CALCUTTA HIGH COURT

Liberty Cinema

Vs.

Commissioner, Corporation of Calcutta

Matter No. 48 of 1958

(D.N. Sinha, J.)

24.07.1958

ORDER

D.N. Sinha, J.

1. This application and 62 other applications have been heard together. A common point of law is involved in all these applications. The petitioners in all these cases are either a company or a firm carrying on the business or running a cinema house in the city of Calcutta, or a proprietor thereof. I shall now proceed to delineate the facts of this case. The facts in all these cases are more or less similar. The petitioner in this case is a registered partnership firm carrying on business in Calcutta as the owner and licensee of a cinema-house known as the Liberty Cinema, situate at 255/B, Chittaranjan Avenue. It is a 'C' class cinema according to the classification made by the Corporation of Calcutta, having a seating capacity of 551. The petitioner has been paying the following taxes and fees to the Corporation of Calcutta in order to run the said cinema-house:

(a) A consolidated rate of Rs. 971,08 np. per year.
(b) A fee of Rs. 250/- for a trade license.
(c) A license-fee of Rs. 800/- per year under Section 443 of the Calcutta Municipal Act, 1951.
(d) A water-tax amounting to Rs. 33/- per year.
(e) License fee for sky signs, (unspecified).

2. At a meeting held on 14-3-1958 the Corporation of Calcutta passed a resolution, a copy whereof is Ex. 'A' to the petition. In that resolution it was stated that in accordance with the decision of the Standing Finance (Budget) Committee, dated 5-2-1958 to increase the existing charges in respect of cinema only, under Section 443 read with Section 548(2) of the Calcutta Municipal Act, 1951, the procedure for levy and realization of such fees was to be according to the terms of the resolution. No person was to keep open any cinema house without a license granted by the Commissioner to the Corporation. The classification of cinema houses and the fees for the license with effect from 1-4-1958 were to be as follows :
(I) Classification of cinema houses

Class A - having sanctioned seats over 1000.
Class B - having sanctioned seats over 700 not exceeding 1000.
Class C - having sanctioned seats 700 and below.
(II) Scale of fees.
Class A - Rs. 15/- for each show.
Class B - Rs. 10/- for each show.
Class C - Rs. 5/- for each show.

3. The fee was to be payable in advance weekly or monthly and each time it was to be paid along with a return in form A.

4. As a result of this resolution, the existing annual scale of fees, which was in the range of Rs. 400/- for the small cinemas and Rs. 800/- for the larger cinemas, has been increased to Rs. 6,000/- for the smaller cinemas, Rs. 12,000/- for the medium sized cinemas and Rs. 18,000/- for the larger ones. By a notice dated 25-3-1958 issued by the Commissioner to the Corporation, the petitioners have been apprised of the said resolution and they have been called upon to comply with the same. Under the new rules, the petitioner who was paying a license fee of Rs. 800/- per year will now have to pay a license fee of about Rs. 6,000/-. Similar notices have been served on other cinema houses and the petitioner and 62 other applicants affected by such notices have made applications to this Court challenging the validity of the said resolution and the power of the Corporation or the Commissioner to demand such increased taxes.

5. Before I proceed further, it is necessary to refer to the two Sections in the Act in pursuance of which the resolution mentioned above has been passed.

6. Section 443 of the Act is contained in Chapter XXVI, which is entitled "Inspection and regulation of premises and of factories, trades and places of public resort". Chapter XXVI is again contained in Part V which is headed "Public health, safety and convenience". Section 443 again, is within a group which is headed "Factories, trades and places of public resort". This group contains Sections 436 to 444. Section 436 relates to factories the establishment of which, within the municipal limits requires the permission from the Commissioner which may be withheld if it was open to the objection that by reason of the density of the population in a particular locality, the establishment of a factory; would amount to a nuisance. Section 437 lays down that no premises shall be used for purposes stated therein without a license. These purposes relate to the storing of combustible articles or articles dangerous to life, health or property or where animals or birds are kept for sale; or hire. The idea is to control the storing of dangerous articles which may imperil the safety of the rate-payer and also to prevent nuisance. Section 442 deals with eating houses and lays down that no eating house, teashop, hotel, boarding house etc. should be kept without a license issued by the Commissioner. In the case of Section 437 it is laid down that the fee shall not exceed Rs. 500/-. In the case of Section 442, it has been laid down that the fee shall not exceed Rs. 20/-. I now come to Section 443 which runs as follows :

> "443. No person shall, without or otherwise than in conformity with the terms of a license granted by the Commissioner in this behalf, keep open any theatre, circus, cinema house, dancing-hall or other similar places of public resort, recreation or amusement", provided that this Section shall not apply to private performances in any such place."

7. No fee is prescribed in Section 443. For that we have to travel to Section 548(2) of the Act. That Section is contained in Chapter XXXVI which is headed "Procedure - licenses and written permissions" Chapter XXXVI is contained in Part VIII of the Act. It is in the following terms :

> "548(2). Except when it is in this Act or in any rule or bye law made thereunder otherwise expressly provided, for every such license or written permission a fee may be charged at such rate as may from time to time be fixed by the Corporation and such fee shall be payable by the person to whom the license or written permission is granted."

8. It would thus be seen that Section 443 makes it incumbent for any person running a cinema-house to obtain a license. In most cases where a license has to be taken out, the license-fee or at least the ceiling thereof, has been laid clown in the Section which prescribes the license. Section 548 (2) is a residuary provision which deals with cases where the Act or any rule or bye-law has not laid down or prescribed such amounts. In such cases, the Corporation is granted unlimited power to charge license fee at such rate as it may think fit. It is this newer of the Corporation to fix a license fee without limit that is really being challenged in this Application. The grounds of challenge have been formulated as follows :

> (1) that the levy is a fee and not a tax. If it is a fee and not a tax, then there are limitations which must be observed. It is said that the following limitations have not been observed :
> (a) that the license fee that is proposed to be imposed, is excessive and unreasonable.
> (b) that the amount of the license fee which is sought to be imposed, has no correlation to the object for which it is being realized and the services that are proposed to be rendered. In short, there is no quid pro quo.
> (2) Assuming however, that the imposition is a tax and not a fee, then the provisions contained in Section 548(2) of the Act are ultra vires and beyond the competence of the State Legislature and the Corporation of Calcutta and as such void, for the following reasons :
> (a) Because there has been an improper delegation by the Legislature to the Corporation, of legislative functions, without laying down any rational basis or principle or policy for regulating the same.
> (b) Because it is violative of the fundamental right granted to the petitioner under Article 19(1)(g) of the Constitution, namely, the right to carry on any occupation, trade or business, inasmuch as-
> (i) by imposition of an unreasonably excessive amount, it may lead to the extinction of the petitioner's business.
> (ii) That it gives arbitrary power to the executive and/or a non-legislative body to lay down any restriction it likes so far as the quantum of tax is concerned and this amounts to an unreasonable restriction of the fundamental rights of the petitioner as granted by Article 19(1)(g).

