KERALA HIGH COURT

Travencore Rayons Ltd

Vs

Textiles Committee

Original Petn. No. 2324 of 1969

(M.U. Isaac, J.)

03.03.1972

JUDGMENT

M.U. Isaac, J.

1. The petitioner is an in-corporated company, having a factory at Rayonpuram in Ernakulam District, wherein rayon yarn and cellulose film are manufactured. The term 'textiles' is defined in Section 2(g) of the Textiles Committee Act, 1963; and rayon yarn is a textile within the meaning of that definition. The Textile Committee Act is a Central enactment to provide for the establishment of a Committee for ensuring the quality of textiles and textile machinery and for matters connected with it. The first respondent is the Textile Committee, constituted under that Act; and respondents 2 and 3 are the Union of India and the State of Kerala respectively.

2. Section 4 of the Act lays down the functions of the Committee. Section 11 provides for inspection and examination of textiles and textile machinery. Section 12 empowers the Committee to levy such fees as may be prescribed for such inspection or examination, or for any such service which the Committee may render to the manufacturers of textiles and textile machinery. It is necessary to notice the full ambit of the above provisions; and it is better to read them:-

> 'Section 4 (1) Subject to the provisions of this Act the functions of the Committee shall generally be to ensure by such measures, as it thinks fit, standard qualities of textiles both for internal marketing and export purposes and the manufacture and use of standard type of textile machinery.
> (2) Without prejudice to the generality of the provisions of sub-section (1), the Committee may-
> (a) undertake, assist and encourage, scientific technological and economic research in textile industry and textile machinery;
> (b) promote export of textiles and paganda for that purpose;
> (c) establish, adopt or recognize standard specifications for textile for the purposes of

export and for internal consumption and affix suitable marks on such Standardised varieties of textiles;

(d) specify the type of quality control or inspection which will be applied to textiles or textile machinery:

(e) provide for the inspection and examination of-

(i) textiles;

(ii) textile machinery at any stage of manufacture and also while it is in use at mill-heads;

(f) establish laboratories and test houses for the testing of textiles;

(g) provide for testing textiles and houses other than those established under clause (f);

(h) collect statistics for any of the abovementioned purposes from-

(i) manufacturers of, and dealers in textile;

(ii) manufacturers of textile machinery; and

(iii) such other persons as may be prescribed;

(i) advise on all matters relating to the development of textile industry and the production of textile machinery;

(j) provide for such other matters as may be prescribed.

(3) In the discharge of its functions, the Committee shall be bound by such directions as the Central Government may, for reasons to be stated in writing, give to it from time to time'.

Sec. '11. (1) The Committee may, on application made to it or otherwise, direct an officer specially authorized in that behalf to examine the quality of textiles or the suitability of textile machinery for Use at the time of manufacture or while in use in a textile mill and submit a report to the Committee.

(2) Subject to any rules made under this Act, such an officer shall have power to-

(a) Inspect any operation carried on in connection with the manufacture of textiles or textile machinery in relation or inspection standards have been specified;

(b) take samples of any article or of any material or substance used in any article or process in relation to which construction particulars, marks or inspection standards have been specified;

(c) exercise such other powers as may be prescribed.

(3) On receipt of the report referred to in sub-section (1), the Committee may tender such advice, as it may deem fit, to the manufacturer of textiles, the manufacturer of textile machinery and the applicant'.

Sec. '12. (1) The Committee may levy such fees as may be prescribed-

(a) for inspection and examination of textiles,

(b) for inspection and examination of textile machinery,

(c) or any other service which the Committee may render to the manufacturers of textiles and textile machinery:

Provided that the Central Government may, by notification in the Official Gazette, exempt from the payment of fees, generally or in any particular case.

(2) Any sum payable to the Committee under sub-section (1) may be recovered as an arrear of land revenue'.

