
(1982) 12 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4931 of 1981

Waryam Singh and Sons and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-12-1982

Acts Referred:

East Punjab Control of Bricks Supplies Act, 1949 — Section 3

Citation : AIR 1983 P&H 287

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Judgement

1. M/s. Waryam Singh and sons (petitioner) own a brick-kiln at Amritsar and Beant Singh petitioner is its partner. The Punjab Government in exercise of powers conferred by S. 3 of the East Punjab Control of Bricks Supplies Act, 1949. Made an order called "The Punjab Control of Bricks Supplies order, 1949." On June 5, 1956. Under Clause (3) of this order it was incumbent for a dealer in bricks to obtain a licence. The fee prescribed for grant of licence was Rs. 200/- and for its renewal Rs. 100/- . The Punjab Control of Bricks Order, 1956, was struck down in C. W. P. No. 1632 of 1961 vide order Dt. Mar. 20, 1972. The Punjab Government then promulgated the Punjab Control of under the licence and renewal fee was maintained at Rs. 200/- and Rs. 100/- respectively. The State Government again issued the Punjab Control of Bricks Supplies (First Amendment) Order, 1978 on Feb. 27. 1978(P. 2). It was provided under the amended clause (7) that then licence shall be granted or renewed for such period not exceeding 3 years at a time as may be desired by the applicant at the time of making application for grant or renewal as the case may be. It was further provided that the fee for granting of a licence for a period not exceeding one year would be Rs. 200/- for a period exceeding one year but not exceeding two years would be Rs. 300/- and that for a period exceeding 2 years up to 3 years would be Rs. 400/- . The renewal fee of the licence was Rs. 100/- for one year or part thereof. The State Government promulgated yet another order called "The Punjab Control of Bricks Supplies)1st Amendment) Order, 1979" on May 4.

1979(P. 3). Whereby it enhanced the amount of licence fee from Rs. 200/- to Rs. 1500/- for one year and from Rs. 300/- to Rs. 2500/- for a period exceeding one year but not exceeding two years and from Rs. 400/- to Rs. 3250/- for a period exceeding 2 years but not exceeding 3 years. This order further provided enhancement of fee for the renewal of the licence from Rs. 100/- to Rs. 1250 /- for a period not exceeding one year and to Rs. 2375/- for period exceeding one year but not exceeding two years and to Rs. 300/- for a period exceeding 2 years but not exceeding 3 years. The petitioners have assailed the order P. 3 in the present writ.

2. The learned counsel for the petitioners has argued that the licence and renewal fees prescribed under the impugned order P.3 is in the nature of a tax and far exceeds the expenses incurred for the services rendered. the impugned order P. 3 is liable to be quashed on this ground. Reliance has been placed on *The Chief Commissioner, Delhi and Another Vs. The Delhi Cloth and General Mills Co. Ltd. and Others*, wherein it has been held that a fee in order to be a legal fee, must satisfy two conditions (i) there must be an element of quid pro quo that is to say, the authority levying the fee must render some service for the fee levied however remote the service for the fee levied however remote the service may be, and (ii) that the fee realised must be spent for the purposes of the imposition and should not purposes of the imposition and should not form part of the general revenues of the State.

3. The legal proposition enunciated by the learned counsel for the petitioners is not disputed. The plea raised by the State Government is that the increase in the licence/renewal fee has been necessitated to meet the expenses incurred for service rendered.

4. In the written statement filed on behalf of the State Government it has been averred that the licence/renewal fee has been prescribed in the relevant factors in view and is based on the principle of quid pro quo and as such is wholly just and reasonable. The fees prescribed are fully commensurate with the services rendered to the payee it has been averred that the Licensing Authority has to fully satisfy itself about the fulfilment of the prescribed conditions before granting the licence. Full survey has to be made of the site chosen by the applicant for a brick kiln licence to see that the installation is not made in close proximity of gardens, nurseries, residential areas and Municipal limits. "No Objection Certificate" has to be secured by the Licensing Authority from the Town and Country Planning Department, Compliance by licencees of various directions issued from time to time in public interest has also to be gone into before sanctioning renewal. For purposes of renewal, even more laborious and time consuming formalities have to be gone into. The brick kiln owner seeking renewal of his licence has to submit in prescribed pro forma detailed account of bricks produced, sold by him during the year and the stocks held by him at the close of the year. These accounts have to be verified by the staff of the Food and supplies Department. This is quite a time consuming and laborious process. The fee

charged is a non-tax revenue of the Punjab Government which is deposited under the Major Head of the State "008--Social Security and Welfare."

5. Before the impugned order P. 3 was issued on May 4, 1979 the licence fee was charged according to the rates prescribed under the Punjab Control of Bricks Supplies (1st Amendment) Order, 1978 issued on February 27, 1978)P. 2). The licence fee prescribed under P. 2 is Rs. 200/- for one year, Rs. 300/- for a period exceeding one year but not exceeding two years and Rs. 400/- for period exceeding 2 years up to 3 years. The renewal fee prescribed therein is Rs. 100/- for one year or part thereof. The rates of fees charged before 1978, were almost similar. The nature and quantum of work involved in the matter of issuing licence or its renewal before and after the impugned order p. 3 was promulgated on May 4. 1979 remains the same. The increase in the licence and renewal fee prescribed in the impugned order P. 3 is sharp, steep and colossal. The annual licensing has been increased from Rs. 200/- to Rs. 1500/- and the annual renewal fee has been increased from Rs. 100/- to Rs. 1250 /- . In the written statement filed on behalf of the State Government no foundation, whatsoever, has been laid to justify such a colossal and steep increase. Under these circumstances the contention of the learned counsel licence / renewal fee as prescribed in the impugned order P. 3 is justified to meet the expenses for service rendered by the payee, cannot be upheld. The impugned order P. 3 is, therefore, liable to be quashed on the ground that the colossal increase in licence/renewal fee prescribed therein is not justified on the principle of quid pro quo.

6. In view of discussion above, the writ is accepted and the Punjab Control of Bricks Supplies (1st Amendment) Order, 1979 is quashed. No order as to costs.

7. Petition allowed.