Nagar Mahapalika Varanasi vs Durga Das Bhattacharya & Ors on 4 March, 1968

Equivalent citations: 1968 AIR 1119, 1968 SCR (3) 374, AIR 1968 SUPREME COURT 1119, 1968 2 SCJ 836 ILR 1969 1 ALL 32, ILR 1969 1 ALL 32

Author: V. Ramaswami

Bench: V. Ramaswami, J.C. Shah, G.K. Mitter

PETITIONER:
NAGAR MAHAPALIKA VARANASI

Vs.

RESPONDENT:
DURGA DAS BHATTACHARYA & ORS.

DATE OF JUDGMENT:
04/03/1968

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
MITTER, G.K.

CITATION:
1968 AIR 1119 1968 SCR (3) 374
CITATOR INFO :
RF 1975 SC 846 (15,19)
R 1980 SC1008 (17,21)

ACT:
U.P. Municipalities Act (II of 1916) Chapters V, VIII and IX-Licence fees from owners of rickshaws and rickshaw drivers-If in the nature of tax-Whether quid pro quo in the form of services by municipality necessary,

HEADNOTE:
Under s. 294 of the U.P. Municipalities Act, 1916 a Municipal Board may charge a fee, to be fixed by bye law, for any licence, and, s. 298 enables the Board to make the bye-laws. Purporting to act under s. 298(2) and List I-H, of the Act, the appellant (Municipal Boa Varanasi) framed

certain bye-laws relating to the plying of rickshaws, under which, the owner of each rickshaws had to pay an annual licence fee of Rs. 30/and each rickshaw driver an annual licence fee of Rs. 51-. The rickshaw owners and drivers challenged the validity of the bye-laws in a suit on the ground that the licence fees were not commensurate with the services and advantages rendered or provided by the appellant.

The trial court dismissed the suit. The High Court, on appeal. held that the imposition of licence fees at the rates of Rs. 30/- and Rs. 51- was ultra vires and illegal, because, after excluding certain items of expenditure the balance did not constitute sufficient quid pro quo for the amount of licence fees charged.

In appeal to this Court, it was contended : (1) that the fee charged was not for rendering any services but was in the nature of a tax; (2) that s. 294 of the Act contemplates the charge of a fee not only in the restricted sense of a fee for which a quid pro quo is provided but also in the sense of a fee in which the taxation element is predominant, that such a licence fee could be imposed by enacting a bye-law for that purpose under s. 298, and that the licence fee in the present case was of that category and (3) that even if it was held to be a fee in the restricted sense for services rendered by the appellant, there was sufficient quid pro quo.

HELD : (1) The fees mentioned in Chapter VIII, which contains s,,_ 294, are meant for the purpose of regulation of certain trades and professions, for rendering services and for the maintenance of public safety and convenience of the inhabitants of the municipality, and, it is not contemplated that they should be merged in the public revenues of the municipality or should go for the upkeep of the roads and other matters of general public utility. Therefore, the fees imposed under s.'294, are only fees in the restricted sense of a fee for which a quid pro quo is provided and cannot be considered to be an impost in the nature of a tax. [384 E-G]

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt, [1954] S.C.R. 1005, 1042, followed.

(2) The Act contemplates only two categories of impost, that is, taxes enumerated in Chapter V and fees mentioned in ss. 293, 293-A and 294 of Chapter VIII. If a levy is a tax the imposition could be lawfully made only after following the mandatory procedure prescribed under ss. 131 to 135. Under s. 128(1)(iii) and (iv), which are in Chapter V, it is 375

competent to a municipality to impose, a tax on rickshaw drivers and rickshaw owners. If it is assumed that the tax element was predominant in the present case and that therefore the licence fee was in the nature of a tax, the imposition would be ultra vires because the procedure under

