
(2003) 05 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 14037 of 1999

United India Insurance Co. Ltd.

APPELLANT

Vs

Nagar Nigam

RESPONDENT

Date of Decision : 19-05-2003

Acts Referred:

Uttar Pradesh Nagar Nigam Act, 1959 — Section 541, 544

Citation : (2003) 6 AWC 5534

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : N.K. Srivastava, for the Appellant; S.D. Kautilya, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—By means of this writ petition, the Petitioner has challenged the impugned Gazette notification Annexure-1 to the writ petition by which the Nagar Nigam, Allahabad, has framed bye-laws for insurance companies apart from Nursing Homes, Vehicles and trades, and has prescribed licence fee.

2. Heard learned Counsel for the parties.

3. The Petitioner is a public sector undertaking doing insurance business. By means of the impugned bye-laws which was published in U.P. Gazette dated 30.1.1999, the Nagar Nigam, Allahabad, has imposed licence fee of Rs. 12,000 on the insurance companies including the Petitioner which is doing business inter alia at Allahabad. In pursuance of the said bye-laws, the Respondent has sent notices dated 15.3.99, Annexures-2, 3, and 4 to the petition to the three branches of the Petitioner company.

4. It is alleged by the learned Counsel for the Petitioner that under the U.P. Nagar Nigam Adhiniyam, 1959, there is no power u/s 541 to issue such bye-laws or demand or levy licence fee from the Petitioner.

5. A Division Bench in Chakresh Kumar Jain and Others Vs. State of Uttar

Pradesh and Others, , as already upheld the bye-laws framed by the Nagar Palika Parishad for regulating and requiring licence fee from Nursing Home, private clinic, etc. Another Division Bench in Doctors' Jan Kalyan Society, Mirzapur Vs. State of U.P. and others, , has also upheld similar bye-laws. We have, however, to consider as to whether this petition is distinguishable or not.

6. Learned Counsel for the Petitioner has submitted that the business of insurance is within Union List of the Constitution of India vide Entry 43 of List I of Schedule 7, whereas the power of licencing is given to the State under Entry 66 of the State List. He has submitted that since the business of insurance is not in the State List it cannot be taxed or regulated by the State Government or under any State Act. We do not agree.

7. In *M/s Naveen Gun House v. State of U.P.* 2002 (2) AWC 894, the question was whether stamp duty can be demanded for issuing arms licence. It was urged in that case that the Arms Act come under the Union List Entry v. and hence no stamp duty can be levied by the State Legislature for issuing licence for arms. This submission was repelled by the Division Bench of this Court which relied upon the doctrine of "pith and substance" and held that since stamp duty is leviable under Entry 44 of List III, hence, it was validly levied by the State. On the same reasoning, we are of the opinion that the State Legislature can authorize levying of licence fee on insurance companies.

8. Learned Counsel for the Petitioner then submitted that the Nagar Nigam had not taken confirmation from the State Government for framing bye-laws as required by Section 544 of the Act. This allegation has been made in paras 16 and 17 of the writ petition. In reply to this averment it is stated in para 10 of the counter-affidavit that bye-laws have been framed on the order of the State Government, Copy of the order of the State Government dated 6.8.1996 is Annexure-1 to the counter-affidavit. Thus, there is no substance in this submission.

9. Learned Counsel for the Petitioner then submitted that the Nagar Nigam does not render any kind of service to the insurance companies and hence, there is no quid pro quo for imposing the fees. In this connection, it has been stated in para 7 of the counter-affidavit that the Nagar Nigam is rendering a lot of service to the residents. Due to business transaction of the Petitioner company, they are crowded by the customers at their business place and there are sanitation problems proportionate to the other areas and for this, the Nagar Nigam, bears extra cost.

10. In our opinion it is not necessary to go into the question because as held in *Chakresh Kumar Jain's* case (supra), there is a difference between compensatory fee and regulatory fee. For regulatory fee, quid pro quo is not necessary.

11. As held by the Supreme Court in *P. Kannadasan v. State of Tamil Nadu and others* 1996 (5) SCCvide para 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."

12. Similarly, it was held by the Supreme Court in *State of Tripura and others Vs. Sudhir Ranjan Nath*, , that for regulatory fee quid pro quo is not necessary. The same view was also followed by the Supreme Court in *Secunderabad Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another*, wherein it was held:

"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 regulating or controlling. 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."

13. A perusal of the impugned notification shows that regulations have been made for insurance companies in category "Ga". Hence, the fee imposed is a regulatory fee.

14. Learned Counsel for Petitioner has relied on the Supreme Court decision in *A.P. Bankers and Pawn Brokers Association Vs. Municipal Corporation of Hyderabad*, This decision is clearly distinguishable because there the Supreme Court was interpreting the provisions of Section 521 (1)(e) of *Hyderabad Municipal Corporation Act, 1955*, which stated that the Commissioner has to issue licence on certain terms and conditions and it was held that no terms and conditions has been specified. It was also held that the trade or operation was not likely to create nuisance. Hence, the above decision was in relation to Section 521 of the *Hyderabad Municipal Corporation, 1955*, and has no bearing on interpretation of *U.P. Nagar Nigam Adhiniyam*, which has already been explained by the Division Bench of this Court in *Chakresh Kumar Jain's case (supra)*. Thus, there is no force in this petition. The writ petition is dismissed.