A.P. Paper Mills Ltd. Etc. Etc vs Government Of A.P. And Anr on 28 September, 2000

Equivalent citations: AIR 2000 SUPREME COURT 3290, 2000 (8) SCC 167, 2000 AIR SCW 3622, (2000) 4 ALLMR 862 (SC), 2000 (9) SRJ 287, 2000 (4) ALL MR 862, 2000 (1) JT (SUPP) 299, 2000 (6) SCALE 586, 2001 (3) LRI 661, (2000) 4 SCJ 155, 2000 SCC (L&S) 1077, (2000) 87 FACLR 610, (2001) 1 MADLW(CRI) 253, (2001) 1 MAD LW 834, (2001) 1 MAHLR 262, (2001) 1 ANDHLD 14, (2000) 6 SUPREME 473, (2000) 6 SCALE 586, (2001) 1 CURLR 297

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Bench: K.T. Thomas

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           CASE NO.:
Appeal (civil)  6317 of 1997

PETITIONER:
A.P. PAPER MILLS LTD. ETC. ETC.

RESPONDENT:
GOVERNMENT OF A.P. AND ANR.

DATE OF JUDGMENT: 28/09/2000

BENCH:
K.T. THOMAS & D.P. MOHAPATRA R.C. LAHOTI

JUDGMENT:
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JUDGMENT 2000 Supp(3) SCR 513 with Nos. 6335, 6337-44, 6336, 6345, 6348, 6346, 6349, 6319-30, 6347, 6318, 6333-34, 6331-32, 7215-18, 7546 of 1997 (From the Judgment and Order dated 12-12-1996 of the Andhra Pradesh High Court in WP No. 19274 of 1994), 1098-1100 of 1998, 6616 of 1997 and 5591 of 2000, decided on September 28, 2000.

The Judgment was delivered by D. P. MOHAPATRA, J. :

D. P. MOHAPATRA, J. - Leave granted in SLP (C) No. 12499 of 1997.

The controversy raised in all these appeals relates to validity of the revision of licence fee under the Andhra Pradesh Factories Rules, 1950 (hereinafter referred to as "the Rules") which was introduced by the State Government by GOMs No. 154, E and F Department, dated 26-7-1994. Since common questions of fact and law are involved in the cases, they were heard together and they are being disposed of by this common

judgment.

The appellants who are owners of factories located in the State of Andhra Pradesh challenged the levy of revised licence fee by filing writ petitions before the High Court of Andhra Pradesh. The challenge was on several grounds some of which are not relevant for the purpose of the present proceedings. Suffice it to state that the main grounds on which the revised licence fee was challenged were :

(i) that the Factories Act, 1948 (hereinafter referred to as "the Act") does not impose licence fee as there is no charging section;

(ii) that the fee imposed amounts to a fee on production of goods and therefore it is a "tax". The State has no power to levy the tax;

(iii) that the Rules or the Act do not provide any criteria or guidelines for fixation of the licence fee;

(iv) that collection of exorbitant fee to meet the State budget is a colourable exercise of power; so there is legal mala fide in enhancing the licence fee;

(v) that the State has no power to impose or enhance the licence fee for any alleged services rendered or proposed to be rendered under other legislations other than the Act, as the power is delegated under the Act only;

(vi) that the proposed strengthening of the Department and additional activities which are to be approved by the State Government cannot be a ground for revising the licence fee prior to increasing such expenditure.

The proposal of strengthening the Department is with reference to other enactments also; and(vii) the classification shown in the Schedule to Rule 5 itself shows that the classification is discriminatory and unreasonable. So it is violative of Article 14 of the Constitution of India.

In the counter-affidavit filed on behalf of the respondents the stand taken was that the fee is compensatory in nature. It was averred in counter- affidavit inter alia that due to progressive policies of the Government there is a tremendous growth of activity in the State; besides the phenomenal growth of number of factories, complexity of problems which are brought by the hazardous/major factories is multifaceted, thus the problems to be tackled by the Factories Department have become more multifarious and complex. Setting out the various types of jobs handled by the Factories Inspectorate it was stated in the counter-affidavit that at present there are about 26, 650 factories in the State and 39 Inspectors of Factories in the field. It is further averred in the affidavit that the Factories Department is a statute-enforcing Department for ensuring safety, health and welfare of industrial workers.

