Delhi Race Club Ltd vs Union Of India & Ors on 13 July, 2012

Equivalent citations: AIR 2012 SUPREME COURT 3408, 2012 (8) SCC 680, 2012 AIR SCW 4096, (2012) 3 CURCC 118, (2012) 3 KER LT 95.2, (2012) 6 SCALE 413, AIR 2012 SC (CIVIL) 2428, (2012) 347 ITR 593

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Bench: D.K. Jain, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA			
CIVIL APPELLATE JURISDICTION			
CIVIL APPEAL NO. 6461 OF 2003			
DELHI RACE CLUB LTD.	–	APPELLANT	
VERSUS			
UNION OF INDIA & ORS.	–	RESPONDENTS	

JUDGMENT

D.K. JAIN, J.:

1. This is an appeal from a judgment, dated 5th February, 2003, rendered by the High Court of Delhi at New Delhi in CWP No.2278/2002. By the impugned judgment, the High Court has upheld the validity of the Delhi Race Course Licensing (Amendment) Rules, 2001.

2. On 19th October, 1984, the Central Government in exercise of its powers under Section 2 of the Union Territories (Laws) Act, 1950, extended the Mysore Race Courses Licensing Act, 1952 (for short "the Act") to the Union Territory of Delhi, as it existed then, with certain amendments. The Preamble to the said Act reads thus:

"Whereas it is expedient to make provision for the licensing regulation, control and management of horse-racing on race-course and all matters connected therewith in the Union Territory of Delhi" Further, Section 3 of the Act reads as follows:

"3. Prohibition of horse-racing on unlicensed race- courses- No horse- race shall be held save on a race course for which a licence for horse racing granted in accordance with the provisions of this Act, is in force." Section 4 which lays down the procedure for issuing the licences for horse racing reads as follows:

"4. Licences for horse-racing- (1) The owner, lessee or occupier of any race course may apply to the Government for horse-racing on such race-course or for arranging for wagering or betting in such race- course on a horse, race run or some other race-course either within the Union territory of Delhi or Outside the Union territory of Delhi.

(2) The Government may (if in its opinion public interest so requires) withhold such licence or grant it subject to such conditions and for such period as they may think fit.

(3) In particular and without prejudice to the generality of the foregoing power, such conditions may provide for-

(a) the payment of a licence fee;

(b) the maintenance of such accounts and furnishing of such returns as are required by the United Provinces Entertainment and Betting Tax Act, 1937 as extended to the Union territory of Delhi;

(c) the amount of stakes which may be allotted for different kinds of horses;

(d) the measures to be taken for the training of persons to become Jockeys;

(e) the measures to be taken to encourage Indian bred horses and Indian Jockeys;

(f) the inclusion or association of such persons as the Government may nominate as Stewards or members in the conduct and management of horse-

racing;

(g) the utilisation of the amount collected by the licensee in the conduct and management of horse-racing;

(h) such other matters connected with horse-racing and the maintenance of the race-course for which in the opinion of Government it is necessary or expedient to make provision in the licence. ....." Sections 5, 6 and 7 respectively enumerate penalties for taking part in horse races on unlicensed race-course and for contravention of conditions of licence. Section 9 envisages that cognizance of the offences under the Act can be taken by a court not inferior to that of a Metropolitan Magistrate. Section 11, the pivotal provision, which empowers the Government to make rules, reads as follows:

"11. Power to make rules-(1) The Government may, by notification in the Delhi Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers; such rules may provide for all or any of the following matters, namely:-

(i) the form and manner in which applications for licences are to be made;

(ii) the fees payable for such licences;

(iii) the period for which licences are to be granted;

(iv) the renewal, modification and cancellation of licences."

3. In furtherance of the power conferred under Section 11 of the Act, by a notification dated 1st March 1985, the Administration of the Union Territory of Delhi, notified the Delhi Race Course Licensing Rules, 1985 [for short "1985 Rules"]. Rules 4 and 5 of the 1985 Rules lay down the procedure for submission of application for grant of licence for horse racing and the validity period of such licence respectively.