9. I shall now proceed to consider these grounds. Reliance has been placed by learned Counsel for the petitioner upon my decision in Matter No. 81 of 1956 *Sarat Chandra Ghatak v.*

Corporation of Calcutta[1], In that case, a similar challenge was thrown in respect of Section 229 of the said Act, which relates to license-fee for advertisements. The advertisements with which we were concerned in that case, were advertisements displayed on the screen in a cinema-house. Under Section 229, a license-fee can be charged by the Corporation upon such exhibitions, at such rate and in such manner and subject to such exemptions as the Corporation may prescribe by rule with the approval of the State Government. There also, the question arose as to whether such an imposition was a fee or a tax. The learned Advocate-General appearing on behalf of the State frankly confessed that if it was to be treated as a fee, then it could not be supported because no quid pro quo could be established. He, however, argued that the words "fee" and "tax" have been indiscriminately used in the Act and according to him, what has been described as a "license-fee" in Section 229 of the Act was really a tax and not a fee. That these expressions have been indiscriminately used cannot be disputed. For example, in the Summary of Content, Part IV is entitled "taxation." While Chap. XI under Fart IV speaks of the imposition of a consolidated rate, Chap. XII speaks of tax on professions, trades and callings which have always been considered as pure license-fees and the Chapter itself is headed "Tax on professions, trades and callings". In the case, abovementioned, having regard to all the facts and circumstances and particularly to the fact that Section 229 occurred in Part IV which is headed "Taxation" I came to be of the opinion that the imposition sought to be made there was really a tax and not a fee. Taken as a tax, however, I came to the conclusion that the Section was bad because there was an improper delegation to the Corporation, giving it unlimited power, without laying down any policy or restriction whatsoever.

10. Coming back to the question of license-fees, the question is whether the provisions of Section 548(2) read with Section 443, as applicable to the running of a cinema house in Calcutta should be considered as a fee or a tax. As I have stated above, Section 548(2) has to be read with Section 443. It is this latter Section, which requires a license to be taken out and the former provision lays down how a license fee was to be fixed. Neither of these provisions are contained in part IV of the Act which, as I have stated above, is headed 'Taxation." Section 443 is contained in Part V which, as I have pointed out above, relates to "public health, safety and convenience." It is included in Chap. XXVI which deals with inspection and regulation of premises and of factories, trades and places of public resort. As I have mentioned above, it appears in a group relating to factories, trades and places of public resort. Section 548(2) is contained in Part VII. This Part has no particular heading. It contains four Chapters one of which deals with penalties, another with procedure and the remaining two with supplemental and transitory provisions. The section is contained in Chap. XXVI which relates to procedure.

11. Under the Constitution, the Legislature can impose a tax or a fee and it has in the Act authorised the imposition of both taxes and fees. It is unfortunate, however, that the legal distinction between these two kinds of impositions have not been kept in view. That being so, we have got to find out, upon the facts of this case and the nature of the imposition, as to whether it is a fee or tax. The distinction between a tax and a fee is well established. Reference may be made to my decision in *Netram Agarwalla v. Chairman, Raiganj Municipality*[2], In that case, I have analysed the law bearing on the distinction between a

[1] AIR 1959 Cal 36 (Judgment dated 21-11-1957)

[2] 59 Cal WN 872

tax and a fee. The tests to be employed have been tabulated at pages 877/878 (there appears to be a misprint in respect of test No. 1, as the word "not" has been dropped between the words "is"

and "in" in the fourth line). Some of the salient features which are relevant for our purpose ii this case are reproduced below :

(1) A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not in payment for services rendered : *Matthews v. Chiekory Marketing Board*[3], at p. 276 .

(2) The levy of tax is for the purpose of general revenue.

(3) As the object of a tax is not to confer a special benefit upon any particular individual, there is no element of quid pro quo between the taxpayer and the public authority.

(4) A "fee" however, is a charge for a special service rendered. The amount of fee is based upon the expenses incurred in rendering the service.

(5) The quantum of a tax generally depends upon the tax-payer's capacity to pay, but fees are generally uniform and have no relation to the paying capacity of the license-holder.

(6) While there is no limit to the quantum of a tax that can be levied unless it is such as would lead to the extinction of the particular occupation; trade or business in respect of which it is levied and thus amounts to an unreasonable restriction, there is limit to the amount of a license-fee that can be imposed. Apart from the correlation to the expenses incurred as aforesaid, it has a further limitation, in that it must not be unreasonable or excessive.

12. All the relevant cases on the subject have been discussed in my judgment abovementioned and it is unnecessary to repeat them here. In fact, Mr. Gupta who had himself appeared in Netram Agarwalla's case (supra) does not dispute the distinction between a fee and a tax as explained in my decision. The dispute is as regards the application of the tests to the facts of the present case. It is obvious that the answer to this question is partly a question of law and partly a question of fact. The question of law is to determine as to whether in the Calcutta Municipal Act, 1951 it was intended to treat it as a fee or a tax and the question of fact will follow the determination of this question, because if it is a fee it will have to be determined as to whether there is a correlation between the amount of fee that is sought to be charged and the particular service sought to be rendered. I have already mentioned the exact position of the two relevant Sections, namely, Sections 443 and 548(2) of the Act. In my opinion, from the internal evidence in the Act it does appear that Section 548(2) read with Section 443 in its application to the running of a cinema house was meant to impose a license fee and not a tax. As I have pointed out above, Section 443 is not contained in the Part relating; to taxation. It is in Part V which deals with public health, safety and convenience, Even if this is inconclusive, we come to the heading of Chap. XXVI which merely speaks about inspection and regulation of premises and of factories, trades and places of public resort. The scheme of the Chapter seems to be quite clear. The Chapter deals with buildings deemed to be unfit for human habitation, factories which might create a nuisance, places where things might be stored which are dangerous to life, health or property or which likely to create a nuisance, eating houses and places of amusement like theatre, circus etc. The permission that is granted under the Chapter and the license that is taken out, is for

[3]60 CLR (Aust) 266

facilitating inspection and regulation thereof and not for the purpose of raising general revenue. After all, we must make some distinction between a tax and a fee although the Act has failed to do so. Inevitably therefore we must consider the particular position of the Section we are considering and its place in the Scheme of the Act. In the scheme of the Act, I do not see how

Section 443 read with Section 548(2) as applicable to the present case can be connected with the power of the Corporation to impose a tax as distinguished from a fee.

