

CWP No.22524 of 2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(PROCEEDINGS THROUGH V.C.)

CWP No.22524 of 2020

Date of Decision: 23.12. 2020

Weights and Measures Industrial Association Punjab

...Petitioner

Versus

Department of Food, Civil Supplies and Consumer Affairs,
Government of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Abhay Singh, Advocate, for the petitioner.

Mr. Pradeep Bajwa, Addl. A.G., Punjab.

Mr. Kushagar Mahajan, Advocate, for Union of India.

AUGUSTINE GEORGE MASIH, J.

Weights and Measures Industrial Association, Punjab
(hereinafter referred to as 'petitioner – association') has approached this
Court for issuance of a writ of *mandamus* or direction declaring the
provisions of the Punjab legal Metrology (Enforcement) (Amendment)
Rules, 2020 (hereinafter referred to as 'Amended Rules, 2020') as
unconstitutional for being manifestly arbitrary and in violation of Articles
14 and 19 (1) of the Constitution of India.

2. Petitioner – association is a society registered under the
Societies Registration Act, 1860, as amended by the Punjab Amendment
Act, 1957. It is an association of manufacturers, repairers and dealers in
weights and measures of Punjab State. The main grievance which has been

highlighted by the petitioner – association is the Legal Metrology Wing of Department of Food, Civil Supplies and Consumer Affairs, Government of Punjab, vide notification No.5/9/2017-5/CPA/227, dated 19.03.2020 (Annexure P-2), has published Legal Metrology (Enforcement) (Amendment) Rules, 2020 in order to amend the Punjab Legal Metrology (Enforcement) Rules, 2013, whereby the fee for issuance of licence and renewal of licence has been unreasonably doubled for the manufactures, repairers and dealers of weights and measures as also security deposit has been imposed along with 50% increase in stamping and verification rates for weights and measures. This undue increase in the issuance/renewal of licence fee is alleged to be without any reasonable explanation and backing of law, especially when no additional benefit stands accrued to the members of the petitioner – association so as to justify the exorbitant increase in the fee. There is disparity between the rates of fee being charged from the petitioner – association in the State of Punjab vis-a-vis the neighbouring States, where the said fee is much lesser, which leads to the petitioner – association being put at disadvantage leading to deliberate obstruction of the petitioner's right to equity and right of free trade and commerce as guaranteed by the Constitution of India.

3. The Legal Metrology Act was enacted by the Parliament in the year 2009 for the purpose of establishing and enforcing standards of weights, measures and other goods, which are sold or distributed by weight, measure or number and for matter connected therewith or incidental thereto. The said Act has been enacted with the intent to regulate trade and commerce in weights and measures amongst other goods. Section 53 (1)

empowers the State Government to make rules by way of notification to carry out the provision of the Act. Section 53 (2) (c) reads as follows:-

“53. Power of State Government to make rules.—

(1) XXXX XXXX XXXX

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) and (b) XXXX XXXX XXXX

(c) the form, manner, conditions, period, area of jurisdiction and fees for issuance of licence under sub-section (2) of section 23.”

4. Section 23, reference whereof finds mentioned in Section 53 (2) (c), reads as follows:-

“23. Prohibition on manufacture, repair or sale of weight or measure without licence.—

(1) No person shall manufacture, repair or sell, or offer, expose or possess for repair or sale, any weight or measure unless he holds a licence issued by the Controller under sub-section (2):

Provided that no licence to repair shall be required by a manufacturer for repair of his own weight or measure in a State other than the State of manufacture of the same.

(2) For the purpose of sub-section (1), the Controller shall issue a licence in such form and manner, on such conditions, for such period and such area of jurisdiction

and on payment of such fee as may be prescribed.”

5. It is on the basis of these provisions, members of the petitioner – association assert that the Competent Authority i.e. Controller shall issue licence to any person to manufacture, repair or sell, or offer, expose or possess for repair or sale, any weight or measure and the Government of State alone shall have the power to make rules with regard to the form, manner, conditions, period, area of jurisdiction and fee for issuance of such licence. It is on the basis of these only, the members of the petitioner – association assert that although the State of Punjab has the jurisdiction to frame rules but the licence fee, the renewal fee as well as the security amount which has been enhanced, is unreasonable, unjust and arbitrary.

