

Secunderabad Hyderabad Hotel Owners' Association and Others

Vs

Hyderabad Municipal Corporation, Hyderabad and Another

Writ Petition No. 238 of 1992 with CAs Nos. 546 of 1991, 1811-12 of 1988

(Sujata V. Manohar, A. P. Misra JJ)

20.01.1999

JUDGMENT

SUJATA V. MANOHAR, J.-

1. In these proceedings, the petitioners are challenging an increase in the license fee for a trade license for running a lodging house, hotel, restaurant, coffee house, tea stall, eating house, soft drink hall, cafeteria, tiffin room, etc., levied under section 622 of the Hyderabad Municipal Corporation Act, 1955.

2. Under Section 521(1)(e)(ii) of the Hyderabad Municipal Corporation Act of 1955, except under and in conformity with the terms and conditions of a license granted by the Commissioner, no person shall inter alia, carry on, allow to be carried on, in or upon any premises, any trade or operation which in the opinion of the Commissioners, is dangerous to life, health or property, or is likely to create a nuisance either from its nature, or by reason of the manner in which, or the conditions under which, the same is or is proposed to be carried on. By an order of the Special Officer, Municipal Corporation of Hyderabad, dated 15-4-1972, a list of trades, operations etc. covered by section 521(1) (e) (ii) was notified. The trades so covered include eating houses, hotels, restaurants, cafes, bars, tea stalls, can canteens, coffee houses, tiffin rooms, cafeteria or any place where food is prepared and supplied or sold for the purpose of gain. Lodging houses were also covered.

3. Under Section 622 of the Hyderabad Municipal Corporation Act, 1955, whenever it is provided under the Act that a license of a written permission may be given for any purpose, such license or written permission shall specify the period for which and the restrictions and conditions subject to which, the same is granted. Under Section 622(2), for every such license or written permission, a fee may be charged at such rate as shall from time to time, be fixed by the Commissioner with the sanction of the Corporation. Under said order of 15-4-1972, the license fees for the said traders were specified/revised. Where the monthly rent of an eating house etc. was up to Rs. 50, the rate of license fee was Rs. 50. The license fees were graded depending upon the rent of the premises. The maximum license fee where rent was above Rs. 1000. The same was the position with regard to lodging houses where the rates of license fee varied from Rs. 50 to Rs. 1000 depending upon the monthly rent of the premises. The rates so prescribed were higher than the rates in force earlier. This increase was challenged, but was upheld by the high Court.

4. Thereafter the Special Officer, Municipal Corporation of Hyderabad, by his order dated 6-4-1981, revised these license fees. The said order, inter alia, stated that in view of the license of the service charges rendered by the Municipal Corporation of Hyderabad, it was felt necessary to revise the

existing schedule of rates of license fee fixed under Section 622(2) of the Hyderabad Municipal Corporation Act, 1955. As a result of this revision, the license fee where the monthly rent was up to Rs. 50 was increased to Rs. 100 and the maximum license fee where the rent was above Rs. 1500 but not more than Rs. 2000, was increased to RS. 2000. In respect of lodging houses, the maximum license fee where the rent was above Rs. 4000 but not more than Rs. 5000, was fixed at Rs. 5000. The license fee was proportionately increased in respect of all categories of lodging houses and eating houses by the said order.

5. The present petitioners filed Writ petition No. 3055 of 1981 in the High Court of Andhra Pradesh challenging the increase in the license fee by the said order of 6-4-1981. The learned Single Judge upheld the levy and dismissed the writ petition. An appeal before the Division Bench of High Court filed by the petitioners was also dismissed by the Division Bench. The Division Bench held that since the Corporation is providing services in the form of inspection by the officials of the remises of the petitioners and is also providing general services like lifting of garbage in the whole city for which staff is required, the Corporation is providing services though general in nature, to the persons or traders. Th levy is not a tax. It upheld the levy as a fee. Civil Appeals Nos. 1811 of 1988 are against the said judgment of the Division Bench of the High Court.