Rule 6 prescribes the rate of 'Licence fee'. It reads as follows :

"6. Licence fee-The fee for the grant or renewal of a licence for horse racing on the race course shall be a sum of rupees two thousand (Rs.2000/-) per day on which race is held. The fee for the grant or renewal of a licence for arranging for wagering or betting on a horse race run on any other race course, within or outside the Union Territory of Delhi, shall be rupees five hundred (Rs.500/-) per race day on which race is held." Rule 12 of the 1985 Rules, material for our purpose, confers power of inspection and states as under:

"12. Inspection- The District Officer or any other officer not below the rank of Entertainment Tax Inspector shall have access to the licensed race course at all reasonable times with a view to satisfy himself that the provisions of the Act and these Rules are being complied with and that the conditions of the licence are duly observed."

4. On 7th March 2001, in exercise of the powers conferred under Section 11 of the Act, the Lt. Governor of the National Capital Territory of Delhi enacted the Delhi Race Course Licensing (Amendment) Rules, 2001 (for short "2001 Rules") and enhanced the aforesaid licence fee rates to Rs.20,000/- and Rs.5,000/- respectively.

5. On 31st January, 2002, Commissioner of Excise, Entertainment & Luxury Tax (respondent no.3 in this appeal) issued a demand letter to Delhi Race Club, a body corporate, the appellant in this appeal, informing them that the licence fee deposited by them was short by Rs.17,80,000/- for the year 2001-02 and by Rs.18 Lacs for the year 2002-

03. Validity of the demand notice was questioned by the appellant by way of a writ petition in the High Court of Delhi, on the grounds that both the notifications, dated 19th October, 1984 and 7th March, 2001 were illegal in as much as : (i) delegation of

powers under Section 11 of the Act to the Lt. Governor, to fix the licence fee without any guidelines is excessive delegation of legislative power and is therefore, ultra vires, (ii) in the absence of an element of quid pro quo, the licence fee charged was not in the nature of a fee but a tax and (iii) the ten fold increase in licence fee was highly excessive. However, it appears that based on the arguments advanced by the learned counsel, the High Court framed two key questions viz.

(i) Is the licence fee under Rule 6 of the 1985 Rules a "fee" or not ? and (ii) If it is a fee, is it excessive or not?

6. Answering both the questions against the appellant, the High Court concluded that the licence fee in question is not a compensatory fee and consequently there was no requirement of a quid pro quo; the licence fee is in the nature of a regulatory fee and therefore, would not require any quid pro quo in the form of any social service and when the impost of Rs.2,000/- and Rs.500/- in the year 1984 was not regarded by the appellant as being excessive, keeping in mind the high rate of inflation between 1984 and 2001, the enhanced rates of Rs.20,000/- and Rs.5,000/- in the year 2001 could not be said to be excessive. Hence, the appellant's writ petition having been dismissed, they are before us in this appeal.

7. At the outset, Mr. S. K. Bagaria, learned senior counsel appearing for the appellant, submitted that he would confine his submissions only to the two issues relating to the excessive delegation of power in the matter of fixation of licence fee and that the fee levied is in fact a tax and therefore, ultra-vires entry 66 of List II in the Seventh Schedule of the Constitution of India and would not press the issue that the fee levied is excessive.

8. Learned counsel strenuously urged that Section 11(2) of the Act confers unguided, uncontrolled and unfettered power on the Administrator to fix licence fee and thus, ipso facto bad in law, unconstitutional and ultra-vires. Learned counsel traced the evolution of law in this regard by referring to several decisions of this Court. The main thrust of his submissions was based on the decision of this Court in Corporation of Calcutta & Anr. Vs. Liberty Cinema[1], wherein it was held that the function of fixing the rate of tax is not an essential function and can be delegated, but such delegation has to be under some guidance. He invited our attention to the case of Devi Das Gopal Krishnan & Ors. Vs. State of Punjab & Ors.[2], wherein while explaining the ratio of the decision in Liberty Cinema (supra) and emphasising the necessity of some guidance while delegating the power to fix the rate of tax, it was observed that the doctrine of constitutional and statutory needs would not afford reasonable guidelines in the fixation of such rates of tax. Reliance was also placed on The Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi & Anr.[3], wherein, the Constitution Bench of this Court, while observing that guidance and control must necessarily be present while delegating a legislative function, discussed various forms of such guidance depending upon the facts of each delegation, and held that the form of guidance to be given in a particular case, depends on a consideration of the provisions of the particular Act in question including the nature of the body to which the function has been delegated. Lastly, reference was made to the case of Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Assistant Commissioner of Sales Tax & Ors.[4], wherein the above mentioned principles were reiterated. According to the

