

**State of Karnataka Vs. Vishwabharathi House Building Co-op. Society Ltd. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/380668](http://sooperkanoon.com/380668)

**Court :** Karnataka

**Decided On :** Aug-06-1996

**Reported in :** ILR1997KAR534

**Judge :** R.P. Sethi, C.J. and ;S. Rajendra Babu, J.

**Acts :** Bangalore Development Authority (Allotment of Sites) Rules, 1984 - Rule 8;  
Bangalore Development Authority Act, 1976 - Sections 69(2)

**Appeal No. :** W.A.s. 1908/1990 and 2803/1991

**Appellant :** State of Karnataka

**Respondent :** Vishwabharathi House Building Co-op. Society Ltd. and ors.

**Advocate for Def. :** N.D.R. Ramchandra Rao, Adv. for R-1 and ;H.B. Datar, Senior Adv. for ;H. Thipperudrappa, Adv. for R-3

**Advocate for Pet/Ap. :** H. Rangavittalachar, Government Adv.

**Disposition :** Writ appeal allowed

**Judgement :**

**S. Rajendra Babu, J.**

1. These appeals are filed by the aggrieved respondents in the writ Petition. The Bangalore Development Authority (BDA) is constituted under the Bangalore Development Authority Act, 1976. Section 69 of the said Act empowers the Government for framing of rules for carrying out the purposes of the Act in particular the restrictions, conditions and limitation subject to which the authority may lease, sell or transfer moveable or immovable property and to regulate the allotment or sale by auction of sites by the Authority. In exercise of that power, the State framed the rules known as 'The Bangalore Development Authority (Allotment of Sites) Rules, 1984' (hereinafter referred to as the Rules). Rules 8 and 9 read as follows:

'8. REGISTRATION: (1) Every applicant for a site shall register his name on payment of registration fees as specified in the table below. If an applicant withdraws the registration, the Authority shall refund to such applicant the entire registration fee paid by him after deducting ten percent of the registration fee towards service charges. The Registration shall be done in Form No.I-

#### TABLE

| Area of the Site in Sq. Metres | Registration Fee |
|--------------------------------|------------------|
| 350 and above                  | a) Rs. 2,000     |
| 225 and above                  | b) Rs. 500       |
| below 225                      | c) Rs. 100       |

(2) Registration made shall be valid for subsequent allotments unless the applicant has withdrawn the registration.

9. APPLICATION: (1) A person so registered as above has to apply in the prescribed form II for allotment of a site along with the initial deposit of 12 1/2% of the notified cost of the site. The initial deposit shall be 5% in the case of persons applying for sites under the categories of Scheduled Castes, Scheduled Tribes and Backward Tribes.

(2) The applications shall be presented in person or sent by registered post so as to reach the office of the Authority before the date and time fixed for the receipt of

such applications. Applications received after the date and time fixed or which are defective and incorrect shall be rejected.

(3) In a case where applications have already been made for allotment of sites in response to a notification already issued by the authority and where the applications are still pending without a decision as to their disposal and fresh applications have been called for, for allotment of sites, the applicant who has already applied for allotment of a site and paid the initial deposit in response to the first notification, need not pay once again the initial deposit. However, he should make an application in response to the second notification in Form-II(A) which is appended to these rules'.

2. The respondents herein challenged the validity of these rules on the ground that there is no quid pro quo between the fee collected and the service rendered. The learned Single Judge accepted the contention advanced on behalf of the respondents and held that there is no element of service for the levy of fees under Rule 8 and therefore, such levy amounts to tax for which there is no authority of law and consequently, struck down the same. Challenging this order, these appeals are filed.