ss. 131 to 135 was not followed. There is no third category of impost of licence fee which is in the nature of a tax for which the procedure prescribed by ss. 131 to 135 is not applicable, but the procedure contemplated by Chapter IX, which contains s. 298, is applicable. [383 G-H; 384 D-E]
(3) The items disallowed by the High Court could not be considered as having been spent in rendering any services to rickshaw owners and drivers, because they were spent over paving bye-lanes suitable for rickshaws and for the lighting of streets and lanes; and, under s. 7(a) and (h) of the Act, it was the statutory duty of the municipal board to light public streets and places and to construct and maintain public streets, culverts etc. A licence fee cannot be imposed for reimbursing the cost of ordinary municipal services performed in the discharge of its statutory duty to provide for the general public. Since the balance of expenditure constituted only 44% of the total income of the appellant from the licence, the High Court was right in holding that sufficient quid pro quo was not established in the circumstances of this case. [385 G-H; 386 A-c]
India Sugar and Refineries Ltd. v. The Municipal Council, Hospital, I.L.R. [1943] Mad. 521, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 558 of 1967. Appeal from the judgment and decree dated November 23, 1961 of the Allahabad High Court in First Appeal No. 315 of 1958. C. B. Agarwala, Ravindra Rana and 0. P. Rana, for the appellant.

S. Y. Gupta, Jai Shankar Lal, Yogevhwar Prasad and Mohan Behari Lal, for the respondents.

The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought, by certificate, from the judgment of the Allahabad High Court dated November 23, 1961 in First Appeal No. 315 of 1958 by which the appeal of the respondents was allowed and the suit was decreed with costs throughout.

On March 26, 1956, the plaintiff respondents who are rick- shaw owners and rickshaw drivers filed a representative suit in the court of Civil Judge, Varanasi praying for a decree against the, appellant to restrain it by means of a permanent injunction from charging any license fee or preventing the respondents from plying rickshaws for hire without paying license fee within the municipal limits of Varanasi. Purporting to act under's. 298(2), List I-H of the U.P. Municipalities Act, 1916 (Act No. IT, of 1916), hereinafter referred to as the 'Act', the Municipal Board L6SLip. C.1/68-11 of Varanasi framed certain bye-laws relating, to the plying of rickshaws. The bye-laws were first published by Government order No. 3471/XXIII-9994 dated March 10, 1941 and were subsequently amended by two notifications No. 4022/XXIII-445 dated February 2, 1950 and No. 5834-XXIII-745 dated September 6, 1951. Under these bye-laws, as they stood amended, the owner of each rickshaw had to pay an annual licence fee of Rs. 30/1- and each driver of a rickshaw had to pay an annual fee of Rs.

5/-. The respondents challenged the validity of these byelaws mainly on the ground that considering the amount that was being levied what should have 'been only a fee was really a tax which the Municipal Board had no authority to levy. It was, contended on their behalf that a licence fee could be levied only for services rendered or advantages provided and the imposition must be commensurate with the services and advantages so rendered.or provided. It was urged that so far as the rickshaws that were being plied within the municipal limits of Varanasi were concerned no advantages or services were provided which could justify the levy of a fee at such a rate. The suit was contested 'by the appellant Municipal Board on the ground that services and advantages were, in fact, provided and their cost was much more than the total amount that was being realised from the rickshaw owners and drivers. By his judgment dated March 26, 1958 the 1st Additional Civil Judge, Varanasi dismissed the suit of the respondents, holding that the bye-laws in question were not invalid. The respondents took the matter in appeal to the, Allahabad High Court being- First Appeal No. 315 of 1958. The appeal was first placed before Gurtu and Srivastava, JJ. who referred it for consideration by a larger Bench. The appeal was finally heard by the Chief Justice, Jagdish Sahai and Bishambhar Dayal, JJ. By a majority _judgment dated November 23, 196 1. the appeal of the respondents was allowed, the judgment of the trial court was set aside and the suit of the respondents decreed. It was held by Sahai and Dayal, JJ. who delivered the majority judgment that the imposition of the license fee- at the rate of Rs. 30/- on each of the rickshaw owners and Rs. 5/- on each of the rickshaw drivers was ultra vires and a permanent in_junction was accordingly granted restraining the appellant from realising the license fees at this rate for the period in question. It was however, made clear that it was open to the Municipal Board to reduce the fee to a reasonable figure and co-relate it to the services rendered by the Municipal Board.