The term 'textile machinery' has been defined in Section 2 (f) of the Act. Section 22 contains rule-making power; and clause (e) of sub-section (2) particularly provides for making rules prescribing the scale of fees that may be levied for inspection and examination under Section 12 exercise in exercise of the powers under the above section, the Central Government has made the Textiles Committee Rules 1965. Rule 21 provides for the levy of fees and prescribes the rates; and it reads:-

Rule '21. Fee for Inspection Examination and other services rendered by the Committee.-

(1)The Committee may with effect from 1st March, 1965 levy end collect for inspection and examination of textiles and textile machinery specified in column 2 of the Table below, the fee specified in the corresponding entry in column 3 of that Table:

TABLE

Sl.No.	Description of textiles and textile machinery	Fee
1.	Cotton cloth where the average count of yarn used in the cloth is less than 35s.	6 paise for every 100 Sq metres manufactured.
2.	Cotton cloth where the average count of yarn used in the cloth is 35s or finer.	10 paise for every 100 sq. metres manufactured.
3.	(a) Woollen yarn (excluding shoddy and carpet varn);	2 paise per kg. manufactured.
	(b) shoddy and carpet yarn:	1 paisa per kg. manufactured.
4.	(a) Man-made cellulosic or non cellulosic filament yarn (other than nylon filament yarn);	2 paise per kg. manufactured.
	(b) Nylon filament yarn.	6 paise per kg. manufactured.
5.	(a) Man-made cellulosic fibre cut to staple length.	1 paisa per 2 kg. manufactured.
	(b) Man-made non-cellulosic fibre out to staple length	2 paise per kg. manufactured.
6.	Textile Machinery (Assembled).	8 Paise per Rs.100 ad valorem on the ex-factory price of the machinery manufactured.
7.	Cotton yarn for export	2 paise per kg. inspected.
8.	Natural silk yarn or fabric for export.	50 paise per Rs.100 on f.o.b. price of the goods price of the goods inspected.

Note: 1. In the case of items 1 to 5 of this Table, packed production during a month will be taken as the quantity manufactured during the month.

Note: 2. Fents, rags and chindies will be excluded for the purposes of payment of fees in the case of fabrics.
Note: 3. Mixed varn fabrics will be deemed as exclusively made of the material the content of which accounts for 50% and above by weight in the composition thereof.

> (2) The Committee may levy and collect, for any other service rendered by it to the manufacturers of textiles and textile machinery such fees as it may fix with the approval of the Central Government'.

The rayon yarn manufactured by the petitioner admittedly falls under item 4 (a) in the Table; and the Committee is entitled to levy a fee of 2 paise per kilogramme for the inspection or examination of that textile with effect from 1st March, 1965.

3. Purporting to act under the above rule, the first respondent called upon the petitioner to pay a sum of Rs.46:955/- as fees .payable by it in respect of the rayon yarn manufactured in its factory during the period from 1-3-1965 to 31-3-1966. The amount was paid by draft sent to the first respondent as per the petitioner's letter, Ext.P-1 dated 6-4-1966. A few months later, the petitioner wrote to the first respondent by letter Ext.P-2 dated 30-12-1966, stating that the above amount was sent on the assumption that some service would be rendered by the first respondent, and requesting the first respondent to refund the said amount, since no service had been done for the rayon industry. There was no response to the above letter On 20th February, 1969, the first respondent by its letter Ext.P-3 wrote to the petitioner calling upon it to pay the fees in respect of rayon yarn manufactured with effect from 1-4-1966 and informing it that if a sum of Rs.25,881.02, being the fees payable till 31-3-1967 was not paid before 1st March 1969, proceedings would be taken to recover the same under Section 12 (2) of the Act as an arrear of land revenue. Thereupon the petitioner filed this writ Petition on 22-4-69 to declare that Rule 21 of the Textiles Committee Rules as ultra vires of the Act and that the first respondent is not entitled to collect from the petitioner any fees on the basis of the said rule, to quash the demand as per Ext.P-3 and to restrain the first respondent from collecting any amount as per the said demand, and to refund to the petitioner the sum of Rs.46.955/- paid as per Ext.P-2 together with interest.