6. In 1987, the respondent – Corporation again revised and increased license fees. The said increase is under challenge before the High Court. Thereafter, by an order dated 12-10-1991, the respondent – Corporation again increased the license fees of eating houses and lodging houses. The increase was four times the license fee fixed in 1987. However, on 25-7-1992, the respondents have reduced this increase on the basis of a compromise arrived at between the Corporation and several groups of affected traders. The increased license fee fixed in 1987. However, on 25-7-1992, the respondents have reduced this increase on the basis of a compromise arrived at between the Corporation and several groups of affected traders. The increased license fee under the order of 25-7-1992 is twice the license fee charged under the order of 1987. The petitioners were not parties to the compromise. They have filed Writ Petition No. 238 of 1992 in this Court under Article 32 challenging the increased license fee under the order of 1992. Since common questions of law arise in all these proceedings, they have been heard together. A chart showing the increase of license fee for lodging and eating from time to time is set out below:-

Description of the trade & operation to be licensed	Annual license fee prevailing prior to 1981	Annual license fee increased in 1981	Annual License fee increased in 1987	Annual license fee revised in impugned order 1991 1992	
	Rs.	Rs.	Rs.	Rs.	Rs.
Lodging / Hotels where monthly rent is up to Rs. 50	50	100	300	1200	600

Rent above 50 but not more than 100	125	150	450	1800	900
Rent Above 100 but not more than 200	200	250	750	3000	500
Rent above 200 but not more than 400	300	400	1200	4800	2400
Rent above 400 but not more than 600	400	600	1800	7200	3600
Rent above 600 nut not more than 800	500	800	2400	9600	4800
Rent above 800 but not more than 1000	600	1000	3000	12,000	6000
Rent above 1000 but not more than 1500	1000	1500	4000	16,000	8000
Rent above 1500 but not more than 2000	1000	2000	6000	24,000	12,000
Rent above 2000 but not more than 3000	1000	3000	9000	36,000	18,000
Rent above 3000 but not more than 4000	1000	4000	12,000	48,000	24,000

Rent above 4000	1000	5000	15,000	60,000	30,000
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7. The petitioners contended that the increased license fees of 1981 and thereafter of 1992 are not in the nature of fees since there is no quid pro quo between the fees charged by the respondents and the services rendered by them to the traders in question. These are taxes. The petitioners have drawn our attention to Chapter VIII of the Hyderabad Municipal Corporation Act, 1955 which deals with municipal taxation. Under Section 197, (which is the first section falling under Chapter III) for the purposes of this Act, the Corporation shall impose the taxes which are specified in that section. Under sub-section (2) of section (1), subject to the previous sanction of the Government. Under Section 198, before the Corporation passes any resolution imposing a tax for the first time or at a new rate. It shall direct the Commissioner to publish a notice in the Andhra Pradesh Gazettee and in the local newspaper of its intention to do so and fix a reasonable period, not being less than one month, for submission of objections. The resolution to levy the tax. The corporation is also required to publish a notice specifying the date from which and the rate at which such tax or increased tax is to be levied. The petitioners contended that this procedure has not been followed while increasing the license fee which is in the nature of a tax and not a fee and hence the levy is not valid.

8. The first question, therefore, which requires consideration is whether the increased license fee under the orders of 1981 and 1992 is in the nature of a tax or a fee. In order to answer this question, it is necessary to look at the nature of the license which is granted. The hotel license which is issued to each of the traders is subject to the conditions set forth in the bye – laws of the Municipal Corporation of Hyderabad relating to the regulation of eating houses or hotels mentioned in Section 521. These conditions are reproduced in the license. These prescribe, inter alia, that

(1) the building shall be situated at a suitable place and shall be spacious and have enough accommodation according to the requirements of business;

(2) it shall be constructed of masonry and such other non-inflammable material as may be approved by the Commissioner;

(3) a signboard of the hotel in English and at least one regional language shall be hung in front of the building ;

(4) the licensee shall put up a notice – board in a conspicuous part of the dining hall stating whether the articles of food are made of beef, mutton, ghee or oil.

