The Delhi Cloth and General Mills Co. Ltd.

Vs

The Chief Commissioner, Delhi and Others

Civil Appeal No. 1424 of 1966

(J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

11.09.1969

JUDGMENT

GROVER, J. -

1. This is an appeal from a judgment of the Punjab High Court (Circuit Bench, Delhi) involving the question of the validity of Rule 7 read with Rule 5 and its Schedule of the Delhi Factories Rules 1950 made under Section 112 of the Factories act 1948, hereinafter called the Act. The impugned Rules relate to the grant of a licence for a factory and renewal thereof, the fees being prescribed by the Schedule to Rule 5.

2. The Delhi Cloth and General Mills Co. Ltd. operates within the Delhi area a number of industrial establishments which are factories within the meaning of Section 2(m) of the Act. The company has to pay a total sum of Rs. 12,775.00 as annual licence fee for all its factories in Delhi, the fees being calculated according to the Horse Power and the maximum number of workers to be employed on any day during the year as given in the Schedule. The maximum fee that is payable is Rs. 2,000/- for a factory. The factories can be run only after registration and under a licence granted under the Act and the Rules on payment of the prescribed fee. The licence is renewed every year under Rule 7 on payment of the same fee which is paid at the time of the granting of the licence. Every licence granted or renewed remains in force up to December 31, of the year for which it is granted or renewed. In January, 1963 the company filed a petition under Articles 226 and 227 of the Constitution in the High Court challenging the validity of the Rules under which the licence fee for renewal of the licence for each of its factories in Delhi was being levied and collected i.e., Rule 7 read with Rule 5 and its Schedule. This petition was dismissed by a division bench on February 11, 1965. The company then filed the present appeal by certificate.

3. The principal point which has been canvassed on behalf of the appellant company is that the payment made for renewal of the licence was and is only to endorse the licence as valid for the next year and the amount charged for the renewal thereof cannot and does not entail services which can reasonably be regarded to be commensurate with the amount so charged. In other words the element of quid-pro-quo which distinguishes a fee from a tax is absent and lacking. The Act, it is pointed out, contains specific provisions for rendering of benefit and service to the workmen by the owners of the factories. The Inspectors who are appointed under the Act to ensure that its provisions are complied with by the factory owners constitute a policing agency and it is not possible to say that the powers and duties of the Inspectors when exercised and carried out amount to services rendered for the benefit of the factory owners or the workmen.

4. Falshaw C.J., who delivered the judgment of the division bench was of the view that the work

carried out by the Inspectors under the Act of seeing that all its beneficient provisions for the health and welfare of the be regarded as services rendered in return for the fee levied for the annual renewal of the licence for the factory. It was further observed on an examination of the affidavit which had been placed before the court that at least 60% of the amount realised as licence fee was being utilised on running the department.

5. Mr. H. R. Gokhale for the appellant company has contended that the High Court failed to apply the principles which are settled by certain decisions of this Court for determining whether a fee for a licence or a renewal thereof in circumstances similar to the present case, is in substance and effect a tax. He has relied largely on Corporation of Calcutta and Another v. Liberty Cinema. In that case the licence fee had been raised from Rs. 400/- to Rs. 6,000/- per year. It was observed in the majority judgment that the provision under which the licence had to be taken out for a cinema did not refer to the rendering of any service by the corporation of Calcutta. It was also not obligatory on the Corporation to make any bye-law under which services were to be rendered. If the bye-laws were not made there would be no service to render. It was further pointed out that inspection by the authorities concerned could not be regarded as a service to the licensee as it was meant only to make sure that the licensee carried out the conditions on which the licence had been granted to him. Some of the earlier decisions were considered as also the pronouncement in H. H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, Mysore and with regard to the latter case it was said that a service resulting in the control of the Math Adipathi conferred special benefit on the institution which alone paid the levy.

6. As far back as 1954 it was laid down in Mahant Sri Jagannath Ramanuj Das and Another v. The State of Orissa and Another that the contributions levied for the expenses of the Commissioner and his staff who were to exercise effective control over the trustees of the Maths and the temples was to be regarded as fee and not a tax. Two reasons were given for this : (1) The payment was demanded only for the purpose of meeting the expenses of the Commissioner and his staff which is the machinery set up for due administration of the affairs of the religious institution. (2) the collections made were not merged in the general public revenue. Similarly in Ratilal Panachand Gandhi v. The State of Bombay and Others, the contributions imposed under the Bombay Public Trusts Act was held to be fee and not tax. It was stated that in the first place these contributions were to be credited to the Public Trusts Administration Fund which was a special fund and were not to be merged in the general revenue. Secondly, it was not necessary that services should be rendered only at the request of particular people and it was enough that payments were demanded for rendering services which the State considered beneficial in the public interest and which the people had to accept whether they were willing or not. The following observations in H. H. Sudhundra Thirtha Swamiar case (supra) may be referred to with advantage :

> "A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to individual who obtains the benefit of service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are et out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax".

According to Mr. H. R. Gokhale the present case is of the type which would fall squarely within the decision in Liberty Cinema case (supra). It is difficult to agree. In each case where the question

arises whether the levy is in the nature of a fee the entire scheme of the statutory provisions, the duties and obligations imposed on the inspecting staff and the nature of work done by them will have to be examined for the purpose of determining the rendering of the services which would make the levy a fee. It is quite apparent that in the Liberty Cinema case it was found that no service of any kind was being or could be rendered and for that reason the levy was held to be a tax and not a fee. In our Judgment the present case falls within the other class of cases to which reference has been made in which contributions for the purpose of maintaining an authority and the staff for supervising and controlling public institutions like Maths etc. were held to be fee and not tax.