4. The petitioner has stated several grounds in the petition in support of its contention that Rule 21 of the Textiles Committee Rules is ultra vires of the Act. I do not think that they are either relevant or sustainable. The petitioner is concerned only with the validity of item 4 (a) in Rule 21 under which the impugned levy has been made against him, and also with the sustainability of the levy made under the said rule. The petition has been subsequently amended by the petitioner by incorporating an additional ground of attack against the impugned levy. The new ground is that the fees collected by the Textiles Committee are identical in nature with the excise duty levied under the Central Excise and Salt Act, 1944, and that Parliament has no power to make such a levy in the garb of a fee. This contention can be summarily rejected. The duty collected under the Central Excises and Salt Act is a tax, while what Section 12 of the Textiles Committee Act empowers the Committee to levy are fees for the inspection and examination of textiles and

textile machinery and for any other services which the Committee may render to the manufacturers of textiles and textile machinery. Both are entirely different things. Even otherwise, there is no question of want of Parliamentary competence.

5. Two contentions were urged by counsel for the petitioner against the validity of the impugned few. One is that the fee levied under Item 4 (a) of Rule 21 is not under law a fee; and the other contention is that the few made against the petitioner is not warranted by the said Rule. The first contention requires a little more detailed statement; and I shall do so, when dealing with that matter. The second contention raises the question whether, on the facts, the case falls within the ambit of the Rule. I shall take up this contention first.

6. The petitioner's case is that the vice to the rayon industry by way of examination or inspection, and it has not even got any machinery or arrangement to do any such service to the said industry, and that Rule 21 is not therefore, attracted. It is difficult to know what exactly is the reply of the first respondent to the above contention though it has filed as many as five affidavits and also produced a number of documents. Most of the averments in these affidavits and the documents produced by the first respondent have very little relevancy to the points in controversy. Some of the averments are evasive if not misleading. I shall refer to one instance. In paragraph 5 of the petition, the petitioner states.-

> 'As far as the petitioner is aware, the first respondent has not been of any benefit either to the petitioner or to the other manufacturers of artificial yarn in the country. The first respondent has not rendered any service to the petitioner, and as far as the petitioner is aware it has not rendered any service to other manufacturers of artificial yarn'.

Paragraph 7 of the petition again states –

> 'As mentioned already, the first respondent has not rendered any service to the petitioner, or even to the rayon industry as such, much less the services referred to in Section 12 of the Act, for which alone the first respondent is authorized to demand fee'.

Paragraph 6 of the counter-affidavit dated 19-10-1970 purports to meet the above averments; and it states –

> 'The averment in para 5 of the affidavit that this respondent has not rendered any service to the manufacturers of ed. This respondent has rendered valuable service to the textile industry as a whole, and the petitioner also in particular'.

The reference is obviously to para 5 of the petition, and not of the affidavit. The petitioner averment is positive that the first respondent has not done any service to the petitioner's industry or to its knowledge to other manufacturers of artificial yarn. The reply is evasive and misleading. The alleged valuable services, rendered to the petitioner in particular are referred to in paragraph 20 of the above counter-affidavit. It reads.-

> 'The allegation of the petitioner that no services have been rendered to the petitioner by the first respondent is categorically denied. I say that the petitioner had from time to time

applied for pre-shipment inspection of fabrics 4.33 lakhs metres of man-made fabrics had been inspected by the first respondent during 1968 and 1969 on behalf of the petitioner.....'

The petitioner is not a manufacturer of rayon fabrics. During some years, the petitioner purchased and exported rayon fabrics. The export was subject to pre-shipment inspection by the first respondent. There is controversy whether a fee was being charged for that service. Whatever that may be, rayon fabric falls under item 5 in the Table in Rule 21 of the Textiles Committee Rules; and it provides for levy of a fee on ad valorem basis on the quantity of the fabric manufactured. What is impugned in this case is the fee levied on rayon yarn; and the preshipment inspection of rayon fabric has absolutely no relevancy to the question whether any service by way of inspection or examination is being rendered by the first respondent to the manufacturers of rayon yarn or to the petitioner in particular. The above position was clarified by the petitioner in its reply affidavit dated 19th October 1971. The first respondent filed a further-affidavit dated 17th December. 1971 paragraph 2 of which states as follows:

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'I say that the contentions leveled by the petitioner that no service has been rendered to the textile industry is false and baseless. I say that the first respondent has rendered several types of services to the textile industry as has been elaborately enumerated in paragraph 14 of the counter-affidavit dated 19th October 1970 filed by the respondents.....'

