Netram Agarwalla and Others Vs Chairman, Raigunj Municipality and Others

Court: Calcutta High Court

Date of Decision: May 3, 1955

Acts Referred: Bengal Municipal Act, 1932 â€" Section 123, 370, 370(1)(ii)
Constitution of India, 1950 â€" Article 19(1)(g)

Citation: 59 CWN 872

Hon'ble Judges: Sinha, J

Bench: Single Bench

Advocate: Atul Chandra Gupta, Anil Kumar Sinha and Kashi Kanta Maitra, for the Appellant;Arun Kumar Mukherjee and Sukumar Sen for Opposite Parties Nos. 1 and 2 and Jagneswar Mazumdar and Mihir Kumar Sarkar for Opposite Party No. 3, for the Respondent

Judgement

Sinha, J.
The Raigunj Municipality (hereinafter referred to as the ""Municipality""), was constituted on the 15th August, 1951. Previously

there existed merely an Union Board. After the partition of the old district of Dinajpur, Raigunj became a subdivision of the district of West

Dinajpur. It is not disputed that jute has always been and still is the main industry there. But there is also considerable trade in rice, paddy and

timber. On the 16th July, 1952, the Commissioners of the Municipality passed the following resolution:

Regarding Item No. 5A, it is unanimously resolved that within the Municipal area persons engaged in occupations mentioned in section 370(1) (ii),

(ix), (x), (3d), (xii) only for wood and jute and (xiii) be required to take licenses under the above section 370 of the Bengal Municipal Act and that

the State Government be moved to approve the levy of fees at 75 p.c. maximum laid down in Schedule IV, Part III, of the Act for the license.

This resolution was modified by another resolution passed by the Commissioners of the said Municipality on the 30th July, 1952. It runs thus:

It is unanimously resolved that as in resolution No. 5 on 16th July, 1952, the Part III of Schedule IV was incorrectly taken as applicable for fees

u/s 370 of the Bengal Municipal Act, 1932, the following scales of fees be recommended in modification of that resolution for adoption in this

Municipality.

1. Storing of hides, fish, horns or Rs. 10/- annually per license

skins....

2.

3.

4. Storing

(i) Kerosene .. Rs. 2/- a year per 100 gallons or part

thereof

(ii) Petroleum

.. Rs. 2/- a year per 50 gallons or part thereof.

(iii) Naptha

.. Re. 1/- a year per quart or part thereof.

(iv) Any other inflammable oil or spirit

.. Rs. 2/- a year per 100 gallons or part

thereof.

5. Storing of Wood .. One anna per C. ft. annually.

6. Storing of Jute .. Two annas a year per md.

2. The petitioner in this application is a jute merchant and stores jute within the jurisdiction of the Municipality. We are, therefore, concerned in this

case with the license fee relating to the storing of jute. The rate was sanctioned by Government on or about the 25th April, 1953. Thereafter, bills

have been served on the petitioner demanding the payment of the fees said to be calculated at the rate above mentioned. On the 24th November,

1953, this Rule was issued upon the opposite parties to show cause why a Writ in the nature of Mandamus should not be issued directing them to

cancel and/or withdraw and/or forbear from giving effect to, the resolution dated 1.8.53., mentioned in the petition and/or from realizing any fee

pursuant to the said resolution and/or why such further or other order or orders should not be made as to this Court may seem fit and proper. The

date of the offending resolution is not the 1st of August, 1953. What happened was that the resolution was sanctioned by the Commissioner, under

powers delegated to him by the State Government, and took effect from the 1st August 1953. The mistake arose from the fact that the municipality

did not afford inspection of the impugned resolution, prior to the making of this application. However, before me, the parties have proceeded upon

the footing that the impugned resolution is the one passed on the 30th July, 1952, which came into operation on and from the 1st August, 1953.