learned counsel, Section 4(3) of the Act merely provides for the conditions, subject to which a licence may be granted but does not contain any guidance or policy relating to fixation of the licence fee. Similarly, Rule 13(2) of the 2001 Rules confer power of inspection of the licensed race course and has nothing to do with the licence fee or its rates. Thus, the learned senior counsel asserted that in the present case, Section 11(2) of the Act confers unguided, unfettered and arbitrary power on the Government to fix the licence fee without a minute shred of guidance of any manner and hence is beyond the limits of permissible delegation and therefore, deserves to be struck down as unconstitutional.

9. Mr. Bagaria also submitted that in the absence of any element of fee, as no services were being provided to the appellant against the fee charged, licence fee cannot be demanded, in as much as it lacked any element of quid pro quo. Referring to the decisions of this Court in The Delhi Cloth & General Mills Co. Ltd. Vs. The Chief Commissioner, Delhi & Ors.[5]; Kewal Krishan Puri Vs. State of Punjab[6]; Secunderabad Hyderabad Hotel Owners' Association & Ors. Vs. Hyderabad Municipal Corporation, Hyderabad & Anr.[7]; A.P. Paper Mills Limited Vs. Government of A.P. & Anr[8]; B.S.E. Brokers' Forum, Bombay & Ors. Vs. Securities And Exchange Board of India & Ors.[9] and Liberty Cinema case (supra) learned counsel argued that even though quid pro quo may not be required if the fee is classified as regulatory fee, nevertheless there must be a broad co-relation between the fee levied and the expenses incurred for rendition of services. It was contended that when a question arises whether the levy is in the nature of a fee, the duties and obligations imposed on the inspecting staff and the nature of the work done by them has to be examined for the purpose of determining the rendering of the services, which would make the levy a fee.

10. Per contra, Mr. T.S. Doabia, learned senior counsel appearing on behalf of respondent nos.2 and 3, submitted that the Act does not suffer from the vice of excessive delegation as the scheme of the Act provides enough guidelines to fix the rate of licence fee. To buttress his argument, he relied upon the Preamble and the text of Section 4 of the Act as also Rule 13(2) of the 1985 Rules. Drawing support from Liberty Cinema (supra) and Municipal Corporation of Delhi (supra) learned counsel contended that the nature and extent of guidance is to be ascertained from the broad features and objects sought to be achieved by a particular statute and not on the touchstone of a rigid uniform rule. According to the learned counsel, Section 4(3) of the Act, relating to the conditions of licence, itself provides the parameters to be kept in view while fixing the licence fee and are thus, sufficient guidelines in the matter of fixation of such licence fee. Rebutting the submissions of the appellant that the levy cannot be demanded as there was no quid pro quo involved, learned senior counsel submitted that there is an inherent distinction between the fee for services rendered; i.e. compensatory fee and a license fee which is in the nature of a regulatory fee, where no quid pro quo was necessary. In support, reliance was placed on the decisions of this Court in Liberty Cinema (supra); Secunderabad Hyderabad Hotel Owners' Association (supra) and A.P. Paper Mills Ltd. (supra) wherein it was held that a licence fee is regulatory when the activities for which a licence is granted, require to be regulated or controlled. The fee which is charged for regulation of such activity would be classifiable as a fee and not a tax, although no services are rendered. He thus, submitted that the present fee being a regulatory fee, charged for the purpose of monitoring the activities to ensure that the licencees comply with the terms and conditions of licence, does not necessarily have to satisfy the test of quid pro quo and hence is valid. Although it was never the case

of the respondents before the High Court, yet Mr. Doabia endeavoured to submit, in the alternative, that the impugned impost could be justified as a tax.

11. Learned counsel also urged that the fact that the levy had been challenged after a long delay was by itself sufficient for the High Court to dismiss the writ petition.

12. Before addressing and evaluating the rival submissions on the first issue, it would be useful to first survey the decisions heavily relied upon by the learned counsel, wherein the question as to the limits of permissible delegation of legislative power by a legislature to an executive/another body has been examined in extenso.