Chapter V of the Act deals with Municipal Taxation. Section 128 falls within that Chapter and reads as follows :

> "(1) Subject to any general rules or special orders of the State Government in this behalf, the taxes which a board may impose in the whole or any part of a municipality are-
>
> .....
>
> (iii) a tax on trades, callings and vocations including all employments remunerated by salary or fees '
>
> (iv) a tax on vehicles and other conveyances plying for hire or kept within the municipality or on boats moored therein;

..... Section 131 deals with framing of preliminary proposals and reads as follows :

> "131. (1) When a 'board desires to impose a tax, it shall by special resolution frame proposals specifying,-

(a) the tax, being one of the taxes described in subsection (1) of section 128, which it desires to impose; .

(b) the persons or class of persons to be made liable, and the description of property or other taxable thing or circumstances in respect of which they are to be made liable, except where and in so far as any such class or description is already sufficiently defined under clause (a) or by this Act,

(c) the amount or rate leviable from each such person or class of persons;

(d) any other matter referred to in section 153, which the State Government requires by rule to be specified.

(2) The board shall also prepare a draft of the rules which it desires the State Government to make in respect of the matters referred to in section 153.

(3) The board shall, thereupon, publish in the manner prescribed in section 94 the proposals framed under sub-section (1) and the draft rules framed under sub-section (2) along- with a notice in the form set forth in Schedule Ill."

Section 132 provides for filing objections by inhabitants of the, municipality and the procedure for dealing with such objections. It reads "132. (1) Any inhabitant of the municipality may, within a fortnight from the publication of the said notice, submit to the board an objection in writing to all or any of the proposals framed under the preceding section, and the board shall take any objection so sub- mitted into consideration and pass orders thereon by special resolution.

(2) If the board decides to modify its proposals or any of them, it shall publish modified proposals and (if necessary) revised draft rules along with a notice indicating that the proposals and rules (if any) are in modification of proposals and rules previously published for objections.

(3) Any objections which may be received to the modified proposals shall be dealt with in the manner prescribed in sub-section (1). (4) When the board has finally settled its proposals, it shall submit them along with the objections (if any) made in connection therewith to the (Prescribed Authority)." Section 133 relates to the power of State Government to reject sanction or modify the proposals of the Municipal Board. Section 134 states :

"(1) When the proposals have been sanctioned by the Prescribed Authority or the State Government, the State Covernment, after taking into consideration the draft rules submitted by the board, shall proceed forthwith to make under section 296, such rules in respect of the tax as for the time being it considers necessary.

(2) When the rules have been made the order of sanction and a copy of the rules shall be sent to the board, and thereupon the board shall by special resolution direct the imposition of the tax with effect from a date to be specified in the resolution."

Section 135(1) & (2) provide as follows :

> "(1) A copy of the resolution passed under section 134 shall be submitted to the State Government, if the tax has been sanctioned by the State Government and to the Prescribed Authority, in any other case.
>
> (2) Upon receipt of the copy of the resolution the State Government or Prescribed Authority as the case may be, shall notify in the Official Gazette, the imposi-

tion of the tax from the appointed date, and the imposition of a tax shall in all cases be subject to the condition that it has been so notified."

Chapter VII deals with powers of the Municipal Board in respect of buildings, public drains, streets, extinction of fires, scavenging and water supply. Chapter VIII deals with other powers in respect of markets, slaughter-houses, sale of food, public safety, sanitation and prevention of disease, inspection, entry, search, rent and charges etc. Sections 293 and 294 fall within Ch. VIII. Section 293 of the Act reads as follows :

> "(1) The board may charge fees to be fixed by byelaw or by public auction or by agreement, for the use or occupation (otherwise than under a lease) of any immovable property vested in, or entrusted to the management of the board, including, any public street or place of which it allows the use or occupation whether by allowing a projection thereon or otherwise.
>
> (2) Such fees may either be levied along with the fee charged under section 294 for 'the sanction, licence or permission or may 'be recovered in the manner provided by Chapter VI."

Section 293-A of the Act is to the following effect "A board may with the previous sanction of the State Government impose and levy fees for use of any place to which the public is allowed access and at which the Board may provide sanitary and other facilities to the public." Section 294 of the Act enacts as follows "The board may charge a fee to be fixed by bye-law for any licence, sanction or permission which it is entitled or required to grant by or under ,his Act."

