

K.C. Varadachari, Partner, Madras Oil Mills and Products Vs. the State of Madras, by the Secretary to the Government of Madras, Food and Agriculture Department

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Court : Chennai

Decided On : Feb-22-1952

Reported in : AIR1952Mad764; (1952)IIMLJ410

Judge : Rajamannar, C.J. and ;Venkatarama Aiyar, J.

Acts : [Constitution of India](#) - Articles 14, 19(1) and 304

Appeal No. : Civil Misc. Petn. No. 5590 of 1951

Appellant : K.C. Varadachari, Partner, Madras Oil Mills and Products

Respondent : The State of Madras, by the Secretary to the Government of Madras, Food and Agriculture Department

Advocate for Def. : Adv. General, for the Govt. Pleader

Advocate for Pet/Ap. : K.V. Venkatasubramaniam, Adv.

Disposition : Application allowed

Judgement :

1. The petitioner is a partner of a firm carrying on the business and trade of an oil miller under the name and style of Madras Oil Mills and Products. The Oil mill owned by the firm has got five expellers which are used for crushing groundnut and producing groundnut oil and groundnut cake. The firm had been granted a licence under the Madras Manure Dealers' Licensing Order. The fee for the said licence was Rs. 10 from the year 1947.-By G.O. No. Ms. 2435 (Food and Agriculture) dated the 29th December 1950 an amendment was made to the Madras Manure Dealers Licensing Order, 1949, providing for the enhancement of the licence fee. The rate so far as oil mills were concerned was fixed at Rs. 100 for each expeller and Rs. 20 for each rotary or screw press. For mere dealers in manure the licence fee was fixed at Rs. 20 and for firms engaged in manure mixing trade the licence fee was fixed at Rs. 100 with a non-recurring fee of Rs. (30 for each manure mixture marketed. In accordance with this amendment the petitioner's firm became liable to pay a sum of Rs. 500 as licence fee as there were five expellers in the Mill. The petitioner seeks to have the aforesaid G. O. dated the 29th December 1950 enhancing the licence fee quashed by a Writ of Certiorari.

2. The main ground on which the enhancement is impugned is that the new rate of fee is disproportionately high and virtually amounts to levy of a tax. The material

allegations are contained in paragraph 9 of the affidavit which runs as follows:

"I submit that the Government by levying such disproportionately high rate of licence fee are in fact levying a tax which can only be done by the Legislature and not by the Executive. Further the licence fee should be only to cover the cost of issuing licences and for general supervision and in this case I submit that except that the Madras Manure Dealers Order makes it obligatory for me to make returns of production and sale of oil, there is absolutely no control over the dealers in manure by the respondent and even the sum of Rs. 10 previously collected per year is in effect a tax and not a licence fee."

He also attacks the new amendment on the ground that the classification adopted by it is discriminatory and is inconsistent with the provisions of Art. 14 of the Constitution.

3. On behalf of the State the Joint Director of Agriculture filed a counter affidavit supporting the amendment. He stated that there had been frequent complaints from the public of adulteration of oil cakes used as cattle food and manure as well as other kinds of manure and the Govt. have approved of certain amendments to the Madras Manure Dealers' Control Order the enforcement of which would ensure good quality in manure. To enforce these amendments it is said that the staff of inspectors and analysts for analysing manure samples had to be strengthened. A statement was given of the strength of the staff employed and the expenditure by the Govt. on this account during 1950 and 1951 which showed a total of Rs. 43,389. It was further stated that the question of employing additional staff for the purpose at an estimated cost of Rs. 56,720 was under the consideration of the Government. The justification for the imposition of the enhanced licence fee may be stated in the language employed in the counter affidavit which is as follows:

"In fixing the different scales for different classes of licences what was prominently kept in view was that the scale of taxation or licence fee should be based on the work involved and cost of the control and inspection necessary. It is the millers who supply the dealers with oil cakes, and frequent checks to ensure quality are therefore necessary at the very source. It cannot therefore be contended that the imposing of licence fee is not justified by consideration relating to the interests of the general public."

and further on,

"When compared to the cost of installing and working an oil mill, the enhanced licence fee of Rs. 100 per expeller per annum is an insignificant amount. The capacity to pay and the fact that oil mills are the source of supply of oil cakes to dealers and hence frequent checks have to be made at the source were prominently kept in view in proposing the enhancement of licence fees."

