Municipal Corporation Of Delhiand ... vs Mohd. Yasin Etc on 28 April, 1983

Equivalent citations: 1983 SCR (2) 999, 1983 SCC (3) 229, AIR 1983 SUPREME COURT 617, (1983) 37 CURTAXREP 133, 1983 UJ (SC) 460, 1983 (1) MCC 384, 1983 SCC (TAX) 154, (1983) 96 MAD LW 114, (1983) 142 ITR 737, (1983) 2 SCJ 66, 1983 (3) SCC 229, (1983) 23 DLT 493

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, D.A. Desai

PETITIONER:
MUNICIPAL CORPORATION OF DELHIAND OTHERS

Vs.

RESPONDENT:
MOHD. YASIN ETC.

DATE OF JUDGMENT28/04/1983

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
DESAI, D.A.

CITATION:
1983 SCR (2) 999 1983 SCC (3) 229
1983 SCALE (1)492

ACT:
Tax and fee, contradistinction-Fees for slaughtering animals at slaughter houses enhanced by the Municipal Corporation, eightfold Legality of the enhancement-Whether the enhanced fee for slaughtering animals was wholly disproportionate to the cost of the services and supervision and therefore, not a fee, but a tax.

HEADNOTE:
As per the rates fixed in the year 1953 by the Municipal Corporation of Delhi, the slaughtering fees were 0.25 paise for each animal, in the case of sheep, goats and pigs and rupees one for each animal in the case of buffaloes. By a Notification dated 31.1.1968, the

Corporation purported to enhance the slaughtering fee in both the categories eightfold, with effect from February 1 1968. Some butchers of the city questioned the revision of rates on the ground that the proposed enhanced fee was wholly disproportionate to the cost of the services and supervision and was in fact not a fee, but a tax.

During the pendency of the writ petitions in the High Court, by virtue of an interim arrangement, the appellant, was permitted to collect slaughtering fees at double the rates fixed in 1953 and as a result thereof the Corporation realised a sum of Rs. 4,24,494/-. The budget of the Corporation under item XIV-B showed a sum of Rs. 2,56,000 as the expenditure involved in connection with the slaughter houses. Comparing the amount of actual realisation of fee at the rates permitted by the court with the amount of expenditure as revealed by the budget and excluding from consideration all expenditure not shown in the budget from item XIV B, the High Court came to the conclusion that even if the original fee was doubled the amount realised would be more than sufficient to meet the expenditure involved and, therefore, there was no reason at all for increasing the fee eightfold and so the proposed fee was no fee but a tax for which there is no legislative mandate. Hence the appeal by special leave.

Allowing the appeal, the Court

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HELD: 1;1 The increase of the slaughtering fee from 0.25 P to Rs. 2.00 per animal in the case of small animals and from rupee 1.00 to Rs. 8.00 in the case of large animals was wholly justified, in the Circumstances of the case.

[1008 C-D]

1:2 True, the Municipal Corporation has realised a sum of Rs. 4,24,494 way of fees at the rate of Re. 00.50 per animal in the case of sheep, goats

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and pigs and Rs. 2 per animal in the case of buffaloes, whereas the budget of the M.C.D. showed under item XIV-B that an amount of Rs. 2,56,000 was expended in connection with slaughter houses. The Items of expenditure covered by item XIV-B of the Municipal Budget are evidently those items of expenditure which are incurred directly and exclusively in connection with slaughter houses. There are several other items of expenditure the whole or part of which is attributable to slaughter houses like the expenditure involved in the purchase, maintenance and the use of trucks and other vehicles for the removal of filth from slaughter houses, conservancy, petrol oil etc., the expenditure incurred in connection with the maintenance of supervisory staff like a fulltime Veterinary officer, Municipal Health officer, Deputy Health officer and Zonal Head officers, the cost of depreciation of the buildings and fittings in slaughter houses, expansion and improvement of slaughter houses for utilities etc. but actually debited to other

heads of account under the Municipal budget. Apparently, the High Court was under an erroneous impression that the fees collected should be shown to be related to expenditure incurred directly and exclusively in connection with the slaughtering of animals in its slaughter houses and also, shown as such in the Municipal budget. [1007 B-H, 1008 A-B]