Section 298 relates to the power of the Board to make bye-laws and reads as follows :

> "298. (1) A board by special resolution may, and where required by the State Government shall make bye-laws applicable to the whole or any part of the municipality, consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety, and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under this Ac t.
>
> (2) In particular, and without prejudice to the generality of the power conferred by sub-

section (1), the board of a municipality, wherever, situated, may, in the exercise of the said power, make any bye-law, described in List I below and the board of a municipality-wholly or in part situated in a hilly tract may fur- ther make, in the exercise of the said power, any byelaw described in List II below.

List I ..... H-Public safety and convenience .....

(c) Imposing the obligation of taking out licences on the proprietors or drivers of vehicles other than motor vehicles boxs or animals kept or plying for hire, or on persons hiring themselves out for the purpose of carrying, loads within the limits of the municipality, and fixing the fees payable for such licences and the conditions on which they are to be granted and may be revoked;

(d) Limiting the rates which may be demanded for The hire of a carriage, cart, boat or other conveyance, or of animals hired to carry loads or for the services of persons hired to carry loads, and the loads to be carried by such conveyances, animals or persons when hired within the municipality for a period not exceeding twenty-four hours or for a service which would ordinarily be performed within twenty-four hours;

By Government Notification No. 3471/XXIII-994 dated March 10, 1941 the bye-laws framed by the Municipal Board under s. 298, List IL-H (c) and (d) of the Act and confirmed by the Commissioner, were published. Paragraphs 12, 13 and 14 of the bye-laws are to the following effect :

> "12. For every licence granted under these byelaws to the proprietor of the rickshaw, a fee of Rs. 25 per annum shall 'be charged for cycle rickshaw and Rs. 3 per annum for hand- drawn rickshaws.
>
> 13. The licences shall be annual and shall terminate on the 31st March, in each year.
>
> 14. A fee of Re. 1 shall be charged from every person who desires to take out a licence for driving a rickshaw and the licence shall be issued to the applicant on receipt of the prescribed fee by the licensing officer, after ascertaining that he is strong, healthy and above the age of 18 years, provided that the Licensing Officer may refuse the license if he is of opinion that it would be inexpedient to grant it to the person applying."

An amendment was made by the Municipal Board to the byelaws by Government Notification No. 4022/XXIII-745 (45-49) dated February 2, 1950 and No. 5834/'XXIII-745 dated September 6, 1951 which read thus :

> "No. 4022IXXIII-745 (45-49) dated 2-2-1950:
>
> The following amendment in the Rickshaw bye- laws for the Banaras Municipality published under notification No. 3471/XXIII-994 dated March 10, 1941, which has been made by the Banaras Municipal Board under section 298-H(c) and (d) of the U.P. Municipalities Act 1916 and confirmed by the Commissioner, is hereby

published as required under Section 301 (2) of the said Act.

AMENDMENT In the 2nd line of rule 12 of the Rickshaw bye-laws read 'Rs. 30' instead of 'Rs. 25' in between the words 'a fee of' and 'per annum'. No. 58341'XXIII-745 dated September- 6, 1951 The following amendment in the bye-laws for the regulation and control of Rickshaws plying for hire or kept for private use in the Banaras Municipality sanctioned under G.O. No. 3471/XXIII-994 dated March 10, 1941, which has been made by the Municipal Board of Banaras, under- Section 298-H(c) and (d) of the U.P. Municipalities Act, 1961, as confirmed by the Commissioner is hereby published as required by Section 301 (2) of the said Act. Amendment In Rule 14 between the words 'A fee' and 'shall be charged' 'rupees five' be substituted in place of 'Re. I/-' occurring in the first line."