13. Coming to Section 548(2), that again is contained in a Chapter headed as procedure. There is nothing to connect this with the power of taxation. Mr. Mukherji has pointed out that so far as Part IV of the Act is concerned, under the heading "taxation" except under Section 229, wherever either tax or fee is prescribed, there is a ceiling imposed or at least some safeguard has been granted. Even in the case of the consolidated rates, a ceiling has been fixed. In Section 216 which relates to a dog-tax, the amount is fixed. Under Section 218 there is a tax on professions, trades and callings but the ceiling is fixed. Section 224 speaks about tax on carts and the amount payable has been fixed by Section 225. Section 229 relating to advertisements has already been referred to above. There is no ceiling laid down there and the provisions have been declared by me as ultra vires and void. Section 548(2) does not refer to Part IV at all and in my opinion, when read with Section 443, as applicable to the present case, does not refer to any provision for taxation. This view is supported in the affidavit in opposition filed of behalf of the Corporation, where it is maintained that the imposition is a license fee and not a tax.

14. If the imposition that is sought to be levied is a license fee and not a tax, then it is obvious that the imposition must pass the tests mentioned above and here we come to a question of fact. In the affidavit in opposition filed in this case, affirmed by Sachindra Bhusan Gupta, dated 28-4-1958, we find as follows : The deponent describes himself as a Theatre Inspector of the Corporation of Calcutta. In the affidavit, the definite stand is taken that the imposition is not a tax but a fee, although it is submitted that even if considered as a tax, it is valid in law. A faint attempt has been made to show that the imposition is justified if considered as a fee, that is to say, there existed a quid pro quo. It is said that in order to effectively discharge the statutory duties imposed on the Corporation in regard to inspection, regulation and supervision and control of cinema-houses in Calcutta, it is necessary to provide for a more suitable machinery and establishment involving the employment of a much larger staff and consequently very large additional expenses have to be incurred in order to exercise better, fuller and more effective control over cinema-houses. It is pointed out that there is an over-growing need for protection regarding the health, safety and convenience of the public and the new scale of fees is reasonably required to cover the necessary expenditure involved in the control and supervision of cinema-houses in Calcutta. Reading this superficially, one would almost think that the Corporation of Calcutta was at last awakening to the needs of the rate-payers and that the increased imposition was indeed to be spent for the benefit of the license-holder only. A little consideration will serve to dispel this illusion. As I have stated above, in order to justify the quantum of fees levied in respect of any particular matter, what will have to be proved is that it has some correlation to the cost of the services rendered or to be rendered for that particular object. That the proposed increase is on a grand scale is not being disputed by anybody. We are faced in this case with an increase from Rs. 800/- to Rs. 18,000/-. What is suggested is that this increased amount is required to provide a more suitable machinery and establishment for inspection and control of cinema-houses. Some such thing was also attempted to be put forward in Sarat Chandra Ghatak's case (supra) but at hearing the plea was abandoned. The wav that inspection is carried on is by the appointment of Inspectors, who periodically visit the cinemas and see that the rules laid down for protection of the public from danger by fire etc. are followed. It may be that the staff requires to be increased, but nothing has been shown to establish that the enormous increase in the quantum of the license fees has any relation to the amount required ior a mere increase in the

number of Inspectors employed. In fact, the materials placed, before the Court are utterly insufficient. We are not told what the number of the present staff is and what is the proposed increase; what the present expenditure is and what is required to be expended. But I think that what may be considered to be decisive in the matter is that no resolution of the Corporation or any of its Standing Committees has been disclosed to show that there has been any desire on the part of the Corporation to increase the inspecting establishment in respect of cinema houses. Ample opportunities have been given for the filing of affidavits and production of records but no such resolution can be produced, for the simple reason that none exists. Surely, I cannot rely on the statement of a mere Theatre Inspector for purposes of establishing the intention of the Corporation, in the absence of any records of any kind. In the absence of such evidence, it is obvious that no correlation has been established between the amount of the fee which is sought to be levied and the services that are sought to be rendered. Apart from this, it seems to me that prima facie the fee is excessive. It is on the face of it, an imposition in the nature of a tax. Although a license-fee can be graded, it is not linked with the capacity to pay. Here, however, it seems that it is being linked with the capacity to pay of the tax-payer. Even before me the ultimate argument has been that cinema-houses in Calcutta are doing a roaring trade and the proprietors earn fabulous incomes, so why should they not make much larger payments to the Corporation, which sorely needs funds for carrying on its functions ? There is little to quarrel with this argument. The question, however, is as to the method by which this increased amount is to be imposed and collected. The law providing for any such imposition and collection must be a law that will pass the tests of legality. Obviously, such impositions must be by way of taxation and not license fees. Since the attempt has been made to levy an imposition in the nature of a license fee, the legal limitations must at once apply and however lofty the object, an illegal imposition must be struck down.

15. I, therefore, hold that the imposition that is sought to be made under Section 443 read with Section 548 (2) of the Act in the present case is not in the nature of a tax but is in the nature of a license fee and that it has not passed the tests of legality, inasmuch as there is no correlation between the quantum that is sought to be imposed and the services that are to be rendered. That is to say. there is no quid pro quo. It is also bad on the ground that the amount as is sought to be imposed is excessive. I must, however, mention here that the objection is merely to the increase in the fee and not to the existing fee.

