Secunderabad Hyderabad Hotel Owners ... vs Hyderabad Municipal Corporation, ... on 20 January, 1999

Equivalent citations: AIR 1999 SUPREME COURT 635, 1999 AIR SCW 286, (1999) 1 JT 75 (SC), 1999 (3) SRJ 90, 1999 (1) ADSC 177, 1999 (1) SCALE 70, 1999 (1) LRI 27, 1999 (2) SCC 274, 1999 (1) JT 75, (1999) 1 SCJ 279, (1999) 1 SUPREME 136, (1999) 1 SCALE 70

Author: Sujata V. Manohar

Bench: Sujata V. Manohar, A.P.Misra

PETITIONER:
SECUNDERABAD HYDERABAD HOTEL OWNERS ASSOCIATION & ORS.

Vs.

RESPONDENT:
HYDERABAD MUNICIPAL CORPORATION, HYDERABAD & ANR.

DATE OF JUDGMENT: 20/01/1999

BENCH:
Sujata V. Manohar, A.P.Misra

JUDGMENT:

Mrs. Sujata V. Manohar,J.

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

Under Section 521(1)(e)(ii) of the Hyderabad Municipal Corporations Act of 1955, except under and in conformity with the terms and conditions of a licence granted by the Commissioner no person shall, inter alia, carry on, allow to be carried on, in or upon any premises, any trade or operation which in the opinion of the Commissioner, is dangerous to life, health or property, or is likely to create a nuisance either from its nature, or by reason of the manner in which, or the conditions under which, the same, is or is proposed to be carried on. By an order of the Special Officer, Municipal Corporation of Hyderabad, dated 15.4.1972 a list of trades, operations etc. covered by Section 521(1)(e)(ii) was notified. The trades so covered include eating houses, hotels, restaurants,

Cafes, bars, tea stalls, canteens, coffee houses, tiffin rooms, cafeteria or any place where food is prepared and supplied or sold for the purpose of gain. Lodging houses were also covered.

Under Section 622 of the Hyderabad Municipal Corporations Act, 1955 whenever it is provided under the Act that a licence or a written permission may be given for any purpose, such licence or written permission shall specify the period for which and the restrictions and conditions subject to which, the same is granted. Under Section 622 (2) for every such licence or written permission a fee may be charged at such rate as shall from time to time be fixed by the Commissioner, with the sanction of the Corporation. Under the said order of 15.4.1972 the licence fees for the said trades were specified/revised. Where the monthly rent of an eating house etc. was up to Rs.50/- the rate of licence fee was Rs.50/-. The licence fees were graded depending upon the rent of the premises. The maximum licence fee where rent was above Rs.1,000/- was Rs.1,000/-. The same was the position with regard to lodging houses where the rates of licence fee varied from Rs.50/- to Rs.1,000/- depending upon the monthly rent of the premises. The rates so prescribed were higher than the rates in force earlier. This increase was challenged, but was upheld by the High Court.

Thereafter the Special Officer, Municipal Corporation of Hyderabad, by his order dated 6.4.1981 revised these licence fees. The said order, inter alia, stated that in view of the increase of the service charges rendered by the Municipal Corporation of Hyderabad, it was felt necessary to revise the existing schedule of rates of licence fee fixed under Section 622(2) of the Hyderabad Municipal Corporations Act, 1955. As a result of this revision the licence fee where the monthly rent was up to Rs.50/- was increased to Rs.100/- and the maximum licence fee where the rent was above 1,500/- but not more than Rs.2,000/- was increased to Rs.2,000/-. In respect of lodging houses the maximum licence fee where the rent was above Rs.4,000/- but not more than Rs.5,000/- was fixed at Rs.5,000/-. The licence fee was proportionately increased in respect of all categories of lodging houses and eating houses by the said order.

The present petitioners filed Writ Petiton No.3055 of 1981 in the High Court of Andhra Pradesh challenging the increase in the licence fee by the said order of 6.4.1981. The Learned Single Judge upheld the levy and dismissed the writ petition. An appeal before the Division Bench of the High Court filed by the petitioners was also dismissed by the Division Bench. The Division Bench held that since the Corporation is providing services in the form of inspection by the officials of the premises of the petitioners, and is also providing general services like lifting of garbage in the whole city for which staff is required, the Corporation is providing services though general in nature, to the persons or traders. The levy is not a tax. It upheld the levy as a fee. Civil Appeal Nos. 1811 and 1812 of 1988 are against the said judgment of the Division Bench of the High Court.

