IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.8637 of 2003 and

W.P.M.P.No.11069 of 2003

M/s The Sivkasi Master Printers Association
Rep. By its President: K.A.P.A.B.Rajakrishnan
No.425 Kamaraj Road
SIVAKASI ... Petitioner

Vs

1. The State of Tamil Nadu, rep. By
Secretary to Government
Department of Local Administration
Fort St. George, Chennai 600 009.

2. The Municipal Council
Sivakasi Municipality,
SIVAKASI.

3. The Commissioner
Sivakasi Municipality,
SIVAKASI. ... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the 3rd respondent in Na.Ka.No.20366/99/H-1 dated 20.06.2002, enhancing the licence fee payable for running Industries and Factories, published in Virudhunagar District Gazette No.7, dated 26.08.2002, in so far as Item Nos.96[a], 99[a to o], 103[4], [5], [6], [22], [23], [27], [28], [29], [30], [34], [45-a], [45-b], [48], [52], [53], [57], [58] and [59] of the Schedule to the licence fees are concerned; same as illegal, arbitrary, unjustified and exorbitant in so far as the members of the petitioner association are concerned.

For Petitioners : Mr.P.Radhakrishnan
For Respondents : Mr.S.Pattabiraman (R1&R2)

O R D E R

The petitioner Association represents the interest of Offset Printers of Sivakasi. The Notification dated 26.08.2002, raising the licence fee payable to the Sivakasi Municipality is under challenge in this writ petition.

2. Heard Mr.P.Radhakrishnan, learned counsel for the petitioner and Mr.S.Pattabiraman, learned counsel for the Municipality.

3. The learned counsel for the petitioner submitted that though under Section 249 of the Tamil Nadu District Municipalities Act, the Sivakasi Municipality has the power to levy licence fee on Industries and Factories operating within its jurisdiction, in the instant case, the Municipal Council has effected steep increase in the licence fee arbitrarily without sufficient cause. In paragraph No.11 of the affidavit, the petitioner has given the details which are as under:-

S.No.	List of Industry and Machinery	Earlier Licence Fee	New Licence Fee	Respective Item No. in the Licence Fee Schedule
1	Printing Ink Manufacturing	100.00	300.00	96(a)
2	Electrical Motors			99(a to o)
	Upto 1 H.P.	1.00	10.00	
	1 H.P. To 5 H.P.	5.00	25.00	
	6 H.P. To 10 H.P	15.00	75.00	
	11 H.P. To 20 H.P	25.00	125.00	
	21 H.P. To 30 H.P	40.00	200.00	
	31 H.P. To 40 H.P	50.00	250.00	
	41 H.P. To 50 H.P	75.00	375.00	
	51 H.P. To 100 H.P	100.00	500.00	
	101 H.P. To 200 H.P	200.00	800.00	
	201 H.P. To 500 H.P.	350.00	1,500.00	
	500 H.P. and above	450.00	2,000.00	
c)	Camera Wirlar Machine	40.00	200.00	103(4)
d)	Camera Printing Machine	40.00	200.00	103(5)

S.No.	List of Industry and Machinery	Earlier Licence Fee	New Licence Fee	Respective Item No. in the Licence Fee Schedule
e)	Calender Trimming Machine	25.00	100.00	103(6)
f)	Ink Grinding Machine	50.00	200.00	103(22)
g)	Litho Machine	50.00	200.00	103(23)
h)	Baby Offset Machine	125.00	300.00	103(27)
i)	All other Offset Machines			
	i) Single Colour	175.00	400.00	103(28-a)
	ii) Double Colour	175.00	500.00	103(28-b)
	iii) Four Colour	175.00	800.00	103(28-c)
	iv) Above Four Colour	175.00	1,000.00	103(28-d)
j)	Plate Grinding Machine	25.00	100.00	103(29)
k)	Paper Cutting Machine	25.00	100.00	103(30)
l)	Punching Machine	20.00	100.00	103(34)
m)	1.Treadmill Machine	30.00	100.00	103(45-a)
	2.Scoring Machine	30.00	100.00	103(45-b)
n)	Varnish Machine	40.00	150.00	103(48)
o)	Wire Ditching Machine	30.00	100.00	103(52)
p)	Water Pump	20.00	100.00	103(53)
q)	Scanner Machine	NIL	300.00	103(57)
r)	Lamination Machine	NIL	100.00	103(58)
s)	Other Machineries	40.00	100.00	103(59)

4. The learned counsel for the petitioner further submitted that earlier the Printing Unit with Baby Offset machine was levied a licence fee at Rs125 and in the present G.O., the Baby Offset machine is levied a fee of Rs.200 and a new category of Printing Unit has been conceived under the heading "All other offset machines", under which the Council has enumerated four other categories of units which are also doing the same job, but with different machinery. The learned counsel further submitted that the machinery employed by the Unit cannot be the criteria for fixing the licence fee.

5. The learned counsel for the petitioner has placed strong reliance on the following Judgments.

(i) AIR (30) 1943 Madras 191
(India Sugars and Refineries Ltd. v. Municipal Council, Hospet).