2. Vicissitudes of time and necessitudes of history contribute to changes of philosophical attitudes, concepts, ideas and ideals and, with them, the meanings of words and phrases and the language itself. The philosophy and the language of the law are no exceptions. Words and phrases take colour and character from the context and the times and speak differently in different contexts and times. Words and phrases have not only a meaning but also a content, a living content, which breathes, and so, expands and contracts. This is particularly so where the words and phrases properly belong to other disciplines. "Tax" and "Pee" are such words. They properly belong to the world of public finance but since the Constitution and the laws are also concerned with Public Finance, these words have often been adjudicated upon in an effort to discern their content. [1002 D-G]

3. From the decided cases beginning from Commissioner of Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiyar [1954] S.C.R. 1005 till date, it is clear that: (i) There is no generic difference between a tax and fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of tax payers whereas a fee is a payment for services rendered; benefit provided or privilege conferred; (ii) Compulsion is not the hall mark of the distinction between a tax and fee; (iii) That the money collected does not go into a separate fund but goes into the Consolidated Fund does not also necessarily make a levy tax; (iv) Though a fee must have relation to the services rendered, or the advantage conferred, such relation need not be direct; a mere casual relation may be enough; (v) Further neither the incidence of the fee nor the service rendered need be uniform, (vi) That others besides those paying the fees are also benefited does not detract from the character of the fee; (vii) In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest; (viii) Nor is the court to assume the role of a Cost Accountant. It is neither necessary nor expedient to weigh too meticulously the cost, of the services rendered
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etc. against the amount of fees collected so as to evenly balance the two and (ix) A correlationship is all that is necessary. Quid pro quo in the strict sense is not the only true index of a fee; nor is it necessarily absent in a tax.
[1006 E-H, 1007 A-B]

Commissioner of H.R. & C.E., Madras v. Shri Lakshmindra Thritha Swamiyar, [1954] S.C.R. 1005; H. H. Sudhundra v.

Commissioner for Hindu Religious and Charitable Endowments, [1963] Supp. 2 S.C.R. 302; Hingir-Rampur Coal Co. Ltd. and others v. The State of Orissa and others, [196] 2 S.C.R. 537; H. H. Swamiji v. Commissioner Hindu Religious & Chariiable Endowments Dept. and others, [1980] 1 S.C.R. 268; Southern Pharmaceuticals & Chemicals, Trichur and others etc. v. State of Kerala and others, [1982] 1 S.C.R. 519 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2120 & 2125 of 1970.

From the Judgment and order dated the 17th April, 1970 of the Delhi High Court in Civil Writ Petitions Nos. 133 & 134 of 1968 Kapil Sibal, Rameshwar Dial, Adarsh Dial and S. Mittar for the Appellants.

K. B. Rohtagi for the Respondents.

The following Judgment of the Court was delivered by CHINNAPPA REDDY, J. BY a notification dated 31.1.68, the Delhi Municipal Corporation purported to enhance the fee for slaughtering animals in its slaughter houses from Re. 00.25p to Rs. 2.00 for each animal, in the case of sheep, goats and pigs, and li from Re. 1.00 to Rs. 8.00 for each animal, in the case of buffaloes. The notification was quashed by the High Court of Delhi on the ground that the Corporation was really proposing to levy a tax under the guise of enhancing the fee. The original rates were fixed in March 1953 and the revised rates were to take effect from February 1, 1968. Some butchers of the city questioned the revision of rates on the ground that the proposed enhanced fee was wholly disproportionate to the cost of the services and supervision and was in fact not a fee, but a tax. The High Court accepted the contention of the butchers on what appears to us a superficial view of the facts and principles. Fortunately, the High Court has certified the case as a fit one for appeal under Art. 133 (1)(c) of the Constitution and the matter is now before us.

During the pendency of the writ petitions in the High Court, by virtue of an interim arrangement, the Municipal Corporation was permitted to collect fee at the rate of Re. 00.50p. per animal in the case of sheep, goats and pigs and Rs. 2.00 per animal in the case of buffaloes. As a result, the Municipal Corporation realised a sum of Rs. 4,24,494 by way of fee for slaughtering animals in its slaughter houses. Now, the budget of the Municipal Corporation under item XIV- B showed a sum of Rs. 2,56,000 as the expenditure involved in connection with the slaughter houses. Comparing the amount of actual realisation of fee at the rates permitted by the Court with the amount of expenditure as revealed by the budget and excluding from consideration all expenditure not show in the budget under item XIV-B, the High Court came to the conclusion that even if the original fee was doubled the amount realised would be more than sufficient to meet the expenditure involved and there was, therefore, no warrant at all for increasing the fee eight-fold. So, it was said, the proposed fee was no fee but a tax for which there was no legislative mandate. We shall presently point out the

error into which the High Court fell on facts as well as principle.