In 1987 the respondent-Corporation again revised and increased licence fees. The said increase is under challenge before the High Court. Thereafter by an order dated 12.10.1991 the respondent-Corporation again increased the licence fees of eating houses and lodging houses. The increase was four times the licence fee fixed in 1987. However, on 25.7.1992 the respondents have reduced this increase on the basis of a compromise arrived at between the Corporation and several groups of affected traders. The increased licence fee under the order of 25.7.1992 is twice the licence fee charged under the order of 1987. The petitioners were not parties to the compromise. They have

filed Writ Petition No. 238 of 1992 in this Court under Article 32 challenging the increased licence fee under the orders of 1992. Since common questions of law arise in all these proceedings they have been heard together. A chart showing the increase of licence fee for lodgings and eating houses from time to time is set out below:-

I.....T.....T.....T.....T.....T.....T.....T..J

---------- Description Annual li Annual li- Annual li- Annual li- of the trade& cence fee cence fee cence fee cencee fee operation to prevaili- increased increased revised in be licensed ng prior in 1981 in 1987 impugned to 1981 order

---

	Rs.	Rs.	Rs.	1991 Rs.	1992 Rs.
Lodging/Hotels Whre monthly rent is upto Rs.					
50/-	50/-	100/-	300/-	1200/-	600/-
Rent above 50/- not more than 100/-	125/-	150/-	450/-	1800/-	900/-
Rent above 100/- but not more than 200/-	200/-	250/-	750/-	3000/-	1500/-
Rent above 200/- but not more than 400/-	300/-	400/-	1200/-	4800/-	2400/-
Rent above 400/- but not more than 600/-	400/-	600/-	1800/-	7200/-	3600/-
Rent above 600/- but not more than 800/-	500/-	800/-	2400/-	9600/-	4800/-
Rent above 800/-					

but not more than 1000/- 600/- 1000/- 3000/- 12000/-6000/-

---------- Rent above 1000/-

but not more than 1500/- 1000/- 1500/- 4000/- 16000/-8000/-

---------- Rent above 1500/-

but not more than 2000/- 1000/- 2000/- 6000/- 24000/-12000/

---------- Rent above 3000/-

but not more than 4000/- 1000/- 4000/- 12000/- 48000/-24000/

---------- Rent above 4000/- 1000/- 5000/- 15000/- 60000/-30000/

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

The first question, therefore, which requires consideration is whether the increased licence fee under the orders of 1981 and 1992 is in the nature of a tax or a fee. In order to answer this question it is necessary to look at the nature of the licence which is granted. The hotel licence which is issued to each of the traders is subject to the conditions set forth in the bye-laws of the Municipal Corporation of Hyderabad

> relating to the regulation of eating houses or hotels mentioned in Section 521. These conditions are reproduced in the licence. These prescribe, inter alia, that (1) the building shall be situated at a suitable place and shall be spacious and have enough accommodation according to the requirements of business; (2) it shall be constructed of masonry and such other non-inflammable material as may be approved by the Commissioner; (3) a sign board of the hotel in English and at least one regional language shall be hung in front of the building; (4) the licensee shall put up a notice-board in a conspicuous part of the dining hall stating whether the articles of food are made of beef, mutton, ghee or oil.

There are several other conditions. e.g. the licensee shall make adequate provision for parking of cycles, motor cars or other vehicles of the persons visiting the hotel. The licensee shall provide suitable means of drainage, ventilation and lighting of such premises. The licensee shall provide in the kitchen suitable outlets for smoke. The licensee shall provide doors and windows with shutters fitted with wire gauge so as to make them proof against dust and flies. The licensee shall provide good supply of wholesome water. All cups, saucers etc. shall be rinsed in clear water. No vessels or utensils shall be used which are likely to get corroded or which would otherwise render obnoxious the article of food, and so on. There are a large number of conditions for the purpose of ensuring that the premises are safe and suitable, the food is wholesome and hygienic and there is adequate ventilation, drainage and so on. The respondent-Corporation is required to inspect the premises in question in order to ensure that the conditions are complied with. It also has the responsibility for inspecting and supervising the sale of foodstuff to ensure that all the conditions of licence pertaining to the preparation and sale of such food are complied with. The respondent is also required to ensure cleanliness, removal of garbage and maintenance of hygiene in these premises. Undoubtedly, the Corporation has the general duty to provide scavenging and sanitation services including removal of garbage and maintaining hygienic conditions in the city for the benefit of all persons living in the city. Nevertheless, hotels and eating houses by reason of the nature of their occupation, do impose an additional burden on the municipal corporation in discharging its duties of lifting of garbage, maintenance of hygiene and sanitation since a large number of persons use the premises either for lodging or for eating; the food is prepared in large quantity unlike individual households and the resulting garbage is also much more than what would otherwise be in the case of individual households. In fact, under Section 230 of the said Act the respondent-Corporation has the power to fix special rates of conservancy tax in respect of a hotel, club or other large premises. This, however, does not turn a licence fee into a tax.