The fee fixed under the Punjab Legal Metrology (Enforcement) Rules, 2013 (Annexure P-1) provided for the fee in schedule X. At that time, licence and renewal fee was fixed as ₹5,000/- per year for manufacturers, ₹2,000/- per year for repairers and ₹1000/- per year for dealers of weights and measures. This fee was already on the higher scale, which the members of the petitioner – association were unable to bear but with the coming into force of the Amended Rules, 2020, further increase in fee for issuance and renewal of licence has been made. Now the licence and renewal fee is ₹10,000/- per year for manufacturers, ₹4,000/- per year for repairers and ₹2000/- per year for dealers of weights and measures. This action of the Government of Punjab has been challenged by the petitioner – association in the present writ petition by asserting that the State Government, in a whimsy manner, has increased the licence fee by 20 times

and there is no legitimate relationship between the fee charged and the benefit accrued to the members of the petitioner – association by means of grant of licence, especially when the licence fee charged by the Governments of neighbouring States are comparatively much low. As per Rule 5 of the Amended Rules, 2020, one time security amount imposed is ₹15,000/- for manufacturers, ₹7,500/- for repairers and ₹5,000/- for dealers of weights and measures, which imposition has put the members of the petitioner – association with a burden of unreasonable obligation. Similarly, increased/revision in the verification and stamping fee for Weights and Measures and Weighing and Measuring instruments is also unsustainable for the reason that the respondents have failed to establish any additional benefit being accrued upon the members of the petitioner – association or any additional expense which has fallen upon the respondents for the services provided, thus, violating Articles 14 and 19 (1) of the Constitution of India. Reliance has been placed upon the Judgment of the Hon'ble Supreme Court in Ajay Hasia Vs. Khalid Mujib Sehravardi {(1981) 1 SCC 722} to contend that the arbitrariness in the State action is unsustainable and the Courts should step in to strike-down such action of the State.

6. The next ground which has been asserted by the petitioner – association is on the provision of Section 53 (2) (c) of the Legal Metrology Act, 2009, to assert that the power of the State is limited to the extent of charging the licence fee and does not confer any right for charging renewal of licence. The term of renewal has been deliberately excluded from the State Government's purview and therefore, the power of the State

Government is restricted only to make rules for issuance of licence. Charging of the security deposit is intended to extract money from the licence fee leading to the abuse of power by manipulating the provisions to treat the fee charged as tax levied. A fee is generally defined to be a charge for special service rendered by some governmental agency, which is missing in the present case. Rather the respondents, under the garb of levy of fee, have attempted to impose a tax or it is a colourable exercise of legislative powers by the State Government. Members of the petitioner – association assert that there is a distinction between a tax and a fee as the tax is levied as a part of common burden while the fee is payment for special benefit or privilege, which the individual receives. The fee has to be charged proportionate to the benefit being accrued. The licence fee which is being charged is excessive and exorbitant and is being treated as a tax, which is not permissible in law. Petitioner – association has placed reliance upon the judgments of Hon'ble Supreme Court in **The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.**{AIR 1954 (SC) 282} and **Kishan Lal Lakhmi Chand & ors. Vs State of Haryana & ors.** {AIR 1993 (4) SC 426}.

7. It is, on the basis of the above, the members of the petitioner – association assert that the Amended Rules, 2020, being manifestly, arbitrary and in colourable exercise of power by treating it as a fee, whereas it is in the nature of tax, is unsustainable and therefore, is not enforceable in law being unconstitutional and violative of Articles 14 and 19 (1) of the Constitution of India.

8. Having considered the submissions made by the learned counsel for the petitioner – association and going through the pleadings, we are unable to accept the challenge posed to the Punjab legal Metrology (Enforcement) (Amendment) Rules, 2020.

9. The basic grievance which has been highlighted by the petitioner is largely limited to the fee and security amount, which has been enhanced by amendment of Schedule X dealing with the licence and renewal fee and Schedule XV dealing with the security deposit by the manufacturers, repairers and dealers.

10. The power of the State of Punjab to legislate and frame the rules and obviously to amend the same are not in dispute as it has been admitted by the petitioner – association in its pleadings. What has been sought to be asserted by the members of the petitioner - association is that in the garb of fee which is exorbitant, tax is being levied without any jurisdiction. For substantiating such contention, it has been asserted that the *quid pro quo* between the fee so charged and the services rendered is missing especially with regard to the enhanced amount of fee. The distinction between the tax and fee is that the tax is levied as part of a common burden while the fee is for the payment of a specific benefit or privilege. The fee is co-related between the fee collected and the service intended to be rendered.