A word on interpretation. Vicissitudes of time and necessitude, of history contribute to changes of philosophical attitudes, concepts, ideas and ideals and, with them, the meanings of words and phrases and the language itself. The philosophy and the language of the law are no exceptions. Words and phrases take colour and character from the context and the times and speak differently in different contexts and times. And, it is worthwhile remembering that word, and phrases have not only a meaning but also a content, a living content which breathes, and so, expands and contracts. This is particularly so where the words and phrases properly belong to other disciplines. 'Tax' and 'Fee' are such words. They properly belong to the world of Public Finance but since the Constitution and the laws are also concerned with Public Finance, these words have often been adjudicated upon in an effect to discover their content.

Commissioner of Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiyar(1) is considered the locus classicus on the subject of the contradistinction between 'tax' and fee?. The definition of 'tax' given by Latham, C.J. as "a compulsory exaction of money by public authority for public purposes enforceable by law and not payment for services rendered" was accepted, by the Court as stating the essential characteristics of a tax. Turning to fees, it was said "a fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency", but it was confessed, "as there may be various kinds of fee, it is not possible to formulate a definition that would be applicable to all cases". As regards the distinction between a tax and a fee, it was noticed that compulsion could not be made the sole or even a material criterion for distinguishing a tax from fee. It was observed that the distinction between a tax and fee lay primarily in the fact that tax was levied as a part of a common burden, while a fee was a payment for a special benefit or privilege. But it was noticed that the special benefit or advantage might be secondary to the primary motive of regulation in the public interest, as for instance in the case of registration fees for documents or marriage licences. It was further noticed that Article 110 of the Constitution appeared to indicate two classes of cases where 'fees' could be imposed: (1) where the government simply granted a permission on privilege to a person to do something-which otherwise that person would not be competent to do and extracted from him, in return, heavy or moderate fees (ii) where the government did some positive work for the benefit of the person and money was taken as a return for the work done or services rendered, such money not being merged in the public revenues for the benefit of the general public. It was however made clear that the circumstance that all the collections went to the Consolidated Fund of the State and not to a separate fund may not be conclusive. The Court finally observed that there was really no generic difference between the tax fees though the Constitution had, for legislative purposes, made a distinction between a tax and a fee. While there were entries in the legislative lists with regard to various forms of taxes, there was an entry at the end of each one of the three lists as regards fees which could be levied in respect of any of matters that was included in it. The implication seemed to be that fee had special reference to governmental action undertaken in respect to any of those matters.

In HH Sudhandra v. Commissioner for Hindu Religious & Charitable Endowments(1), the Court reiterated the principle that a levy in the nature of a fee did not cease to be of that character merely because there was any element of compulsion or coerciveness present in it, and aided.

> "Nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering services, the levy would be in the nature of a fee and not in the nature of a tax ..... but a levy will not be regarded as a tax merely because of the absence of unity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may."

In Hingir-Rampur Coal Co. Ltd. & Ors. v. The State of Orissa and Ors.(1) the Court while reiterating that there was an element of quid pro quo between the person paying the fee and the authority imposing it, said:

> "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."

Later it was said:

> "It is true that when the legislature levies a fee for rendering specific services to a specified area or to 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 ben fitting 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,"

In H.H. Swamiji v. Commissioner, Hindu Religious & Charitable Endowments Department and Ors.,(1) Chandrachud, CJ. speaking for the Constitution Bench, emphasised the necessity as well as the sufficiency of a broad correlationship between the services rendered and the fees charged and discounted the attempts to go into minutiae to discover meticulously whether or not there was mathematical equality. He said, "For the purpose of finding whether there is a correlationship between the services rendered to the fee payers and the fees charged to them, it is necessary to know the cost incurred for organising and rendering the services. But matters involving consideration of such a correlationship are not required to be proved by a mathematical formula. What has to be seen is whether there is a fair correspondence between the fee charged and the cost of services rendered to the fee payers as a class. The further and better particulars asked for by the appellants