7. We may now look at the provisions of the Act. Chapter II provides for the inspecting staff. Section 9 gives the powers of the Inspectors. They can enter any factory and inter alia make examination of the premises, plant and machinery. Under Section 10 qualified medical practitioners can be appointed to be certifying surgeons for the purpose of the Act. The certifying surgeon has to carry out such duties as may be prescribed in connection with the examination and certification of young persons under the Act, the examination of the persons engaged in factories in dangerous occupation or process as also the exercising of medical supervision. Chapter III deals with health. Section 11 contains detailed provisions about cleanliness. Sections 12 to 14 relate to disposal of waste and effluents, ventilation and temperature and dust and fume. Sections 17 to 20 concern lighting, drinking water, latrines and urinals, and spittoons. Chapter IV contains the provisions relating to safety. Section 21 deals with fencing of machinery, Section 22 with work on or near machinery in motion and Section 23 with employment of young persons on dangerous machines. The other sections which may be noticed in this Chapter are Section 27 containing the prohibition of employment of women and children near cotton openers; Section 35 in the matter of protection of eyes, Section 36 dealing with precautions against dangerous fumes, Section 37 relating to explosive or inflammable dust, gas etc., and Section 38 relating to precautions in case of fire. Under Section 39 if it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plaint in a factory is in such a condition that it may be dangerous to human life and safety he may serve on the manager of the factory an order in writing requiring him to furnish the particulars for determining whether the building, machinery, plants etc. can be used with safety or to carry out such tests as may be specified and convey the result thereof to the Inspector. Under Section 40 if it appears to the Inspector that any building or part of a building is in such a condition that it is dangerous to human life or safety he can serve an order on the manager of the factory specifying the measures which should be adopted and requiring him to carry out the same before a specified date. Similarly if it appears to him that the use of any building or machinery or plant involves imminent danger to human life or safety he can serve an order prohibiting its use until it has been properly repaired or altered. Chapter V deals with welfare and provisions are made therein for such amenities as washing facilities for storing and drying clothing, for sitting, first aid appliances, canteens and creches and every factory is required under Section 49 wherein 500 or more workers are ordinarily employed to have such number of welfare officers as may be prescribed. The Rules also contain various provisions where the Inspector has to be consulted and his approval obtained for doing certain things. For instance Rule 65(3) says that the manager of a factory shall submit for the approval of the Chief Inspector plans of the building to be constructed or adapted for use as a canteen. It is unnecessary to refer to several other provisions contained in the Act and the Rules which show that the Chief Inspector and his staff play a very important role in the working of the factory.

8. In the return which was filed in the High Court to the writ petition it was stated in Paragraph 8 that the fees were being charged for the running of the whole establishment including the Factory Inspectorate which in its turn "provides free inspection and expert technical advice etc. to factory

owners in matters connected with safety, health, welfare and the allied matters in respect of compliance with the provisions of the Factories Act". It has further been stated that in our country matters relating to health, safety, welfare and employment have to be looked after and the desired results have been sought to be achieved by the Legislature by providing statutory inspection service.

9. According to Mr. Gokhale the Inspectors only carry out the duties laid on them under the Act and all that they have to do is to ensure that the statutory provisions and the rules are carried out properly and launch prosecutions against factory owners under the provisions of Chapter X of the Act in case of any breach or default on the part of the factory owners. We do not consider that the functions and duties of the Inspectorate are confined only to the limited task which has been suggested on behalf of the appellant company. A large number of provisions to which reference has been made, particularly in the Chapter dealing with safety, involve a good deal of technical knowledge and in the course of discharge of their duties and obligations the Inspectors are expected to give proper advice and guidance so that there may be due compliance with the provisions of the Act. It can well be said that on certain occasions factory owners are bound to receive a good deal of benefit by being saved from the consequences of the working of dangerous machines or employment of such processes as involve danger to human life by being warned at the proper time as to the defective nature of the machinery or of the taking of precautions which are enjoined under the Act. Similarly if a building or a machinery or a plant is in such a condition that it is dangerous to human life or safety the Inspector by serving a timely notice on the manager saves the factory owner from all the consequences of proper repairs not being done in time to the building or the machinery. Indeed it seems to us that the nature of the work of the Inspector is such that he is to render as much, if not more service than a Commissioner would, in the matter of supervision, regulation and control over way in which the management of the trustees of religious and charitable endowment was conducted. The High Court further found, which finding being of fact, must be considered as final, that 60% of the amount of licence fees which were being realized was actually spent on services rendered to the factory owners. It can, therefore, hardly be contended that the levy of the licence fee was wholly unrelated to the expenditure incurred out of the total realisation. Before the High Court the appellant company never made out any case that the collections on account of the licence fee were merged in the general public revenue and were not appropriation in the manner laid down for the appropriation of expenses for the department concerned.

10. There can be no manner of doubt that the amount which the appellant company has to pay as licence fee is not in the nature of a tax but is a fee which could be properly levied.

The appeal fails and it is dismissed with costs.

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