It is irresponsible to characterize the petitioner's contention as false and baseless. The petitioner has not stated anywhere that the first respondent is not rendering services to the textile industry. What the first respondent has done is to attribute a wrong statement or an imaginary contention to the petitioner, and then attempt to meet it. That serves no purpose. It is clear from the evasive manner in which the first respondent has behaved that it has not hitherto done any service by way of inspection or examination to the rayon industry in the manufacture of rayon yarn, nor has it any machinery or arrangement to do any such service. The first respondent has indirectly, perhaps unwittingly, admitted this fact in its counter-affidavit dated 8th November, 1971. wherein it has stated as follows:-

'I say that there is already a standard adopted by the first respondent for examination of rayon fabrics, and as far as inspection of rayon filament yarn is concerned, an inspection for rayon filament yarn is under preparation and would be put into operation in due course'.

Whether there is a standard adopted for examination of rayon fabrics or not is irrelevant. The alleged scheme under preparation for inspection of rayon filament yarn has not yet come into operation.

7. Rule 21 of the Textiles Committee Rules states in express terms that the fees that the Textiles Committee is empowered to collect are for inspection and examination of textiles and textile machinery specified in column 2 of the Table given in the rule. The different classes of textiles on which fees are levied are items 1 to 5, 7 and 8 in the Table: and item 6 is textile machinery. As already stated, the only item concerned in this case is 4 (a). The fees chargeable for different

items are at different rates and on different basis. It needs hardly to be stated that for inspection and examination of a textile falling under any one of the above items, a fee cannot be levied in respect of a textile falling under another item. In other words, a fee under Item 4 (a) can be levied only in respect of services rendered by way of inspection or examination of a textile falling under that item. There is, not yet any machinery or arrangement to render any such services. There is, therefore, no question of levying any fee under Rule 21 in respect of rayon yarn: and that the fee already collected and sought to be levied by the first respondent is without any authority of law.

8. In the light of the above finding, it is unnecessary to consider the first contention. However in view of the fact that the matter was elaborately argued. I shall deal with that contention also for the sake of completeness. Counsel for the Petitioner submitted that the fee levied under Item 4 (a) is not a fee under law on the following grounds:-

(i) A fee can be levied only for a service rendered;
(ii) The amount levied as fee for a particular service should be ear-marked for that service: and
(iii) The amount collected must be commensurate with the actual services rendered.

According to the petitioner, all these three essential characteristics of a fee are lacking. The first respondent is not rendering any service to the manufacturers of rayon yarn; the amount collected as fee is not ear-marked; and it has also no relation to the quantum of services, if any, contemplated to be rendered. The learned Advocate General appearing for the first respondent contended that a large volume of services of different types are being rendered by the first respondent for the textile industry as a whole, and that this was sufficient to justify the Jevy. He submitted that the fact that the manufacturers of rayon yarn, which is only one of the textiles, do not get any service, or that the petitioner as an individual does not receive any service in respect of his industry is not relevant. Regarding the other two characteristics, he contended that all the fees are collected for doing services for the textile industry in general, that the amounts thus collected are hardly sufficient to meet the expenses of the Textile Committee, and that the said two characteristics are therefore satisfied.

9. There is a fairly large number of decisions of the Supreme Court dealing with the distinction between a tax and a fee; and they indicate the essential characteristics of a fee. Reference was made to the following decisions during the course of the arguments. 1. *Commissioner. H.R.E. v. L.T. Swamiar*[1], 2. *Ratilal v. State of Bombay*[2], 3. *Jaganath v. State of Orissa*[3], 4. *Hingir-Rampur Coal Co v. State of Orissa*[4], 5. *S.T. Swamiar v. Commr. H.R. and C.E*[5]., 6. *Corporation of Calcutta v. Liberty Cinema*[6], 7. *Nagar Mahapalika v Durga Das*[7], 8 *Lakhan Lal v. State of Bihar*[8], 9. *Commr., H.R. and C.E. v. U*.