16. Next, I have to examine the question as to whether the imposition can be justified as a tax, in case I am wrong in my conclusion that it is a fee and not a tax.

17. As I have already mentioned above, the argument on this heading may be divided into two parts. In the first part, it is said that there has been an improper delegation by the Legislature to the Corporation, of legislative functions without laying down any rational basis, principle, or policy for regulating the same. The second part challenges the validity of the law enabling the imposition, on the ground that it is violative of the fundamental right guaranteed to the petitioner under Article 19(1)(g) of the Constitution, namely, the right to carry on any occupation, trade or business. With regard to the first part of the argument, the matter is covered by my judgment in Matter No. 81 of 1956 : AIR 1959 Calcutta 86(A). (Judgment dated 21-11-1957). In that case, what was involved is the interpretation of Section 229 of the Calcutta Municipal Act, 1951. That section relates to the power of the Corporation to levy license-fee for advertisements. The particular case that was dealt with there related to advertisements displayed on the screen of

cinema houses. Section 229 lays down that every person who exhibits or displays any advertisement to public view, in any manner whatsoever, visible from a public street or other public place, must pay a license-fee calculated at such rate and in such manner and subject to such exemptions as the Corporation may prescribe by rules with the approval of the State Government. Thus, under that section also, the power is unlimited. For reasons given in my judgment mentioned above, I have held that the imposition was really in the nature of a tax and the section was bad as there was a delegation of power by the Legislature to a non-legislative body, without laying down any restrictions or without indicating any policy.

18. In *Gopal Chandra Mukherjee v. B.C. Das Gupta*[4], I have summarized the findings of the Supreme Court in the Delhi Laws Act (1912) In re, AIR 1951 Supreme Court 332. Applying those principles, I held that Section 229 was bad on the ground of improper delegation. The same reasons would apply to this case. It is unnecessary to repeat the reasoning in great detail in this case, but I may shortly state the fundamental principles that are involved. The power to delegate legislative functions generally is not warranted under the Constitution of India, at any stage. The whole scheme of the Constitution is based on the concept that the legislative function of the Union will be discharged by Parliament and that of the States by the respective State legislatures and no other body. The essentials of legislative function, viz., the determination of the legislative policy and its formulation as a rule of conduct are in Parliament or the State Legislature as the case may be and nowhere else. If, however, owing to unusual circumstances and exigency the Legislature does not choose to lay down detailed rules or regulations, that work may be left to another body which is then deemed to have subordinate legislative power. This is described as "subordinate legislation." The Legislature cannot, however, abdicate its legislative functions and, therefore, while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel Legislature. The essential legislative function consists of the determination or choosing of the legislative policy and of formula enacting that policy into a binding rule of conduct. It is open to the Legislature to formulate the policy as broadly and with as little or as much detail as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority which will work out the detail within the framework of that policy. So long as a policy is laid down and standard established by Statute, no constitutional delegation of legislative power is involved. It is equally true that where no policy is laid down but arbitrary power is given without limit, then there is a surrender of legislative function, in that no policy has been laid down or indicated. In the case of income-tax, which may be cited as a well-known form of taxation, the rate of tax to be levied is indicated each year by the Finance Acts. As I have pointed out in Sarat Chandra Ghatak's

[4]93 Cal LJ 304

case (Supra), it would be strange if the Legislature laid down that income-tax will be payable at such rate and in such manner as Government or the Commissioner of Income-tax prescribes. In the present case also, no limit is imposed. Section 548(2) gives unlimited right to the Corporation to lay down the rate. In a way this can be explained, if my decision that the imposition is a fee and not a tax be correct. If it is a fee, then there is an automatic restriction imposed upon the rate, because it cannot exceed the cost, charges and expenses required in connection with the services rendered or to be rendered by the Corporation for that particular matter, in respect of which the license-fee was being imposed. The ceiling would then be capable of calculation and determination and the provision of law would be quite valid. Taken as a tax, however, these internal restrictions do not apply. In such a case, the Legislature must lay down the policy or indicate the same and cannot leave an unlimited discretion to non-legislative bodies. If this were

not so, the consequences may be serious. The Corporation, may levy a tax in the nature of income-tax and charge people 15 annas in the rupee upon their profits. I do not think that such delegation of power without limit to a non-legislative body can be supported in law.

19. The second part of the question relates to an alleged violation of the fundamental right granted to the petitioner under Article 19(1)(g) of the Constitution. This, again, is divisible into two parts. It is, firstly, argued that there is a violation of the provisions of that Article by imposition of an unreasonably excessive amount which may lead to the extinction of the petitioner's business. Secondly, it is stated that the conferring of an uncontrolled and arbitrary power to the executive authority or a non-legislative body, to impose any amount of tax, constitutes an unreasonable restriction upon the fundamental rights granted to the petitioner under Article 19(1)(g). The first question that has to be determined is as to whether in the case of the imposition of a tax it is. permissible at all to apply the provisions of Article 19. The first case that may be cited is *Chintaman Rao v. State of Madhya Pradesh*[5], This was not a case of taxation, but it laid down the principle as to what was, or amounted to, "reasonable restriction" within the meaning of Article 19(6). The Central Provinces and Berar Regulation of Manufacture of Bidis (Agricultural Purposes) Act, provided that the Deputy Commissioner may by Notification fix a period to be an agricultural season in respect of a specified village and by the order prohibit the manufacture of bidis therein during the agricultural season. An order was issued by the Deputy Commissioner forbidding all persons residing in certain villages from engaging in the manufacture of bidis during a particular season. A manufacturer of bidis and an employee in a Bidi Factory within the prohibited area applied to the Supreme Court under Article 32 of the Constitution, alleging that there was violation of their fundamental right to carry on their trade or business, guaranteed to them under Article 19(1)(g) of the Constitution. Mahajan, J., held that the phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of a right should not be arbitrary or of an excessive nature, beyond what is required ill the interest of the public. The word "reasonable" implies intelligent care and deliberation, that is, a choice of a course which reason dictates. Legislation, which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) at Article 19, it must be held to be wanting in that quality. It was pointed out that the object of the Statute was to provide measures for the supply of adequate labour for agricultural purposes in bidi manufacturing areas. The object could well be achieved by restraining agricultural labour from being employed during the agricultural season, in

[5](1950) SCR 759 : (AIR 1951 SC 118)

the manufacturing of bidis. In point of time, there may have been a restriction if there was a regulation of the hours of work. But the effect of the provisions of the Act was drastic and much in excess of the object. It prohibited the manufacturer of bidis from employing any person within the specified period, whether he was likely to be employed in the process of agriculture or not. In other words, there was a total prohibition. The Act was struck down as being an unreasonable restriction upon the fundamental rights granted to the petitioner under Article 19(1)(g). Although the facts are not on all fours, the case has been cited to show that a restriction which practically amounts to a total prohibition or extinction of the right to carry on trade or business will be violative of the fundamental rights granted under Article 19(1)(g) of the Constitution.

