Municipal Corporation of Delhi and Others

Vs

Mohd Yasin

Civil Appeal No. 2120 of 1970

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Vs

Siraj Uddin

Civil Appeals No. 2125 (N) of 1970

(D. A. Desai, O. Chinnappa Reddy JJ)

28.04.1983

JUDGMENT

CHINNAPPA REDDY, J. –

1. By a notification dated January 31, 1968, the Delhi Municipal Corporation purported to enhance the fee for slaughtering animals in its slaughterhouses from Re 0.25 to Rs. 2 for each animal, in the case of sheep, goats and pigs, and from Re 1 to Rs. 8 for each animal, in the case of buffaloes. The notification was quashed by the High Court of Delhi on the ground that the Corporation was really proposing to levy a tax under the guise of enhancing the fee. The original rates were fixed in March 1953 and the revised rates were to take effect from February 1, 1968. Some butchers of the city questioned the revision of rates on the ground that the proposed enhanced fee was wholly disproportionate to the cost of the services and supervision and was in fact not a fee, but a tax. The High Court accepted the contention of the butchers on what appears to us a superficial view of the facts and principles. Fortunately, the High Court has certified the case as a fit one for appeal under Article 133 (1) (c) of the Constitution and the matter is now before us.

2. During the pendency of the writ petitions in the High Court, by virtue of an interim arrangement, the Municipal Corporation was permitted to collect fee at the rate of Re 0.50 per animal in the case of sheep, goats and pigs and Rs. 2 per animal in the case of buffaloes. As a result, the Municipal Corporation realised a sum of Rs. 4,24,494 by way of fee for slaughtering animals in its slaughterhouse. Now, the budget of the Municipal Corporation under Item XIV-B showed a sum of Rs. 2,56,000 as the expenditure involved in connection with the slaughterhouses. Comparing the amount of actual realisation of fee at the rates permitted by the court with the amount of expenditure as revealed by the budget and excluding from consideration all expenditure not shown in the budget under Item XIV-B, the High Court came to the conclusion that even if the original fee was doubted the amount realised would be more than sufficient to meet the expenditure involved and there was, therefore, no warrant at all for increasing the fee eight-fold. So, it was said, the proposed fee was no fee but a tax for which there was no legislative mandate. We shall presently point out the error into which the High Court fell on facts as well as principle.

3. A word on interpretation. Vicissitudes of time and necessitudes of history contribute to changes of philosophical attitudes, concepts, ideas and ideals and, with them, the meanings of words and phrases and the language itself. The philosophy and the language of the law are no exceptions. Words and phrases take colour and character from the context and the times and speak differently in different contexts and times. And, it is worthwhile remembering that words and phrases have not only a meaning but also a content, a living content which breathes, and so, expands and contracts. This is particularly so where the words and phrases properly belong to other disciplines.'Tax' and 'fee' are such words. They properly belong to the world of Public Finance but since the Constitution and the laws are also concerned with Public Finance, these words have often been adjudicated upon in an effort to discover their content.

4. Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar is considered the locus classicus on the subject of the contradistinction between 'tax' and 'fee'. The definition of 'tax' given by Latham, C.J. as "a compulsory exaction of money by public authority for public purposes enforceable by law and not payment for services rendered" was accepted, by the court as stating the essential characteristics of a tax. Turning to fees, it was said "a fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency", but it was confessed, "as there may be various kinds of fee, it is not possible to formulate a definition that would be applicable to all cases". As regards the distinction between a tax and a fee, it was noticed that compulsion could not be made the sole or even a material criterion for distinguishing a tax from fee. It was observed that the distinction between a tax and a fee lay primarily in the fact that tax was levied as a part of a common burden, while a fee was a payment for a special benefit or privilege. But it was noticed that the special benefit or advantage might be secondary to the primary motive of regulation in the public interest, as for instance in the case of registration fees for documents or marriage licences. It was further noticed that Article 110 of the Constitution appeared to indicate two classes of cases where 'fees' could be imposed : (i) where the government simply granted a permission on privilege to a person to do something which otherwise that person would not be competent to do and extracted from him, in return, heavy or moderate fees (ii) where the government did some positive work for the benefit of the person and money was taken as a result for the work done or services rendered, such money not being merged in the public revenues for the benefit of the general public. It was however made clear that the circumstance that all the collections went to the consolidated fund of the State and not to a separate fund may not be conclusive. The court finally observed that there was really no generic difference between the tax and fees though the Constitution had, for legislative purposes, made a distinction between a tax and a fee. While there were entries in the Legislative Lists with regard to various forms of taxes, there was an entry at the end of each one of the three lists as regards fees which could be levied in respect of any of the matters that was included in it. The implication seemed to be that fee had special reference to governmental action undertaken in respect to any of those matters.

5. In H.H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, the court reiterated the principle that a levy in the nature of a fee did not cease to be of that character merely because there was an element of compulsion of coerciveness present in it, and added,

> ... 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 the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met 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... but a levy will not be regarded as at tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may.

6. In Hingir-Rampur Coal Co. Ltd. v. State of Orissa, the court while reiterating that there was an element of quid pro quo between the person paying the fee and the authority imposing it, said :

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.