[1] AIR 1954 SC 282 [3] AIR 1954 SC 400 [5] AIR 1963 SC 966.
[2] AIR 1954 SC 388 [4] AIR 1961 SC 459 [6] AIR 1965 SC 1107
[7] AIR 1968 SC 1119 [8] AIR 1968 SC 1408

Krishna Rao[9], 10. *D.C. and G Mills v. Chief Commr., Delhi*[10], and 11, *Indian Mica and Micanite Industries Ltd v. State of Bihar*[11], I shall refer to a few of the above decisions, which would be more relevant in the context. One of the most important decision in which there is a detailed and illuminating discussion on the above aspects is AIR 1654 SC 282 Mukherjea, J. delivering the judgment of a Constitutional Bench of seven Judges of the Supreme Court stated that a neat definition of what tax means has been given by Latham, C.J. of the High Court of Australia in

Mathews v. Chicory Marketing Board[12]. and quoted the following passage from that decision-

> 'A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered'.

The learned Judge then elaborated the matter as follows :-

> 'It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax payer's consent and the payment is enforced by law. Vide *Lower Mainland Dairy v. Crystal Dairy Ltd*[13].,

The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the caver of the tax. This is expressed by saving that the levy of tax is for the purposes of general revenue which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said no element of 'quid pro quo' between the tax payer and public authority, see Findlay Shirras on Science of Public Finance, Vol. I, page 203. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax payer depends generally upon his capacity to pay. Coming now to fees, a fee is generally denned to be a charge for a special service rendered to individuals by same 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 vide Lutz on 'Public Finance' page 215. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.' There was an argument in the above case that a fee is a voluntary contribution which a person has got to pay only if he wants certain services. The argument was rejected; and the Court stated,-

> 'We think that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and that it is not totally absent in fees ..... Compulsion lies in the fact that payment is enforceable by law against a man in spite of his unwillingness or want of consent; and this element is present in taxes as well as in fees.'

Summing up the distinction between a tax and a fee, the court said,-

[9] AIR 1970 SC 1114 [11] AIR 1971 SC 1182 [13]1933 AC 168
[10] AIR 1971 SC 344 [12]60 CLR 263

> 'The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or 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 vide Findlay Shirras on Science of Public Finance Vol. I page 202. Public interest seems to be at the bottom of all impositions, but in a fee if is

some special benefit which the individual receives. As Seligman says it is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax the particular advantage if it exists at all is an incidental result of state action - vide Seligman's Essays on Taxation, page 408.'

'If as we hold, a fee is regarded as a sort of return or consideration for services rendered. It is absolutely necessary that the levy of fees should, on the face of the legislative provision, be co-related to the expenses incurred by Government in rendering the services. As indicated in Art, 110 of the Constitution, ordinarily there are two classes of cases where Government imposes 'fees' upon persons. In the first class of cases. Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred.

'A most common illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau, for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant, vide Seligman's Essays on Taxation, page 409, and if the money paid by licence holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regarded as a tax.

'In the other class of cases, the Government does some positive work for the benefit of. persons and the money is taken as the return for the work done or services rendered. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of general public, it could be counted as fees and not a tax.'

I shall also read the following passage from the decision of the Supreme Court in AIR 1954 SC 388 wherein the Court has reiterated the same principles and stated more precisely the salient characteristics of a fee.

'Fees on the other hand, are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of 'quid pro quo' which is absent in a tax. It may not be possible to prove in every case that the fees that ere collected by the Government approximate to the expenses that are incurred by it in rendering any particular kind of services or in performing any particular work for the benefit of certain, individuals. But in order that the collections made by the Government can rank as fees, there must be co-relation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services. This can be proved by showing that on the face of the legislative provision itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering these services.

Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must, be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be ear-marked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general purposes.

10. The learned Advocate General placed much reliance on the decision, of the Supreme Court in AIR 1961 SC 459. One of the contentions raised in the above case was that the cess imposed under the Orissa Mining Areas Development Fund Act, 1952, was not a fee under law. The Act provided for the constitution of a mining area, whenever the Government considered it necessary and expedient to provide amenities like, communications, water-supply and electricity for the better development of any area wherein any mine is situated or to provide for the welfare of the residents or the workers in any such area. Section 4 of the Act provided for the imposition and collection of a cess at a rate not exceeding 5 per cent of the valuation of the materials at the pit's mouth. After referring to the above provisions of the Act in detail, the Court said:-