It is now well established that there is a fundamental difference between a tax and a licence fee. The issue of licences to regulate particular branches of business or specified trades or occupations and other matters is part of what in American constitutional law is called "the police power" of the State. For the grant of a licence a fee may be charged to cover probable expenses which may have to be incurred for the regulation of the particular trade or business or calling in respect of which the licence is required. The licence fee is not intended to raise revenues for the general

purpose of the authority levying the fee. For such purposes the levy should be in the shape of a tax. The licence fee must be reasonable, whereas a tax need not be.

4. Courts have often dealt with the question whether a particular licence fee is reasonable or not. Though, ultimately the decision in each case must depend upon the particular facts of that case, certain general tests have been formulated to decide whether a particular fee is reasonable in the circumstances. In laying down these general principles, courts have always kept in view the essential difference between a licence fee and a tax, namely, that in the case of a licence fee imposition is intended to reimburse the authority in any amount expended by it in respect of the particular business or matter which is intended to be regulated, whereas a tax is the recognised method of raising revenues for general purposes. It is useful to refer to some of the decided cases on the point, and we shall begin with the ruling of the Privy Council in 'Pazundaung Bazar Co. Ltd. v. Municipal Corporation of the City of Rangoon, 9 Rang. 440 (P.C.). That was given on an appeal from the judgment of the Rangoon High Court reported in 'Municipal Corporation of Rangoon v. Pazundaung Bazar Co. Ltd.', 8 Rang. 143. Under the City of Rangoon Municipal Act the Corporation had power to charge licence fees for private markets. The question was whether the licence fee imposed was unreasonable. Heald, Offg. C. J. rejected the contention of the owners of the private markets who were protesting against the levy that the only charges recoverable by way of licence fees were the cost of the papers on which the licences and receipts were printed together with the costs of printing and writing thereon and the cost of such inspection as was directly connected with the licences themselves. He, held (and Mya Bu J. concurred with him) that the licence fee may reasonably cover the cost of all special services necessitated by the duties and liabilities imposed on the corporation in respect of the supervision and regulation of private markets. The Privy Council agreed with this statement of the law.

5. In 'Corporation of Madras v. Spencer & Co.', 52 Mad. 764 this court held that a licence fee imposed by the Corporation of Madras for storing spirits was unreasonable because the imposition was not with a view to pay for the expenses in connection with the licences but was obviously done to increase the revenue of the Corporation from liquor. The learned Judges accepted the view of the trial Judge, Beasley J. (as he then was) that licence fees were leviable as compensation to the Corporation for the expenses incurred in the issue of licences and the general regulation of the trades and other occupations which were licenced and that there must be some relation between these expenses and the amount of fees leviable. In the case before them, they found on the evidence which had been adduced that the expenses of supervising the places where foreign liquor was stored were practically nil. Reilly J. enunciated two general principles which may be useful to determine whether licence fees can be held to be reasonable or not, namely,

"If we accept the proposition that the power of charging licence fees cannot be used for "taxation, then we must say that as a whole the fees charged by the Corporation must not be very much in excess of what the duties cast upon them and their staff in connection with the licences cost them. There is the cost of issuing the licences; there is the cost of inspecting the premises to see whether they are suitable for the purpose proposed; and there is the subsequent cost of inspecting the premises to see that they are being used properly and that the conditions and restrictions imposed by the Commissioner are observed. But, roughly speaking, if the fees are charged at so high a rate that as a whole they bring in very much more than the cost of these operations to the corporation, then I think we can rightly say that they are unreasonable. There

is another principle. Although it is almost impossible for the Corporation itself to ascertain, when the licencing authority issues they are issuing a number of licences to persons engaged in different trades and occupations, exactly what is the cost of any particular licence or of licences for persons engaged in particular trades or occupations -- and certainly we could not attempt anything of that sort --yet, surely it would be unreasonable if they so fixed the fees that the whole cost incurred by them in connection with all the licences or a grossly disproportionate part of it was imposed on one particular trade or a few particular trades. These principles, I think, may be of help in ascertaining whether a particular fee is reasonable or not." Of Course it is not for a court to minutely assess and fix what in its opinion is the proper fee. All that the court can do is to hold whether a particular fee is reasonable or not."