3. The contention of the petitioner in this application will be clear if we examine the nature of the resolution regarding the storing of jute, and the

rate fixed for the license fee in respect thereof. Usually the license fee is a fixed amount to be paid in advance. But in this case, the license fee has

been fixed at a sum calculated at the rate of ""two annas a year per maund."" It is not easy to comprehend what it exactly means, but I am told that

the intention is to charge two annas per maund upon the total quantity of jute stored in a particular year in a godown, for which the license was

being issued. The objection of the petitioner in short is that this imposition is in the nature of taxation, and that it is not a license-fee at all. It is

argued that neither the State Legislature, nor the Municipality has jurisdiction to tax the storage of goods, i.e., levy a tax on the storage of goods,

and, therefore, this was a colourable attempt to levy an imposition which they had no jurisdiction to impose. It is first of all necessary to consider

the relevant provisions of the Bengal Municipal Act (hereinafter referred to as the "Act").

4. Chapter V of the Act is headed-- ""Municipal Taxation, Imposition of Taxes."" u/s 123, the commissioners may from time to time at a meeting

convened specially for the purpose, impose within the limits of the Municipality, rates, taxes, tolls and fees or any of them as laid down in that

section. These headings include such familiar items as rates on holdings, water rate, lighting rate, conservancy rate, taxes on trades, professions

etc., and tolls on ferries and bridges. Section 123(2) of the Act is as follows:--

The commissioners may, from time to time, at a meeting convened as aforesaid, and in accordance with a scale of fees to be approved by the

State Government, charge a fee in respect of the issue and renewal of any license which may be granted by them under this Act and in respect of

which no fee or tax is leviable under sub-section (1).

5. The next section to be considered is section 370, appearing in Chapter XIII, under the heading of ""Offensive and dangerous trades, occupations

or processes"". The relevant part of the section is as follows:

370(1). No person shall use or permit to be used any place within such local limits as may be fixed by the commissioners at a meeting without a

license from the commissioners (which shall be renewable annually) for any of the following purposes, namely:--

.....

(xii) for trading in, or storing for other than his own domestic use hay, straw, wood, thatching grass, jute or other dangerously inflammable material.

.....

(3) The commissioners at a meeting, in accordance with a scale of fees prepared by them from time to time and approved by the State

Government, levy a fee in respect of any such license or renewal thereof, and may impose such conditions as to supervision, inspection,

conservancy and other matters upon the grant of any such license as they may think necessary.

6. u/s 122 of the said Act, the State Government has been empowered to make rules for certain purposes. Rules have been framed in pursuance

of the power granted under the section, and the relevant rules are Rules 82, 83 and 85. It will appear from the said Rules that prepayment of the

license fee is a condition for the issue of a license. The form in which a license is to be issued is also prescribed, being Form No. 25 (at page 191),

and shows on the face of it that the license was meant to be issued upon pre-payment of the license fee. Mr. Mukherjee has argued that Rule 82,

which makes the pre-payment of fee a condition precedent for the issue of a license is ultra vires of the Act, inasmuch as no power has been

granted u/s 122 of the Act, upon the State Government to make such a rule, the rule-making power as granted by that section being limited to the

headings enumerated therein. According to Mr. Mukherjee, Rule 82 does not fall under any of the headings. There is another section which

confers rule-making power upon the State Government. This is section 215, relevant part whereof is set out below:--

The State Government may make rules--

(g) regulating any other matter relating to taxes, tolls, fees or rates in respect of which this Act makes no provision or insufficient provision, and for

which provision is, in the opinion of the State Government, necessary or which is directed to be prescribed.

7. The trouble however is that the rules as framed purport to be u/s 122, and not u/s 215.

8. Mr. Gupta appearing on behalf of the petitioner argues that there is a substantial difference between a tax and a license fee. A tax is an

imposition calculated to raise revenue for the State for its general purposes. Mr. Gupta argues that so far as the Municipality is concerned, it cannot

in any event, "impose" a tax. But assuming that the imposition was valid, a tax would be an imposition raised for its general revenue. A license fee,

on the other hand, is an imposition which is raised for a particular purpose. The amount raised must be a limited amount which is required for a

specific purpose. Or as it has been put, there must be a ""quid pro quo"". The question is whether the municipality can ever "impose" a tax, that

power being given to the legislature.

