IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20/12/2022

C O R A M

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Writ Petition No.4885 of 2011
a n d
W.M.P.No.2 of 2011

Sundaram Brake Linings Limited
rep. By its Financial Controller & Secretary
Mr.S.Ramabadran
Padi
Chennai 600 050. ... Petitioner

Vs

The Commissioner
Ambattur Municipality
Ambattur
Chennai 600 053. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the respondent in Proceedings in Ka.No.14340/2009/H-2 dated 11/6/2010 in so far as Sl.No.102 of the said proceedings published in Tiruvallur District Gazette No.7 dated 1/8/2010 and quash the same.

For Petitioner	...	Mr.Anand Gopalan for M/s. T.S.Gopalan and Co
For respondent	...	Mrs.P.T.Ramadevi

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O R D E R

This writ petition has been filed to quash the order, dated 11/6/2010 passed by the respondent in Ka.No.14340/2009/H-2.

2. The petitioner Company was incorporated on 5th September, 1974, and have been paying necessary tax as assessed by the Municipality. As per Section 249 of the District Municipalities Act, fees are fixed by the Municipality and there should be a reasonable nexus between the fee charged and any supervision done. Originally, the license fee was fixed at Rs.50/- per machine and have been collected by the Municipality. Thereafter, in the year 2010 – 2011, there was a phenomenal increase of the license fee. Challenging the above increase of license fee, instant writ petition has been filed, praying for the relief as stated therein.

3. In the counter, it is stated by the respondent that revision has been made after a long gap. Originally, the license fee was fixed in the year 2001 and thereafter, in the year 2010, to augment the revenue of the Municipality.

According to them, objection and suggestions have been invited from the public before publishing the Notification in the Gazette. Hence, opposed the writ petition.

4. Heard Mr.Anand Gopalan, learned counsel for the petitioner and Mrs.P.T.Ramadevi, learned Standing Counsel for the respondent.

5. Learned counsel appearing for the petitioner submitted that the impugned Gazette Notification does not reveal as to on what basis, hike in the fee has been arrived at and basically, no additional cost or supervision is being done by the respondent to justify any hike.

6. The learned counsel appearing for the petitioner has relied on the following judgments:-

(i). The CORPORATION OF MADRAS Vs. SPENCER & CO (1929) 57 MLJ 71

(ii). THE MUNICIPAL COUNCIL, KUMBAKONAM, REP. BY ITS CHAIRMAN Vs. RALLI BROTHERS (ORIGINAL SIDE APPEAL No.94 OF 1929) (iii). SUBBAIAH MAISTRY Vs. THE CORPORATION OF MADRAS, REP BY ITS SANITARY INSPECTOR (1953) IMLJ – 92

(iv). A.R.DAMODARA MUDALIAR & CO, REP. BY ITS PARTNER – Mr. A.R.DAMODARAN Vs. THE COMMISSIONER, NELLIKUPPAM MUNICIPALITY (1972) 1 MLJ 389

(v). KRISHI UPAJ MANDI SAMITI AND OTHERS Vs. ORIENT PAPER & INDUSTRIES LTD (1995) 1 SUPREME COURT CASES – 655

(vi). THE SIVKASI MASTER PRINTERS ASSOCIATION, REP. BY ITS PRESIDENT, SIVAKASI Vs. 1. THE STATE OF TAMIL NADU, rep. BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF LOCAL ADMINISTRATION, CHENNAI 9 AND TWO OTHERS (W.P.No.8637 of 2003)

7. Learned counsel appearing for the respondent submitted that license fee has been enhanced in the year 2010. Now, the erstwhile Municipality has been merged with Chennai Metropolitan Corporation. Therefore, the same cannot be challenged now and further submitted that new license fee would be fixed, as per Section 365 of the Chennai City

Municipal Corporation Act, 1919. As the petitioner is paying the original license fee, since the Municipality has merged, they will follow the rules, as per the Chennai City Corporation Act.

8. Learned counsel appearing for the respondent further submitted that the license fee was enhanced in order to augment the revenue of the Municipality and therefore, increase cannot be stated to be arbitrary or illegal.

9. In such a view of the matter, this Court is of the view that as the Municipality has already merged with Chennai City Corporation, any license fee to be revised and the same should be in accordance with law, as per Section 365 of the said Act. It is relevant to note that a learned Single Judge of this Court in ***THE SIVKASI MASTER PRINTERS ASSOCIATION, REP. BY ITS PRESIDENT Vs. 1. THE STATE OF TAMIL NADU, rep. BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF LOCAL ADMINISTRATION, CHENNAI 600 009 (W.P.No.11069 of 2003),*** has referred the judgment in R.NARAYANAN'S case reported in 1976 (1) MLJ -12, wherein the Hon'ble Supreme Court has 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".

10. Similarly, the Hon'ble Full Bench of this Court 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 Vs. COLCHESTER CORPORATION [1952 (2) ALL.E.R. 297], it is for the convenience of the stall holders 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."

11. On a careful perusal of the above judgments, it is clear that Municipality cannot increase the license fee arbitrarily and there should be a rational basis for such enhancement. Though the learned Single Judge has not quashed the increase on the ground of delay in enhancing the license fee however held that there cannot be any arbitrary increase of license fee.

12. Considering the above judgments, this Court is of the considered view that collecting the fees on the basis of the horse powers of the machineries will amount to double taxation, since the petitioner has already obtained license under the Factories Act, based on the horse power of each machineries. Fixation of the license fee is only for the purpose of providing some service and it is not for the purpose of revenue generation. The purpose of collection of license fee is only for providing the service relating to issuance of licence and not for augmenting the revenue. The

amounts collected in the form of property tax and wealth tax, etc., could be said to be for the purpose of revenue.

13. In such a view of the matter, arbitrary exercise of powers enhancing the fees from 100% to 400% without giving an opportunity cannot be sustained in the eye of law. As the license fee has been fixed by the Municipality, now the Municipality has been merged with the Corporation of Chennai, Corporation shall fix the licence fee, as per the procedure set out in Section 365 of the Chennai City Municipal Corporation Act, 1919. As the petitioner has already paid the original license fee, as fixed in the year 2010, no further arrears could be claimed by the CMDA. If at all new license fee has to be enhanced, the same has to be enhanced, strictly in accordance with the provisions under Section 365 of the Chennai City Municipal Corporation Act, 1919.

14. With the above observation, this writ petition is disposed of. No costs. Consequently, the connected M.P is closed.

20/12/2022

Index : Yes / No
Internet: Yes
Speaking/non speaking order

mvs.

To

The Commissioner
Ambattur Municipality
Ambattur
Chennai 600 053.

N. SATHISH KUMAR, J

mvs.

W.P.No.4885 of 2011

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