
(1929) 02 MAD CK 0009
In the Madras High Court

The Corporation of Madras

APPELLANT

Vs

Spencer and Co., Ltd.

RESPONDENT

Date of Decision : 21-02-1929

Acts Referred:

Citation : AIR 1930 Mad 55 : 121 Ind. Cas. 849 : (1929) 30 LW 372 : (1929) 57 MLJ 71

Hon'ble Judges : Reilly, J;Phillips, J

Bench : Full Bench

Judgement

Phillips, J.—The only question for determination in this appeal is whether the action of the appellant, the Madras Corporation, in raising the

licence fee for storing-spirits from Rs. 25 to Rs. 200 was within its powers. Beasley, J., who tried the case has held that the increase in the fee is

unreasonable within the meaning of the term as defined by Lord Russell, C.J., in Kruse v. Johnson (1898) 2 Q.B. 91 and has directed refund to

the plaintiffs, Messrs. Spencer and Co., of the excess amount paid by them. Mr. Rangaswami Aiyangar for the appellant now takes exception to

this finding and says that the power to levy fees for licences under the Madras Act IV of 1919 is conferred on the Council and it is within their

power to fix the fee at any figure they please. He contends that if they fixed it at a figure too high or too low, the tax-payer has two remedies, (1)

by exercising pressure on the member of the Corporation for his ward with a view to getting the figure altered, and

(2) the correction of its own mistake by the Council; but he was not at first prepared to accept the dictum in Kruse v. Johnson (1898) 2 Q.B. 91

that the Court has power to interfere with bye-laws which are unreasonable. The definition given of "unreasonable" at p. 99 of the report of that

case is as follows:

If, for instance, they (i.e., the bye-laws) were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men....

2. Appellant's contention in the first place is that the fees fixed for licences for what are called dangerous and offensive trades which are leviable

under the provisions of the Act are revenue in the same sense as the taxes which the Council is empowered to levy. When there is a question of

what is the power of taxation conferred by Government on a public body, a very careful scrutiny is necessary to see that only powers specially

conferred are exercised and that nothing further is added to them. In Part I of the Act which purports to deal with Taxation and Finance, Chapter

V deals with Taxation and enumerates the several taxes which the Council is empowered to levy. Licences are dealt with in Part IV of the Act and

are leviable u/s 287. The power to levy fees for licences is given in the chapter on Procedure. There can be little doubt that there is great difference

between taxes and licence fees. The fact that in Sections 110 and 111 the levying of taxes is authorised but is stated to be by way of licence fees

does to some extent support the argument that taxes and licence fees have something in common, but that a tax is not the same as a licence fee, is

clear from the fact that no permission has to be obtained before the tax becomes payable and the tax is not paid for such permission, whereas the

licence fee is payable in respect of a permission which is granted by the Corporation. I must confess that the words "by way of licence fee" in

Sections 110 and 111 are not very intelligible to me and I cannot think that the Sections would be affected in any way by the omission of these

words. Presumably the legislature intended to attach some meaning to these words, but nothing has been suggested in the course of these

proceedings in explanation of the meaning. Whatever may be the meaning, I am satisfied that taxes cannot be treated as being in the same category

as licence fees under the Act. The argument therefore that, when the Corporation is empowered to levy licence fees, it may do so solely for the

