

Shyam Lal vs Municipal Board, Ferozabad on 12 August, 1955

Equivalent citations: AIR1956ALL185, AIR 1956 ALLAHABAD 185

ORDER

V.D. Bhargava, J.

1. These two petitions are on behalf of two applicants who are owners and proprietors of brick-kilns situate within the municipal limits of Ferozabad, district Agra.

2. A bye-law was framed by the Municipality of Ferozabad levying a licence fee of Rs. 500/-per year on every brick kiln. The case of the-petitioners is that the Municipality does not incur any expenditure and there are many brick kilns and the licence fee that has been realised is out of all proportion to the expenditure incurred in this connection and is exorbitant; and on that ground they challenge the validity of the bye-law enforcing this licence fee.

Learned counsel for the Municipal Board has. tried to support the fee imposed as being reasonable and has urged that the Municipal Board has to spend a large amount of money on account of these brick kilns and further that this. fee is not only charged for the purpose of immediate expenses which the Municipal Board has to meet but it is also for the purpose of meeting any likely expenditure of an emergent nature, for example, spread of malaria or of any other kind of disease, and therefore, they should be seen not from the point of view of the actual expenditure incurred in the year but what are likely expenditures that may be incurred by the Municipal Board if such emergency arises.

The distinction between a tax and a licence fee has been decided by their Lordships of the Supreme Court in more than one case. In --'Rati Lal Panachand v. State of Bombay', AIR 1954 SC 388 (A), their Lordships of the Supreme Court have given the distinction as follows:

"A tax is in the nature of a compulsory exaction of money by a public authority for purposes, the payment of which is enforced by law. The other characteristic of a tax is, that the imposition is made for public purpose to meet the general expenses of the state without reference to any special advantage to be conferred upon the payers of the tax.

Thus although a tax may be levied upon particular classes of persons or particular kinds of property, it is imposed not to confer any special benefit upon individual persons and the collections are all merged in the general revenue of the State to be applied for general public purposes. Tax is a common burden and the only return which the tax payer gets is participation in the common benefits of the State.

Fees 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. In order that the collections made by the Government can rank as fees, there must be correlation between the levy imposed and the expenses incurred by the State for the purpose of rendering such 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 earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes.

However, too much stress should not be laid on the presence or absence of what has been called the 'coercive' element. It is not correct to say that as distinguished from taxation which is compulsory payment, the payment of fees is always voluntary it being a matter of choice with individuals either to accept the service or not for which fees are to be paid."

3. According to this decision of their Lordships it must be established before a fee can be justified that it was for some special services rendered or some special work done for the benefit of those from whom the payments are demanded', It may be levied in consideration of some services and the third and most essential qualification of a fee is that it must be ear-marked to meet the expenses of rendering these services and must not go to the general revenue of the said year as in the present case, and the Municipal Board should not spend it for general public purposes.

4. These facts must be within the special knowledge of the Municipal Board as to what particular service they are rendering to the brick kiln owners, what are their expenses particularly incurred in meeting these services and whether this amount is ear-marked and kept separately for meeting the expenses of those services and that these amounts are not put in the general revenue of the Municipal Board. The affidavit filed on behalf of the Municipal Board lacks in all these details.

Except general allegations having been made that the amount of fees realised is not even sufficient to meet the expenditure over the enforcement of the bye-laws and regulating the brickkilns, nothing has been mentioned as to what particular services they are rendering for which they are spending the money.

In para 7 of their counter-affidavit they allege that they have employed a Chief Sanitary Inspector, three Sanitary Inspectors, three clerks, four peons and nine mates to look after the health and sanitation within the municipal limits and the Municipal Board spends about Rs. 19,000/- on pay of the staff. The maintenance of the public sanitation is one of the duties of the Municipal Boards imposed upon them by the Municipalities Act.

It is no favour that they are showing by employing these persons. The very fact that the amount of fees realised is spent on the employment of these general officers shows that the opposite party is not keeping that amount separately under a separate head. Then in para 9 they have alleged that they have to spend large amounts over litigation as they are compelled to launch a number of prosecutions for the breach of the bye-laws for payment of these fees.

This amount probably they will not have to spend if they put a reasonable sum as licence fee and whatever they have collected they keep under a separate account and spend on the amenities to be afforded to those persons from whom they charge this amount of fees.

5. This amount of fees that has to be levied is to be in proportion to the expenditure and has to be kept separately for the services to be rendered to the persons from whom it is charged. It should not be kept for meeting future expenditure on emergencies or for the general health or education or for spending otherwise on the public at large, and the argument of learned counsel for the respondent is untenable.

There was a case of brick kilns in -- 'Shri Biswa Nath Singh v. District Board of Ballia', AIR 1953 All 415 (B), where the fees on brick kilns of different types were put at Rs. 25/- and Rs. 100/- by the District Board. Their Lordships drew a distinction between a licence fee and a tax as follows :

"It is clear from a perusal of Clause (k) of Sub-section (2) of Section 174, U. P. District Boards Act 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 specific 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.

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."

6. In another case. -- 'Lala Raj Kishore v. District Board of Saharanpur', AIR 1954 All 675 (C), Chaturvedi, J. has discussed this question at length and many of the cases of this Court and of other Courts have been considered. In that case a writ of mandamus was issued to the District Board of Saharanpur commanding them not to enforce bye-law No. 6 which had imposed a licence fee of Rs. 500/- on sugar factories propelled by petrol, steam or electricity a fee of Rs. 100/- per year on crushers propelled by petrol, steam or electricity, a fee of Rs. 100/- on centrifugal machines propelled by engines and a fee of Rs. 50/- each on certain flour mills etc.

7. I think it is too late in the day now to contend that the Municipal Board can levy any fee for the purpose of meeting general expenses in cases of emergency. Nothing has been established from the counter-affidavit of the respondent to show that the licence fee was justified.

8. The petitioner in writ petition No. 158 of 1955 is being prosecuted in three criminal cases and proceedings in cases Nos. 21, 22 and 23 all of 1955 are pending in the Court of Sri B.N. Kansal, Magistrate 1st class, Agra under. Sections 298 and 299, Municipalities Act, while the petitioner in writ petition No. 159 of 1955 is being prosecuted in cases Nos. 318, 319, 320, 321 and 322, all of 1955, before the Tehsildar Magistrate, IInd Class, Ferozabad under Sections 298 and 299, Municipalities Act.

These criminal cases are on account of nonpayment of licence fee for different years. As I am holding that the Municipal Board had no justification to levy a tax of Rs. 500/- per year and the tax is illegal, the prosecution on that basis cannot be allowed to proceed.

I, accordingly, quash the criminal proceedings pending in the Court of Sri B.N. Kansal, Magistrate 1st class in cases Nos. 21, 22 and 23 of 1955 against the petitioner in writ petition No. 158 of 1955 and in cases Nos. 318, 319, 320, 321 and 322 of 1955 pending in the Court of the Tehsildar Magistrate IInd Class, Ferozabad against the petitioner in Writ Petition No. 159 of 1955.

I further order that a writ of mandamus be issued commanding the Municipal Board Ferozabad not to enforce their bye-law No. 7 of the Bye-laws for Regulating the Burning or Baking of Tiles, Pottery, Lime and Bricks within the Ferozabad Municipality, against any one of the petitioners. The petitioners are entitled to their costs in both the petitions.