It is also stated in the counter-affidavit that the Department proposes to intensify the activities by strengthening and better equipping the Department from the additional licence fee.

It is also stated in the counter-affidavit that the Department not only issues licences but also undertakes statutory inspections, safety training programmes, etc., for better compliance of various statutory provisions to ensure safety in the industries and in order to concentrate and better monitor these major industries to prevent occurrence of accidents resulting in loss of lives and limbs of workers and loss of properties of the factory, it is essential that the Factories Department should strengthen itself by augmenting its resources and hence the amendment of existing licence fee schedule. Therefore, it was the contention of the respondent that this should not be construed as a tax for the purpose of raising revenue.In the judgment under challenge the High Court formulated the following points for consideration :

1. Whether the fee to be charged under the impugned GO amounts to tax or fee ?

2. Whether the fee levied has got any quid pro quo ?

3. Whether it is exproprietory or exorbitant and if so whether it amounts to tax, but not fee ?

4. Whether the impugned GO is arbitrary and discriminatory as no guidelines are provided in the Act ?

5. Whether there is a delegation of power by Parliament to the State Government and the same is excessive, unguided and in violation of the provisions of the Constitution of India ?

The High Court observed "the first and foremost point to be considered in this batch of writ petitions is - whether the fee levied amounts to tax"

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After discussing in detail the legal positions with reference to several decisions of this Court, the High Court summed up its conclusion on the point in the following words :

"We can safely say that the distinction between a 'tax' and a 'fee' lies primarily in the fact that a 'tax' is imposed for public purposes and is not, and need not be supported by any consideration of service rendered in return; whereas a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. Thus in 'fees' there is always an element of quid pro quo, which is absent in a 'tax'."

Testing the facts of the case in the light of the principles noted above, the High Court came to the conclusion that since the major part of the amount received as licence fee is spent for the services

rendered to the factories and the persons working therein, and since there is a nexus between the licence fee and the services rendered it cannot be said that the levy is a tax and not a fee. The High Court recorded the finding that the facts and circumstances mentioned in the counter-affidavit clinchingly establish that the Government is rendering services to the factories as provided under the Act and also other Acts where obligation is imposed on the Inspector of Factories, and therefore, the contention raised on behalf of the petitioners that there is no quid pro quo in the fee collected and the services rendered by the Department is not tenable. The High Court also repelled the contention raised on behalf of the petitioners that the impugned Government Order is arbitrary and discriminatory as there is no guideline provided under Section 6 of the Act. The contention that the classification of the factories for the purpose of levy of licence fee based on installed horsepower and number of workmen employed in the industry is arbitrary, was also rejected by the High Court as without any substance. On these findings all the writ petitions were dismissed. The writ petitioners have filed these appeals challenging the common judgment passed by the High Court dismissing the writ petitions.The main thrust of the submissions of learned counsel appearing for the appellants was that the enhancement of the licence fee from Rs. 10, 000 to Rs. 18, 00, 000 (maximum rates) is arbitrary, grossly high and has no correlation with the services rendered or proposed to be rendered by the respondents to the holders of the licence. It was the further submission of the learned counsel that since the licence fee in question is a fee and not a tax it has to satisfy the principle of quid pro quo for its validity and sustainability; on the facts emerging from the pleadings of the parties, particularly the counter-affidavit filed by the respondents, the principle of quid pro quo is not at all satisfied in the case. Therefore, submitted the learned counsel, the amended rule in which was introduced the revised set of licence fee should have been struck down as invalid and inoperative and the High Court erred in dismissing the writ petitions.

The learned counsel appearing for the respondents, on the other hand supported the judgment of the High Court. He contended that the quantum of fee collected has a nexus with the services rendered by the Department of the State Government in charge of enforcement of different laws governing factories in the State and keeping in view the large number of industrial units, particularly heavy industries which have come up in the State, the workload of the Directorate of Factories and the administrative department of the State Government has increased manifold requiring expansion of their establishments. In the circumstances submitted the learned counsel, the principle of quid pro quo is squarely complied with in the case.