For determining whether the fee is levied or is it a tax, the true test is whether the primary and essential purpose is to render specific service to a specified area or class, which may be of no consequence leading to ultimately and indirectly benefitting the State by it, however, co-relation

between levy and service rendered/expected cannot be calculated in mathematical exactitude. What is required is a reasonable relationship between the levy of the fee and service rendered. The quantum of the fee which has been charged by the State is being challenged by the petitioner – association and this challenge is not sustainable for the simple reason that the amount to be charged for a particular service is within the domain of the legislature as the Court would not be concerned with the arithmetical calculations with the judicial review being extracted to the extent of power to exercise such legislative function. Licence fee imposed for regulatory purpose is not conditioned by the fact that there must be *quid pro quo* for the services rendered nor would it be within the domain of the Court to calculate as to what would be the quantum of the reasonable fee.

The Hon'ble Supreme Court in **Delhi Race Club Ltd. v. Union of India & others** {2012 (8) SCC 680}, in paras 36 to 42, has observed as under:-

“36. The appellants have also challenged the nature of the impost, as according to them it is a tax imposed under the guise of a fee, since there is no quid pro quo or any broad co-relation between the impost and the services rendered in return, rather, there is no service in return at all. While it is true that ‘quid pro quo’ is one of the determining factors that sets apart ‘tax’ from a ‘fee’ but the concept of quid pro quo requires to be understood in its proper perspective. It can be traced back to the decision of this Court in Sreenivasa General Traders and Ors. Vs. State of Andhra Pradesh and Ors., wherein a Bench of three learned Judges, analysed, in great detail, the principles culled out in Kewal Krishan Puri (supra).

Opining that the observation made in the said decision, “seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely: ‘At least a good and substantial portion of the amount collected on account of fees, may be in neighbourhood of two-thirds or three fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee’ ” appeared to be an obiter, the Court echoed the following views insofar as the actual quid pro quo between the services rendered and payer of the fee was concerned: (*Sreenivasa case*, (1983) 4 SCC 353, SCC 380-81, paras 31-32)

"31. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest, if the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area of class; it may be of no consequence that the State may ultimately and indirectly be benefitted by it. The power of any legislature to levy a fee is conditioned by the fact that it must be 'by and large' a quid pro quo for the services rendered.

However, correlationship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the Fee and the services rendered.

32. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person inspite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realized 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 not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in Shirur Mutt case (AIR 1954 SC 282: 1954 SCR 1005) was not drawn to Article 226 of the Constitution. The Constitution nowhere contemplates it to be an essential element of 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 in the strict sense is not always a sine qua non for a fee. It is needless to stress that the element of quid pro

quo is not necessarily absent in every tax...”

“7. It is not always possible to work out with mathematical precision the amount of fee required for the services to be rendered each year and to collect only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income of a market committee by way of market fee and licence fee may exceed the expenditure and in another year when the development works are in progress for providing modern infrastructure facilities, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into consideration to decide whether the fee is commensurate with the services rendered. An overall picture has to be taken in dealing with the question whether there is quid pro quo i.e. there is correlation between the increase in the rate of fee from 50p. to rupee one and the services rendered.”

37. It is pertinent to note that in *Liberty Cinema* (AIR 1965 SC 1107), the Court had identified the existence of two distinct kinds of fee and traced its presence to the Constitution itself. It was observed that in our Constitution, “fee for licence” and “fee for services” rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a bare reading of Articles 110(2) and 199(2) of the Constitution, where both the expressions are used, indicating thereby that they are not the same. Quoting *Shannon V. Lower Mainland Dairy Products Board* (AIR 1939 PC 36), with approval, it was observed thus :-

“8. ...!... if licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local

regulation or to increase the general funds of the Province, or for both purposes...It cannot, as Their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue.”

38. The same principle was reiterated in Secunderabad Hyderabad Hotels Owners’ Association case (1999) 2 SCC 274 where the existence of two types of fee and the distinction between them has been highlighted as follows:

“9. It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. *Licence fee can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.*” (Emphasis supplied)

39. Dealing with such regulatory fees, this Court in Vam Organic Chemicals Ltd. Vs. State of U.P. (1997) 2 SCC 715; observed that in case of a regulatory fee, like the licence fee, no quid pro quo is necessary, but such fee should not be excessive. The same distinction between “regulatory” and “compensatory” fees has been

highlighted in P. Kannadasan Vs. State of T.N. (1996) 5 SCC 670, SCC p.698 para 36; State of Tripura Vs. Sudhir Ranjan Nath (1997) 3 SCC 665, SCC p.673, para 14 and B.S.E. Brokers' Forum case (2001) 3 SCC 482 and followed in several later decisions.