13. Liberty Cinema (supra), on which heavy reliance was placed by Mr. Bagaria, related to a levy imposed on cinema houses under the Calcutta Municipal Act, 1951. The levy was quashed by a learned Single Judge on the grounds that : (i) the levy being in the nature of a licence fee and not a tax, did not pass the test of legality on account of there being no correlation between the amount charged from the theatre owners and the services rendered to them or the expenses incurred by the Municipality in regard to the issue of licences and (ii) Section 548(2) of the said Act, which authorised the Corporation to levy a tax, is unconstitutional as suffering from the vice of excessive delegation as it laid down no principle; indicated no policy and afforded no guidance for determining the basis or the rate on which the tax was to be levied and is, therefore, void. Corporation's appeal before the Division Bench being unsuccessful, the matter reached this Court. By majority, Corporation's appeal was allowed and impost was upheld as a tax. However, while upholding the validity of levy, speaking for the majority, Sarkar, J. observed that when the power to fix rates of tax is left to another body, the legislature must provide guidance for such fixation. Nevertheless, the validity of the guidance cannot be tested by a rigid uniform rule and must depend on the object of the Act which delegated the power to fix the rate. Thus, it was held that the power to fix the rate of tax can be delegated but some guidance has to be specified in the Act.

14. A similar question arose in Devi Das (supra) where the Constitution Bench, while endorsing the opinion rendered in Liberty Cinema (supra), held that there can be no general principle that the doctrine of constitutional and statutory needs would always afford reasonable guidelines in the fixation of rates of taxation. Each statute has to be examined to find out whether there are guidelines therein which prevent delegation from being excessive. The Constitution Bench summarised the law on the subject of excessive delegation as follows:

> "The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare

> its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature." (Emphasis supplied by us)

15. Our attention was also invited to a seven Judge Bench decision in Municipal Corporation of Delhi (supra) where the majority again took the view that the legislature can delegate non essential legislative functions, but while delegating such functions, there must be a clear legislative policy which serves as guidance for the authority on which the function is delegated. As long as a legislative policy can be culled out with sufficient clarity or a standard is laid down, Courts should not interfere with the discretion that undoubtedly rests with the legislature in determining the extent of delegation necessary in a particular case. On a review of a number of decisions on the point, including In re. Delhi Laws Act, 1912[10], Liberty Cinema (supra) and Devi Das (supra), Wanchoo C.J. (speaking for himself and Shelat, J.) observed that what guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal with including its preamble. It was also observed that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation. However, what form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary. In the same decision, Shah J. (speaking for himself and Vaidialingam J.) after analyzing the cases on the point of delegation of legislative function by the Legislature, culled out the following principles:

> "(i) Under the Constitution the Legislature has plenary powers within its allotted field; (ii) Essential legislative function cannot be delegated by the Legislature, that is, there can be no abdication of legislative function or authority by complete effacement, or even partially in respect of a particular topic or matter entrusted by the Constitution to the Legislature; (iii) Power to make subsidiary or ancillary legislation may however be entrusted by the Legislature to another body of its choice, provided there is enunciation of policy, principles, or standards either expressly or by implication for the guidance of the delegate in that behalf. Entrustment of power without guidance amounts to excessive delegation of legislative authority;

> (iv) Mere authority to legislate on a particular topic does not confer authority to delegate its power to legislate on that topic to another body. The power conferred upon the Legislature on a topic is specifically entrusted to that body, and it is a necessary intendment of the constitutional provision which confers that power that it shall not be delegated without laying down principles, policy, standard or guidance to another body unless the Constitution expressly permits delegation; and (v) the taxing provisions are not exception to these rules."

16. From the conspectus of the views on the question of nature and extent of delegation of legislative functions by the Legislature, two broad principles emerge, viz. (i) that delegation of non essential legislative function of fixation of rate of imposts is a necessity to meet the multifarious demands of a welfare state, but while delegating such a function laying down of a clear legislative policy is pre-requisite and (ii) while delegating the power of fixation of rate of tax, there must be in existence, inter-alia, some guidance, control, safeguards and checks in the concerned Act. It is manifest that the question of application of the second principle will not arise unless the impost is a tax. Therefore, as long as the legislative policy is defined in clear terms, which provides guidance to the delegate, such delegation of a non essential legislative function is permissible. Hence, besides the general principle that while delegating a legislative function, there should be a clear legislative policy, these judgments, which were vociferously relied upon before us, will have no bearing unless the levy involved is tax.