Before discussing the merits of the contentions raised on behalf of the parties we may clarify the position that it was not the case of the appellants that the State Government has no power to levy the licence fee in question. It was also not contended on their behalf that the levy suffers from any other illegality or infirmity except the non-compliance with the principle of quid pro quo.On the contentions raised on behalf of the parties as noted above the question that arises for determination is whether the enhancement of licence fee under the Act is hit by the principle of quid pro quo. For answering the question it is necessary to find out whether the element of quid pro quo is applicable to the levy in question and if so, whether a reasonable corelation between the quantum of fee and services rendered is established on the materials on record.

Taking up the first question it is necessary to ascertain the nature of the licence fee under the Act; is it obligatory in character or is it a levy in lieu of some special services rendered to the payer of the fee.

Section 6(1)(d) of the Act provides that the State Government may make rules requiring the registration of licensing of factories or any class or description of factories, and prescribing the facts payable for such registration and licensing and for the renewal of licences. The section reads :

"6. Approval, licensing and registration of factories. - (1) The State Government may make rules -

(d) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences."

Chapter II (Sections 8 to 10) of the Act contains the provisions regarding the inspecting staff and the powers conferred on them. In Chapter III (Sections 11 to 20) are included the provisions relating to health on the premises of a factory. Similarly in Chapter IV (Sections 21 to 41) are incorporated the provisions regarding safety of the buildings and machineries. In Chapter IV-A (Sections 41-A to 41-H) are included provisions relating to hazardous processes. In Chapter V (Sections 42 to

50) the provisions regarding welfare of the persons working on the factory premises are contained. Chapter VI (Sections 51 to 66) contains the provisions regarding working hours of adult workmen. Chapter VII (Sections 67 to 77) deals with provisions regarding employment of young persons. Chapter VIII (Sections 78 to 84) deals with annual leave with wages of the workers of factories. Chapter IX (Sections 85 to 91-A) contains the special provisions dealing with the matters provided therein. In Chapter X (Sections 92 to 106-A) are included the provisions regarding penalties for offences under the Act and in Chapter XI (Sections 107 to 120) are included the supplemental provisions like Section 107 - appeals, Section 111 - obligations of workers, Section 111-A - rights of workers, Section 112 - general power to make rules, etc. In Section 112 of the Act it is laid down that the State Government may make rules providing for any matter which, under any of the provisions of the Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act.The Andhra Pradesh Factories Rules, 1950 were framed in exercise of the power conferred under Section 112 of the Act. In Rule 4 thereof it is laid down that the occupier of every factory shall submit to the Inspector an application in the prescribed Form 2 in duplicate for registration of the factory and the grant of licence thereof.

In Rule 5 in which provisions are made for grant of licence it is laid down in sub-rule (3) that an occupier shall not use any premises as a factory or carry on any manufacturing process in a factory unless a licence has been issued in respect of such premises and is in force for the time being, provided, that, if a valid application for grant of licence has been submitted and the required fee has been paid, the premises shall be deemed to be fully licensed until such date as the Inspector grants or renews the licence or refuses in writing to grant or renew the licence. In the Schedule to this Rule the different amounts of licence fee to be paid by the applicant depending on the installed horsepower and the number of persons employed in the factory are set out.

In Rule 7 provision is made regarding renewal of licences; in sub-rule (3) thereof it is laid down inter alia that some fee shall be charged for the renewal of licenses as for the grant thereof.

In Rule 11 the mode and manner of demand of fee is laid down. In sub-rule (1) of the said Rule it is laid down inter alia that every application under these Rules shall be accompanied by a treasury receipt showing that the appropriate fee has been paid into the local treasury under the appropriate head of account; provided that the appropriate fee may alternatively be paid by a crossed cheque or a bank draft drawn on any nationalised bank in favour of Inspector of Factories in whose jurisdiction the factory is situated.In sub-rule (2) of the said Rule provision for refund of fee paid by the applicant in case his application for grant/renew/transfer or amendment of licence is rejected, is made.

In sub-rule (3) of Rule 11 is provided that if the Chief Inspector is satisfied that a factory has not worked even on a single day during the period of licence, he may order the refund of the licence fee collected for that period.