purpose of revenue does not seem to me to be tenable. Beasley, J., has held that

the fees are 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 are licensed and there must be some relation between these expenses and the amount of fees leviable. This was the view which was adopted by the Rangoon High Court in *Municipal Corporation of Rangoon v. The Sooratee Bara Bazaar Co., Ltd.* I.L.R.(1927) Rang. 212. With all respect, I think this is a very reasonable view to take and, although possibly the above is not the sole consideration which may be taken into account in fixing the amount of fee, it is the main consideration. The licence fees are in respect of what are called dangerous and offensive trades, that is to say, it is necessary in the interests of the city that the Corporation shall know where such trades are being carried on and shall be in a position to see that they are carried on in a proper manner without causing unnecessary nuisance to other people or danger to the public generally. That being so, it is clear that the Corporation must have power to raise money for the exercise of these powers, but it does not follow that the Corporation has the power to levy any sum it likes by way of licence fee in order to raise the revenue, and in fact it is conceded by Mr. Rangaswami Aiyangar that there must be some limit to the fee which can be imposed; but he is not prepared to suggest what that limit will be. If there is such a limit, there is good reason for holding in accordance with the principle of *Kruse v. Johnson* (1898) 2 Q.B. 91 that, if the fee is unreasonable within the meaning of Lord Russell's definition in that case, the Court has power to interfere with its levy. We have been referred to another case, *Institute of Patent Agents v. Lockwood* (1894) A.C. 347 in which Lord Herschell, when dealing with the rules framed by the Board of Trade under the Patents, Designs and Trade Marks Act, 1888, which fixed a certain fee, in the course of his judgment observed: I confess that it seems to me, if there were any power to impose fees at all, very difficult indeed to arrive at the conclusion, when the Board of Trade have sectioned a particular fee, that it is within the province of a Court of Law to canvass their conclusion, and to determine what is the legitimate amount at which the fee may be fixed.

3. If that remark is applicable to the present circumstances, it would follow that, as the Council has power to fix the fee, it is not within the province

of this Court to interfere but there is a subsequent remark at page 357, namely, I will say one word, however, before leaving this part of the subject, upon the point suggested that they involved something harsh or unfair as regards the respondent.

4. It is not reasonable to interpret that as showing that the learned Judge had the principle laid down in *Kruse v. Johnson* (1898) 2 Q.B. 91 in his

mind, namely, that if there was something harsh or unfair in the rules, it may be that the court will interfere. The case is certainly no authority to the

contrary and was not even cited in *Kruse v. Johnson* (1898) 2 Q.B. 91. The question, therefore, before us is whether *Beasley, J.*, was right in

holding that the levy of this fee was unreasonable. Apparently from 1904 to 1924 the fee of Rs. 25 was fixed as the fee for storing spirits. Until that

date the word "spirits" was interpreted as denatured spirits and the fee was levied for the storage of such spirits. In 1924 and 1925 the licence in its

present form was granted for a fee of Rs. 25. At the end of 1925 a proposal was made to raise it and we have the minutes of the proceedings of

the Council from the 15th of December, 1925 to the 9th of March, 1926, when the Council finally fixed the fee at Rs. 200, changing the nature of

the licence to one for arrack and for foreign liquors containing alcohol. From the notes of the then Commissioner it would appear that the

Corporation resented the action of Government in collecting the Abkari revenue within the City and in not allowing the Corporation to utilise such

revenue for themselves. As compensation the Government were paying a fixed sum annually to the Corporation. The Commissioner suggested that,

as the Government insisted on the old conditions being adhered to, the power to levy a fee for storing spirits should be fully exploited and raised.

Accordingly the fee was raised from Rs. 25 to Rs. 200. Can it be said that this alteration was made reasonably? Taking it that the fee income must

be more or less proportionate to the trouble and expense incurred by the Corporation in issuing licences and in controlling trades and other matters

for which licences are issued, the reason at the bottom of the resolution of the Council is clearly not in accordance with the spirit of the Act. The

fee was not raised because of the expense of collection or regulation but was merely a counter-demonstration to the order of Government refusing

to allow the Corporation to take the Abkari revenue of the City. The result of this

increase of fee has undoubtedly been to impose on the persons who store such liquor a very unfair burden as compared with other tax-payers in the City.

5. From the evidence which has been adduced it would appear that the expenses of supervising the places where foreign liquor is stored are

practically nil. The site is inspected when the licence is originally granted and, so far as the evidence goes, no further action appears to be taken. If

we compare the fee for this licence with the fees for other matters which entail much greater expense and trouble on the Corporation, such as fees

for stables, dairies and storing skins and explosives, we find that the fee for storing spirits is by far the highest although those other matters entail

much greater trouble and are more dangerous and offensive to the general public. The fee for other licences was not raised at the same time and

consequently it is impossible to hold that there was justification for raising the fee for a licence for storing spirits by 800 per cent. It was certainly

not done with a view to pay for the expenses in connection with such licences but was obviously done to increase the revenue of the Corporation

from liquor, thereby replacing the Abkari revenue taken by Government. This being so, I must find that Beasley, J., was amply justified in finding

that the levy of the enhanced fee was unreasonable.