On behalf of the appellant Mr. Agarwala argued, in the first place, that the impugned bye-laws under which the appellant charged the license fee from the respondents were not ultra vires the powers of the Board. It was maintained that the impost was not a fee in the sense ,'bat the Municipal Board had to give a quid pro quo to the persons from whom the fee was charged. In other words, the contention of the appellant was that the fee charged Was not under the bye-laws a fee taken for render in any services but it was a license fee which was in the nature of a tax. I'(was contended that it was not necessary to show that there was any co-relationship between the amount of license fee and the services rendered by the Municipal Board to rickshaw owners and rickslia" drivers concerned. The question about the distinction between a tax and a fee has been considered by this Court in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt(1) in which the constitutional validity of the Madras Hindu Religious and Charitable Endowments Act 1951 (Madras Act XIX of 1951) came to be examined. Amongst the sections challenged war s. 76(1). Under this section every religious institution had to pay to the Government annual contribution not exceeding 5 per cent of its income for the services rendered to it by the said Government; and the argument was that the con- tribution thus exacted was not a fee but a tax and as such outside the competence of the State Legislature. In dealing with this argument Mukherjee, J., as he then was, cited the definition of tax given by Latham, C.J., in the case of Matthews(1) and has elaborately considered the distinction between a tax and a fee. "A tax", said Latham, C.J., is a compulsory exaction of monev by public authority for public purposes enforceable by law and is not payment for services rendered". In b,-in-ing 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 supported by any consideration of service rendered in return, a fee is levied essentially for servires 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. In The Commissioner, Hindu Religious Endowments, Madras.v v. Sri Lakshmindi-a Tirtha Swamiar of Sri Shirur Mutt(1) Mukherjee, J. examined the scheme of the Act and observed as follows:

" If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be co-related to the expenses incurred by Government in

> rendering the services. As indicated in Article 110 of the Constitution, ordinarily there are two classes of cases where Government imposes 'fees' upon persons. In the first class of cases, (1) [1954] S.C.R. 105, I-42. (2) 60 C.L.R. 263, 276.

Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person-in return for the privilege that is conferred."

After giving an illustration of licence fees for motor vehicles as coming under that class of cases, Mukherjee, J. proceeds to state :

> "In such cases, according to all the writers on public finance, the tax element is predominant, and if the money paid by licence holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regarded as a tax. In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered. If the money thus paid is set apartand appropriatedspecifically for the performance ofsuch work and isnot merged in the public revenues forthe benefit of thegeneral public, it could be counted as fees and not a tax. There is really no generic difference between the tax and fees and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes."

On behalf of the appellant learned, Counsel relied upon this passage and said that licence fee fell within the first class of cases mentioned by Mukherjee, J. and it was not necessary for the appellant to show that there was any co- relationship between the levy of the fees and the expenses incurred by the Municipal Board in rendering the services. We shall assume in favour of the appellant that the tax cle- ment is predominant in the imposition of the fee upon the respondents under the impugned bye-laws and the license fee is therefore in the nature of tax. Even upon that assumption the imposition of the fee under the machinery contemplated by s. 294 of the Act is ultra vires the powers of the Municipal Board. The reason is that if the imposition is in the nature of a tax the procedure contemplated by ss. 131 to 135 of the Act should be followed by the Municipal Board and in the absence of such procedure being followed the imposition of this kind of fee would be ultra virus. It is manifest from s. 128 (1) (iii) & (iv) that it is competent to the Municipality to impose a tax on vehicles plying for hire or kept within the municipality and also on trades, calling and vocations including rickshaw drivers and rickshaw owners.

But the imposition of such a tax can only be lawfully made by the Municipal Board after following the procedure prescribed under ss. 131 to 135 of the Act. It was, however, contended for the appellant that under s. 294 of the Act the Municipal Board has authority to impose a licence fee by enacting a bye-law for that purpose under s. 298 of the Act. It was said that s. 294 of the Act contemplates the charge of a fee not only in the restricted sense of a fee for which a quid pro quo is provided but also in the sense of a fee in which the taxation element is predominant. It was hence argued that the procedural machinery for the imposition of tax contemplated under ss. 131 to 135 of