From the provisions of the Act and the provisions of the Rules relating to grant of licence it is clear that the licence fee in this case is a regulatory fee and not a fee for any special services rendered. Indeed there is no mention of any special service to be rendered to the payer of the licence fee in the provisions. The purpose of the licence is to enable the authorities to supervise, regulate and monitor the activities relating to factories with a view to secure proper enforcement of the provisions. From the nature of the provisions it is clear that for proper enforcement of the statutory provisions persons possessing considerable experience and expertise are required. The question is whether the element of quid pro quo as it is understood in common legal parlance is applicable to a regulatory fee as in the present case. Before adverting to that question it will be helpful to notice a few decisions in which the question has been considered and decision regarding applicability or otherwise of the principle has been taken. The point has been dealt with in umpteen cases, but we propose to notice only a few of them.

In the case of Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt 1954 AIR(SC) 282 : 1954 SCR 1005) which is commonly referred to as Shirur Mutt case 1954 AIR(SC) 282 : 1954 SCR 1005) a Constitution Bench of this Court bringing out a distinction between a tax and other forms of impositions made the following observations :

> "A neat definition of what 'tax' means has been given by Latha, C.J. of the High Court of Australia in Matthews v. Chicory Marketing Board (1938 (60) CLR 263). '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".

This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law .... 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 payer of the tax. This is expressed by saying 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 taxpayer and the public authority .... Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.

Coming now to fees, a 'fee' 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, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

In Sreenivasa General Traders v. State of A.P. (1983 (4) SCC 353 : 1983 (3) SCR 843) a Bench of three learned Judges of this Court considered the validity of the levy of market fee and the enhancement of its rate under the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Market Act, 1966. Bringing out the conceptual distinction between "tax" and "fee" the Court observed :

> "The traditional view that there must be actual quid pro quo for a fee has undergone a sea change. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy become a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee or a tax, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be 'by and large' a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable 'relationship' between levy of the fee and the service rendered.
>
> There is no generic difference between a tax and a fee : both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to

> each individual who obtains the benefit of the service. It is now increasingly realized that merely because the collections for the services rendered or for grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the Shirur Mutt case 1954 AIR(SC) 282 : 1954 SCR 1005) was not drawn to Article 266 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not to the consolidated fund. The element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax.* * * It is not always possible to work out with mathematical precision the amount of fee required for the services to be rendered each year and to collect only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income of a market committee by way of market fee and licence fee may exceed the expenditure and in another year when the development works are in progress for providing modern infrastructure facilities, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into consideration to decide whether the fee is commensurate with the services rendered. An overall picture has to be taken in dealing with the question whether there is quid pro quo i.e. there is correlation between the increase in the rate of fee from 50 paise to rupee one and the services rendered."

In Corpn. of Calcutta v. Liberty Cinema 1965 AIR(SC) 1107 : 1965 (2) SCR

477) a Constitution Bench of this Court by majority upheld the levy of licence fee under Section 413 read with Section 548 of the Calcutta Municipal Act, 1951. Therein this Court observed that in our Constitution fee for licence and fee 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 Articles 110(2) and 199(2) where both the expressions are used indicating thereby that they are not the same. Referring to the judgment in George Walkem Shannon v. Lower Mainland Dairy Products Board [1938] A.C. 708 : (107) L.J. P.C. 115 : 1939 AIR(PC) 36(PC) this Court quoted with approval the observation that :

> "If licences are granted it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the Province or for both purposes. ... It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue."

In the case of Delhi Cloth & General Mills Co. Ltd. v. Chief Commr., Delhi (1969 (3) SCC 925 : 1970 (2) SCR 348) a three-Judge Bench of this Court considered the question whether the fee charged for annual renewal of licence to run a factory is in reality a tax or fee and further whether maintenance of Inspectors provides quid pro quo for fee, this Court observed :

"In the return which was filed in the High Court to the writ petition it was stated in paragraph 8 that the fees was being charged for the running of the whole establishment including the Factory Inspectorate which in its turn 'provides free inspection and expert technical advice etc. to factory owners in matters connected with safety, health, welfare and the allied matters in respect of compliance with the provisions of the Factories Act. It has further been stated that in our country matters relating to health, safety, welfare and employment have to be looked after and the desired results have been sought to be achieved by the legislature by providing statutory inspection service.