9. Under item 5 of List II in the VII Schedule of the Constitution, the State Legislature can legislate (sic)sa to the constitution and powers of

municipal corporations. Item 60 relates to Taxes on professions, trades, callings and employments.

10. Item 66 authorizes the imposition of fees in respect of any of the matters in the list, not including fees taken in any Court.

11. Item 54 authorizes the imposition of taxes on the sale and purchase of goods and Item 56 authorizes taxes on goods carried by road.

12. Section 544 of the Act empowers the State Government to delegate any of the powers vested in the State Government under the Act to the

Commissioner of a Division. The State Governor has delegated its powers u/s 370(3), to the Commissioner. Mr. Mukherjee concedes that the

word imposition of taxes in Chapter V of the Act, and the inclusion of licensing fees under that heading, is somewhat unfortunate. He says that in

reality the imposition of the taxes and fees has been done by the legislature, but there has been a partial delegation of power, inasmuch as the

commissioners have been empowered to decide when to levy the same and the amount thereof. (In the case of license fees, subject to approval of

the State Government).

13. I think that for the purposes of this case, it is unnecessary to decide the wider question, whether the State legislature could delegate to the

Commissioners of a Municipality, its power to impose a tax or license fee. I shall assume that such a power of delegation exists and that the State

legislature has validly delegated to the Commissioners of the Municipality, the power to levy taxes in certain cases and license fee in respect of the

storage of jute and other materials which are dangerously inflammable. The powers of the Commissioners in that case would be no more than that

of the State Legislature, and would be circumscribed by the wordings of the Act. It is clear that the State Legislature has no power to impose a tax

on goods which are stored. In any event, no such power has been delegated to the Commissioners. Therefore the first point to decide is whether

the impugned imposition is a tax or a license-fee. What is the difference between a tax or a license-fee ?

14. This point has been exhaustively dealt with by Mukherjea, J., in the case of the Commissioner, Hindu Religious Endowments, Madras v. Sri

L.T Swamiar of Shirur Mutt (1) (1954) S.C.A. 415. In this case, the learned Judges of the Supreme Court were called upon to construe the

provisions of the Madras Hindu Religious and Charitable Endowments Act (XIX of 1951). The Act provided for the control by the Government of

the administration of Hindu endowments. u/s 76 of the said Act, such religious institutions were required to pay to Government, in respect of

services rendered, an annual contribution not exceeding five per cent. of its income, as might be prescribed. Religious institutions the annual income

of which was not less than one thousand rupees, were liable to pay a sum not exceeding one-half per cent. of their income to Government. The

Government was to pay salaries, pensions, etc., to those who were employed for the purposes of the Act, and other expenses incurred for the

purposes of the Act. The question arose whether this was a fee or a tax. The findings of Mukherjea, J., upon this point may be summarized as

follows:--

(1) A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is in payment for services rendered

(Mathews v. Chickory Marketting Board, 60 C.L.R. (Australia) 263 at page 276.

(2) The essence of taxation is compulsion, it is an imposition under statutory power without the tax-payer''s consent and the payment is enforceable

by law (Lower Mainland Dairy v. Chrystal Dairy Limited, 1933 A.C. 168).

(3) A tax is an imposition made for a public purpose, without reference to any specific benefit to be conferred upon the tax-payer.

(4) The levy of tax is for the purpose of general revenue which when collected, forms part of the revenue of the State.

(5) As the object of a tax is not to confer any special benefit upon any particular individual, there is no element of ""quid pro quo"" between the tax-

payer and the public authority.

(6) As a tax is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay.

(7) A ""fee"" is a charge for a special service rendered to an individual by some governmental agency.

(8) The amount of fee levied, is based upon the expenses incurred by Government in rendering service. Although in many cases the costs are

arbitrarily assessed, ordinarily, fees are uniform and no account is taken of the varying abilities of the different recipients to pay. There is a ""quid

pro quo"".