the Act need not be followed in such a case. We are unable to accept this argument as correct. According to the scheme of the Act there is a sharp and clear distinction between taxes properly so called and fees. There is a logical and clear-cut division of the Act into several Chapters, and taxes, by whatever designation they may be called, are all comprehended and dealt with in Ch. V. and by that Chapter alone. And what is permitted to be imposed by S. 294 which occurs in Ch. VIII is only a fee in the restricted sense as distinguished from a tax. To put it differently, the Act contemplates only two categories of impost, i.e., taxes enumerated in Ch. V and fees mentioned in ss. 293, 293-A and 294 of Ch. VIII. It is not contem- plated in the scheme of the Act that there should be a third category of impost of licence fee which is in the nature of a tax for which the procedure contemplated by Ch. IX is applicable. In our opinion, the scheme of Ch. VIII of the Act shows that the provisions contained therein are meant for the purpose of regulation of certain trades and professions and for maintenance of public safety and convenience of the inhabitants of the municipality. The fees mentioned in s. 294 are meant to be imposed for the purpose of regulation of trade and professions and for rendering services. It is not contemplated by the Act that licence fees imposed by s. 294 should be merged in the public revenues of the municipality and should go for the upkeep of the roads and other matters of general public utility. It is therefore not permissible for the Municipal Board to impose a tax on the respondents under the guise of a license fee without following the mandatory procedure for imposition of the taxes prescribed by ss. 131 to 135 of the Act. Otherwise there will be a circumvention of the provisions of ss. 131 to 135 of the Act. It is manifest that s. 294 of the Act must be interpreted in such a manner as to prevent the circumvention of the safeguards of the provisions of ss. 131 to 135 of the Act.

In this context it is important to notice that the power to tax is not included in the police power in the American Municipal Law.-(Dillon on 'Municipal Corporations' Vol. IV, 5th Edn., p. 2400). It has been held that the police and taxing powers of the legislature though co-existent, are distinct powers. Broadly speaking, the distinction is that the taxing power is exercised for the purpose of raising revenue and is subject to certain designated constitutional limitations, while the police power is exercised for the promotion of the public welfare by means of the regulation of dangerous or potentially dangerous businesses, occupations, or activities, and is not subject to the constitutional restrictions applicable to the taxing power.

> "It may consequently be said that if the primary purpose of a statute or ordinance exacting an imposition of some kind is to raise revenue, it represents an exercise of the taxing power, while if the primary purpose of such an enactment is the regulation of some particular occupation, calling or activity, it is an exercise of the police power, even if it incidentally produces revenue." (American Jurisprudence, 2nd Edn. Vol. 16, p. 519).
>
> We pass on to consider the next question raised in this appeal, namely, whether there was a quid pro quo for the licence fees realised by the appellant and whether the impost was a fee in the strict sense as contemplated by s. 294 of the Act. A finding has been recorded in the present case by the trial court that a sum of Rs. 1,43,741/7/0 was spent by the Municipal Board for providing facilities and amenities to owners and drivers of rickshaws. This sum of Rs. 1,43,741/7/0 is made up of the following

items :

"Rs. 68,000/- spent over the paving of bye-lanes, in these the only conveyance that can operate is a rickshaw. Rs. 20,000/- spent as expenses for lighting of streets and lanes.

Rs. 47,741/7/0 spent in making provision for parking grounds.

Rs. 8,000/- spent on payment of salary to the staff maintained for issuing licences and inspecting rickshaws."

The High Court was of the opinion that the amount of Rs. 68,000/- spent for paving of bye-lanes and Rs. 20.000/- for lighting of streets and lanes cannot be considered to have been spent in rendering services to the rickshaw owners and rickshaw drivers. The reason was that under s. 7 (a) of the Act it was the statutory duty of the Municipal Board to light public streets and places and under cl. (h) of the same section to construct and maintain public streets, culverts etc. The expenditure under these two items was incurred by the Municipal Board in the discharge of its statutory duty and it is manifest that the licence fee cannot be imposed for reimbursing the cost of ordinary municipal services which the Municipal Board was bound under the statute to provide to the general public (See the decision of the Madras High Court in India Sugar and Refineries Ltd. v. The Municipal Council Hospet(1). If these two items are excluded from consideration the balance of expenditure incurred by the Municipal Board for the benefit of the licensees is Rs. 55,741/7/0. In other words, the expenditure constituted about 44% of the total income of the Municipal Board from the licensees. In our opinion, there is no sufficient quid pro quo established in the circumstances of this case and the High Court was therefore right in holding that the imposition of the, licence fees at the rate of Rs. 30/- on each rickshaw owner and Rs. 51- on each rickshaw driver was ultra vires and illegal. For the reasons expressed we hold that the judgment anl decree of the Allahabad High Court dated November 23, 1961 in First Appeal No. 315 of 1958 is correct and this appeal is accordingly dismissed with costs.

V.P.S. Appeal dismissed.

(1) I.L.R. [1943] Mad. 521.