6. While holding that the enhanced licence fee is unreasonable, the learned Judge has in his decree ordered that the plaintiffs are therefore liable

only to pay a licence fee of Rupees Twenty-five (Rs. 25) which sum is amply sufficient to cover all the duties performed and the expenses incurred

by the defendant-Corporation with respect to those licensed premises and other premises in respect of which licences have been granted. While

agreeing with him that the enhanced fee is excessive, I do not think that the Court is justified in taking upon itself the power conferred by the Act

upon the Council, namely, the fixing of the amount of fees; in this case the omission to fix the fee for a licence will make no difference in the

substance of the decree, for the fee which was formerly leviable was Rs. 25 and this figure must be restored, as the resolution for its enhancement

is invalid and the plaintiffs are therefore entitled to the refund of the balance of Rs. 175. The words of the decree quoted above should therefore be

removed, but the decree is in other respects confirmed.

7. A somewhat surprising argument has also been advanced on the question of costs. The learned Judge has passed the usual order that costs should follow the result, and the circumstances would have to be exceptional to justify our interference with the order. Not only must we be of opinion that there were circumstances which justified a departure from the usual order as to costs but we must be further satisfied that those circumstances were so exceptional that the learned Judge cannot have exercised his discretion judicially in ignoring them. That is far from being the case here and this ground of appeal must be rejected.

8. The appeal is accordingly dismissed with costs.

Reilly, J.

9. I agree with the finding of the learned Judge on the Original Side that the power given by the Madras City Municipal Act to the Council to levy licence-fees cannot be used as a power of taxation. The Act clearly provides in Part III for taxation and lays down what taxes the Corporation may levy. Then the Act goes on to an entirely different part, Part IV, which is headed "'Public Health, Safety and Convenience.'" In that part there are provisions to the effect that no person shall carry on certain trades or occupations or use any premises for certain purposes without getting a licence from the Commissioner. The section in that part with which we are particularly concerned is Section 287, which provides that no person shall use any place for any of the specified purposes without getting the permission of the Commissioner in the form of a licence. A person who wishes to use his premises for such purposes has to apply for a licence. The Commissioner may grant, or refuse to grant, such a licence. If he grants it, he may fix any conditions or restrictions which he thinks necessary. There is nothing whatever in this section about a person who wishes to use his premises for such a purpose being taxed, or his occupation or his premises being taxed. He has under those provisions to get a licence. When we come to the end of the Act, there is another part headed "'Procedure and Miscellaneous.'" Section 365 at the beginning of that part sets out that every licence or permission must be signed by the Commissioner and must specify the restrictions, if any, which are imposed by the Commissioner. Then Sub-section (2) goes on to say "'For every such licence or permission fees may be charged at such rate as may be sectioned

by the Council." It is suggested that the fixing of fees for these licences may be used by the Council as a method of taxation. Surely, if that was intended, that power would have been provided for in the part of the Act which deals with taxation. What could be the reason for bringing it in as a mere fact of procedure at the end of the Act? Mr. Rangaswami Aiyangar for the Corporation has suggested that, because in the Sections which deal with taxation one or two of them refer to the method of collecting taxes as "by way of licence-fees" therefore we must hold that there is no distinction between licence-fees and taxes. I can see no sufficient reason in the rather loose language which is used in those Sections about the means of collecting taxes to lead us to hold that under the Act it is intended that there should be no distinction between licence-fees and taxes. I do not think that the matter really admits of any doubt. But, if there were any doubt about the meaning of Section 365(2), if it were possible to read that sub-section in two ways--in one way as empowering the Council to impose taxes on persons who apply for licences and in another way as empowering them only to require those persons to pay fees--then under the ordinary principle of construction when; we are dealing with a statute which imposes or which it is contended imposes any liability on a subject or citizen to taxation, it would be imperative upon us to adopt the construction most favourable to the subject or citizen. But I do not think it is necessary to call that principle of construction to our aid in this case. I cannot imagine that the Legislature, when providing for licence-fees under the heading "Procedure" and omitting them from the provisions regarding taxation, ever intended them to be treated in any way as taxes.