20. The next case to be cited is *Mohammad Yasin v. Town Area Committee, Jalalabad*[6], This case involved the question of license-fee and tax. The petitioner was a wholesale dealer in fresh vegetables and fruit at Jalalabad in the State of Uttar Pradesh. The Town Area Committee of

Jalalabad framed a certain bye-law which virtually gave a monopoly in the sale of vegetable and fruit to a contractor, It was held that this was an imreasonable restriction on the fundamental rights of the petitioner under Article 19(1)(g) Das, J. (as he then was) said to follows :

> "Learned Counsel for the respondent in reply takes a preliminary objection to this line of argument. He points out that as the levying of a tax without authority of law is specifically prohibited under Article 265 of the Constitution, Article 31(1)(i) must be construed as referring to deprivation of property otherwise than by levying of a tax and that levying of a tax in contravention of Article 265 does not amount to a breach of a fundamental right. He contended on the authority of the decision of this Court in *Ramjilal v. Income-tax Officer Mohindar Garh*[7], that while an illegal imposition of tax may be challenged in a properly constituted suit, it cannot be questioned by an application under Article 32. This argument overlooks the difference between a tax like the income-tax and a license-fee for carrying on a business. A license-fee on a business not only takes away the property of the licensee but also operates as a restriction on his right to carry on his business for without payment of such fee business cannot be carried on at all .....

If therefore, the license-fee cannot be justifiable on the basis of any valid law, no question of its reasonableness can arise, for an illegal impost must at all times be an unreasonable restriction and will necessarily infringe the right of the citizen to carry on his occupation, trade or business under Article 19(1)(g) .....".

21. In AIR 1951 Supreme Court 97 an application was made under Article 32 of the Constitution before the Supreme Court for appropriate orders for the protection of what the petitioner claimed to be his fundamental rights guaranteed by Articles 14 and 31. The contention of the petitioner was that while the people of Kapurthala, which is included in Pepsu had been asked to pay income-tax for the period prior to 28-9-48 at the old rate fixed by the Kapurthala Income-tax Act, which was lower than the rate fixed by the Patiala Income-tax Act, 2001, the people of Nabha, who had not to pay any income-tax

[6](1952) SCR 572: (AIR 1952 SC 115)

[7](1951) SCR 127: AIR 1951 SC 97

prior to 28-9-48 at all, have been made liable to pay at the higher Patiala rate and that such discrimination offended against the provisions of Article 14 and also it invaded the petitioner's fundamental right to property guaranteed by Article 31(1) of the Constitution. It was held that Article 265, which is in Part XII, Chapter I, provided that no tax shall be levied or collected except by authority of law. If collection of taxes amounted to deprivation of property within the meaning of Article 31(1), then there was no point in making a separate provision again as has been made in Article 265. In the United States of America power of taxation is regarded as distinct from exercise of 'police power' or 'Eminent domain.' Our Constitution evidently has also treated taxation as distinct from compulsory acquisition of property and has made independent provision giving protection against taxation save by authority of law. Article 265, not being in Chapter III of the Constitution, its protection was held not to be a fundamental right which can be enforced by an application to the Supreme Court under Article 32. In *Himmatlal v. State of Madhya Pradesh*[8] it was held that Explanation (ii) to Section 2 (g) of the Central Provinces and Berar Sales Tax Act 1947 as amended by Act XVI of 1949. being ultra vires, any imposition of

sales tax was without authority of law and that being so, a threat by the State by using the coercive machinery of the impugned Act to realise it amounted to an infringement of the appellant's fundamental right under Article 19(1)(g) of the Constitution and the appellant was entitled to relief under Art, 225 of the Constitution. In the *State of Bombay v. United Motors (India) Ltd*[9]*.,* the question of sales tax and the validity of a law imposing sales tax was involved. It was held that the principle that the Court will not issue a prerogative writ when an adequate alternative remedy was available would not apply and where a party came to the Court with an allegation that his fundamental right 1ms been infringed and sought relief under Article 226, relief should be granted.

22. It thus appears that the construction that might be nut upon Ramjilal's case (supra), namely, that in the case of a tax, the fundamental rights guaranteed by Article 19 can never be invoked, would not be a correct one. Mr. Gupta appearing on behalf of the respondent has conceded that the proposition in such a broad form would not be correct. A tax may be such that it seriously hinders the carrying on of business. While the Courts could not interfere simply on the ground of hardship, in the case of an unconscionable tax, it could interfere if the quantum of taxation was such as to make the carrying on of trade or business wholly impossible. To give an example, supposing if the provision as to taxation laid down that 16 annas of the profit would have to be paid in tax, then naturally no one would be foolish enough to carry on any business and it would mean a total extinction of it. Such a provision would be an unreasonable restriction and would militate against the fundamental rights granted by the Constitution and would be struck down. Mr. Gupta, however, has rightly pointed out that in this case there is no evidence whatsoever before the Court that the quantum of tax was so high as to make it impossible for the petitioners to carry on business. In other words, there is no evidence to show that the quantum of tax was so high as would lead to extinction of their business. Mr. Gupta says that Cinema houses earn fabulous incomes and although there has been a sudden jump in the quantum of taxation, it is not at all difficult for the petitioners to pay such taxes and it will not affect their business in any way. It is true that I have not got evidence one way or the other. It is impossible on the materials before me to hold that the quantum was so high

[8](1954) SCA 654: (AIR 1954 SC 403)

[9] AIR 1953 SC 252(1)

as to make it impossible for the petitioners to carry on their business. While it is possible to hold that taken as a fee it is unreasonably excessive, it is not possible to hold upon the materials before me that taken as a tax, the quantum alone makes it an unreasonable restriction upon the rights of the petitioners to carry on their business.