(9) License fee is something voluntary which a person has got to pay if he wants certain services from the Government, there being no obligation on

his part to seek such services, and if he does not want the services, he can avoid the obligation. This, however, is not a very important distinction

between a tax and a fee, because an element of compulsion may exist even in the case of a license fee.

(10) The distinction between a tax and a fee, lies primarily in the fact that a tax is levied as part of the common burden, while a fee is a payment for

a special benefit or privilege.

(11) The levy of a fee must, on the face of the legislative provision, be correlative to the expenses incurred by Government in rendering the service.

(12) The taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes. Our

Constitution has for legislative purposes made a distinction between a tax and a fee. While there are various entries in the legislative list with regard

to various forms of taxes, there is an entry at the end of each one of the three lists as regards fees which can be levied in respect of any of the

matters that is included in it. The implication seems to be that fees have special reference to governmental action undertaken in respect of any of

these matters.

15. By applying these tests the learned Judge came to the conclusion that the imposition sought to be made u/s 76 of the Madras Hindu Religious

and Charitable Endowments Act was a tax and not a fee, and therefore, it was beyond the power of a State Legislature to enact such a provision.

The learned Judge stated as follows:--

It may be noticed, however, that the contribution that has been levied u/s 76 of the Act, has been made to depend upon the capacity of the payer

and not upon the quantum of benefit that is supposed to be conferred on particular religious institution. Further, the institutions which come under

the lower income group and income less than one thousand Rupees annually, are excluded from the liability to pay additional charges under clause

(2) of the section. These are undoubtedly some of the characteristics of a tax and the imposition bears close analogy to income tax.....

16. ""But the material fact which negatives the theory of fees in the present case is that the money raised by the levy of the contribution is not

earmarked or specified for defraying the expenses that the Government is to incur in performing the services. All the collections go to the

consolidated fund of the State and all the expenses are to be met not out of these collections, but out of the general revenues by a proper method

of appropriation as is done in case of other Government expenses. That in itself might not be conclusive, but in this case there is a total absence of

any correlation between expenses incurred by the Government and the amount raised by contribution under the provisions of section 76, and in

these circumstances, the theory of return, or counterpayment or ""quid pro quo"" cannot have any possible application to this case.

In our opinion, therefore, the High Court is right in holding that contribution levied u/s 76 is a tax and not a foe and consequently it is beyond the

power of the State Legislature to enact this provision.

17. In Sri Jagannath Ramanuj Das v. State of Orissa (2) (1954) S.C.A. 569, the conclusion arrived at, after applying the tests above mentioned,

was that the imposition was a fee and not a tax. This case dealt with the Orissa Hindu Religious Endowments Act (IV of 1949). It was held that

section 49 of the Act was within the competence of the Orissa Legislature, as the contribution that was levied by section 49 will have to be

regarded as a fee and not as a tax. Mukherjea, J., says as follows:--

The only other section that requires consideration is section 49, under which every mutt or temple having an annual income exceeding two hundred

and fifty rupees has got to make an annual contribution for meeting the expenses of the commissioner and officers and servant working under him.

The first question that arose with regard to this provision is, whether the imposition is a tax or a fee; and it is not disputed that if it is a tax,

provincial legislature would have no authority to enact such a provision.

This question has been elaborately discussed in our judgment in the Madras Appeal..... As has been pointed out in the Madras Appeal

(supra), there is no generic difference between a tax and a fee and both are different forms in which the taxing power of a State manifests itself.

Our Constitution, however, has made a distinction between a tax and a fee for legislative purposes, and while there are various entries in three lists

with regard to various forms of taxation, there is an entry at the end of each one of these lists as regards fees which could be levied in respect of

every one of the matters that are included there in.

A tax is undoubtedly in the nature of compulsory exaction of money by a public authority for public purposes, payment of which is enforceable by

law. But the essential thing in a tax is that the imposition is made for public purposes to meet the general expenses of the State without reference to

any special benefit to be conferred upon the payers of the tax. Taxes collected are all merged in the general revenue of the State to be applied for

general public purposes. Thus, tax is a common burden and only return which the tax-payer gets is participation in the common benefits of the

State. Fees, on the other hand, are payments primarily not in the public interest, but for some special service rendered or some special work done

for the benefit of those from whom payments are demanded.