under VI, rule 5 of the Civil Procedure Code, would have driven the Court, had the particulars been supplied, to a laborious and fruitless inquiry into minute details of the Commissioner's departmental budget. A vivisection of the amounts spent by the Commissioner's establishment at different places for various purposes and the ad hoc allocation by the Court of different amounts to different heads would at best have been speculative. It would have been no more possible for the High Court if the information were before it, than it would be possible for us if the information were before us. to find out what part of the expenses incurred by the Commissioner's establishment at various places and what part of the salary of his staff at those places should be allocated to the functions discharged by the establishment in connection with the services rendered to the appellants. We do not therefore think that any substantial prejudice has been caused to the appellants by reason of the non-supply of the information sought by them."

In Southern Pharmaceuticals & Chemicals Trichur & Ors. etc. v. State of Kerala & Ors. etc.,(1) A.P.Sen, J. speaking for the Court noticed the broadening of the Court's attitude and observed:

> "It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the services is not by itself decisive. That is because the Constitution did not con template it to be an essential element of- a 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 stricto senso is not always a sine qua non of a fee. It is needle to streess that the element of quid pro quo is not necessarily absent in every tax.....
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> The Traditional Concept of Quid Pro Quo Is Undergoing. A Transformation."

What do we learn from these precedents? We learn that is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred'. Compulsion is not the hall-mark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct . a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as com-

pared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax.

What do we have in the present case ? True, the Municipal Corporation has realised a sum of Rs. 4,24,494 by way of fees at the rate of Re. 00.50p. per animal in the case of sheep, goats and pigs and Rs. 2.00 per animal in the case of buffaloes, whereas the budget of the Municipal Corporation showed under item XIV-B that an amount of Rs. 2,56,000 was expended in connection with slaughter houses. But as explained in the affidavit of Dr. A. C. Ajwani Deputy Health officer (Public Health) of the Municipal Corporation of Delhi, the amount of Rs. 2,56,000 covers only those items of expenditure as are reflected in item XIV-B of the Municipal Budget. The items of expenditure covered by item XIV-B of the municipal budget are evidently those item of expenditure which arc incurred directly and excessively in connection with slaughter houses. In addition there are several other items of expenditure connected with slaughter houses but which are not included in item XIV-B. To name a few, . there is the expenditure involved in the purchase, maintainance and the use of trucks and other vehicles for the removal of filth and refuse from slaughter houses. These expenses, though attributable to slaughter houses, are debited in the municipal budget under other heads such as transport, conservancy, petrol and oil etc. There is also the expenditure incurred in connection with the maintainance of supervisory staff like a full time Veterinary officer, and a Municipal Health officer, Deputy Health officer, Zonal Health officer etc., a considerable part of those duties are connected with slaughter houses. There is then the cost of depreciation of the buildings and fittings in the slaughter houses. There is also the provision for expansion and improvement of slaughter house facilities. There are several other items of expenditure the whole or part of which is attributable to slaughter houses. Unfortunately, the High Court refused to look at any of these formidable items of expenditure on the ground that the Corporation could not ask the Court to look at any figures other than the figure mentioned under item XIV-B of the municipal budget. Aparently the High Court was under the impression that the fees collected should be shown to be related to expenditure incurred directly and exclusively in connection with the slaughtering of animals in its slaughter houses and also, shown as such in the municipal budget. This was a wholly erroneous approach, in the light of what we have said earlier. We have explained earlier that the expenditure need not be incurred directly nor even primarily in connection with the special benefit or advantage conferred. We have also explained that there need not be any fastidious balancing of the cost of the services rendered with the fees collected. It appears to have been common ground before the High Court that the price of meat had gone up about 10 to 12 times since the rates were original fixed. If so, one wonders how the Municipal Corporation could be expected to effectively discharge its obligations in connection with the supervision of the slaughtering of animals in the slaughter houses maintained by it by merely raising the rates two-fold and three-fold. The increase from Re. 00.25p to Rs. 2.00 per animal in the case of small animals and from Re. 1.00 to Rs. 8.00 in the case of large animals appears to us to be wholly justified in the circumstances of the case. The appeal is therefore, allowed with costs the judgment of the High Court set aside and the Writ Petition filed in the High Court dismissed with costs.

S.R. Appeal allowed.