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

In the case of The Commissioner, Hindu Religious Endowments, Madras v. Sri Laxshmindra Thirtha Swamiar of Sri Shirpur Mutt (1954 SCR 1005) one of the earliest cases dealing with the question whether the levy is a fee or a tax, this Court held that the Constitution and in particular the legislative entries in Schedule VII of the Constitution make a clear distinction between a tax and a fee. The High Court reproduced the definition of what "tax" means, given by Latham C.J. of the High Court of Australia in Matthews v. Chicory Marketing Board (60 C.L.R. 263, 276) (see at page 1040). "A tax" according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered". A fee on the other hand is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, as far may be, of various kinds of fees. It is not possible to formulate a definition that would be applicable to all cases. The Court then observed (at page 1042), "The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of the common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example, in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest". There is really no generic difference between tax and fee and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively a special assessments, fees and taxes. Our Constitution has, for legislative purposes, made a distinction between a tax and a fee.

In the case of Corporation of Calcutta and Another v. Liberty Cinema ([1965] 2 SCR 477 at page 483), this Court after referring to the constitutional provisions making a distinction between a fee and a tax, also went on to say that in our Constitution fees for licence and fees for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Article 110(2) and Article 199(2) where both the expressions are used indicating thereby that they are not the same. In other words, a distinction was made between fees for services rendered and fees which are regulatory. In Indian Mica & Micanite Industries Ltd. v. State of Bihar & Ors. (1971 Supp. SCR 319 at page 324), Om Parkash Agarwal etc. v. Giri Raj Kishori & Ors. etc. ([1986] 1 SCR 149) and The Municipal Council, Madurai v. R. Narayanan etc. ([1976] 1 SCR 333 at pages 339 to 400) the Court had considered a fee which was charged for services rendered. In all these cases the Court observed that when a fee is charged for services rendered an element of quid pro quo is necessary and there has to be a co-relationship of a general character between the cost of rendering such service and the fee charged. A number of other decisions were also cited in this connection. The position in respect of fees for services rendered is summed up in the case of Krishi Upaj Mandi Samiti and Ors. v. Orient Paper & Industries Ltd.([1995] 1 SCC 655 in paragraph 21).

In the present case, however, the fees charged are not just for services rendered but they also have a large element of a regulatory fee levied for the purpose of monitoring the activity of the licensees to ensure that they comply with the terms and conditions of the licence. Dealing with such regulatory fees, this Court in Vam Organic Chemicals Ltd. & Anr. etc. v. State of U.P. & Ors. etc. ([1997] 2 SCC

715 at page 726) observed that in the case of a regulatory fee no quid pro quo was necessary but such fee should not be excessive. The same distinction between regulatory and compensatory fees has been made in the case of P. Kannadasan & Ors. v. State of T.N. & Ors. ([1996] 5 SCC 670 in paragraph 36) as well as State of Tripura & Ors. v. Sudhir Ranjan Nath ([1997] 3 SCC 665 at

673).

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

> "169. Constitution of Municipal Fund :- (1)Subject to the provisions of this Act and the rules and the bye-laws -
>
> (a) all moneys received by or on behalf of the Corporation under the provisions of this Act or any other law for the time being in force, or under any contract,
>
> (b) .....
>
> (c) .....
>
> (d) all moneys raised by any tax levied for the purposes of this Act,
>
> (e) all fees and fines payable and levied under this Act or under any rule, bye-law or standing order in force thereunder,
>
> (f) .....
>
> (g) ....., and
>
> (h) all interest and profits arising from any investment of, or from any transaction in connection with any money belonging to the Corporation shall be credited to a fund which shall be called 'the Municipal Fund' and which shall be held by the Corporation in trust for the purposes of this Act, subject to the provisions herein contained.
>
> (2)....."

