
(1963) 04 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No's. 3215, 3325, 3444 and 3528 of 1961 and 98 and 194 of 1962

Varkey and Sons

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 01-04-1963

Acts Referred:

Kerala Municipalities Act, 1960 — Section 309

Citation : (1964) KLJ 53

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : S. Easwara Iyer and L. Gopalakrishnan Potti, for the Appellant; S. Narayanan Potti, N.K. Varkey, for the Respondent

Final Decision : Dismissed

Judgement

Govindan Nair, J.—Latham C. J. said in Matthews v. Chicory Marketing Board (60 C. L. R. 263 at 276):

A tax is a compulsory exaction of money by public authority for public purposes enforceable by law, and is not payment for services rendered.

This passage from the Judgment of the learned Chief Justice has been relied on by the Supreme Court in The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, for distinguishing a tax from a fee. Said their Lordships of the Supreme Court:

It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or

business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all, public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons, to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, co-relation between the fee collected and the service intended to be rendered. Cases may arise where under the guise of levying a fee, Legislature may attempt to impose a tax, and in the case of such a colourable exercise of legislative power, courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of fee and not a fee in reality. In other words, whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case."

This distinction between a tax and a fee has been strongly relied on by counsel for the petitioners in this batch of Original Petitions in support of his contention that what has been imposed by Ext. P. 1 Notification by the Vaikom Municipality, the second respondent in these petitions, is really the imposition of a tax and not the levy of a fee authorised by section 309 of the Kerala Municipalities Act, 1960 (Act XIV of 1961). That section runs thus:

309. Provision of Public cart stand, etc.

(1) The Municipal Council may, subject to the provisions of sub-section (4), construct or provide public landing places, halting places and cart stands and may levy fees for the use of the same.

(2) The council may

(a) place the collection of any such fees under the management of such person as may appear to it to be proper; or

(b) farm out the collection of any such fees for any period not exceeding three years at a time and on such terms and conditions as it may think fit.

(3) A statement in English and a language of the locality of the fees fixed by the council for the use of such place shall be put up in a conspicuous part thereof.

Explanation: A cart stand shall, for the purposes of this Act, include a stand for vehicles (including motor vehicles as defined in the Motor Vehicles Act, 1939) and animals.

(4) The power to construct or provide stands for motor vehicles under subsection (1) may be exercised notwithstanding anything to the contrary contained in the Motor Vehicles Act, 1939, but shall be subject to any direction issued by the Government from time to time.

Ext. P. 1 notification shows that the fee is one rupee per day per vehicle or vehicles starting from and arriving within the Vaikom Municipal limits and 50 nP. for vehicles passing through Vaikom Municipal limits. This levy, it is contended by the second respondent, is justified by the services rendered by the said Municipality in establishing a place within the Municipal limits as a stand for motor vehicles and in providing facilities and amenities by way of parking sheds for the vehicles, waiting shed for the passengers and comfort stations as well as canteens. There is no indication whatever in the affidavit filed in support of the petitions as to the extent of the total collections per day or as to how the collections relate to the services rendered or even as regards the costs incurred by the Municipality for providing the above facilities. It is, therefore, not possible to accept the contention that the levy of the fees above-mentioned is a colourable exercise of the power to levy fees. The Supreme Court pointed out in the passage extracted above from the decision in *Hingir Rampur Coal Co. Ltd. v. The State of Orissa* that the question whether a particular cess levied by a statute would or would not amount to a fee or tax would always be a question of fact to be determined in the circumstance of each case. There are no materials before me to determine this question. The levy imposed by Ext. P. 1 is not patently or palpably arbitrary or unreasonable.

2. Counsel for the petitioners in these Original Petitions advanced a more fundamental argument that section 309 of the Kerala Municipalities Act, 1960, extracted above, is bad as amounting to excessive delegation. He relied on the ruling of the Supreme Court in *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, , and urged that the section gives uncontrolled power to the Municipal Council to levy any fees that it likes, that the power so granted is unchanneled and there are not even any indications or guidance regarding the limits of the exercise of that power. It is contended that not even a maximum has been indicated in the section or by any other provisions in the Act or the Rules framed under the Act. The power granted by section 309 is only to levy a fee. A fee must be related to the services rendered and cannot be excessive or unreasonable with reference to the services rendered. The very term "fee" has a particular significance and connotes a specific thing and therefore denotes a limited levy which from its very nature has fairly well defined boundaries. The power to impose such a limited levy too is thus a defined and controlled power. In other words, by the use of the word "fee" in the section it is not an unbridled or an uncontrolled power that has been conferred on the

Municipal Council, but power which necessarily has limitations. These limitations have been indicated in the passage from the judgment of the Supreme Court which I have extracted above. The contention that in every case where a power has been granted to a Local Body or a State Government to impose a fee, the granting of the power amounts to excessive delegation cannot, therefore, be accepted. There can, of course, be cases where such a power may be abused. Those abuses can certainly be corrected, if proved, but the mere possibility of abuse is not sufficient to strike down the section. In fact when there is abuse, the impost will be different from the impost of a fee-perhaps a tax-and, therefore, the exercise of a power not conferred by the section. This aspect I have already dealt with and I have come to the conclusion that it has not been made out that there has been any abuse of the power conferred by section 309 . I also reject the contention that section 309 amounted to excessive delegation.

3. Counsel for the petitioners finally urged that in any view of the matter, the action taken by the Municipal Council, Vaikom, in seizing the vehicles of the petitioners purporting to act u/s 310 of the Kerala Municipalities Act, 1960, is unwarranted. Section 310 reads:

310. Prohibition of use of public place or sides of public streets as cart stand, etc: Where a Municipal Council has provided a public landing place, halting place or cart stand, the Commissioner may prohibit the use for the same purpose by any person within such distance thereof as may be determined by the Municipal Council of any public place or the sides of any public street, and may in addition to the penalty imposed by or under this Act seize and detain any cart, carriage or vessel plying in disobedience of such prohibition and may release it after obtaining satisfactory guarantee for the due observance of such prohibition.

4. The argument advanced is that the power to seize and detain given by the section relates only to "any cart, carriage or vessel". Notwithstanding the Explanation to sub-section (3) of section 309, it is urged that a cart or even a carriage mentioned in the section cannot be read or understood as a motor vehicle. Reference was made to the definition of the term "vehicle" in the Act and it was pointed out that a motor Vehicle will not come within the term "vehicle" as defined in the Act. The definitions in the Act would apply only if the context did not otherwise require. This is specifically mentioned in section 3 of the Act and the Explanation to sub-section (3) of section 309 enacts that a cart stand shall for the purposes of this Act include a stand for vehicles including motor vehicles as defined in the Motor Vehicles Act, 1939. Thus a stand for motor vehicles will come within the term "cart stand". So, in reading section 310, "the motor vehicle stand" can and must be added to the public landing place, halting place or cart stand, specifically mentioned in the section. If that be so, "cart" must also include a motor vehicle. This is the only possible interpretation in the context in which section 310 and section 311 occur and this is the only way of giving effect to the Explanation to sub-section (3) of section 309. The above points dealt with exhaust all the points raised in these six Original Petitions and I have negated

those contentions. These petitions, therefore, fail and are dismissed. Being a case of first impression, I direct the parties to bear their costs.