There are several other conditions, e.g. the licensee shall make adequate provision for parking of cycle, motor cars or other vehicles of the persons visiting the hotel. The license shall provide suitable means of drainage, ventilation and lighting of such premises. The license shall provide doors and against dust and flies. The license shall provide a good supply of wholesome water. All cups, saucers etc, shall be rinsed in clear water. No vessels or utensils shall be used which are likely to get corroded or which would otherwise render obnoxious the article of food, and so on. There are a large number of conditions for the purpose of ensuring that the premises are safe and suitable, the food is wholesome and hygienic and there is adequate ventilation, drainage and so on. The respondent-Corporation is required to inspect the premises in question in order to ensure that the conditions are complied with. It also has the responsibility for inspecting and supervising the sale of foodstuff to ensure that all the conditions are complied with. The respondent is also required to

ensure cleanliness, removal of garbage and maintenance of hygienic in these premises. Undoubtedly, the Corporation has the general duty to provide scavenging and sanitation services including removal of garbage and maintaining hygienic conditions in the city for the benefit of all persons living in the city. Nevertheless, hotels and eating houses by reason of the nature of their occupation, do impose an additional burden on the municipal corporation in discharging its duties of lifting of garbage, maintenance of hygiene and sanitation since a large number of persons use the premises either for lodging or for eating; the food is prepared in large quantity unlike individual households and the resulting garbage is also much more than what would otherwise be in the case of individual households. In fact, under section 230 of the said Act, the respondent – Corporation has the power to fix special rates of conservancy tax in respect of a hotel, club or other large premises. This, however, does not turn a license fee into a tax.

9. It is by now, well settled that a license fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the license fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. License fees can also be regulatory when the activities for which can be charged. License fees can also be regulatory when the activities for which license is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validity classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is required although such fees cannot be excessive.

10. In the case of *Commr., H.R.E. v. Sri. Lakshmindra Thirtha Swamian of Sri Shirur Mutt* one of the earliest cases dealing with the question whether the levy is a fee or a tax, this Court held that the Constitution and, in particular, the legislative entries in Schedule VII of the Constitution make a clear distinction between a tax and a fee. This court reproduced the definition of what "tax" means, given by Lathim, C.J. of the High Court of Australia in *Matthews V. Chicory Marketing Board* (CLR at p. 276) (see at p. 1040). A "tax" according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered". A fee, on the other hand, is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases, the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, as far may be, of various kinds of fees. It is possible to formulate a definition that would be applicable to all cases. The Court then observed: (at p.1042).

"The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of the common burden, while a fee is a payment for a special benefit of privilege. Fees confer a special capacity, although the special advantage, as for example, in the case of registration fees for documents or marriage licenses, is secondary to the primary motive of regulation in the public interest."

There is really no generic difference between a tax and a fee and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes. Our Constitution has, for legislative purposes, made a distinction between a tax and a fee.

11. In the case of *Corpn. of Calcutta v. Liberty Cinema* (SCR at p. 483) this Court after referring to

the Constitutional provisions making a distinction between a fee and a tax, also went on to say that in our Constitution, fees for license and fees for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of article 110(2) and Article 199(2) where both the expression are used indicating thereby that they are not the same. In other words, a distinction was made between fees for services rendered and fees which are regulatory. In *Indian Mica Micanite Industries v State of Bihar* (SCC at p. 241:CR at p. 324), *Om Prakash Agarwal v. Giri Raj Kishori and Municipal Council, Maduarai v. R. Narayanan* (SCC pp. 503 : SCR at pp 339 to 340) the Court had considered a fee which was charged for services rendered. In all these cases, the Court observed that when a fee is charged for services rendered, an element of quid pro quo is necessary and there has to be a correlationship of a general character between the cost of rendering such service and the fee charged. A number of other decision rendered were also cited in this connection. The position in respect of fees for services rendered is summed up in the case of *Krishi Upaj Mandi Samiti v. Orient Paper & Industries Ltd.* (SCC in para 21).

12. In the present case, however, the fees charged are not just for services rendered but they also have a large element of a regulatory fee levied for the purpose of monitoring the activity of the license. Dealing with such regulatory fees, this Court in *Vam Organic Chemicals Ltd. v. state of U.P.* (SCC at p. 726) observed that in the case of a regulatory fee, no quid pro quo was necessary but such fee should not be excessive. The same in the case of *P. Kannadasan v. state of T.N.* (SCC in para 36) as well as *State of Tripura v. Sudhir Ranjan Nath* (SCC at p. 673).