Thus in fees there is always an element of "quid pro quo" which is absent in a tax. Two elements are thus essential in order that a payment may be

regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or

unwillingly, but this by itself is not enough to make the imposition a fee, if the payments demanded for rendering of such services are not set apart

or specifically appropriated for that purpose but are merged in the general revenue of the State to be spent for general public purposes.

18. It was pointed out that the contribution that was sought to be levied was for the particular purpose of meeting the expenses of the

commissioner and his office, connected with the due administration of the affairs of the religious institution. The collections were not merged in the

general revenue, but went to constitute a fund which was set apart for the rendering of such services. It was held, therefore, applying the tests, that

the imposition was a fee, not a tax.

19. Apart from the characteristics of a license fee, enumerated above, there is another feature which distinguished a fee from a tax. Where a tax

can be levied, there is no limit on the amount that can be levied, although ordinarily, it is levied proportionate to the paying capacity of the tax-

payer. On the other hand, it is a legitimate objection to a fee that it is excessive. As stated above, a fee for a license must be correlative to the

services to be rendered, and therefore, must be proportionate to the expenses that are likely to be incurred therefor. This objection was taken in

the case of Cooverjee B. Bharucha v. Excise Commissioner, etc., (3) (1954) S.C.A. 256. It was contended there, that the charge of fee collected

from vendors of intoxicating liquor by public auction was excessive. It was held, however, that this imposition was not in the nature of a fee, but of

a tax, although it was described as license fee. It was, therefore, not permissible to raise the point that the imposition was excessive.

20. In Md. Yasin v. The Town Area Committee, Jalalabad, (4) (1952) S.C.A. 237, Das, J., pointed out that there was a difference between a tax

like income tax, and a license fee, for carrying on a business. A license fee on a business not only took away the property of the licensee, but also

operated as a restriction on his right to carry on his business; for, without payment of such fee the business could not be carried on at all. If a

license fee could not be justified on the basis of any valid law, no question of its reasonableness would arise, for an illegal impost must at all times

be an unreasonable restriction and will necessarily infringe the right of a citizen to carry on his occupation, trade or business under article 19(1) (g)

of the Constitution.

21. In the case of K.C. Varadachari, Partner, Madras Oil Mills and Products v. State of Madras, (5) AIR (1952) Mad. 764, the facts were as

follows: Under the Madras Manure Dealers Licensing Order, 1949, dealers in manure had to take out a license for which a flat rate of ten rupees

was payable in advance. This rate was suddenly increased to one hundred rupees for each dealer. It was held that there was a fundamental

difference between a tax and a license fee. For the grant of a license, the fee may be charged to cover proportionate expenses which may have to

be incurred for the regulation of the particular trade or business or calling in respect of which the license is required. License fee is not intended to

raise the revenues for the general purpose of the authorities levying the fee. For such purposes, the levy should be in the shape of a tax. The license

fee must be reasonable, whereas a tax need not be. Though ultimately the decision in each case must depend upon the particular facts of that case,

certain general tests have been formulated by the Courts in various decisions to decide whether a particular fee is reasonable in the circumstances.

They are:--

(1) The license fee may reasonably cover the costs of all special services necessitated by the duties and liabilities imposed on the authority in

respect of the supervision and regulation of the particular trade or calling in respect of which the license is issued.

(2) There must be some relation between the expenses incurred in the issue of licenses and in regulating the licensed trade and other occupations

and the amount of fees leviable. When the licensing authorities issue a number of licenses to persons engaged in different trades and occupations it

would be unreasonable if they so fixed the fees that the whole cost incurred by them in connection with all the licenses or a grossly disproportionate

part of it was imposed on the particular trade or a few particular trades.

