
(1948) 04 MAD CK 0005
In the Madras High Court

V.R. Ramanatha Aiyar

APPELLANT

Vs

The Corporation of Madras

RESPONDENT

Date of Decision : 22-04-1948

Acts Referred:

Madras City Municipal Act, 1904 — Section 321(2)

Citation : (1948) 61 LW 523 : (1948) 2 MLJ 144

Judgement

1. The appellant is the proprietor of two coffee hotels known as the Ramakrishna Lunch Home and the Sankar Cafe. In respect of each of these

hotels, he had paid a licence fee of Rs. 50 to the Corporation of Madras upto 31st March, 1944. In February, 1944, when he applied for renewal

of the licences in respect of the same premises and sent a cheque for Rs. 100 he was informed that the licence fee in respect of the Ramakrishna

Lunch Home had been enhanced to Rs. 250 while the licence fee for the Sankar Cafe had been enhanced to Rs. 100. He paid these amounts

under protest and then filed the suit out of which this appeal arises for a declaration that the scale of licence fees fixed by the Council for the official

year 1944-45 was arbitrary and unreasonable and ultra vires and for an injunction restraining the Commissioner of the Corporation from levying

the fees on the new scale or on any scale in excess of Rs. 50 for each coffee hotel. The suit was dismissed.

2. It is argued for the appellant that the enhancement of the fees was unreasonable in itself and, as the Corporation was already making a profit

from the levy of fees as a whole, that the fees must be regarded as imposed for the purpose of taxation. The power of the Madras Corporation to

impose a licence fee is derived from Sub-section (2) to Section 321 of the Madras City Municipality Act which states that "" for every such licence

or permission fees may be charged at such rates as may be fixed by the Council." It is well established that licence fees cannot be imposed for the purpose of taxation and that they should only cover the reasonable expenses entailed by granting the licence and collecting the fee and exercising such supervision as may be necessary to see that the terms of the licence are complied with. And on the question whether a Court will interfere with the exercise of the power by the Corporation, the principles laid down by Lord Russell, C.J., as applicable to by-laws in *Kruse v. Johnson*

(1898) 2 Q.B. 91 have been followed. Lord Russell said:

If, for instance, they 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, the Court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable

and ultra vires" Cases, to which reference will be made again, to which this principle has been applied are *The Corporation of Madras Vs.*

Spencer and Co., Ltd., and Municipal Council, Kumbakonam v. Ralli Bros (1930) 61 M.L.J. 748.

3. The enhancement of the fees now in question was made on a report by the Commissioner of the Madras Corporation to the Standing

Committee. In that report, the Commissioner pointed out that licence fees were fixed generally on the principle that they should be just sufficient to

cover the costs of supervision, etc., for the particular trade and that they should not be considered a source of revenue. At the same time,

however, he drew attention to the fact that in spite of the increase in prices and the cost of administration fees had not been altered since 1930 and

that the time seemed to have come for a revision of them. As regards coffee hotels, eating houses and restaurants generally, he stated, that the fees

were low when compared with the fees levied in small municipal towns and that a rate of Rs. 50 was particularly low for hotels which paid a rent of

more than Rs. 250 per mensem having regard to the constant supervision needed for enforcing the conditions of the licence. The Standing

Committee, as appears from the proceedings in Ex. P-8, did not accept all the recommendations of the Commissioner, but did accept substantially

the recommendations with regard to coffee hotels, eating houses, restaurants, etc., and it also appears that a fresh enquiry had been ordered with regard to the fees charged by other municipalities in respect of these establishments. In his report, the Commissioner made some observations which are open to criticism, such as that the rate of Rs. 50 for hotels paying a high rental was exceedingly low considering the nature and amount of business turned out in them and that the expenditure incurred in respect of sanitary and conservancy services had greatly increased. It is arguable that the ability to pay of the concern licensed should not be a governing consideration and that the proprietor as an ordinary rate payer was entitled to the normal conservancy and sanitary services irrespective of the fee which he paid. On the whole, however, it cannot be said that the Corporation was misdirected as to the nature of a licence fee or that the enhancement was not made in good faith. It appears that, previously coffee hotels had paid licence fees ranging between a minimum of Rs. 10 and a maximum of Rs. 50. The new schedule of rates was based on the rental value of the premises so that the appellant was required to pay a fee of Rs. 100 for the Sankar Cafe on the basis that the rental value of the premises exceeded Rs. 100 but did not exceed Rs. 250, while Rs. 250 was payable in respect of the Ramakrishna Lunch Home on the basis that the rental value of its premises exceeded Rs. 500 but did not exceed Rs. 1,000. What the over-all percentage of increase in respect of the licence fees charged for coffee hotels is not ascertainable from the evidence adduced. There was, however, some over-all increase, and as far as the hotels in question in the suit are concerned, the licence fee in respect of the Sankar Cafe was doubled and the licence fee in respect of the Ramakrishna Lunch Home was increased five times.

