled that a licence fee for carrying on a particular trade or industry should not be regarded a form of taxation the extent of

which is to be governed purely by revenue considerations. The licence fee should bear as nearly as possible a relation to the cost of issuing the

licence and the cost of supervising the trade or of any special measures rendered necessary by the character of that trade. We doubt whether the

Municipality would be justified in increasing the licence fee chargeable upon a particular industry merely by reason of the cost of ordinary municipal

services to which that industry is entitled by virtue of its position as a tax-payer

in the Municipality. But if the industry involves special sanitary precautions, a special supervising agency or such like expenditure, it is, we think, reasonable to take this expenditure into account in fixing the amount of the fee. When a supervision agency is necessary for a number of industries, it will always be difficult to say how the cost is to be apportioned and, so long as the apportionment is to be made on a reasonable basis it is not for the Courts, to interfere with the way in which it has been achieved.

10.. Substantially similar principles have been laid down by the Supreme Court of the United States. It is sufficient to cite one instance, namely, the decision in -- "Ingles v. Morf, (1937) 300 US 290: 81 Law Ed 653 (I), in which a permit fee was held to be invalid because it bore no reasonable relation to the total cost of regulation to defray which it was collected.

11. Bearing these principles in mind, let us examine the facts of the present case on the foot of the additional evidence which was called for and which has been submitted.

12. The evidence on record clearly shows the following facts. Individual dhobies are not being licensed. But when soiled and washed clothes are stored and clothes are ironed a licence fee is imposed with reference to the premises wherein this laundry business is carried on. The authority for

the Madras Corporation for doing so is to be found in the publication filed by the learned State Prosecutor under the style and name of

Corporation of Madras, Bylaws and Rules under the Madras City Municipal Act and the Public Health Act"" printed at Rathanam Press,

University Printers, 11 Badrian Street, G. T. Madras, in which at page 66 we find printed the bylaws u/s 349 (13), Madras City Municipal Act,

1919, regulating the premises used for washing soiled clothes and keeping soiled clothes for the purpose of washing them and keeping washed

clothes. There is no doubt that the accused Subbiah Maistry in this case, on 16-2-1952 and subsequently had run a laundry in a hut at S.S. Devar,

3rd Street, wherein he resides without a licence from the Commissioner of the Madras Corporation as required by Section 287, Madras City

Municipal Act and that he thereby committed an offence punishable u/s 357 of the said Act. Mr. S. Brady, the Sanitary Inspector attached to

Division No. 21, Aynavaram, has given evidence that he inspected the hut

occupied by the accused and he found that the accused was storing soiled and washed clothes and that he was also ironing the clothes. A notice was, therefore, issued and the accused not having taken out a licence this prosecution has been launched. Therefore, the only point for determination is whether the fee of Rs. 5/- imposed has to be construed as a licence fee or a tax.

13. The evidence in this case clearly shows that this sum of Rs. 5/- is only a licence fee and not a tax and here are the reasons.

14. The Corporation has filed a statement Ex. P. 2 which shows (i) the designation and number of officers employed or connected with the licensing of trades; (ii) The total amount of expenditure incurred by the Corporation by way of pay and allowances; (iii) The percentage of work attributable to licensing; (iv) The proportionate cost for the work rendered by them; the figures being taken out of the budget estimate for 1952-

1953 (Ex. P. 3). Ex. P. 2 does show the amount derived from uilding licences. Ex. P. 5 is the schedule of licence fees now in force. The substance

of this information can be summarized as follows: There are 724 licensed laundries in Madras. The total fee collected from them at Rs. 5/- per

laundry is Rs. 3620. The total fee collected by way of licence fees in respect of all trades except private markets is Rs. 6,35,994. The total

expenditure involved in the licensing of trades, businesses, etc., is Rs. 7,10,000/- as shown in Ex. P. 2. The percentage of expenditure connected

with the licensing and supervision resulting therefrom shown in these statements makes out clearly that the licence fee collected does not result in

raising revenue for the general purposes of the Corporation but covers only the probable expenses which are being incurred for the regulation of

this particular calling for which licence is required.

15. The Corporation through P. W. 2 has indicated the services rendered in the shape of granting of licences and exercising such supervision as is

necessary to see that its terms are complied with and these give us an indication of the cost entailed. The evidence of P. W. 2, the Assistant

Revenue Officer, shows the elaborate and multifarious work entailed in the issue of licences and the supervising work relating thereto which falls

upon the Health Department, the Revenue Department, the Electricity Department, and the Works Department. Issue of licences, entails previous

enquiries, inspections, verifications and serving of various processes, considerable expenditure of stationery and printing and book-keeping are involved. Then after the issue of licences the premises are inspected frequently throughout the year to see that the conditions of the licence are observed. In the case of refusal of licence, the party can appeal to the Standing Committee whose members use the Corporation motor van for the purpose of inspection. Then when there is failure or non-compliance with the terms of licence or when licences are not taken out, again much work is involved on the supervising agency in the matter of launching prosecutions and carrying them through various Courts. In other words, the evidence of P. W. 2 shows and the figures given by the Corporation indicate that the licence fee collected does not cover more than the expenses involved in the licensing of the business and that no part of this amount becomes a part of the general revenue of the Corporation, thereby making a licence fee a substitute for a tax.

16. In the result, on the evidence on record I have come to the conclusion that the sum of Rs. 5/- levied upon every dhoby inside the Madras

Corporation is a licence fee within the ambit of the decision in -- K.C. Varadachari, Partner, Madras Oil Mills and Products Vs. The State of

Madras, by the Secretary to the Government of Madras, Food and Agriculture Department, " and is not a tax. This revision case is dismissed.