23. The next line of argument advanced by Mr. Mukherjee is that there has been a violation of the fundamental rights granted to the petitioner under Article 19(1)(g) inasmuch as an arbitrary power has been given to the executive and/or a non- legislative body to lay down any restriction, it likes, so far as quantum of tax: is concerned. He argues that this amounts to an unreasonable restriction of his client's fundamental rights under Article 19(1)(g). As I have pointed out above, this argument can only be sustained upon the footing that it is a tax and not a fee. If it is a fee, then there is an implied restriction. If it is a tax, then there is no implied restriction and consequently there is no limit. If it is a tax, the Corporation can, even though acting under the guise, of levying a license-fee, make the fee as high as it likes without any limit and without any indication in the Act as to the ceiling of any such imposition. I have already referred to the case of Chintaman Rao (F) (supra) where it was held that the order passed by Deputy Commissioner

whereby everyone within a specified arose was prohibited from being engaged in the manufacture of bidis, amounted to an unreasonable restriction.

24. The next case cited is The *State of Rajasthan v. Nath Mal*[10] In that case, the last portion of Clause 25 of the Rajasthan Foodgrains Control Order, 1949 was struck down. Ghulam Hasan, J. said as follows :

> "The last portion of Clause 25 to the effect that 'such stocks shall also be liable to be requisitioned or disposed of under orders of the said authority at the rate fixed for purposes of Government pro cerement', however stands on a different footing. The clause, as it is worded, leaves it entirely to the Government to requisition the stocks at any rate fixed by it and to dispose of such stocks at any rate in its discretion. This obviously vests an unrestrained authority to requisition the stocks of foodgrains at an arbitrary price X X X. We hold, therefore, that the last portion of Clause 25 places an unreasonable restriction upon the carrying on of trade or business and is thus an infringement of the respondent's right under Article 19(1)(g) of the Constitution and is, therefore, to that extent void."

25. It will be observed that the principle laid down, which is necessary for our purposes, is that when a non-legislative body like Government is given a power which is unrestrained and arbitrary and which may cause prejudice to the rights of the citizen to carry on trade or business, then such power should be struck down. It is no answer to say that Government or the Corporation were not likely to act arbitrarily. The test of constitutionality is not whether a matter is capable of being acted upon within such limits. It would be had so long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out - *Romesh Thapper v. The State of Madras*[11]*,*

26. The last case cited on this point is *Dwarka Prasad v. State of Uttar Pradesh*[12] That was a case in which certain provisions

[10](1954) SCR 982: (AIR 1954 SC 307)
[11] AIR 1950 SC 124
[12](1954) SCA 204 : (AIR 1954 SC 224)

of the Uttar Pradesh Coal Control Order, 1953 were challenged on the ground that they violated the fundamental rights of the petitioners guaranteed under Article 19(1)(g) of the Constitution. Under the impugned provisions of the Coal Control Order the carrying on of business in coal could be restricted by imposing the necessity of taking out a license. The licensing authority had been given absolute power to giant or refuse to grant, renew or refuse, suspend, revoke, cancel or modify any license under the Order. It was held that the power of granting or withholding licenses or of fixing the prices of goods would necessarily have to be vested in certain public officers or bodies and they would certainly be left with some amount of discretion in these matters. But a law or order, which confers arbitrary or uncontrolled power upon the executive in the matter of regulating trade or business in normally availably commodities cannot but be held to be unreasonable, The phrase "reasonable restriction" connotes that the limitation imposed upon a person in the enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public.

27. In my opinion, it is now firmly established that an uncontrolled and arbitrary power without

any restriction whatsoever cannot be granted to the executive or a non-legislative body, if it is possible by the exercise of such power to affect the rights guaranteed to a citizen to carry on trade or business. Since even the levy of a tax can be made the subject-matter of violation of fundamental rights under Article 19, I do not see why the principle laid down in the cases cited above should not be taken to lay down that an unrestricted or arbitrary power which is so wide in terms as to make it possible for the executive or a non-legislative body to impose such a tax as would make it impossible or onerous for a citizen to carry on his trade or business, should not be struck down. In this case, viewed as a 'tax, the impugned provision enables the Corporation to levy any quantum of tax it likes' under the guise of a license-fee. As I have mentioned above, if this law is not struck down, then whatever the license-fee is, even if it amounts to 15 annas in the rupee, would pass the test of legality. It would be no answer to say that Corporation wag not likely to impose such a tax. The question is whether under the particular provision of law it is capable of doing so. In my opinion, therefore, this point ought to succeed and the arbitrary and unrestricted provision contained in the impugned section should be struck down.

28. Mr. Atul Gupta appearing on behalf of respondent has not seriously challenged the principles as regards delegation, or as regards violation of the fundamental rights mentioned above. In order to counter the argument made on these points by the petitioner he has advanced an ingenious argument which is as follows : He says that Section 548(2) of the Calcutta Municipal Act, 1951 is not a new provision but is a re-enactment of Section 498(2) of the Calcutta Municipal Act, 1923. In fact, it is identical, except that the words "or written permission" have been added after the words "which is known" in the last but one line. He argues that the Calcutta Municipal Act, 1923 was enacted by the Provincial legislature under the Government of India Act, 1919. Section 10(1) and Section 10(3)(a) of the Government of India Act, 1919 which is included in Section 80A of the parent Act of 1915 run as follows :

> "10. (1) The local legislature of any province has power subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that Province.
> X X X X X
> (3) The local legislature of any Province may not without the previous sanction of the Governor General, make or take into consideration any law-
> (a) imposing or authorizing the imposition of any new tax unless the tax is a tax scheduled as exempt from this provision by rules made under the principal Act; x x x x"

Mr. Gupta argues that when Section 498(2) came to be incorporated in the Calcutta Municipal Act, 1923 the provincial legislature with the previous sanction of the Governor General, was exercising the power granted to it under the provisions of the Government of India Act, 1915 and the Government of India Act, 1919 as stated above. In other words, it was exercising the power to authorise the imposition of a new tax. Mr. Gupta argues that in such a case the question of improper delegation does not come into the picture at all because the Government of India Act, 1919 was made by the British Parliament which was supreme and in such an Act of Parliament there is no question of improper delegation of power. He says that the British Parliament being supreme, was not restricted by any constitutional limitation as to the delegation of powers and could therefore not only make a law vesting the State legislature with power to impose a tax, but

also vesting it with the power to authorise some one else to impose it. Consequently, when the provincial legislature with the previous sanction of the Governor General, empowered the Corporation to levy a tax as laid down in Section 498(2) of the Calcutta Municipal Act, 1923 it was acting within the powers conferred by the provisions abovementioned in the Government of India Act, 1915 and the Government of India Act, 1919. By this argument he seeks to counter the point as to improper delegation of power by the State legislature to the Corporation. His second argument goes even further. This part of the argument is based on Article 277 of the Constitution which runs as follows :

> "No taxes, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any Municipality or other local authority or body for the purpose of the State, Municipality, district or other local area may, not withstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purpose until provision to the contrary is made by Parliament by few.

