

## **Biswa Nath Singh vs The District Board Of Ballia on 11 November, 1952**

**Equivalent citations: AIR1953ALL415, AIR 1953 ALLAHABAD 415**

### **JUDGMENT**

Sapru, J.

1. These three applications have been presented to this Court under Article 226 of the Constitution by three brick-kiln owners who have been carrying on the business of manufacturing bricks in the district of Ballia for the last 15 years or so and are at present working several brick-kilns in that district. Under the powers conferred by Section 174(2) (k), District Boards Act, the District Board of Ballia first made a bye-law introducing the licensing of brick-kilns of every description on 4-7-1932. By the notification issued under that bye-law, a licence fee for a chimney brick-kiln was fixed at Rs. 10/-, for a deshi brick-kiln at Rs. 5/- and for a kankar lime kiln at Rs. 2/-. This bye-law came to be sub-sequently amended in 1937 and 1947. By these amendments, the licence fee for chimney brick-kilns was raised to Rs. 25/- and Rs. 100/-. The District Board of Ballia approved of a third amendment in 1950 which raised the licence fee for chimney brick-kilns to Rs. 250/-, deshi brick-kilns to Rs. 50/- and kankar lime-kilns to Rs. 15/-.

2. Other restrictions have also been imposed by the bye-laws, viz., (a) that the kilns should be 300 feet from institutions like hospitals etc., (b) that the kilns should be 1000 feet from places where jute, cotton or other inflammable materials are stored, (c) that no excavations be made at a distance of less than 100 feet from any public road.

3. We are not concerned in the present applications with these restrictions. The grievance of the applicants is that the recent amendment which has been sanctioned by the Commissioner raising the amount of the licence fee for chimney brick-kilos from Rs. 100/- to Rs. 250/-, deshi brick-kilns to Rs. 50/- and kankar lime-kilns to Rs. 15/-, is contrary to the provisions of Section 174 (2) (k) of the Act. Section 174 (2) (k) reads as follows: "(2) In particular, and without prejudice to the generality of the power conferred by Sub-section (1), a board may, in the exercise of the said power, make any bye-laws described in the list below --(k) regulating slaughter-houses and offensive, dangerous or obnoxious trades, callings, or practices and prescribing fees to defray the expenditure incurred by a board for this purpose."

4. It will be seen that Section 174(2) (k) of the Act authorises a Board, without prejudice to the generality of the power conferred by the preceding sub-section to make any bye-law regulating slaughter-houses and offensive, dangerous or obnoxious trades, callings or practices and prescribing

fees to defray the expenditure incurred by the board for this purpose.

5. Learned counsel for the applicants contends that the District Board of Ballia has completely ignored the provisions of Clause (k), Sub-section (2), Section 174, inasmuch as, in prescribing the licence fee for the regulation of the trade in question, the board had paid no attention to the actual expenses incurred by it for the purpose of regulating it. It is urged that the licence fee which has been imposed is very much in excess of the amount needed for the regulation of the trade in question. It is clear from a perusal of the clause which has been referred to above that the licence fee contemplated by it is a fee which will only cover, more or less, the actual and special expenses incurred by the board in regulating the trade. It is well known that there is a basic difference between a tax and a licence fee. One of the main functions that boards have to perform is to regulate specified trades. For purposes of this regulation, they have been given powers of imposing a licence fee. This licence fee can be levied only for the purpose of meeting the probable expenses for the regulation of a particular trade or business and not for the purpose of augmenting the general revenue.

6. There is thus a clear distinction between the taxation power which has been given to the boards and the power of levying a licence fee and it is incumbent on Boards to bear this distinction in mind. We may refer in this connection to the case of -- 'K. C. Varadachari v. The State of Madras', AIR 1952 Mad 764 (A) where the question is fully discussed.

7. After hearing learned counsel for the parties and perusing the various affidavits that have been filed on behalf of the parties this case, the impression left on our minds is that it is possible that the distinction between a tax and a licence fee was not sufficiently clear to the District Board of Ballia. Learned counsel for the applicants has drawn our attention to certain circumstances which go to show that the board did not keep the proper object for which a licence fee can be levied in view, but allowed itself to be guided purely by revenue considerations and went on increasing the licence fee for the purpose of augmenting its general revenue.

We, however, do not think it necessary, in view of the eminently fair and proper statement which the learned Advocate General has made, to enter into an elaborate discussion of the questions of fact raised in this case. The learned Advocate-General has given us an assurance that the District Board will consider any representations that the applicants may make on the subject of the licence fee, in the light of the observations made in this judgment; and amend the licence fee in the light of the observations made by us regarding the law on the point. He has further assured us that the licence fee fixed, after a consideration of the representations, will be retrospective in its effect from the date of enhancement. We have been further assured that there will be neither any criminal prosecutions against the applicants nor revenue attachments, till the matter has been considered by the Board.

8. Mr. Khare who appears for the applicants undertakes to make a representation on behalf of his clients to the board within two months.

9. In view of the assurance that the learned Advocate-General has given, we have come to the conclusion that the proper course for us is to dismiss the applications. We direct that the parties

shall bear their own costs.