6. Practically the same principles were reiterated in a subsequent decision of this court in the 'Municipal Council Kumbakonam v. Ralli Bros.', 61 Mad. L. J. 748. It was held that the licence fee should be commensurate with the extra cost entailed by granting the licences and exercising such supervision as was necessary to see that its terms were complied with. But the fees should not be so assessed as substantially to contribute to the general revenues of the local body.

7. The decisions above cited were all discussed in 'Kunhambu v. Local Fund Overseer Chirakkal', 1932 Mad W. N. 873 in which it was again laid down that the licence fee should not be converted into a tax for the purpose of raising revenue and the licence fee should bear a definite and we recognised relation to the expenses incurred by the licensing authority.

8. The decision in 'India Sugar and Refineries Ltd. v. Municipal Council, Hospet', I.L.R, (1943) Mad. 521 relied upon by the learned Advocate General does not lay down any different principle. The following observations of Wadsworth J. are apposite:

"It is, we think, well settled that a licence fee for carrying on a particular trade or industry 'should not be regarded as a form of taxation the extent of which is to be governed purely by revenue considerations. The licence fee should bear as nearly as possible a relation to the cost of issuing the licence and the cost of supervising the trade or of any special measures rendered necessary by the character of that trade. We doubt whether the Municipality would be justified in increasing the licence fee chargeable upon a particular industry merely by reason of the cost of ordinary municipal services to which that industry is entitled by virtue of its position as a tax payer in the municipality. But if the industry involves special sanitary precautions, a special supervising agency or such like expenditure, it is we think, reasonable to take this expenditure into account in fixing the amount of the fee. When a supervision agency is necessary for a number of industries, it will always be difficult to say how the cost is to be apportioned and, so long as the apportionment is to be made on a reasonable basis, it is not for the courts to interfere with the way in which it has been achieved."

Substantially, similar principles have been laid down by the Supreme Court of the United States. It is sufficient to cite one instance, namely, the decision in 'Ingles v. Morf', (1937) 300 U. S. 290 : 31 Law Ed. 053, in which a permit fee was held to be invalid because it bore no reasonable relation to the total cost of regulation to defray which it was collected.

9. Bearing these principles in mind, let us examine the facts of the present case. The

licence fee in question is imposed under the Madras Manure Dealers' Licensing Order, 1949. That order was made by the Government of Madras in exercise of the powers conferred by Section 3 of the Madras Essential Articles Control and Requisitioning (Temporary Powers) Ordinance 1949 and in supersession of the Madras Manure Dealers' Licensing Order, 1947. It may be mentioned that the said Ordinance has now been replaced by Madras Act XXIX of 1949. Clause 2 of this order defines a dealer as

"Oil miller or a person who sells manure in quantities of not less than one maund at a time."

'Oil miller' means any person owning or having in his possession or under his control, an oil mill run by power or hand presses but does not include a person owning or having in his possession or under his control a wooden or stone chekku."

Clause 3 enacts that no person shall on and after 6th December 1949 carry on business as a dealer in manure in the Province of Madras except under and in accordance with a licence issued in that behalf by a licensing authority. A fee of Rs. 10 per annum is payable in advance with every application for a licence (Clause 4 (ii)). Clauses 6, 7, 8 and 9 deal with issue of and refusal to issue licences to applicants. Clause 10 runs thus:

"Any officer authorised by the Director may enter upon and inspect any premises in which he has reason to believe that the sale or storage for sale or distribution of manure is taking place contrary to the provisions of this order or any order made thereunder."

Form II set out in the schedule contains the terms and conditions of the licence, the following of which are important:

"3. The licensee shall not store manure in anyplace other than that specified in paragraph 2, except with the approval of the licensing authority.

4. The licensee shall maintain a register of daily accounts showing correctly all transactions in manure in his possession or control. It shall show:

(a) the opening stock 011 each day,

(b) the quantities sold, delivered or received each day, showing the place of origin, that is, the name of oil miller or factory or other consignor from whom received;

(c) the quantities sold, delivered or otherwise disposed of on each day showing the places of destination and the names of the consignees; and

(d) the closing stock on each day.