13. The petitioners, however, submitted that the fee charged was, in fact, a tax in the guise of a fee. Because apart from the fact that there was no element of quid pro quo present in this case, the amount collected by way of Section 169 of the Hyderabad Municipal Corporation Act, 1955, a Municipal fund is constituted and under the said section, it is provided as follows:

"169. Constitution of Municipal Fund. (1) Subject to the provisions of this Act and the Rules and the bye - laws-

a. all moneys received by or on behalf of the Corporation under the provisions of this Act or of any other law for the time being in force, or under any contract,

b. (c) * * * * *

(d) all moneys raised by any tax levied for the purpose of this Act,

(e) all fees and fines payable and levied for the purposes of this Act, or under any rule, bye law or standing order in force thereunder.

(f) * * * * *

a. ...,and

b. all interest and profits arising from any investment of or from any transaction in connection with an money belonging to the Corporation.

shall be credited to a fund which shall be called 'the Municipal Fund' and which shall be held by the corporation in trust for the purposes of this Act, subject to the provisions herein contained.

(2) * * *

Section 174 describes the purpose for which the Municipal Fund is to be applied. It is, therefore, submitted that since all the fees from a part of the common Municipal Fund, and this fund is to be deployed for various purposes of the Municipal Corporation, there is no provision by which the fee collected is used for regulatory purposes. This Court, however, in the case of *Sirsilk Ltd .v. Textiles Committee* (SCR at pp. 910,2912) has pointed out that a separate fund is not essential in the case of regulatory fees.

14. In the present case, the Budget Estimate Rules are relied upon by the respondents in order to show that the fees are being utilised for regulatory services. The Hyderabad Municipal Corporation Budget Estimate Rules, 1968 under Rule 6 provide as follows:

"6. Sanctioning of the budget. The council shall, after satisfying itself on the following points, sanction the budget ordinarily not later than the twentieth of February , each year with such modifications, as it may deem necessary.:

Provided that no part of the receipts under any fee or charge collected or recovered for performance of services such as slaughter-house fee, market fees and rents, buildings permit fees, layout fees, licence fee and the like shall be utilised or expended for purposes other than those for which the fees and rents are collected. Any amount remaining surplus or unexpended shall be invested in a reserve fund."

The fees, though credited in the common fund, are earmarked for the purposes for which they are collected. Clearly, therefore, the intention is to levy a fee which would be utilised for regulatory and compensatory purposes in the present case. The contention of the petitioners that this is a tax in the guise of a fee does not appear to be sustainable.

15. It is, however, contended by the petitioners that if this is a fee, the quantum of fee levied is excessive. It is also unreasonable because the manner in which the fee is levied bears no nexus to the purpose for which the fee is levied. The petitioners contend that a licence fee based on the rent payable in respect of the premises in which the activities of an eating house or a lodging house are carried on is not a proper basis for charging a fee because the rent charged for the premises has no nexus with the services rendered by the Corporation.

16. In the first place, it is not necessary that a fee should only be in the form of a lump sum fee. A fee can also be graded as in the present case. The Corporation has chosen the quantum of rent paid as the criterion for the quantum of fee to be charged. The rent under the relevant provisions of law in that connection, does have a nexus with the area in the occupation of the lodging house or eating house. In the case of activities carried on by these lodging houses and eating house, the area in their possession has a direct nexus with the extent of business activities. The need for cleanliness and hygiene, the generation of garbage and the extent of regulation that may be required depend upon the size of the premises which in turn controls the extent of activity, Undoubtedly, in a given case, if the premises are old, the rent may be less but that does not mean that classifying premises on the basis of the rent paid has no connection with the quantum of fee charged.