> 'Thus the scheme of the Act shows that the cess is levied against the class of persons owning mines in the notified area and it is levied to enable the State Government to render specific services to the said class by developing the notified mineral area. There is an element of quid pro quo in the scheme, the cess collected is constituted into a specific fund and it has not become a part of the consolidated fund, its application is regulated by a Statute and confined to its purposes, and there is a definite co-relation between the impost and the purpose of the Act, which is to render service to the notified area. These features of the Act impress upon the levy the character of a fee as distinct from a tax.' Dealing with the contention that, regard being had to the extent of the few imposed and the manner in which it was collected, the cess collected under Section 4 of the Act was a duty of excise, the Supreme Court stated:-
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> 'In the present case, if the development, of the mining areas involves considerable expenditure, which necessitates the levy of the prescribed rate it only means that the services being rendered to the mining areas are very valuable, and the rate payer in substance is compensating the State for the services rendered by it to 'him. It is significant that the petitioners do not seriously suggest that the services intended to be rendered are a cloak and not genuine, or that the taxes levied have no relation to the said services or that they are unreasonable and excessive. Therefore, in our opinion the extent of the rate allowed to be imposed by Section 4 (2) cannot by itself alter the character of the levy from a fee with that of a duty of excise, if co-relation between the levy and the services was not genuine or real, or it the few was disproportionately higher than the requirements of the services intended to be rendered it would have been another matter.

Then as to the form in which the impost is levied, it is difficult to appreciate how the method adopted by the Legislature in recovering the impost can alter its character. The character of the levy must be determined in the light of the tests to which we have already referred. The method in which the fee is recovered is a matter of convenience, and by itself it cannot fix upon the levy the character of the duty of excise'. The learned Advocate General submitted that the position is the same in the case of the fee levied by the Textiles Committee, and that, in so far as the

impugned levy is made for rendering services to the textile industry in general and the amount collected is necessary and being actually spent for running a proper establishment to render such services and for rendering the same, the levy is a fee and the petitioner is bound to pay the same, though it may not get any actual service, since it is admittedly engaged in a textile industry.

11. The affidavits filed, on behalf of the first respondent have given facts and figures showing the amounts collectable end actually collected, and also the amounts spent by the Textile Committee during the relevant years; and they have also referred to the various kinds of services done to different classes of the textile industry. Section 7 of the Textile: Committee Act provides that all fees and other charges levied under this Act together with other moneys mentioned in the said section shall constitute 'the Textile Fund', and that the Fund shall be applied for meeting the administrative expenses of the Textiles Committee and for carrying out the purposes of the Act. Thus the amounts collected by way of fees are ear-marked by the statute itself for rendering services to the textile industry. The facts and figures furnished in the affidavits of the first respondent show that the total receipts by way of fees are commensurate with the total expenditure incurred by the Committee for administrative charges and for rendering various kinds of services to different branches of the textile industry. So the learned Advocate General is right in his submission that these two legal requirements are satisfied in the case of the fees levied under Rule 21 of the Textiles Committee Rules. It was not contended before me that the amount's collected have been extravagantly or unnecessarily spent, or that the expenses incurred by the first respondent for running any of its establishments have no proportion or co-relation to the services rendered to the textile industry. Therefore, the question whether a person paying a fee for services is entitled to question the propriety or reasonableness of the expenses incurred by the authority collecting the said fee does not arise for decision in this case.

12. The crucial question for decision is whether in the absence of any services rendered to the manufacturers of rayon, yard, and even of any establishment or machinery to render them any services, any few can be imposed on them as fees. I am unable to accent the argument that the petitioner would also be liable to pay the fee levied by the first respondent, as rayon yarn which it manufactures would fall within the definition of 'textiles', and the service which the first respondent renders are to the textile industry in general. It is true that .a fee can be lawfully levied from a person living or carrying on a business, in an area in respect of which certain services are rendered, or from a person who belongs to a class for whom services are available, though that person may not need any such services. But if the services actually rendered are so circumscribed or limited that a particular person cannot have the benefit of those services, in my opinion he would not be liable to pay a fee in respect of those services. If the services are not available to him, he does not really belong to that area or to that class in respect of which the services are rendered. The legal character of fee being what it is, a man for whom services are not available cannot be made liable to pay for the services, by including him by a statutory definition or by other statutory device in the area or class of persons which Sets the services. Quid pro quo is the essential character of a fee. The term 'textiles' is a word of wide amplitude; it has been given a very wide meaning in the definition of that term in the Textiles Committee Act. There are numerous classes of textiles. Services can be rendered for the some of the classes alone or for all classes generally. For services rendered for some classes, a fee cannot be levied from other classes. For services rendered for all classes generally, fees can be levied from all of them; but if no services are available to a particular class, the services rendered would not be services for all classes generally; it would be only services for those classes to whom the services are