Section 174 describes the purpose for which the municipal fund is to be applied. It is, therefore, submitted that since all the fees form a part of the common municipal fund, and this fund is to be deployed for various purposes of the municipal corporation, there is no provision by which the fee collected is used for regulatory purposes. This Court, however, in the case of Sirsilk Ltd. & Anr. v. Textiles Committee & Ors. ([1988] Supp.(2) SCR 880 at pages 910, 912) has pointed out that a

separate fund is not essential in the case of regulatory fees. In the present case the Budget Estimate Rules are relied upon by the respondents in order to show that the fees are being utilised for regulatory services. The Hyderabad Municipal Corporation Budget Estimate Rules, 1968 under Rule 6 provide as follows:-

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

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

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

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

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

It is also contended that the fees charged are excessive. The respondents in their counter affidavit filed in the writ petition have given general figures to show that the total income from trade licence fees on the basis of the 1987 rates was Rs.1,08,25,588/- as per the revised estimates. With the increase in the licence fees in 1992 the income would be doubled to Rs.2,16,51,176/-. This would not

be sufficient for the sanitary and public health services including lifting of garbage, cleaning of roads, sanitation, medical centres, salaries of the staff employed and so on. The public health budget for the relevant period of the Corporation is to the tune of nearly Rs.13,95,40,000/-. Of course, these figures do not indicate separately the extent of fees collected from eating and lodging houses or the amount expended for regulating the activities of eating and lodging houses and rendering them services. In respect of the year 1981-82, when the first increase which is under challenge took place, the income from licences on the basis of the rates as enhanced in 1981, was to the tune of Rs.37,89,627/- while the expenditure on license section and sanitary section of the Corporation was Rs.3,85,11.961/-. The Corporation also pointed out that the annual salary bill in the year 1981 for the staff in various sections of the municipal corporation dealing with licences was Rs.40,45,585/-. The annual salary of the same staff in 1992 was Rs.1,75,31,943/-. The attempt of the Corporation is to show that the expenditure under various heads between 1981 and 1992 had more than doubled. Therefore, the increase in the licence fee which was made in 1981 for the first time after 1972, as also the increase made in the licence fee in 1992 were co-related with the increase in the cost of providing services ? whether regulatory or otherwise, to the trades in question. The respondents in their affidavit have also annexed budget estimates for the year 1989-90 in order to show that the licence fees collected are far less than the requirements of the municipal corporation for dealing with health services, sanitation, licencing section and so on. In the budget estimates for 1988-89 the licence fees from hotels, for example, are estimated at Rs.25,00,000/-. Revenue expenditure for the year 1988-89 as per budget estimates under sanitary, conservancy and scavenging section including establishment expenses, salaries and allowances are to the tune of Rs.10,14,61,100/-; while under the health office section, these are to the tune of Rs.31,30,400/-. Under prevention of food adulteration and municipal laboratory section, the estimated expenditure is to the tune of Rs.7,66,200/-. Undoubtedly, this expenditure covers not just the services rendered to the trades in question. It also covers services rendered to various other trades, to individuals and organisations and all other members of the public who benefit from such services rendered by the municipal corporation. Nevertheless, looking to the fact that the licence fees collected form only a very small part of the total expenditure incurred by the municipal corporation, we are not inclined to hold the levy of these fees as excessive. It is also necessary to note that the impugned increase in 1981 was the first increase after 1972. The High Court has rightly considered that looking to the increase in the cost of the various activities carried on by the Hyderabad Municipal Corporation, doubling of licence fees after nine years can not be considered as an excessive increase. In respect of the increase from the 1987 level of licence fees to the 1992 level of licence fees, the initial increase could have been viewed as excessive. But after the representations were made to the respondent-Corporation by the various traders affected by the increase in the licence fees, the municipal corporation reduced the increase and kept it at twice the licence fees charged in 1987. The respondents in this connection had meetings and detailed negotiations with the various trade organisations connected with the conducting of eating houses and lodging houses. The respondents have annexed the minutes of the proceedings before the Commissioner, Municipal Corporation of Hyderabad, dated 25.7.1992. The meeting of 25.7.1992 dealt with enhancement of licence fee of certain trades and operations. These cover the present trades and occupations. The proceedings record that the traders viewed the increase from the existing rates as on the high side and the increase in many cases was four to five times the existing rates. Aggrieved by the increase in the licence fee, the traders formed a Twin Cities Traders Joint Action Committee and made representations at various levels. Joint meetings

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

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

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