29. Mr. Gupta argues that he has already shown that the relative provision in the 1923 Act was in accordance with law. Therefore, it was a law which, immediately before the Constitution came into being, was a valid law. Therefore, whatever be the shortcomings of such legislation under the Constitution, it would be saved by Article 277. If this be a valid argument, then of course, no further question arises, because whatever be the defects wider the Constitution are remedied by an express provision in the Constitution and neither the question of improper delegation nor the question of a violation of the fundamental rights can render the law invalid. The argument is undoubtedly attractive, but in my opinion of no substance. Coming to Section 80A of the Government of India Act, 1919 it is undoubtedly an Act passed by the British Parliament, which being a sovereign body, could delegate the power of making laws to a non-legislative body, or could give power to a legislative body to empower a non-legislative body, or delegate to such a body, the power to make laws. In my opinion, however, the particular provision that has been mentioned viz., Section 10(3)(a) which is contained in Section 80A of the parent Act cannot be construed as a power granted to the local legislature of any Province to authorize a non-legislative body to promulgate a law. All that it says is that the local legislature of any Province could authorize the imposition of new taxes with the previous sanction of the Governor General. I do not find in this a power granted to the Provincial legislature to allow the Corporation to make a law imposing a tax or to make a law imposing a tax without any limit or restriction. But assuming that Mr. Gupta's argument is correct and that the relative provisions in the Government of India Acts mentioned above, empowers the Provincial legislature with the previous sanction of the Governor General, to authorize the Corporation to levy a tax without limit or without the laying down of any policy, then it would affect only the Calcutta Municipal Act, 1923. In this case, however, we are dealing with the Calcutta Municipal Act, 1951 which came to be enacted after the promulgation of the Constitution and which repealed the Calcutta Municipal Act, 1923. It is not disputed that the present taxation is sought to be levied under Section 548(2) of the Calcutta Municipal Act, 1951. When it came to the promulgation of the Calcutta Municipal Act, 1951 by the State Legislature, the Constitution had already come into, being and its provisions were paramount. Thus, the entire basis of the argument of Mr. Gupta falls to the ground. It may be that in the 1923 Act, no question of improper delegation could arise. But under the Calcutta Municipal Act, 1951 both the question of improper delegation, as well as violation of the

fundamental rights, apply in full force.

Being faced with this, Mr. Gupta has sought to escape through the provisions of Article 277. He says that whatever infirmities there may be, are saved by Article 277. It will be therefore necessary to examine the provision of Article 277 a little more closely. Shortly put, that article lays down that any tax which was being lawfully levied by any Municipality for its purpose, immediately before the Constitution came into being, notwithstanding that such a tax was mentioned in the Union List in the Seventh Schedule of the Constitution, shall continue to be levied for such a purpose, until provision to the contrary is made by Parliament by law. I do not see what this article has got to do with the Calcutta Municipal Act 1951 or any tax imposed thereunder. What this article means is quite clear. As is well known, the Government of India Act, 1935 contained allocations between the Federal legislature and the Provincial legislature. Under the Constitution, the division is now between the Union legislature and the State legislatures. All that this article says is that if a Municipal tax was levied under the State List, which is now included in the Union List, then although the law relating to Municipalities appertains to the State List, still, such a tax will continue to be levied and be applied in the same way as it was prior to the Constitution, in spite of the fact that these changes in the allocation of items have taken place, until Parliament promulgates a law to the contrary. The scope of this article is therefore a very limited one. It only deals with situations where under the Constitution a Municipal tax came under the Union List, although at the time of its imposition it was in the provincial list. I do not see that any such exigency has arisen in the present case. In fact, even if the 1923 Act is considered, I do not see that it comes within the narrow compass of this article. Mr. Gupta, however, would construe this article in the widest sense. According to him, this article relates to1 every sort of tax imposed by a Municipality before the Constitution and therefore in relation to such a tax, whatever be the infirmity, it continues to be a valid tax, even after the Constitution. Firstly, this wide interpretation is unwarranted. As I have already stated above, this article is meant to apply only in a particular contingency and in no other case. If there, is no shifting in the allocation between the Union and the State under the Constitution, corresponding to the Federation and the Province under the Government of India Act, 1935 this article has no application. Quite apart from this, there is another reason why Article 277 does not apply to the facts and circumstances of this case. As I have mentioned above Article 277 speaks about a municipal tax which was being levied before the Constitution came into being. It is argued by Mr. Gupta that such a tax would continue to be valid after the Constitution, whatever be its infirmities. A tax, however, cannot remain in the air. It is imposed by a certain Statute and it follows that if the particular Municipal tax remains alive after the Constitution then the provision of law which enables the imposition of the tax, must also remain alive. This is a position which Mr. Gupta had to concede. He had to admit that in order to save a tax levied under the 1923 Act, the provisions of that Act enabling the tax to be levied, must necessarily continue. Assuming for a moment that such was the position, all that happened was that the 1923 Act and the provisions therein relating to municipal taxation with which we are concerned, remained alive, whatever be their infirmities, under the Constitution, by virtue of Article 277. But in 1951 the Act of 1933 was wholly repealed and replaced by a new Act, which must be taken to have been passed subject to the Constitution. Obviously therefore the protection of Article 277 cannot extend to a tax which is being levied or sought to be levied not under a law which was in force immediately before the Constitution, but under a law which was passed after the Constitution came into force. Article 277 does not deal with such a legislation at all. Faced with this, all that Mr. Gupta had to say was that the relative provisions in the 1951 Act were virtually the same as in the 1923 Act and as the 1951 Act is a consolidating Act therefore one must construe its provisions as being