17. Therefore, the pivotal question to be determined is the nature of the impost in the present case. The characteristics of a fee, as distinct from tax, were explained by this Court, as early as in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[11] (commonly referred to as the 'Shirur Mutt's Case'). The ratio of this decision has been consistently followed as locus classicus in subsequent decisions dealing with the concept of 'fee' and 'tax'. A Constitution Bench of this Court in Hingir Rampur Coal Co. Ltd. Vs. State of Orissa[12] was faced with the challenge of deciding upon the constitutional validity of the Orissa Mining Areas Development Fund Act, 1952, levying cess on the colliery of the petitioner therein. The Bench explained different features of a 'tax', a 'fee' and 'cess' in the following passage:

> "The neat and terse definition of Tax which has been given by Latham, C.J., in Matthews v. Chicory Marketing Board (1938) 60 C.L.R. 263 is often cited as a classic on this subject. "A tax", said Latham, C.J., "is a compulsory exaction of money by public authority for public purposes enforceable by law, and is not payment for services rendered". In bringing out the essential features of a tax this definition also assists in distinguishing a tax from a fee. It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, 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. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services

> or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee..” It was further held that, “It is true that when the Legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefitting the specified class or area the State as a whole may ultimately and indirectly be benefitted would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. In such a case it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy....” (Emphasis supplied by us)

18. Recently in State of W.B. Vs. Kesoram Industries Ltd. & Ors.[13], a Constitution Bench of this Court, relying upon the decision in Hingir Rampur Coal Co. Ltd (supra), explained the distinction between the terms ‘tax’ and ‘fee’ in the following words: (SCC HN) “The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged....” (Emphasis supplied by us)

19. In the light of the tests laid down in Hingir Rampur (supra) and followed in Kesoram Industries (supra), it is manifest that the true test to determine the character of a levy, delineating ‘tax’ from ‘fee’ is the primary object of the levy and the essential purpose intended to be achieved. In the instant case, it is plain from the scheme of the Act that its sole aim is regulation, control and management of horse-racing. Such a regulation is necessary in public interest to control the act of betting and wagering as well as to promote the sport in the Indian context. To achieve this purpose, licences are issued subject to compliance with the conditions laid down therein, which inter alia include maintenance of accounts and furnishing of periodical returns; amount of stakes which may be allotted for different kinds of horses; the measures to be taken for the training of the persons to become jockeys, to encourage Indian bred horses and Indian jockeys; the inclusion and association of such persons as the government may nominate as stewards or members in the conduct and management of the horse-racing. The violation of the conditions of the licence or the Act is penalised under the Act besides a provision for cognizance by a court not inferior to a Metropolitan Magistrate. To ensure compliance with these conditions, the 1985 Rules empower the District Officer or an Entertainment Tax Officer to conduct inspection of the race club at reasonable times. Thus, the nature of the impost is not merely compulsory exaction of money to augment the revenue

of the State but its true object is to regulate, control, manage and encourage the sport of horse racing as is distinctly spelled out in the Act and the 1985 Rules. For the purpose of enforcement, wide powers are conferred on various authorities to enable them to supervise, regulate and monitor the activities relating to the race course with a view to secure proper enforcement of the provisions. Therefore, by applying the principles laid down in the aforesaid decisions, it is clear that the said levy is a 'fee' and not 'tax'.

20. The appellants have also challenged the nature of the impost, as according to them it is a tax imposed under the guise of a fee, since there is no quid pro quo or any broad co-relation between the impost and the services rendered in return, rather, there is no service in return at all. While it is true that 'quid pro quo' is one of the determining factors that sets apart 'tax' from a 'fee' but the concept of quid pro quo requires to be understood in its proper perspective. It can be traced back to the decision of this Court in Sreenivasa General Traders and Ors. Vs. State of Andhra Pradesh and Ors.[14], wherein a Bench of three learned Judges, analysed, in great detail, the principles culled out in Kewal Krishan Puri (supra). Opining that the observation made in the said decision, seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely:

> 'At least a good and substantial portion of the amount collected on account of fees, may be in neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee' appeared to be an obiter, the Court echoed the following views insofar as the actual quid pro quo between the services rendered and payer of the fee was concerned:
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> "31. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. 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 becomes 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, the true test must be whether its primary and essential purpose is to render specific services to a specified area of class; it may be of no consequence that the State may ultimately and indirectly be benefitted 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 (sic or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the Fee and the services rendered.
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> 32. 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 inspite 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 the 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 Shirur Mutt case (AIR 1954 SC 282: 1954 SCR 1005) was not drawn to Article 226 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. It is also increasingly realised that the element of quid pro quo in the strict sense is not always a sine qua non for a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax.
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> 7. 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....."