available. Manufacturers of rayon yarn fall into a class separate from manufacturers of other yarns and manufacturers of fabrics of any kind. In my view, so ling as services are not provided or made available for manufacturers of rayon yarn, the fee livable under Section 12 of the Textiles Committee Act cannot be charged on them. The same would be the position with regard to the area of service. The fact that services are rendered to manufacturer in one State or some area cannot make a manufacturer in another State or area where the services are not actually available. liable for the fees. In substance, quid pro quo being the essence of the levy of a fee, a person to whom services are not available is not liable for the fee. The question whether he is availing of the services or whether he needs the same is irrelevant. I have already held that there is not even an establishment to render any services to the manufacturers of rayon yarn; and that the services rendered by the first respondent to the manufacturers of various other classes of textiles cannot be said to be services rendered to the textile industry in general, so long as those services are not intended nor available to the rayon yarn industry. It follows that the fee prescribed under Rule 21 of the Textiles Committee Rules cannot be levied from the petitioner.

13. The other decisions of the Supreme Court cited during the course of the arguments only reiterate the principles laid down in the three decisions referred to above; and it is not, therefore, necessary to make any particular reference to them. Reference was also made during the course of the arguments to a few decisions of the Kerala High Court dealing with the validity of certain fees collected by local authorities, under different statutes. These decisions refer to some of the decisions of the Supreme Court referred to above, and follow the principles laid down therein. No useful purpose would, therefore, be served by referring to those decisions.

14. The learned Advocate General invited my attention to two unreported decisions, which have upheld the validity of the levy of license fee from manufacturers of rayon yarn under Section 21 of the Textiles Committee Rules under somewhat identical circumstances. Copies of the judgments in those cases have also been made available for they perusal. The first decision is that of a learned Judge of the Madras High Court D/-4-3-1971 in *South India Viscose Ltd v. Textiles Committee*[14]. The contentions raised in that case were.-

1. There was no scope for charging a fee for inspection or examination of rayon yarn, since the Textiles Committee had not prescribed or recognised any standard specifications for the goods.
2. The levy was in the nature of a duty of excise; and it was a not fee, since there was no quid pro quo for the payment.
3. The fee can be levied only in respect of each class of the goods, and the levy in respect of every class must have a co-relation to the services rendered to that class.
4. The levy was illegal, as considerable part of the fees collected was being utilised for capital expenditure.

The learned Judge held that, on the facts and circumstances of the case, none of the above contentions can be sustained. The questions whether the impugned levy falls within the ambit of Rule 21 of the-Textiles Committee Rules, and whether a fee can be levied from a person in the absence of any establishment or arrangement to render him any services in consideration of that levy, have not bee neither raised or considered by the learned Judge.

15. The second decision referred to by the learned Advocate General is that of a learned Single Judge of the Allahabad High Court D/d. 6-11-1971 in Civil Misc. Nos.1422 and 1473 of 1969 (reported in 1972 Tax LR 2104 (All)). There is a very lone and learned judgment in that case.