identical with the provisions of the previous Act. Mr. Chose following Mr. Gupta has tried to argue that in the case of consolidating Acts, we must not treat one Act as different from another but deem the consolidating Act to be a continuance of the previous Act. I am unable to follow this argument. A consolidating Act is passed in order to gather together the existing law in one place. So far as the 1951 Act is concerned, nobody can argue that its provisions are identical with the 1923 Act. It may have consolidated the law, inasmuch as it might have put in one place the law scattered here and there. The Act of 1951 is not only a consolidating, but also an amending Act. It is thus impossible to hold that the 1951 Act and the 1923 Act must be considered to be the same. In fact, it is difficult to discover why the 1951 Act was at all called a consolidating Act and as to what it has consolidated. So far as I can see, it is more an amending Act than a consolidating Act. The position therefore appears to me to be quite clear. Under Article 277, assuming it to have the wide application as contended for by Mr. Gupta, it is only the provisions of taxation contained in the 1923 Act, which could be saved. But the provisions relating to municipal taxation for all times to come cannot be saved. In other words, it cannot be contended that for all times to come, a municipal tax may with impunity violate the provisions of the Constitution, just because there was a similar tax in vogue before the Constitution came into being, under a law which has since been repealed and therefore has come to an end. That, in my opinion, would be an intolerable situation. This position seems to be borne out to a certain extent by a Madras decision; *J.N. Ran v. State of Madras*[13], In that case, the State Government levied certain duties on medicinal preparations prior to the Constitution. After the Constitution came into being, a new duty was imposed by

[13] AIR 1954 Mad 643

Notification elated 18-11-1952. In the meantime, the subject had become transferred to the Union List. The question was whether this new duty imposed by the State Government could be supported. Aiyar, J. after referring to Article 277 of the Constitution said as follows :

> "This provision would enable the Government to continue to levy such duties on medicinal preparations as were being levied by them prior to the Constitution and that would wave the levy of duty under Notification No. 473. But here we are concerned with a new duty imposed for the first time by the Notification dated 18-11-1952. As neither the legislature nor the Government of Madras had on that date any competence to impose a duty on medicinal preparations, imposition under Notification No. 941 is not within the saving of Article 277 and must be held to be ultra vires."

In this case the tax imposed under the 1951 Act may be of the same character as that imposed under the 1923 Act. But they are imposed under different Statutes and must be considered as different impositions altogether.

30. This also brings into prominence another aspect of the matter which is relevant on the question as to whether the present tax is a new tax or not. If Article 277 was to apply, then according to Mr. Gupta, the provisions of the 1923 Act relating to the taxation in question must be rent alive and the tax must be deemed to be imposed or realized under that Act. But let us regard the increased amount which is being imposed under the 1951 Act. Can it be said that this increase was being imposed under the 1923 Act ? Being faced with this, Mr. Gupta had to confess that this increase could not be said to be imposed under the 1923 Act, but he argued that in such a case we must consider the two Acts as existing side by side, that is to say, the main

imposition being under the 1923 Act and the additional imposition being under the 1951 Act. In my opinions the position is too absurd to be contemplated. It is obvious that the increase is under the 1951 Act and is not governed by Article 277. The petitioners here have not pressed their objections to the tax that was in existence prior to the increase. In other words, the objection is as to the increased amount and as it is conceded that it is under the 1951 Act it cannot be saved under Article 277, if it is otherwise invalid.

31. Lastly, I come to Article 276 of the Constitution which has been referred to by both sides, the relevant provision is as follows :

> "276. (2) The total amount payable in respect of any one person to the State or to any one Municipality, district board, local board or other local authority, in the State by way of taxes on profession, trades callings and employments shall not exceed two hundred and fifty rupees per annum :
> Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipal board or authority a tax on profession, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law and any law so made by Parliament may be made either generally or in relation to any specified State, municipality, board or authority."

It is argued on behalf of the petitioner that, in any event, they cannot be called upon to pay any amount in excess of what it was paying immediately before the Constitution came into being. So far as the petitioner in this case is concerned, it was in the neighborhood of Rs. 800/-. Mr. Gupta has argued that this provision only applies to license-fees like trade licenses and so forth and cannot apply to taxes generally. I am inclined to agree with his point of view. But since I have held that the payment in dispute is in fact a license-fee, the matter becomes of importance. Since however, the petitioners in all these cases are not urging that payment should be limited to Rs. 250/-, I need not deal with this aspect any further. To summaries, I hold that the imposition under Section 548(2) of the Calcutta Municipal Act 1951 read with Section 443, as applied in the case of a cinema-house, is a license-fee and not a tax and the amount demanded in excess of what was being paid before the impugned notice dated 25-3-1958 in this case and the impugned notices in the other cases, are excessive and unreasonable and for which no quid pro quo has been established on behalf of the Corporation. The increased demand is therefore illegal and must be struck down. If the said imposition is considered to be a tax still if is bad, firstly, because there has been an improper delegation of legislative power and secondly because by reason of an unrestricted power being delegated to a non-legislative body, there has been an infringement of the fundamental rights of the petitioner under Article 19(1)(g) of the Constitution. Section 548(2) of the Act would then be ultra vires and invalid and the imposition there under is not saved by Article 277 of the Constitution. Cut as the imposition is held to be license-fee it is not necessary to declare Section 548(2) to be invalid. As regards Article 276(2) of the Constitution, it is not necessary for me to decide whether the payment should be confined to Rs. 250/-, in view of the fact that the petitioners are quite willing to pay the amount which they were paying before the increase that has been demanded under the impugned notices. This rule and the other rules which have been heard with it, must consequently be made absolute and the impugned resolution of the

Corporation dated 14-3-1958 and the notices served on the petitioners in these cases in so far as they relate to an increase in the license fee payable must be quashed by a Writ of Certiorari and there will be a Writ in the nature of Mandamus directing the respondents not to give effect to the same. But this will be without prejudice to the right of the respondents to realize the license fees at the rate that they were being realized previous to the impugned notices.

32. There will be no order as to costs.

Rules made absolute.