5. The licensee shall submit to the licensing authority so as to reach him not later than the 10th of, each month, a true return in form III set out in the schedule to the Madras Manure Dealers' Licensing Order, 1949, of the stocks, receipts deliveries and balance during the preceding month.....

8. The licensee shall give all facilities at all reasonable times to any officer authorised

by the Director of Agriculture, Madras for the inspection of his accounts and stocks wheresoever they may be kept and for taking samples of such manures for examination.

9. The licensee shall comply with any directions that may be given to him by the Director of Agriculture, Madras, or any officer authorised by him in regard to the sale or storage for sale or distribution of manure."

There is provision for a contravention of any of the conditions of the licence.

10. It will be noticed from the provisions of the Order as well as the licence that the licence in question is what may be called a "dealers' licence". No doubt a "dealer" is defined as including an oil miller, but even in respect of him the order relates only to transactions of sale and distribution. There is nothing in the order which directly or indirectly provides for anything other than the regulation of the sale of manure. In Form II, i.e. the licence form, there is one term which makes it incumbent on the licensee to give all facilities to an officer authorised by the Director of Agriculture to take samples of manures for examination. But there is nothing in the order or in the licence which imposes any punishment on a person selling adulterated or bad type of manure. Nor is there anything to indicate as to what is to happen after the officer of the Agriculture Department takes samples of manures for examination. The supervision and regulation contemplated by the Order are confined to the stocking and sale of manure and do not relate to the maintenance of any quality. It is apparently because of this fact that in the Order itself a flat rate of Rs. 10 per annum is prescribed for every licence.

11. If Rs. 10 was considered to be proper and adequate fee from 1947 onwards, what then is the justification for a sudden enhancement in 1951 from Rs. 10 to Rs. 100 per expeller? The statement set out in paragraph 6 of the counter affidavit filed on behalf of the State relates to the staff of the Inspectors of Fertilisers and Chemical Analysts' section of Agriculture department of the Government. Presumably the staff is engaged in checking and analysing samples of fertilisers and other things. But there is nothing in the Order to indicate that the licence required from the dealers is for the purpose of ensuring the proper quality of manure being sold. There is not even a provision which makes a sale of adulterated or unwholesome manure punishable.

12. We are not impressed with the figures, set out in the counter affidavit. Many material particulars are found wanting as regards this, aspect of the matter. The costs of the establishment has been given but we have no information as to the total amount being collected as licence fees from the various classes of dealers, dealt with by the Order. There is no averment that the total of fee collected is much less than the costs of establishment. On the other hand, on the information supplied to us in the counter affidavit it is clear that the total fees at the enhanced rate which can be collected from, the oil millers alone, completely leaving out of account the other classes of dealers, would far exceed the cost of establishment. There are 478 oil mills which have expellers and the average number of expellers per mill is 2.5, that is to say, on an average each oil mill would be liable to pay a licence fee of Rs. 250. The total fee for 478 oil mills having expellers would be Rs. 1,19,500. Besides there are mills having rotaries or screw presses. These number 687. The average number of rotaries per mill is 3.6, and the enhanced rate is at Rs. 20 per each rotary. If the amount calculated at this rate is added to the amount of fee which can be collected from the expeller mills, the figure reached is disproportionately high in comparison

with the expenditure incurred by the Government even according to their statement in the counter-affidavit.

13. It is impossible to discover any rational basis for adopting the expeller as a unit for charging licence fee. If it is said that the more the number of expellers it would mean more manure produced and sold, then it can be very properly asked, what about the other dealers who may actually stock and sell much more than what any oil miller may be able to produce and sell? Such dealers have to pay only at a flat rate of Rs. 20. The enhancement in the case of oil millers only would in that event be clearly discriminatory and would offend the provisions of Article 14 of the Constitution.

14. We must therefore held that the enhanced fee imposed by the amendment in 1950 is unconstitutional and therefore invalid because the fee would amount to an unreasonable restriction on the exercise of the right to carry on business guaranteed by the Constitution and also because the fee is discriminatory and in contravention of Article 14 of the Constitution. The application is allowed and the rule nisi is made absolute. The State will pay the petitioner the costs of this application Rs. 150.

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