22. The learned Judges found upon examination of the facts that the sudden increase from ten rupees to one hundred rupees had no relation to the

actual expenditure that was to be made for services rendered and therefore it was not justified.

23. In the case of the Corporation of Madras v. Spencer & Co., Ltd., (6) AIR (1930) Mad. 55, the facts were as follows. Prior to 1924 the

Corporation of Madras charged a license fee of Rs. 25 for storing spirits within the jurisdiction of the Municipality. Near about that date, the

Government started collecting Abgari revenue within the city and did not allow the Corporation to utilize such revenue for themselves. The

Corporation as a counter demonstration, raised the license fee from twenty-five rupees to two hundred rupees and also changed the definition of

spirits"" by including arak and foreign liquor containing alcohol.

Phillips, J., said as follows:

Can it be said that this alteration was made reasonably ? Taking it that the fee income must be more or less proportionate to the trouble and

expenses incurred by the Corporation in issuing licenses and in controlling trades and other matters for which licenses are issued, reason at the

bottom of the resolution of the Council is dearly not in accordance with the spirit of the Act. The fee was not raised because of the expenses of

collection or regulation, but was merely a counter-demonstration to the order of Government refusing to allow the Corporation to take Abgari

revenue of the city.....

The result of this increase of fee has undoubtedly imposed on the persons who store such liquor a very unfair burden as compared with other tax-

payers in the city. From the evidence which has been adduced it would appear that the expenses of supervising the place, where foreign liquor is

stored is practically nil. The site is inspected when the license is originally granted and, so far as evidence goes, no further action appears to be

taken. If we compare fees for this license with the fees for other matters which entail much greater expense and trouble on the Corporation, such

as fees for stables, dairies and storing skins and explosives, we find that the fee for storing spirits is by far the highest, although these other matters

entail much greater trouble and are more dangerous and offensive to the general public. The fee for other licenses was not raised at the same time

and consequently, it is impossible to hold that there was justification for raising the fee for a license for storing spirits by eight hundred per cent. It

was certainly not done with a view to pay for the expenses in connection with such license.

24. Reference may also be made to the case of Gajapati Narayan Deo v. The State of Orissa, (7) (1954) S.C.A. 1, where it has been held that

the legislature cannot exceed or transgress the limits of its constitutional power. Such transgression may be patent, manifest or direct, but may also

be disguised, covert or indirect, and it is to this latter class of cases that the expression ""colourable legislation"" has been applied.

25. So far as the tests are concerned, I do not think that there is much variance between Mr. Mukherjee and Mr. Gupta. The decision in this case

will depend upon the application of these tests to the facts of this case.

26. The position therefore is as follows. Whether it is the legislature which imposes the payment, or any governmental body by virtue of power

delegated to it by the Legislature, the payment is either a tax or a fee. In the case of a Municipality, the above-mentioned tests will have to be

applied. The imposition, to be characterized as a fee, must not be raised for the general revenue. It must be raised for a specified purpose, and

there must be a quid pro quo, in the shape of services rendered for that specified purpose. One particular trade cannot be singled out for bearing a

burden, the benefit of which is not enjoyed by it exclusively, but shared by others. Lastly, the amount raised must be correlated to the expenditure

involved and cannot be arbitrary, although it cannot be mathematically equated.

27. Let us now come to the facts of the present case. The Municipality came into existence on or about the 15th of August, 1951. In the budget

estimate as sanctioned in August. 1952, or March, 1953, for the year 1953-54, there is no mention of fire-fighting services, etc. It appears,

however, that the Municipality had approached the Government for sanctioning the imposition of license fee at the rate at which it was

subsequently imposed, the relevant resolutions being dated July, 1952, and October, 1952, as already mentioned above. This was sanctioned on

the 25th April, 1953, by Government. In the March, 1954 budget the estimates for fire-fighting services were incorporated. I do not think it is

seriously disputed that jute has always been and still is the main trade and industry in the area comprised within the Municipality. It is equally clear

however, from the relative resolutions passed u/s 370 of the Act, that it is not only jute that is stored within the Municipal area, but also there is

storing of hides, fish, horns, skins, coal, coke, kerosene, petroleum, etc., as also timber. As a matter of fact, it is not disputed that the storing of

timber is quite substantial and comes next to the storing of jute.