21. It is pertinent to note that in Liberty Cinema (supra), the Court had identified the existence of two distinct kinds of fee and traced its presence to the Constitution itself. It was 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 bare reading of Articles 110(2) and 199(2) of the Constitution, where both the expressions are used, indicating thereby that they are not the same. Quoting Shannon Vs. Lower Mainland Dairy Products Board[15], with approval, it was observed thus :-

> "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."

22. The same principle was reiterated in Secunderabad Hyderabad Hotels Owners' Association case (supra) where the existence of two types of fee and the distinction between them has been highlighted as follows:

> "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 fee 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." (Emphasis supplied by us)

23. Dealing with such regulatory fees, this Court in Vam Organic Chemicals Ltd. & Anr. Vs. State of U.P. & Ors.[16]; observed that in case of a regulatory fee, like the licence fee, no quid pro quo is necessary, but such fee should not be excessive. The same distinction between regulatory and compensatory fees has been highlighted in P. Kannadasan Vs. State of T.N.[17]; State of Tripura Vs. Sudhir Ranjan Nath[18]; B.S.E. Brokers' Forum case (supra) and followed in several later decisions.

24. In A.P. Paper Mills Ltd. (supra), a bench of three learned Judges of this Court was called upon to examine the validity of the revision of licence fee under the Andhra Pradesh Factories Rules, 1950. The levy of licence fee was challenged inter-alia on the grounds that the fee imposed being in fact a tax, the State had no power to levy the same; the Rules or the Factories Act, 1948, did not provide any criteria or guidelines for fixation of licence fee and that the State had 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 concerned Act, as the power is delegated under that particular Act only. On an analysis of the provisions of that Act and the Rules made thereunder, the Court came to the conclusion that the licence fee in this case was a regulatory fee and not a fee for any special services rendered; there was no mention of any special service to be rendered to the payer of the licence fee in the provisions and the purpose of the licence was to enable the authorities to supervise, regulate and monitor the activities relating to factories with a view to secure proper enforcement of the provisions. It was observed that the nature of the provisions made it clear that for proper enforcement of the statutory provisions, persons possessing considerable experience and expertise were required. On the question whether the element of quid pro quo, as it is understood in common legal parlance, was applicable to a regulatory fee, as in that case, speaking for the bench, D.P. Mohapatra, J., concluded thus :

> "32. 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."

25. Thus, it is clear that a licence fee imposed for regulatory purposes is not conditioned by the fact that there must be a quid pro quo for the services rendered, but that, such licence fee must be reasonable and not excessive. It would again not be possible to work out with arithmetical equivalence the amount of fee which could be said to be reasonable or otherwise. If there is a broad correlation between the expenditure which the State incurs and the fees charged, the fees could be sustained as reasonable.

26. As noted above, in the present case, the object of the Act, as synthesized from its provisions, is to regulate, monitor, control and encourage the sport of horse-racing. For this purpose, licences are issued subject to certain conditions. The compliance with the licence conditions is inevitable for renewal of the licences as well as significant to avoid any penalty under the Act. To ensure such compliance, as aforesaid, district officers/ entertainment tax officers are entrusted with the duty of inspection. The nature of inspection enjoined by the Act is not of a general nature but requires expertise and training and also constant vigil on the activities of the race course. The expenses incurred in carrying out such regular inspections have to be considerable. Hence, in our opinion, the licence fee imposed in the present case is a regulatory fee and need not necessarily entail rendition of specific services in return but at the same time should not be excessive. In any case, the appellant has not challenged the amount of the levy as unreasonable and expropriatory or excessive. The argument on behalf of the appellant that inspection does not constitute a service rendered in lieu of the fee charged, based upon the observations in the Liberty Cinema case (supra) is equally fallacious. In Delhi Cloth & General Mills Co. Ltd. Vs. The Chief Commissioner, Delhi[19] while holding that the levy involved in that case was a fee as opposed to tax, this Court held as follows:

> "....In each case where the question arises whether the levy is in the nature of a fee the entire scheme of the statutory provisions, the duties and obligations imposed on the inspecting staff and the nature of work done by them will have to be examined for the purpose of determining the rendering of the services which would make the levy a fee. It is quite apparent that in the Liberty Cinema case it was found that no service of any kind was being or could be rendered and for that reason the levy was held to be a tax and not a fee...." The observations made in the Delhi Cloth and General Mills (supra) apply squarely to the instant case. The scheme of the Act; its object as elucidated in its provisions and Rules made therein; nature of conditions imposed in the licences; inspection to ensure its compliance and non- renewal of the licence as well as penalty in case of contravention of the licence conditions, make the Act fall in the category of imposts where contributions are required to be made for the purpose of maintaining an Authority and the staff for supervising and controlling a public

activity viz. the horse racing. Besides, the presence of a large institution like the race course enjoins additional burden on the civic authorities to maintain and develop the surrounding area for the convenience of the public at large. This Court echoed a similar view in the Secunderabad Hyderabad Hotels Owners' Association case (supra) as follows:

"(8)....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....."

27. Thus, the licence fee levied in the present case, being regulatory in nature, the Government need not render some defined or specific services in return as long as the fee satisfies the limitation of being reasonable. We may reiterate here that the amount of licence fee charged from the appellant has not been challenged as being excessive. Thus, in light of the above observations relating to inspection and other provisions of the Act, we hold that the licence fee charged has a broad co-relation with the object and purpose for which the Act and the 2001 Rules have been enacted.

28. As noted above, challenge to the constitutionality of Section 11(2) of the Act was based on the premise that no guidance, check, control or safeguard is specified in the Act. This principle, as we have distinguished above, applies only to the cases of delegation of the function of fixation of rate of tax and not a fee. As we have held that the levy involved in the present case is a fee and not tax, the ratio of the above-mentioned cases, relied upon by the learned Senior Counsel, will have no application in determining the question before us. The scheme of the Act clearly spells out the object, policy and the intention with which it has been enacted and therefore, the Act does not warrant any interference as being an instance of excessive delegation.

29. Before we part with the judgment, it is pertinent to note that the challenge to the validity of Section 11(2) of the Act was raised after almost 15 years of its coming into force. The appellant, since the commencement of the Act, had been regularly paying the licence fee and the present challenge was made only when quantum of the licence fee was increased by the Government on account of non revision of the same since the commencement of the Act. Evidently, the inflation during this period was taken as the criterion for increasing the quantum of the fee. It is a reasonable increase keeping in view the fact that the expenditure incurred by the Government in carrying out the regulatory activities for attaining the object of the Act would have proportionately increased. It is also relevant to note that an institution of the size of the Race Course should not cloak their objection to an increase in the rate of licence fee and present them as a challenge to the constitutionality of the charging section.

30. In view of the aforegoing discussion, we are in agreement with the High Court that Section 11(2) of the Act as well as 2001 Rules do not suffer from any legal infirmity. This appeal, being bereft of any merit, is dismissed accordingly, with costs, quantified at Rs.50,000/-.

	|.....J.
	|(D.K. JAIN)
.....J.	
		(ANIL R. DAVE)
NEW DELHI;	
JULY 13, 2012.	

ARS

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[1] AIR (1965) SC 1107
[2] 1967 (3) SCR 557
[3] AIR (1968) SC 1232
[4] (1974) 4 SCC 98
[5] (1970) 2 SCC 172
[6] (1980) 1 SCC 416
[7] (1999) 2 SCC 274
[8] (2000) 8 SCC 167
[9] (2001) 3 SCC 482
[10] AIR 1951 SC 332
[11] AIR 1954 SC 282
[12] 1961 (2) SCR 537
[13] (2004) 10 SCC 201
[14] (1983) 4 SCC 353
[15] AIR 1939 PC 36
[16] (1997) 2 SCC 715
[17] (1996) 5 SCC 670, para 36
[18] (1997) 3 SCC 665, 673
[19] (1969) 3 SCC 925