(ii) 1972 (1) MLJ 389
(A.r.Damodara Mudaliar and Company, Rep. by Partner A.R.Damodaran v. Municipal Commissioner)

(iii) 1976(1) MLJ 12
(The Municipal Council, Madurai v. R.Narayanan, etc.) and

(iv) 1992 L.W. 696
(Coimbatore Municipality, Rep. by its Commissioner v. C.G.Subbiah)

6. Per Contra, the Municipality has filed a counter, wherein, they have stated that the licence fee was fixed in the year 1986 and after a gap of about 18 years, it was revised by the impugned G.O. in the year 2003 and till date, there has not been any further revision. It is also stated that the licence fee was charged in order to augment the finance of the Municipality and therefore, the increase cannot be stated to be arbitrary or illegal.

7. This Court gave its anxious consideration to the rival submissions.

8. Except the Judgment of this Court in Damodars' case reported in 1972 (1) MLJ 389, all other Judgments relied upon by the learned counsel for the petitioner relates to Civil Suits that were filed by the aggrieved parties over enhancement of licence fee by the respective local body.

9. The learned counsel for the respondent submitted that the petitioner has not challenged the Council resolution and has merely challenged the G.O. and therefore, the writ petition is not maintainable.

10. In Paragraph No.2 of the Judgment in R.Narayanan's case reported in 1976(1) MLJ 12, the Hon'ble Supreme Court held as follows:-

> "2. The authority to justify the levy qua fee, must render some special services to the category from whom the amount is extracted and the total sum so collected must have a reasonable correlation to the cost of such services. Where these dual basic features are absent, you cannot legally claim from the licencee under the label

'fee'."

11. Similarly, the Full Bench of this Court in paragraph No.23 of its decision reported in 1992 L.W. 696, has stated as follows:-

> "23. .... The Municipality being a statutory body, it is bound to act on a rational basis and must apply uniform principles in levying the fee. We are not against the policy of the Municipality in generally increasing the totality of the fees in a market to augment its income. As correctly observed in Attorney General v. Colchester Corporation [1952(2) All.E.R.297], it is for the convenience of the stallholders that he chooses to remain in the public market in spite of the fact that there may be cheaper stalls available outside the market. Therefore, a stall holder cannot question the increase of fee levied by the Municipality on a rational basis unless he makes out arbitrariness on the part of the Municipality in apportioning the fee as among the various stall holders within the market."

From the above, it is evident that the Municipality cannot increase the licence fee arbitrarily and there should be a rational basis for such enhancement. In the case at hand, except the fact that there was no enhancement from 1986, there is no other material placed before this Court to justify such a steep increase in the licence fee.

12. In reply to the allegations that the licence fee for Baby Offset Machine and other Offset machines are at steep variance, the 3rd respondent has taken the following stand in paragraph No.8 of the counter affidavit, which reads as follows:-

> "... The Renewal of the Licence Fees is done on the basis of the installation application submitted by the party applying quoting different Colour of Offset machines. The yardstick while issuing licenses for the various forms of machinery is fixed on the basis of the power used for the machine in the case of motors and the same yardstick would have to be applied in the case of the offset machines also. There is no denying that the very basic difference in the Offset machines as to the number of colour bases

used is that they operate with different capacities and they are also having different ratings. The Single Colour Machine would have only one set of printing mechanism, whereas the double Colour machine will two sets of printing mechanism where two sets of printing apparatus are used with each apparatus or process printing one Colour. ..."

In the considered opinion of this Court, the aforesaid reason cannot justify the steep increase because the licence fee cannot be fixed based on the machinery employed by the entrepreneur, but, must be fixed based on the services rendered like maintenance of road, supply of water provided by the Municipality. As laid down in the aforesaid Judgments, the essential characteristics of a licence fee is quit pro quo unlike the levy of tax. The Municipality cannot fix the licence fee arbitrarily and differently for the same class of business on the ground that the machinery employed by each of them is different. This would be clearly violative of Article 14 of the Constitution of India, because, as stated earlier, the licence fee is not tax but an impost to defray the cost of issuing licence and cost of supervising the trade or of any special measures rendered necessary by the character of that trade.

13. It is brought to the notice of this Court that at the time of admission of the writ petition, the petitioner was not granted any interim orders and therefore, the members of the petitioner Association have been paying the enhanced licence fee to the Municipality till date. Further, the fact remains that from 1986 to 2003, there was no enhancement and thereafter from 2003 to 2017 also, there has been no enhancement. Under such circumstances, it may not be justifiable for this Court to quash the Notification at this distant point of time. However, the Municipality should bear in mind the aforesaid principle relating to licence fee, before effecting any enhancement in the future.

With the above observation, this writ petition is closed. No costs. Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rg

To

1. The State of Tamil Nadu, rep. By
   Secretary to Government
   Department of Local Administration
   Fort St. George, Chennai 600 009.

2. The Municipal Council
   Sivakasi Municipality,
   SIVAKASI.

3. The Commissioner
   Sivakasi Municipality,
   SIVAKASI.

+1cc to Mr.P. Radhakrishnan, Advocate, S.R.No.3649
+1cc to Mr.P. Srinivas, Advocate, S.R.No.3713
+1cc to the Government Pleader, S.R.No.3965

ksj(CO)
md(06/02/2017)

Writ Petition No.8637 of 2003 &
W.P.M.P.No.11069 of 2003