28. In this case, there has been a number of affidavits filed from time to time. This was necessitated by the fact that nobody seemed to be clear in

their mind as to the exact scope of the application. When it was realized that in order to be a license fee, the realizations have to bear a reasonable

proportion to the expenditure contemplated in providing for the services proposed to be rendered, the Municipality asked for an opportunity to

place facts before the Court to satisfy the above tests. It has now been finally stated that the services which were to be provided for are as follows:

(a) Maintenance of proper roads which can stand the wear and tear caused by bullock carts, as well as lorries heavily laden with jute;,

(b) Maintenance of fire-fighting services, as a measure of pre-caution against the spreading of fire, if by accident any fire arises in any godown or

warehouse;

(c) Sanitary measures to prevent drying of raw jute which usually comes in wet bundles in public places which not only spreads obnoxious smell all

around, but is also considered to be injurious to health;

(d) Maintenance of a suitable staff for assessment and realization of license fees, if any license fees are imposed.

29. It is admitted in paragraph 13 of the further affidavit filed on behalf of the Municipality, affirmed by Srish Chandra Gupta, dated the 25th of

January, 1955, that the roads are not, and cannot be regarded as intended solely for the purpose of the jute traffic. It is stated that Rs. 36,000 had

to be spent in making the roads pucca and repairing the same. It is obvious that these roads are not meant for the exclusive use of the jute trade.

No body has calculated as to what should be the proportionate burden that is to be reasonably borne by the jute trade. It is also stated that most

of the jute godowns are situated on P.W.D. Roads. This will have to be taken into consideration. The way that the rate has been calculated is by

estimating that about 2,00,000 maunds of jute would pass through the town and therefore the receipts would be in the neighborhood of Rs.

25,000. Rs. 10,000 was to be spent on fire-fighting equipments. It is however mentioned that it was not intended to acquire the equipments all at

once, but gradually through a period of years. It is said (paragraph 17) that Rs. 6,660, was required for additional staff but it was impossible to

allocate what exactly was the increased sum required so far as jute was concerned. Then again, it is contemplated that carts used for spraying

water on the roads, will be diverted to fire-fighting, if necessary.

30. The nett result is that the income which the Municipality proposes to raise from license fees imposed on the storing of jute is to be used for the

making and maintenance of roads which cannot be said to be exclusively for the benefit of the jute trade. It is next to be used for providing a fire-

fighting service, which is not also exclusively meant for the purposes of the jute trade. As appear from the facts stated above, it is contemplated

that inflammable materials like kerosene, petroleum, etc., as also timber are to be stored and were being stored within the precincts of the

Municipality. If there was a necessity for a fire-fighting service, the necessity is greater in the case of inflammable materials like petroleum, etc., than

jute. It is not stated that the Municipality calculated the probable income from license fees of all such trades and then allocated a suitable

proportion to the jute trade. Throughout the affidavits it is evident that the Municipality considered the jute trade as its real source of income and

ignored the others. So far as item (c) is concerned, there is nothing to show what sanitary precaution the Municipality is proposing to take, save

and except the appointment of a Sanitary Inspector and the making of regulations preventing the drying of wet jute within the Municipal area. That

would, therefore, be a negligible item of expenditure.

31. It is obvious, therefore, that the Municipality has failed to establish the fact that the rate of license fee that was going to be imposed on the jute

trade was proportionate to the service that was going to be rendered to that trade and to that trade alone, or correlated to the service which was

proposed to be rendered to the jute trade. On the other hand it appears that the levy is of an amount which is in the nature of general revenue, to

be utilized not only for providing services for the jute trade, but also for divers other trades and purposes. This is clearly not permissible in the case

of an imposition of a license fee but is more consistent with the imposition of a tax.