40. In A.P. Paper Mills Ltd. (2000) 8 SCC 167, a Bench of three learned Judges of this Court was called upon to examine the validity of the revision of licence fee under the Andhra Pradesh Factories Rules, 1950. The levy of licence fee was challenged inter-alia on the grounds that the fee imposed being in fact a tax, the State had no power to levy the same; the Rules or the Factories Act, 1948, did not provide any criteria or guidelines for fixation of licence fee and that the State had no power to impose or enhance the licence fee for any alleged services rendered or proposed to be rendered under other legislations other than the Act concerned, as the power is delegated under that particular Act only. On an analysis of the provisions of that Act and the Rules made thereunder, the Court came to the conclusion that the licence fee in this case was a regulatory fee and not a fee for any special services rendered; there was no mention of any special service to be rendered to the payer of the licence fee in the provisions and the purpose of the licence was to enable the authorities to supervise, regulate and monitor the activities relating to factories with a view to secure proper enforcement of the provisions. It was observed that the nature of the provisions made it clear that for proper enforcement of the statutory provisions, persons possessing considerable experience and expertise were required.

41. On the question whether the element of quid pro quo, as it is understood in common legal parlance, was

applicable to a regulatory fee, as in that case, speaking for the bench, D.P. Mohapatra, J., concluded thus : (*A.P. Paper Mills Ltd. case*, (2000) 8 SCC 167, SCC pp.179-80, para 32)

“32. From the conspectus of the views taken in the decided cases noted above it is clear that the impugned licence fee is regulatory in character. Therefore, *stricto sensu* the element of *quid pro quo* does not apply in the case. The question to be considered is if there is a reasonable correlation between the levy of the licence fee and the purpose for which the provisions of the Act and the Rules have been enacted/framed. As noted earlier, the High Court has answered the question in the affirmative. We have carefully examined the provisions of the Act and the Rules and also the pleadings of the parties. We find that the High Court has given cogent and valid reasons for the findings recorded by it and the said findings do not suffer from any serious illegality. It is our considered view that the licence fee has correlation with the purpose for which the statute and the rules have been enacted.”

42. Thus, it is clear that a licence fee imposed for regulatory purposes is not conditioned by the fact that there must be a *quid pro quo* for the services rendered, but that, such licence fee must be reasonable and not excessive. It would again not be possible to work out with arithmetical equivalence the amount of fee which could be said to be reasonable or otherwise. If there is a broad correlation between the expenditure which the State incurs and the fees charged, the fees could be sustained as reasonable.”

11. A perusal of the above would show that the power of judicial review is only limited to the extent of looking at the reasonableness of the said fee and it should not be excessive. Keeping in view the provisions of the statute, the duties and responsibilities attached thereto and the services which have been provided under the statute and the rules framed therein, the fee which has been charged cannot be said to be unjust, unreasonable or excessive and it is well within the legislative jurisdiction of the respondents.

12. The power of judicial review with regard to the question of quantum of enhancement is limited. The Court should not delve into the arithmetical calculations whether the increase of licence fee is reasonable or not, in exercise of its power under Article 226 of the Constitution of India, especially when no yardstick can be fixed for determining the absolute for fixation of the licence fee. The quantum of licence fee is, thus, best left for the administrative authorities to decide the same.

13. As regards the assertion of the members of the petitioner – association that there cannot be any renewal fee which could be charged, suffice it to say that as Section 23 (2), reference whereof has been found in Section 53, which empowers the State Government to make rules, it is clearly mentioned that the Controller shall issue licence in such form and manner, on such conditions, for such period and such area of jurisdiction on payment of such fee as may be prescribed. When the Controller is empowered to fix a period of a licence, the obvious corollary is that the licence, after the expiry of the said period, could be renewed in case the licensee intended to continue with the business. The stand of the petitioner – association, therefore, is not acceptable as the power is very much

conferred upon the State Government to make rules relatable to renewal of the licences as well.

14. As regards the contention of the members of the petitioner – association that there is disparity leading to discrimination with the increase in the licence fee and the security amount vis-a-vis the neighbouring States, where the said licence fee is much less, suffice it to say that each State is independent to frame its own rules and therefore, on the basis of quantum of fee, the plea of discrimination and based on Article 14 of the Constitution of India, cannot be sustained when the State has exercised its powers to legislate as conferred under the statute. The State of Punjab has exercised the power which is within the purview of the Constitution and thus, in accordance with law.

15. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

23.12. 2020
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No