3. We shall briefly touch upon the principles relating to levy of fee. Fee could be levied when there is specific authorisation by the statute to any authority to levy such fee. In the present case, the BDA is constituted in exercise of the powers of the State under Entry 5 of List I to VII Schedule to the Constitution of India and therefore could levy fee as provided under Entry 66 of the same list. On the question whether a levy amounts to fee or tax, several tests had been adopted and the whole legal position has been summed up in *KRISHI UPAJ MANDI SAMITI AND ORS. v. ORIENT PAPER AND INDUSTRIES LTD.*, : (1995)1SCC655 which we may reproduce for purpose of convenience:

'xxx xxx

21. Thus what emerges from the conspectus of the aforesaid decisions is as follows:

(1) Though levying of fee is only a particular form of the exercise of the taxing power of the state, our Constitution has placed fee under a separate category for purposes of legislation. At the end of each one of the three Legislative Lists, it has given power to the particular legislature to legislate on the imposition of fee in respect of every one of the items dealt with in the list itself, except fees taken in Court.

(2) The tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. There is no quid pro quo between the taxpayer and the public authority. It is a part of the common burden and the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.

(3) Fee is a charge for a special service rendered to individuals or a class by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in some cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are various kinds of fees and it is not possible to formulate a definition that would be applicable to all cases.

(4) The element of compulsion or coerciveness is present in all kinds of impositions though in different degrees and it is not totally absent in fees. Hence it cannot be the sole or even a material criterion for distinguishing a tax from fee. Compulsion lies in the fact that payment is enforceable by law against an individual in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees.

(5) The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of the common burden while a fee is a payment for a special benefit or privilege. Fees confer a special capacity although the special advantage is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions but in a fee it is some special benefit which is conferred and accruing which is the reason for imposition of the levy. In the case of a tax, the particular advantage if it exists at all, is an incidental

result of State action. A fee is a sort of return or consideration for services rendered and hence it is primarily necessary that the levy of fee should on the face of the legislative provision be co-related to the expenses incurred by Government in rendering the services. As indicated in Article 110(2) of the Constitution ordinarily there are two classes of cases where Government imposes fees upon persons. The first is of grant of permission or privilege and the second for services rendered. In the first class of cases, the cost incurred by the Government for granting of permission or privilege may be very small and the amount of imposition levied is based not necessarily upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, the tax element is predominant. If the money paid by privilege-holders goes entirely for the expenses of matters of general public utility, the fee cannot but be regarded as a tax. In the ether class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered.

(6) There is really no generic difference between tax and fee and the taxing power of the State may manifest itself in three different forms, viz., special assessments, fees & taxes. Whether a cess is tax or fee, would depend upon the facts of each case. If in the guise of fee, the legislature imposes a tax it is for the Court on a scrutiny of the scheme of the levy, to determine its real character. In determining whether the levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specific area or classes. It is of no consequence that the State may ultimately and indirectly be benefited by it. The amount of the levy must depend upon the extent of the services sought to be rendered and if they are proportionate, it would be unreasonable to say that since the impost is high it must be a tax. Nor can the method prescribed by the legislature for recovering the levy by itself alter its character. The method is a matter of convenience and though relevant, has to be tested in the light of other relevant circumstances.

(7) It is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further, cannot be remote. The test of quid pro quo is not to be satisfied with close

or proximate relationship in all kinds of fees. A good and substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable correlation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of quid pro quo is not possible or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering services to those on whom the burden of the fee falls. There is no postulate of a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general co relations hip between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the genera' public may also be benefited from some of the services if the primary service intended is for the payers of the fees.

(8) Absence of uniformity is not a criterion on which alone it can be said that the levy is of the nature of a tax. The legislature has power to enact appropriate retrospective legislation declaring levies as fees by denuding them of the characteristics of tax.

(9) It is not necessary that the amount of fees collected by the Government should be kept separately. In view of the provisions of Article 266, all amounts received by the Government have to be credited to the Consolidated Funds and to the public accounts of the respective Governments.

4. Now, we will have to examine whether the levy in the present case would satisfy the tests referred to above. The scheme of the Rules is that the B.D.A. would offer sites for allotment whenever it forms a lay-out in pursuance of any scheme to persons eligible for allotment of sites under the Rules, after giving due publicity to

the same. Every applicant for a site has to compulsorily register his name by paying the registration fee prescribed therein and such registration will be valid for subsequent allotments unless the applicant has withdrawn registration. Such applicants are registered and an appropriate register is maintained. The learned single Judge took the view that mere registration of the applicant is not rendering a service and therefore would not entitle the State to levy any fee in that regard. He was also of the view that the amount collected thereto could not be utilised for the general purpose of the B.D.A as such a procedure would only render no service to the applicants whose names are registered. This view of the learned Single Judge is supported by the Learned Counsel for the respondents appearing before us.