32. Mr. Gupta has rightly pointed out that the working of the imposition of the so-called license-fee would present insuperable difficulties. I think

Mr. Mukherjee was quite justified in arguing that Rule 82 was not warranted by the power conferred by section 122 of the Bengal Municipal Act.

But that section gives the power to prescribe forms and the form for a license has been prescribed. This form clearly shows that pre-payment of

the license fee is a condition-precedent for the issue of a license. If, however, the license fee is to be calculated at the rate of 2 annas per maund of

jute that is to be stored in a godown during the year, then clearly no license can be granted upon pre-payment. At the beginning of the year nobody

can know how much jute was going to be stored in a particular godown during the course of the year. The license would, therefore, have to be

issued in anticipation of the fee being paid, after calculation later on. What is actually happening is that Bills are being submitted from time to time

upon a hypothetical basis and not upon actual calculation. In fact, to make the provision workable, jute traders would have to file a return like

return of income tax or sales tax. Elaborate investigations will have to be made to avoid multiple taxation, because there is movement of jute even

within the Municipal area, and jute already taxed will enter a particular godown. Mr. Mukherjee has rightly argued that a license fee can be graded

and also that there was nothing to prevent it being payable in installments. That, however, is not the whole difficulty in this case. The mere fact of

grading would not have rendered the imposition unlawful. For example, a person who stored 1000 maunds might be charged more than one who

stored 100 maunds. This can be justified on the ground that the services to be rendered in one case is more than is to be rendered, in the other.

The real question is whether the amount that is to be raised has any reasonable connection with the service to be rendered to the jute trade and jute

trade alone, or whether the amount that was going to be raised was a general amount to be spent not for a particular purpose alone but upon a

variety of purposes. The Municipality is by no means clear in its mind as to the purposes for which the money was going to be spent or the manner

in which it was going to be realized. For example, it has realized license fees from traders for using lorries upon the Municipal Roads carrying jute.

In many instances it has issued bills containing the wrong amount and then has either retracted it or issued new bills. Such confusion is inevitable

because there is a tremendous overlapping, and the conditions which would justify the levy of a license fee are non-existent. What the Municipality

is doing at present is attempting to levy a tax on goods which are stored within its precincts.

33. It is clear, therefore, that before the Municipality can levy a fee in the manner in which it has sought to levy it, several things will have to be

done. Firstly, it will have to make up its mind as to what services are required, to be provided for the jute trade, and what it intends to provide. It

will then have to calculate the exact amount which it requires for providing such services. In the case of services like roads or fire-fighting

equipments, which are to be used not only for the jute trade but for other trades as well, a calculation will have to be made as to the proportion in

which the benefit can be said to accrue to the jute trade, and the fee that is to be levied upon the jute trade must be calculated proportionately.

Finally, the form of license will have to be altered, and a scheme prepared whereby it will be possible to make the imposition related to the actual

amount of jute stored in the godowns. It must also be borne in mind that a license fee cannot be excessive and, therefore, the license fee must be

calculated in a manner so that it should not be an excessive burden on the jute trade.

34. For the reasons aforesaid, in my opinion the license fee which has been levied pursuant to the resolution passed by the Municipality on the 30th

July, 1952, is not in accordance with law, and does not pass the tests of a permissible imposition of a license fee, but that the imposition is in the

nature of taxation which is beyond the competence of the Municipality. It does not come under any heading of taxation which the State Legislature

can impose or what the Commissioners can impose by virtue of the Act.

35. The result is that this Rule must he made absolute and the said resolution must be quashed and set aside and the respondents must be

restrained from realizing license fees in accordance with such resolution.

36. It will be open to the Municipality to proceed to impose such license fees as it may, in accordance with law. Certain amounts of money have

been deposited with the Municipality in anticipation of the result of this application. Such amounts must be refunded but without prejudice to

demands that may hereinafter be made in accordance with law. The operation of this order is, however, stayed for three weeks to enable the

opposite party to prefer an appeal against this order.

37. There will be no order as to costs. [No appeal has been preferred against this judgment-Ed.]