City Corporation of Calicut

Vs

Thachambalath Sadasivan and Others

Civil Appeals Nos. 13 and 14 of 1971

(D. A. Desai, A. N. sen JJ)

26.02.1985

JUDGMENT

D. A. DESAI, J. -

1. The respondents in these two appeals filed Original Petitions Nos. 2892-3073 of 1965 challenging the validity of the licence fee levied by the appellant "The City Corporation of Calicut" to be paid for use of the land or premises for soaking of coconut husks. The appellant-Corporation by its resolution dated January 25, 1963 levied licence fees in respect of various items set out in Schedule IV of the Calicut City Municipal Act, 1961 subsequently restyled as Kerala Municipal Corporation Act, 1964 ('Corporation Act' for short) including for use of premises and land for soaking coconut husks. The respondents are admittedly carrying on the trade of soaking coconut husks and they had not taken out a licence for carrying on the trade. The Commissioner of the appellant-Corporation issued a notice to each of the respondents calling upon him to show cause why within three days of the receipt of the notice, the respondents should not be prosecuted for using premises for soaking coconut husks without obtaining a licence as required by law. The respondents challenged the validity and legality of the aforementioned notices issued by the Corporation and served upon them in the aforementioned two writ petitions on diverse grounds, inter alia contending that if the licence fee is levied as a fee, no service is rendered or special advantage or favour is conferred by the Corporation on the respondents for collecting such fee and that there is no quid pro quo and that the relevant provisions of the Act do not enable the Corporation to levy such a fee. Alternatively, it was contended that if it is levied as a tax, it is beyond the taxing powers of the Corporation.

2. The Corporation filed its counter-affidavit and sought to justify the fee as a licence fee or in the alternative it was contended that the Corporation and the power to levy a tax of the nature levied by it.

3. Both the petitions came up before a learned Single Judge of the High Court who held that the levy of the impugned licence fee is not legal in the absence of conferment of special benefits on the petitioners and other persons who soak coconut husks. The alternative submission that the Corporation had the power to levy it as a tax was negatived observing that the power to levy it as a tax was negatived observing that the power to levy the various taxes conferred on the Corporation under Chapter V of the 1964 Act does not comprehend the impugned levy and accordingly held that as a tax it was not valid and legal. Accordingly both the writ petitions were allowed and the impugned notices were quashed. The Corporation after unsuccessful Writ Appeals No. 107-108 of 1967 filed these appeals by special leave.

4. Mr A. S. Nambiar, learned counsel who appeared for the appellant-Corporation urged that the

levy of licence fee as fee is fully justified and the High Court was in error in rejecting it as such on the ground that the respondents do not enjoy any special service or benefit for paying the fees on the traditional view of law more or less than prevailing that for a fee there must necessarily be quid pro quo. He submitted that the trend revealed by recent decisions of this Court would show that traditional view about fee has undergone a sea change and that the demarcating line between tax and fee has become so blurred as to become almost invisible. It was alternatively submitted that even according to traditional view the Corporation has placed enough evidence on record to show that the respondents have been and are receiving special service or benefit in return for the fees levied and paid. it is not necessary to examine the alternative submission save saying in passing that the respondents do enjoy certain benefits from the functions discharged by the Corporation. The first limb of the contention must prevail in view of the three recent decisions of this Court.

5. In Municipal Corporation of Delhi v. Mohd. Yasin ((1983) 3 SCC 229 : 1983 SCC (Tax) 154) after a review of the earlier decisions it was observed as under : [SCC para 9, p. 235 : SCC (Tax) p. 160]

What do we learn from these precedents ? We learn that there is no generic difference between a tax and a fee, thought broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages of 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 casual relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others 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.

This view was reaffirmed in Sreenivasa General Traders v. State of A.P. ((1983) 4 SCC 353) observing that it is increasingly realised that the element of quid pro quo in the strict sense is not always a sine qua non for a fee. However, co-relationship between the levy and the services rendered or expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable co-relationship between the levy of the fee and the services rendered.

6. In a very recent decision in Amar Nath Om Prakash v. State of Punjab ((1983) 4 SCC 353) the Court reiterated the principle laid down in Mohd. Yasin case ((1983) 3 SCC 229 : 1983 SCC (Tax) 154).

7. It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or

advantage for payment of the fee.

8. Applying the ration of these decisions it is incontrovertible that the appellant-Corporation is rendering numerous services to the persons within its areas of operation and that therefore the levy of the licence fee as fee is fully justified. Soaking coconut husks emit foul odour and contaminates the environment. The Corporation by rendering scavenging services, carrying on operations for cleanliness of city, to make habitation tolerable is rendering general service of which amongst other respondents are beneficiaries. Levy as a fee is thus justified.

9. In this view of the matter it is not necessary to consider the alternative submission that the levy as a tax is legal.

10. Accordingly, both the appeals are allowed and the decision of the learned Single Judge as well as the decision of the Division Beach in writ appeals are set aside and the writ petitions filed by the petitioners are dismissed with no order as to costs.

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