

## **Badhyamal Narayan Das vs Chairman, District Board, Banaras And ... on 2 March, 1955**

**Equivalent citations: AIR1955ALL541, AIR 1955 ALLAHABAD 541**

ORDER

Mehrotra, J.

1. This petition has been filed under Article 226 of the Constitution praying that a writ of mandamus 'be issued directing the opposite party, the Chairman, District Board, Banaras, not to enforce the bye-laws framed by the said opposite party No. 1, under cc, 10 of 1922. It is further prayed that an order be issued to the opposite party No. 1 not to demand any licence fee, as contemplated by the said bye-law for the running of the brick-kiln and a writ of certiorari be issued quashing the notification.

2. The applicant is a brick manufacturer in the district of Banaras and is carrying on his business within the limits of the District Board. In the year 1945 the bye-laws were framed under Section 174(2)(k) of the U. P. District Boards Act providing that each brick-kiln owner shall have to take a licence from the Board for running a brick-kiln and pay a licence fee of Rs. 10/-. Attempts were made subsequently by the District Board to enhance the licence fee from Rs. 10/- to Rs. 50/-. The amount of licence fee has now been increased to Rs. 200/- and the necessary sanction has been accorded by the Commissioner to the bye-laws.

The applicant protested against the payment of such a heavy licence fee but no attention has been paid to the protest by the District Board. The licence fee is out of all proportion to the expenditure which the Board has to incur for granting a licence and it is stated in the affidavit that the heavy fee has been imposed with a view to increase the general revenue of the Board. On these facts it is prayed that a writ of mandamus be issued directing the Board not to realise the heavy licence fee from the applicant. Notices' were issued to the other side.

No counter-affidavit has been filed challenging the facts set out in the affidavit filed in support of the -petition and no attempt has been made on behalf of the Board to prove that the fee is enough to meet the expenses which the Board has to incur for the purpose of granting licence and realising the amount of licence fee.

3. The Standing' Counsel has raised a number of preliminary points to the maintainability of the petition. Firstly it is contended that the petition is not in accordance with the rules framed by this Court. Reliance has been placed on Chapter XXII of the rules, framed under the Act which provides that the application under Article 226 of the Constitution must contain brief statement of facts supported by an affidavit and the grounds on which the relief is claimed. It is urged that in the present case the application only says that "for the reasons given in the accompanying affidavit the

following prayer may be granted."

It does not give a brief statement of the case. The affidavit no doubt does not set out the facts in brief but the grounds for the reliefs claimed are very elaborate and it cannot be said that the parties have been prejudiced on account of the failure of the petitioner to make a brief statement of the facts. The . affidavit has been filed in support of the petition and all the necessary facts, have been stated in that affidavit. It cannot, therefore, be said that the application is not maintainable on account of the non-compliance with the provisions of the rules.

4. The next contention of the Standing Counsel is that the petitioner had an alternative remedy to go up in appeal against the assessment order. It is true that the petitioner could have gone up in appeal against the assessment order, but it cannot be said that the alternative remedy is equally efficacious so as to deprive the petitioner of his remedy by means of a writ petition under Article 226 of the Constitution.

It has been held in a Full Bench of this Court in -- 'Budhu v. Municipal Board, Allahabad', AIR 1952 All 753 (A) that if the interest of a large number of people is affected and a question of public importance is raised the existence of an alternative remedy by itself is no ground for refusing the petition under Article 226 of the Constitution. Section 174(2)(k) of the District Boards Act provides that the District Board has power to frame bye-laws" regulating slaughter-houses and offensive dangerous and obnoxious trades, callings or practices and prescribing fees to defray the expenditure incurred by a Board for this purpose.

The power given to the Board to frame bye-laws providing for the payment of licence fee Is only confined to charging fee enough to defray expenditure incurred by the Board for that purpose. No fee can be charged to increase the general revenue of the Board. Certain powers are given to the Board to impose taxes but it is not permissible for the Board under the garb of a licence fee to impose taxes.

Reference in this connection may be made to the case of -- 'Biswanath Singh v. District Board of Ballia', AIR 1953 All 415 (B) where this Court has held that under the provisions of Section 174 (2)(k) of the District Boards Act the licence fee contemplated is such which will only cover the actual and special expenses incurred by the Board in regulating the trade and under the garb of a licence fee it is not open to the Board to impose tax. In the case of -- 'Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar', AIR 1954 SC 282 (C) at" p. 295 their Lordships of Supreme Court have observed:

"A net definition of what "tax" means has been given by Latham C. J. of the High Court of Australia in -- 'Matthews v. Chicory Marketing Board', 60 CLR 263 (D). "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" ..... 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 and it is an imposition made for public purpose without reference to

any special benefit to be conferred on the payer of tax."

In another case of -- "Jagannath Ramanujdas v. State of Orissa", AIR 1954 SC 400 (E) at pages 402-403 their Lordships of the Supreme Court have again held that there is no generic difference between a tax and a fee and both are different forms in which the taxing power of a State manifests itself but there is a distinction between a tax and a fee for legislative purposes and a tax is in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law.

The tax is a common burden and the only return which the tax payer gets is the participation in the common benefits of the State. 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 payments are demanded. Thus in fees there is always an element of 'quid pro quo' which is absent in a tax. There are two essential features of a fee.

Firstly it must be levied in consideration of certain services which the individuals accept either willingly or unwillingly and it should be in proportion to the expenses which the authorities have to incur for the purposes of rendering the service for which the fee has been levied. It cannot, therefore, be said in the present case that the fee imposed by the District Board was a licence fee and not a tax. The District Board had, therefore, in my judgment, no power to impose this heavy licence fee under Section 174(2)(k) of the District Boards Act.

5. I, therefore, allow this petition with costs and direct the opposite parties not to realise the licence fee of Rs. 200/- for the grant of licence to each brick-kiln.