Later it was said :

> It is true that when the Legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly from part of services to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. In such a case, it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy.

7. In H. H. Shri Swamiji v. Commissioner, Hindu Religious and Charitable Endowments Department, Chandrachud, C.J. speaking for the Constitution Bench, emphasised the necessity as well as the sufficiency of a broad correlationship between the services rendered and the fees charged and discounted the attempts to go into minutiae to discover meticulously whether or not there was mathematical equality. He said : [SCC para 11, pp. 649-50 : SCC (Tax) pp. 23-24]

For the purpose of finding whether there is a correlationship between the services rendered to the fee prayers and the fees charged to them, it is necessary to know the cost incurred for organising and rendering the services. But matters involving consideration of such a correlationship are not required to be proved by a mathematical formula. What has to be seen is whether there is a fair correspondence between the fee charged and the cost of services rendered to the fee prayers as a class. The further and better particulars asked for by the appellants under Order 6, Rule 5 of the Civil Procedure Code, would have driven the court, had the particulars been supplied, to a laborious and fruitless inquiry into minute details of the Commissioner's departmental budget. A vivisection of the amounts spent by the Commissioner's establishment at different places and for various purposes and the ad hoc allocation by the Court of different amount to different heads would at beast have been speculative. It would have been no more possible for the High Court if the information were before it, than it would be possible for us if the information were before us, to find out what part of the expenses incurred by the Commissioner's establishment at various places and what part of the salary of his staff at those places should be allocated to the functions discharged

by the establishment in connection with the services rendered to the appellants. We do not therefore think that any substantial prejudice has been caused to the appellants by reason of the non-supply of the information sought by them.

8. In Southern Pharmaceuticals & Chemicals, Trichur v. State of Kerala, A. P. Sen. J. speaking for the court noticed the broadening of the court's attitude and observed : [SCC para 25, pp. 409-10 : SCC (Tax) pp. 337-38]

It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the service is not by itself decisive. That is because the Constitution did not contemplate, it to be an essential element of a fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo stricto senso is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is necessarily absent in every tax... The traditional concept of quid pro quo is undergoing a transformation.

9. What do we learn from these precedents ? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hallmark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That other besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax.

10. What do we have in the present case ? True, the Municipal Corporation has realised a sum of Rs. 4,24,494 by way of fees at the rate of Re 0.50 per animal in the case of sheep, goats and pigs and Rs. 2 per animal in the case of buffaloes, whereas the budget of the Municipal Corporation showed under Item XIV-B that an amount of Rs. 2,56,000 was expended in connection with slaughterhouses. But as explained in the affidavit of Dr. A. C. Ajwani, Deputy Health Officer (Public Health) of the Municipal Corporation of Delhi, the amount of Rs. 2,56,000 covers only those items of expenditures as are reflected in Item XIV-B of the municipal budget. The items of expenditure covered by Item XIV-B of the municipal budget are evidently those items of expenditure which the incurred directly and exclusively in connection with slaughterhouses. In addition there are several other items of expenditure connected with slaughterhouses but which are not included in Item XIV-B. To name a few, there is the expenditure involved in the purchase, maintenance and the use of trucks and other vehicles for the removal of filth and refuse from slaughterhouses. These expenses, though attributable to slaughterhouses, are debited in the municipal budget under other heads such as transport, conservancy, petrol and oil etc. There is also the expenditure incurred in connection with the maintenance of supervisory staff like a full-time. Veterinary Officer, and a Municipal Health Officer, Deputy Health Officer, Zonal Health Officer

etc., a considerable part of whose duties are connected with slaughterhouses. There is then the cost of depreciation of the buildings and fittings in the slaughterhouses. There is also the provision for expansion and improvement of slaughterhouse facilities. There are several other items of expenditure the whole or part of which is attributable to slaughterhouses. Unfortunately, the High Court refused to look at any these formidable items of expenditure on the ground that the Corporation could not ask the court to look at any figures other than the figure mentioned under Item XIV-B of the municipal budget. Apparently the High Court was under the impression that the fees collected should be shown to be related to expenditure incurred directly and exclusively in connection with the slaughtering of animals in its slaughterhouses and also, shown as such in the municipal budget. This was a wholly erroneous approach, in the light of what we have said earlier. We have explained earlier that the expenditure need not be incurred directly nor even primarily in connection with the special benefit or advantage conferred. We have also explained that there need not be any fastidious balancing of the cost of the services rendered with the fees collected. It appears to have been common ground before the High Court that the price of meat had gone up about 10 to 12 times since the rates were originally fixed. If so, one wonders how the Municipal Corporation could be expected to effectively discharge its obligations in connection with the supervision of the slaughtering of animals in the slaughterhouses maintained by it by merely raising the rates two-fold and three-fold. The increase from Re 0.50 to Rs. 2 per animal in the case of small animals and from Re 1 to Rs. 8 in the case of large animals appears to us to be wholly justified in the circumstances of the case. The appeal is therefore, allowed with costs, the judgment of the High Court set aside and the writ petition filed in the High Court dismissed with costs.

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