It will be convenient to consider first whether licence fees of Rs. 250 for the Ramakrishna Lunch Home and Rs. 100 for the Sankar Cafe are in themselves unreasonable. Argument has in fact been confined to the Ramakrishna Lunch Home as there is less ground for interference with the licence fee charged for the Sankar Cafe. The fee of Rs. 250 has been attacked as unreasonable mainly on the ground that the Corporation was not entitled to take into account in fixing the fee expenditure in respect of sanitary and conservancy charges. In our opinion, the question whether a

share of the cost of sanitation and conservancy should be included in the licence fees is not really relevant. No doubt, in principle, the fee should

not include more than the cost of granting the licence and exercising such supervision as may be necessary to see that the terms of the licence are

complied with. If, however, there is no want of good faith as in the present case and the fee is not ex facie unreasonable, a Court will not examine

minutely whether the fee charged is exactly commensurate with the cost of granting the licence and the cost of supervision in accordance with its

terms. In our judgment, the fee of Rs. 250 in respect of the Ramakrishna Lunch Home cannot possibly be said to be ex facie unreasonable. It was

not unreasonable to apportion the fees on the basis of the rental value of the premises of the hotels. As the larger the hotel is, the greater is the cost

of supervision. If the terms of the licence issued in respect of the Ramakrishna Lunch Home are examined, it will be seen that constant supervision

of the food served, of the method of serving it, and of the sanitary arrangements is required. In fact, as was pointed out in evidence for the

Corporation, the hotel requires inspection every day, whereas the fee charged amounts to only 12 annas per diem. The cases relied on for the

appellant The Corporation of Madras Vs. Spencer and Co., Ltd., and Municipal Council, Kumbakonam v. Messrs. Ralli Bros (1930) 61 M.L.J.

748 are clearly distinguishable. Both are cases of a want of good faith on the part of the Corporations and of unfair discrimination. In The

Corporation of Madras Vs. Spencer and Co., Ltd., the enhancement of the fee of storing foreign liquor from Rs. 25 to Rs. 200 was not made on

the footing that the fee previously charged was low in comparison with the fees charged for similar licences, but because the Corporation was

annoyed by the" action of the Government in depriving it of the revenue from the sale of abkari shops and wanted to make up the loss by charging

higher fees for storing foreign liquor. In short, the fee was being utilised for the purpose of taxation and those who stored foreign liquor were being

unfairly discriminated against. In the Municipal Council, Kumbakonam v. Messrs. Ralli Bros (1930) 61 M.L.J. 748 again, it was found that there

was a want of good faith on the part of the Municipal Council, because they appeared to have charged a fee which was far higher than the fee for

similar licences not on a proper consideration of what the correct fee was for a godown for storing groundnuts but because Messrs. Ralli Brothers

had successfully objected to the payment of a profession tax of Rs. 100 levied on them by the Council. In the present case, it has not been

suggested that the fee charged is unfair as compared with the fees charged in respect of other licences of a different kind, although it is suggested

that the fee is unfair in comparison with the lower fees charged for other coffee shops. As we have pointed out, however, we do not think that a

sliding scale of fees for coffee hotels based on the rental value of the premises is unreasonable or leads to unfairness; and we do not accept the

argument that the same fee should be charged for what is admitted to be one of the biggest coffee hotels in the city as for a coffee shop that

amounts to no more than a bunk in the street.

4. It is, however, also argued on general grounds that the enhanced fees charged on the two coffee hotels amount to taxation because even before

the enhancement the Corporation was making a profit from the levy of licence fees so that any enhancement must have been for the purpose of

taxation. There seem to us to be two answers to this contention; the first being that it has not been established by satisfactory evidence that the

Corporation had been making a profit from its licence fees so that any enhancement must amount to taxation; and the second that the appellant

must show that the fees made payable in respect of his own coffee hotels are unreasonable. It is not, in our opinion, open to him to argue that

because an over-all profit is made the fees paid by him must amount to taxation. In support of the contention that the Corporation does make a

profit out of its licence fees, it is argued that from the year 1930-31 to the year 1944-45 the receipts under licence fees have amounted each year

to something like Rs. 2,25,000, whereas the cost of the licensing establishment has never exceeded Rs. 1,46,532, the figure for 1944-45, in which

year as a result of the enhanced fees the receipts were Rs. 4,43,683. It is true that the expenditure on the cost of establishment would appear

always to have been substantially below the receipts from licence fees. But it is not admitted by the Corporation that these figures are exhaustive of

the expenditure which can properly be debited to the cost of the licensing department. However that may be, there is one item included in the

receipts from licence fees which makes it impossible to accept the contention that on the evidence on record the receipts necessarily exceed the

expenditure. u/s 304-B of the City Municipal Act, a licence fee is chargeable in respect of private markets upto a maximum of 15 per cent, of the gross receipts from the market. Licence fees for private markets are, therefore, charged on a different basis as compared with other licence fees; and we do not accept the contention advanced for the appellant that any profit that may be derived from private markets should go in relief of other licence fees. The fees derived from private markets are included in the total receipts from licensing fees, but their amount is not disclosed by the evidence oral or documentary and the evidence does not enable them to be separated from the other fees. It is not, therefore, possible to ascertain whether the receipts from licence fees in respect of sources other than private markets are or are not in excess of the expenses properly chargeable to them. It seems to us, however, clear that in any case it is not open to the appellant to maintain that the fees charged him are unreasonable or that they amount to taxation because the Corporation makes a profit on licensing fees as a whole. If the ratepayers as a body are dissatisfied with the system of licensing fees and believe that they are being used for the purpose of taxation, it may be open to them to file a representative suit and challenge the whole system. The present suit, however, is not a representative suit, and the only question must be whether the particular fees charged to the appellant should be set aside because they are unreasonable or unfair. We have already given our reasons for holding that the licence fees in question in the appeal are not unreasonable, and, apart from the fact that this is not a representative suit, once it is held that the licence fees charged to the appellant are not unreasonable the fact that a profit is perhaps made from licence fees as a whole can accord no ground for holding the resolution fixing the fees now in question to be invalid. Even on the assumption that the Corporation derives a profit from licence fees as a whole, provided that the fees in respect of the two coffee hotels are not unreasonable, the proper course to be adopted by the Corporation might well be to reduce other licence fees and not the fees which the appellant is called upon to pay. The appeal is dismissed with costs.