A large number of provisions to which reference has been made, particularly in the chapter dealing with safety, involve a good deal of technical knowledge and in the course of discharge of their duties and obligations the Inspectors are expected to give proper advice and guidance so that there may be due compliance with the provisions of the Act. It can well be said that on certain occasions factory owners are bound to receive a good deal of benefit by being saved from the consequences of the working of dangerous machines or employment of such processes as involve danger to human life by being warned at the proper time as to the defective nature of the machinery or of the taking of precautions which are enjoined under the Act. Similarly, if a building or a machinery or a plant is in such a condition that it is dangerous to human life or safety the Inspector by serving a timely notice on the manager saves the factory owner from all the consequences of proper repairs not being done in time to the building or the machinery. Indeed it seems to us that the nature of the work of the Inspector is such that he is to render as much, if not more, service than a Commissioner would, in the matter of supervision, regulation and control over the way in which the management of the trustees of religious and charitable endowment was conducted. The High Court further found, which finding being of fact, must be considered as final, that 60% of the amount of licence fees which were being realized was actually spent on services rendered to the factory owners. It can, therefore, hardly be contended that the levy of the licence fee was wholly unrelated to the expenditure incurred out of the total realisation"

.This Court in the case of Vam Organic Chemicals Ltd. v. State of U.P. (1997 (2) SCC 715) held that there is a distinction between fees charged for licence i.e. regulatory fees and the fees for services rendered as compensatory fees. In the case of regulatory fee like the licence fee existence of quid pro quo is not necessary although the fee imposed must not be, in the circumstances of the case, excessive. In support of the view reliance was placed on Corpn. of Calcutta Liberty Cinema 1965 AIR(SC) 1107 : 1965 (2) SCR 477). This Court in para 18 of the judgment made the following observations :

"18. The High Court in the impugned judgment has drawn a distinction between fees charged for licences, i.e., regulatory fees and the fees for services rendered as compensatory fees. The distinction pointed out by the High Court can be seen in clause (2) of Article 110 :

'110. (2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.' The High Court has quoted from this Court's decision in Corpn. of Calcutta v. Liberty Cinema 1965 AIR(SC) 1107 : 1965 (2) SCR 477), which was based on a Privy Council judgment in George Walkem Shannon v. Lower Mainland Dairy Products Board [1938] A.C. 708 : (107) L.J. P.C. 115 : 1939 AIR(PC) 36(PC). This Court said in the Corpn. of Calcutta v. Liberty Cinema 1965 AIR(SC) 1107 : 1965 (2) SCR 477) :

'In fact, in our Constitution fee for licence and fee for services rendered are contemplated its 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.'The High Court has taken the view that in the case of regulatory fees, like the licence fees, existence of quid pro quo is not necessary although the fee imposed must not be, in the circumstances of the case, excessive. The High Court further hold that keeping in view the quantum and nature of the work involved in supervising the process of denaturation and the consequent expenses incurred by the State, the fee of 7 paise per litre was reasonable and proper. We see no reason to differ with this view of the High Court."

A similar view was also taken by this Court in the case of State of Tripura v. Sudhir Ranjan Nath (1997 (3) SCC 665) in which this Court considered the validity of levy of application fee for grant of licence under the Tripura Transit Rules. Discussing the question this Court made the following observations in paras 14 and 15 of the judgment :

"14. We next take up the validity of the levy of application fee and licence fee of Rupees one thousand and Rupees two thousand respectively. In our opinion, the High Court was not right in holding that the said fee amounts to tax on the ground that it has not been proved to be compensatory in nature. In our opinion, the fee imposed by sub-rules (3) and (4) is a fee within the meaning of clause (c) of sub-section (2) of Section 41. It is regulatory fee and not compensatory fee. The distinction between compensatory fee and regulatory fee is well established by several decisions of this Court. Reference may be made to the decision of the Constitution Bench in Corpn. of Calcutta v. Liberty Cinema 1965 AIR(SC) 1107 : 1965 (2) SCR 477). It has been held in the said decision that the expression 'licence fee' does not necessarily mean a fee in lieu of services and that in the case of regulatory fees, no quid pro quo need be established. The following observations may usefully be quoted :'This contention is not really open to the respondent for Section 548 does not use the word "fee", it uses the words "licence fee" and those words do not necessarily mean a fee in return for services. In fact in our Constitution fee for licence and fee 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 George Walkem Shannon v. Lower Mainland Dairy Products Board [1938] A.C. 708 : (107) L.J. P.C. 115 : 1939 AIR(PC) 36(PC) it was observed :"

If licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the Province or for both purposes .... It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue.