5. The Learned Counsel for the appellants however attacked the said decision on the ground that no specific service need be rendered by the B.D.A and the service if rendered generally to such class of persons as the applicants who are expected to pay the fee for registration of their names, is sufficient. They also submitted that a broad correlation between the service rendered and the fee levied would be sufficient and specific service need not be shown to have been rendered to individuals which is commensurate with the fee levied and on that basis, they contended that the view of the Learned Single Judge is fundamentally incorrect.

6. We have given a very careful thought to the arguments advanced on either side and to the conclusions reached by the learned Single Judge. With respect, we cannot agree with the view expressed by the learned Single Judge for there are certain basic fallacies in the analysis adopted by him in the course of the order. His view that the fee levied is a compulsory exaction and therefore would amount to tax is insupportable in law. Even fee has an element of compulsion in it. Merely because there is a compulsion, it would not render a fee a tax unless certain other requirements are satisfied. Secondly, the conclusion that specific service should be rendered to each individual commensurate with the fee paid is also not correct. A broad correlation between the service rendered and the fee levied is enough to constitute quid pro quo.

7. Let us analyse the rules to correctly appreciate the point put forth before us. Registration is required in respect of an applicant who seeks allotment of a site.

The fee thereby paid by him is not merely for the purpose of registration itself, but for the purpose of entire process of the application until allotment is made and fee once paid by him need not be paid again and such fee is also refundable in cases where the application is not pursued with subject to certain service charges deducted at 10%. An affidavit has been filed before us to indicate that during the relevant period when the fee was under challenge before this Court, 81,843 applications had been received for allotment of sites from different categories and that there were four divisions for receiving applications, processing and scrutiny and each division consisted of the following staff:-

I. Deputy Secretary

-1

III. Deputy Secretary

-1

Superintendent

-1

Superintendent

-1

First Division Assistants

-4

First Division Assistants

-7

Second Division Assistants

-3

Second Division Assistants

-6

Class-IV

-1Group-D

-1

10

16

II. Deputy Secretary

-1

IV. Deputy Secretary

-1

Superintendent

-1

Superintendent

-1

First Division Assistants

-5

First Division Assistant

-2

Second Division Assistants

-6

Second Divn. Assistants

-5

Peons

-2Group-D

-1

15

10

Thus, there are totally 51 staff members whose salary would work out at Rs. 2,33,458 per month and they are accommodated in four rooms with furniture, almirahs and stationery. They also attend to the enquiries made by the applicants. The fee collected on such applications and the expenditure involved for maintenance of the staff and the necessary supporting infrastructure, would indicate that there is broad correlation between the collections made and the expenditure incurred. The said staff attend exclusively to the issue, receipt and process of applications and thereafter to furnish information to the concerned applicants. These acts on the part of the B.D.A would certainly amount to service rendered to the applicants. Therefore, we are of the view that it cannot be said that there is no element of service in registering the application forms and processing them. A comparison may be drawn with the levy of Court fee by the Courts. Court fee is payable on the plaint when the suit is registered. It does not mean that the levy of Court fee is only for purpose of registration of a suit and not for proceedings in the suit. On that basis, we could hold that the registration fee levied is for the purpose of rendering service to the applicants in the manner indicated earlier. If there is an element of service involved in it, there is hardly any argument available for the respondents, for they have not put forth a case that the total expenditure incurred by the B.D.A in any manner is grossly disproportionate to the amounts collected by them. When that element is lacking, it can by no stretch of imagination be said that such fee amounts to tax and the element of service is lacking and there being an element of compulsion. Thus, we are of the view that

the learned single Judge was not justified in allowing the Writ Petitions. We allow these Writ Appeals and set aside the order made by the learned Single Judge and dismiss the petitions filed by the respondents. In the circumstances of the case, no order as to costs.

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