

(1996) 12 SC CK 0168
In the Supreme Court Of India
Case No : Civil Appeal No. 1255 of 1978

Ved Prakash Agarwal and Others	Vs	APPELLANT
Commissioner, Gorakhpur Division, Gorakhpur and Others		RESPONDENT

Date of Decision : 03-12-1996

Acts Referred:

Citation : (1997) 1 SCALE 28 : (1997) 11 SCC 312

Hon'ble Judges : S. B. Majmudar, J; N. P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellants filed the connected writ petition before the High court making a grievance that levy of licence fee at the rate of Rs. 100.00 per chimney per year over brick kiln owners under bye-law framed by the respondent Zila Parishad, was illegal and unconstitutional. According to the appellants no service was being rendered to them by the said Zila Parishad to justify the realisation of the aforesaid licence fee on the principle of quid pro quo.

2. This court from time to time has examined the distinction between the tax and fee. It is well settled in view of those judgments that for purpose of realisation of fee some sort of service has to be rendered to the person from whom such fee is realised.

3. The learned Single Judge allowed the writ petition holding that no service was being rendered by the Zila Parishad to such brick kiln owners. On appeal being filed before the division bench the writ petition was dismissed. From a bare reference of the judgment of the division bench it shall appear that counter-affidavit had been filed on behalf of the Zila Parishad from which it appeared that conditions had been prescribed in respect of the location of such brick kilns away from the public roads, groves and gardens. Conditions were also prescribed in respect of the height of the chimneys. Whether the conditions are being observed or not was to be inspected and verified by the authorities of the Zila

Parishad in the interest of the brick kiln owners as well as the public in general. According to us the Division bench took a correct view of the matter. This court has repeatedly pointed out that for justifying of levy of fee, it is not possible to ascertain or to establish that whatever has been realised as fee has been spent to render service to the person concerned. In this background the fee of Rs. 100.00 being realised with respect to each chimney cannot be held to be a tax so as to become illegal or unconstitutional. Appeal accordingly fails and is dismissed. No costs.