10. If the power to levy these fees cannot be used for taxation, it is admitted that the Council has not the power to fix any arbitrary fee which it chooses. Mr. Rangaswami Aiyangar has admitted that there must be some limit to its power and that the fees must be reasonable. He has rightly contended that in interpreting the word "reasonable" in this connection we must give it a wide and liberal interpretation. And I quite agree with his contention that, when such a question comes before a Court, it is not for the Judge to try minutely to assess what is the proper fee; nor is it for the Judge to substitute his judgment in the matter for that of the public body to which the legislature has entrusted it. But I think there are two principles

which we may use to determine whether the fees fixed by a Municipal Corporation with powers such as these can be held to be reasonable or not.

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 issue a number of licences to persons engaged in different trades and

occupations, exactly, what is the cost of any particular licence or licenses 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. Mr. Rangaswami Aiyangar referred us to the case of

Kruse v. Johnson (1898) 2 Q.B. 91 and asked us to accept the view of what is reasonable and unreasonable taken by Lord Russell, C.J., in that

case. That I am very willing to do. But we must remember that Lord Russell in that case said that a bye-law which was partial or unequal in its

operation would be unreasonable; and in the same way I think we can properly say that a licence fee, if it was imposed partially or in a way which

would make it unequal in operation, would also be unreasonable.

11. Mr. Rangaswami Aiyangar has tried to tell us how much the issue of these licences is costing the Corporation a year, and he has put before us

some calculations which show that the total cost of the licensing operations is about Rs. 95,000 a year. I cannot say that I am entirely satisfied with

the way in which he has arrived at that result. It appears to me that some parts of his calculations required a good deal of clearing up. But let us assume that his figures are correct. He has also told us that the total amount collected for these licences is about Rs. 90,000 a year. If these figures are correct, the Corporation is collecting about Rs. 5,000 less than what the licensing operations cost them. If that is so, it would be very reasonable for them to increase their licence-fees so as to cover the deficit. How they should increase them is not for us to determine. One obvious method would be an allround increase of licence-fees so as to cover the deficit. Another method would be to find out whether some licence-fees are clearly too low and to raise them. But what has the Corporation done in this case? From the schedule with which Mr. Rangaswami Aiyangar has provided us it appears that there are over a hundred different classes of occupations and trades for which people have to apply for licences. They have selected the one with which we are concerned--the storing of spirits. The fee for storing spirits before the change with which we are concerned was made was Rs. 25 a year. The storing of spirits is obviously not a very dangerous thing. It is not a thing which is offensive to the physical senses of persons in the neighbourhood. And the evidence shows that the Corporation and its staff spend practically no time or effort on inspecting places where spirits are stored. For that kind of licence one would expect to find a very moderate fee charged. Perhaps it may be said that Rs. 25 was a moderate fee. But they determined to raise it; and they proceeded to raise it eight times, to Rs. 200. That I find is double the amount charged for storing any other thing, however dangerous or offensive, in this town. It is four times what is charged for licensing places for storing such dangerous things as nitro-glycerine, fulminate of mercury and other explosives. It is many times the fee charged for storing fire-works. On the calculations which Mr. Rangaswami Aiyangar has made it appears that, before this change in the rate of fee, about 1/48 of the whole cost of the licensing operations was collected from the persons who had to obtain licences for storing spirits: after the change, about one-sixth of the whole cost of the licensing operations is collected from them. We are informed that there are only 72 of these particular licences. I find from the schedule with which we have been provided that more than 6,700 licenses are issued for trades, businesses and occupations. But 72 of them are

made to pay about one-sixth of the cost of the whole licensing operations. I think that, when these facts are stated, no one could really contend that

the fee fixed Rs. 200 is in any sense of the word a reasonable one. That being so, the Council had no power to fix the fee at so high a figure. They

appear to have done it with the intention of using their power as a power of taxation; and I may add that they appear to have used their power for improper discrimination.

12. I therefore agree that there is no sufficient reason for us to interfere with the decree of the learned Judge that the excess over Rs. 25 for each of

these licenses must be refunded to the plaintiffs. I agree also that the learned Judge went too far when he attempted to decide for the present or for

the future what is the reasonable fee which the Council should fix. That I think is a matter for them; and therefore I agree that the words quoted

from the decree by my learned brother should be struck out. With that modification I agree that this appeal must be dismissed with costs.