The question whether the impugned levy falls within the ambit of Rule 21 of the Textiles Committee Rules has not been raised or considered in this case also. But the learned Judge seems to have considered the other question, namely whether a fee can be levied from a person in the absence of any establishment or arrangement to render him any services in consideration of that levy. The learned Judge seems to take the view that it is not necessary to have any such establishment or arrangement, and that the levy can be justified, if the setting up of the necessary establishment or arrangement to render services was in contemplation. The learned Advocate General invited my attention to several passages appearing in the above judgment in support of the above view and commended it for my acceptance. In paragraph 36 of the Judgment, the learned Judge says.-

> 'The industry which the Committee has to tackle is vast and varied; the Committee has not only to look after the manufacture of the textiles but also manufacture of textile machinery. The textile industry embraces within its fold manufacture of cloth, yarn and fabric of different varieties i. e. woollen, cotton, silk, artificial silk etc. The Committee has to cater to the internal as well as international marketing. It would be asking for the moon to require the committee to give attention to all the branches of the textile industry and to all its statutory functions simultaneously. The Committee has necessarily to establish priorities and preferences. The background against which the Act has been brought into force justifies the Committee in directing its immediate attention mainly in the services of export promotion and of manufacturers of exportable textiles. The Committees decision to deal with the other functions and with other textiles in gradual stages is understandable. Apart from the

[14](Writ Petn. No.2191 of 1969 (Mad))

activities which it has been carrying on at present it has laid down a programme for the future.'Speaking with great respect, there is no question whether the Committee has been doing all that it could possibly do or whether it has been observing the right priorities in the discharge of its functions. In my view, a person who is called upon by am authority to pay a fee is entitled to ask that authority what services it .can do for him, or what benefits he can derive in consideration of payment of that fee. It would be no answer for the authority to say that the person concerned would not get any services or derive any benefit at the present: but the authority is contemplating to set up an establishment to render him all services, and that he can have the benefit of it, if the scheme succeeds. The following statement appears in paragraph 39 of the Judgment.

> 'The planning of the Central Laboratory and the test is in aid of the services to be rendered to the manufacturers of all textiles including manufacturers of rayon and nylon yarn; and the Committee can legitimately claim that it is preparing itself to serve them in due course, and that such preparation is service, though indirect to the petitioner companies and thus the Committee is even now serving them. .....Just as employment of the staff is a form of service, so is construction of the Central Laboratory and test houses and purchase of equipment for them. Service to the entire class of persons for whom it is intended is service to every member of the class ..... The Committee then ought to

be held to toe rendering service to the petitioner companies by planning and constructing Central Laboratory and test house and purchasing the necessary equipments for them, though they are intended for the use of the entire textile industry. Besides, the Act conceives of the textile industry as an integrated whole and the textile fund created by the Act is a unitary fund to be utilised for the prosecution, and promotion of the objects of the Act in relation to the textile industry as a whole without referent units. In that view, the services rendered to the textile industry generally would tantamount to service to the various branches and the various constituent units of the textile industry. The fact that one branch of the textile industry benefits more than the other branches or that one unit of a branch of the textile industry receives greater service than the other units in the same branch is an irrelevant consideration and is of no consequence; for it is not obligatory in the concept of fee that every contributory should obtain uniform degree of service; the proportion of service can vary.'

With great respect, I am unable to agree with anything stated in the above passage, except with the last sentence there in. I have already expressed my views on, the aspects dealt with in the above passage; and as pointed out in that context, this is a case where there is no establishment or arrangement for rendering any services to the manufacturers of rayon yarn or for benefiting them in any manner; and in my opinion there is no scope or legal basis for levying a fee. The learned Advocate General stated that there is a decision of the Andhra Pradesh High Court also which has upheld the impugned levy in respect of rayon yarn. I have not been able to see a copy of that judgment. I regret that I am unable to arrive at the conclusion that the aforesaid three High Courts have taken in the matter.

16. For the reasons stated above, I hold that the first respondent is not entitled to few any fee from the petitioner under Rule 21 of the Textiles Committee Rules, so long as it is not rendering any service by way of inspection or examination of rayon yarn. Accordingly the first respondent is restrained from levying the said fee from the petitioner; end the demand made by lit as per Ext.P-3 is quashed. The petitioner cannot be Granted a writ of mandamus for refund of the sum of Rs.46.955/-paid as fee for the period ending 31-3-1966, since this writ petition has been filed more than three years after the said payment was made by the petitioner. That payment must have been made under a mistake of law; but there is no positive averment to that effect in the petition nor is there an averment that refund was demanded and it was wrongly refused by the first respondent. These things disentitle the petitioner for a writ of mandamus. In the result, I allow this writ petition to the extent stated above, and dismiss it in other respects. I make no order as to costs.

Order accordingly.