17. It is also contended that the fees charge are excessive. The respondents in their counter-affidavit filed in the writ petition have gives basis of the 1987 rates was Rs. 1,08,25, 588 as per the revised estimates. With the increase in the licence fees in 1992 the income would be doubled to Rs. 2,16,51176. This would not be sufficient for the sanitary and public health services including lifting of garbage, ceaning of roads, sanitation, medical centres, salaries of the staff employed and so on. The public health budget for the relevant period of the Corporation is to the tune of nearly Rs. 139540,000. Of course, these figures do not indicate separately the extent of fees collected from eating and loding houses or the amount expended for regulating the activities of eating and lodging houses and rendering them services, In respect of the year 1981-82, when the first increase which is under challenge took place, the income from licences on the basis of the rates as enhanced in 1981, was to the tune of Rs. 37, 89, 627 while the expenditure on the licence section and the sanitary section of the Corporation was Rs. 3,8511,961. The Corporation also pointed out that the annual salary bill in the year 1981 for the staff in various sections of the Municipal Corporation dealing with licence was Rs. 40,45,585. The annual salary of the same staff in 1992 was Rs. 1,75,31,943. The attempt of the Corporation is to show that the expenditure under various heads between 1981 and 1992 had more than doubled. Therefore, the increase in the licence fee which was made in 1981 for the first time after 1972, as also the increas made in the licence fee in 1992, were correlated with the increase in the cost of providing services (Whether regulatory otherwise, to the trades in question. The respondents in their affidavit have also annexed budget estimates for the year 1989-90 in order to show that the licence fees collected are far less than the requirements of the Municipal Corporation for dealing with health services, sanitation, licensing section and so on. In the budget estimates for 1988-89, the licence fees from hotels, for example, are estimate date Rs. 25, 00,000. Revenue expenditure for the year 1988-89 as per budget estimates under sanitary, conservancy and scavenging section including establishment expenses, salaries and allowances are to the tune of Rs. 10,14,61,100; while under the health office section these are to the tune of Rs. 31 30,400. Under prevention of food adulteration and municipal laboratory section, these are to the tune of Rs 31,30,400. Under prevention of food adulteration and municipal laboratory section, the estimated expenditure is to the tune of Rs. 7,66,200. Undoubtedly, this expenditure covers not just the services rendered tot he trades in question. It also covers services rendered to various other trades, to individuals and organisations and all other members of the public who benefit from such services rendered by the Municipal Corporation. Nevertheless, looking to the fact that the licence fees collected form only a very small part of the total expenditure incurred by the Municipal Corporation, we are not inclined to hold the levy of these fees as excessive. It is also necessary to note that the impugned increase in 1981 was the first increase after 1972. The High Court has rightly considered that looking to the increase in the cost of the various activities carried on by the Hyderabad Municipal Corporation, doubling of licence fees after nine years cannot be considered as an excessive increase. In respect of the increase from the 1987 level of licence fees to the 1992 level of licence fees, the initial increase could have been viewed as excessive. But after the representations were made to the respondent-Corporation by the various traders affected by the increase in the licence fees, the Municipal Corporation reduced the increase and kept it at twice the licence fees charged in 1987. The respondents in this connection and meetings and detailed negotiations with the various trade organisations connected with the conducting of eating houses and lodging house. The respondents have annexed the minutes of the proceedings before the Commissioner, Municipal Corporation of Hyderabad, dated 25-7-1992. The meeting of 25-7-1992 dealt with enhancement of licence fee of certain trade and operations. These cover the present trades and occupations. The proceedings record that the traders viewed the increase from the existing rates as on the high side and the increase in many cases was four to five times the existing rates. Aggrieved by the increase in the licence fee, the traders formed a Twin Cities Traders' Joint Action

Committee and made representations at various levels. Joint meetings were held on 22-4-1992, 4-5-1992, 6-5-1992, 11-5-1992 and 12-4-1992 and after a great deal of exchange of views, it was unanimously resolved to increase the trade licence fee by 100% over the rates prevailing prior to the increase in October 1991. Agreement was reached to this effect. These proposals were accepted by the Standing Committee and the General Body of the Corporation. Accordingly, the revised rates were implemented. The petitioners contend that their members did not agree to this increase. Nevertheless, the Traders' Joint Action committee, which covered a number of other traders carrying on the same trade, did agree to this increase as reasonable. It would not, therefore, be proper to term this agreed increase as excessive or as indicating that it was a taxing measure rather than a fee.

18. The petitioners had also contended that if this increased levy is viewed as a tax, then the provisions of imposing a tax under the Hyderabad Municipal Corporation Act, 1955 have not been complied with. Since we have come to a conclusion that the licence fee which is charged is a regulatory-cum-compensatory fee and it is not a tax, we are not examining this question since it is not necessary to view this levy as a tax.

19. We, therefore, agree with the conclusions reached by the High Court. The appeals as well as the writ petition are, therefore, dismissed. There will, however, be no order as to costs.