> "It would, therefore, appear that a provision for the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered.'

> 15. This decision has been followed in several decisions, including the recent decisions of this Court in Vam Organic Chemicals Ltd. v. State of U.P. (1997 (2) SCC 715) and Bihar Distillery v. Union of India (1997 (2) SCC 727). The High Court was, therefore, not right in proceeding on the assumption that every fee must necessarily satisfy the test of quid pro quo and in declaring the fees levied by sub-rules (3) and (4) of Rule 3 as bad on that basis. Since we hold that the fees levied by the said sub-rules is regulatory in nature, the said levy must be held to be valid and competent, being fully warranted by Section 41."

Taking a similar view this Court in the case of Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn. (1999 (2) SCC 274) held that licence fee collected by municipalities for running a lodging house, hotel, restaurant, coffee house, tea stall, eating house, soft drink stall, cafeteria, tiffin room, etc. is a fee and not a tax; and further that the fee being regulatory existence of an element of quid pro quo is not necessary for levying such fee albeit such fee cannot be excessive. The distinction between the two types of fees, fee which is regulatory and fee for services rendered was expressed by this Court in paras 9 and 12 which are quoted hereunder :

> "9. 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.

> 12. In the present case, however, the fees charged are not just for services rendered but they also have a large element of a regulatory fee levied for the purpose of

> monitoring the activity of the 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. v. State of U.P. (1997 (2) SCC 715) 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 v. State of T.N. (1996 (5) SCC 670) as well as State of Tripura v. Sudhir Ranjan Nath (1997 (3) SCC 665)."

From the conspectus of the views taken in the decided cases noted above it is clear that the impugned licence fee is regulatory in character. Therefore, stricto sensu the element of quid pro quo does not apply in the case. The question to be considered is if there is a reasonable correlation between the levy of the licence fee and the purpose for which the provisions of the Act and the Rules have been enacted/framed. As noted earlier, the High Court has answered the question in the affirmative. We have carefully examined the provisions of the Act and the Rules and also the pleadings of the parties. We find that the High Court has given cogent and valid reasons for the findings recorded by it and the said findings do not suffer from any serious illegality. It is our considered view that the licence fee has correlation with the purpose for which the statute and the rules have been enacted.

The question that remains to be considered is whether the enhanced licence fee under challenge is grossly high and excessive, and therefore, arbitrary. On a first look it appeared to us that the enhancement from Rs. 10, 000 to Rs. 18, 00, 000 (maximum), was too high. We also did not find any material on record to show that there was justification for the enhancement of the fee to the extent prescribed. There was also no material on record to show existence of correlation between the expenditure incurred by the Government for enforcement of the Act and the Rules and the enhanced levy. We therefore inquired from the learned counsel appearing for the Government of A.P. whether the State Government is prepared to reconsider the matter and take a fresh decision regarding the extent to which the licence fee should be enhanced. In response to the query the learned counsel has filed a copy of the communication bearing Lr. No. 453/Lab.II/A-3/97 dated 07-07-2000 issued by the Government of A.P. in Labour Employment Training and Factories (Lab-II) Department in which it is stated that some decisions have been taken regarding revision of the licence fee particularly the maximum licence fee/renewal fee to be levied on factories using power of 20, 000 HP and engaging 20, 000 workers and above, shall be limited to Rs. 2.5 lakhs per annum as against the present limit of Rs. 18, 00, 000 per annum.The statement made by the Government of Andhra Pradesh gives a sort of assurance for revising the fee structure by adopting slab rates. But the decision does not set out the slabs so as to find out the@exact scaling down of the fee. No notification has yet been issued and no time is appointed within which such notification shall be issued, further the statement made by the Government does not make it clear whether it will be prospective or retrospective with effect from the date of the impugned enhancement. In such circumstances the information contained in the aforementioned is of little avail for deciding the case.

On the discussions made and the reasons set out in the foregoing paragraphs, the appeals are allowed, the judgment under challenge is set aside and the revision of licence fee introduced by

GOMs No. 154, E and F Department, dated 26-7-1994, is quashed. It is made clear that this judgment will have only prospective operation and no amount collected as licence fee under impugned Government Order shall be refunded. There will be no order as to costs.