

Zilla Parishad Vs. Ami Chand

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Court : Allahabad

Decided On : Oct-26-1971

Reported in : 1972CriLJ530

Judge : M.M. Shukla and ;K.N. Seth, JJ.

Appellant : Zilla Parishad

Respondent : Ami Chand

Judgement :

M.M. Shukla, J.

1. This appeal has, been preferred by the Zila Parishad. Aligarh against the order of the learned Additional Sessions Judge, Aligarh dated 29-7-1968 acquitting the respondent of the charge under section 239 of the Kshettra Samitis and Zila Parishad Adhiniyam, 1961 (hereinafter to be referred as the Adhiniyam) for violating bye-laws Nos. 3 and 5. The trial court had convicted the respondent and sentenced him to pay a fine of Rs. 75/- or in default to undergo simple imprisonment for three weeks. On appeal the conviction and sentence were set aside.

2. The prosecution case was that on the 20th September, 1967 the Licence-Inspector of Zila Parishad namely Sri Viri Singh found the accused respondent running a flour mill in village Javan, district Aligarh without a licence, which was

essential under the Adhinyam. He was consequently prosecuted. He pleaded not guilty and contended that the flour mill's electric power had been disconnected since 1967 and hence the mill ceased to function thereafter. This plea was, however, repelled by both the courts and the matter is concluded by concurrent findings of fact.

3. The other defence which the accused raised from the very outset and consistently pressed was that the Zila Parishad did not provide any amenities to the licencees and hence had no right to levy any licence fee with the result that the accused could not be prosecuted for having not obtained any licence for running the flour mill in question. This; plea was rejected by the trial court but found favour with the appellate court. It was not disputed that on demand being made by the Licence Inspector the accused was unable to produce any licence.

4. The learned Counsel for the appellant strongly contended that the fee charged by the Zila Parishad was not a fee for the services rendered and hence it could not be struck down on the ground of the alleged absence of any amenities provided to the licencees by the Zila Parishad. It was pressed upon us that there was a distinction between a licence fee simpliciter and a fee for services rendered. Our attention was drawn to Article 110(2) of the Constitution which used the expressions 'payment of fees for licences or fees for services rendered' which were repeated in Article 199(2), It was argued on the basis of a decision of the Supreme Court in *Corpn. of Calcutta v. Liberty Cinema* : [1965]2SCR477 that a fee for securing licence was merely a licence fee as understood in popular parlance and was not necessarily synonymous with a fee for rendering services. A corollary of the same argument was that the test formulated in the aforesaid decision namely that the fee charged must be commensurate with the costs of the services rendered was applicable only to the levy of 'a fee in return for services' and not to every licence fee when that word was used indiscriminately and not as a term of art. This argument put forward on behalf of the appellant, however, loses sight of the other important dictum laid down in the same case by the Supreme Court, namely that where the levy is not found to be a fee for services rendered, it would amount to tax and in that case the levying authority will have to satisfy the Court that it was invested with the power to impose the tax and that such power

did not suffer from the vice of excessive delegation of legislative function. It was also held by the Supreme Court in the same decision that the issue as to whether a particular levy was fee or tax had to be decided only by reference to the terms of the section.

5. It cannot be denied that this line of argument was not adopted by the appellant in the courts below. The Zila Parishad prosecuted the whole case on the unambiguous assertion that the licence fee charged by it was really a fee for services rendered. In the circumstances no material has been placed on record in the instant case to show as to whether the Zila Parishad was competent to levy a tax of the nature now submitted before us. We, therefore, reject this contention,

6. It follows that the case has to be decided on the footing that the Zila Parishad used to realise a fee for services rendered. That being the position, it was incumbent on the prosecution to prove that there was an element of quid pro quo between the licensee and the authority which charged the fee. In other words, the plain question which has to be determined is as to whether the Zila Parishad rendered any services to the licensees and provided amenities to them. As regards the nature of the services to be rendered in return for levy so as to make it 'fee', the Supreme Court has ruled in the case of *Corpn. of Calcutta* AIR 1965 SC 1107 (supra) that it must be shown that the services rendered in respect of a levy conferred some special benefit of advantage on the person who paid the levy and the amount of the levy must also be correlated to the cost of the services rendered.

7. Section 143 of the Adhiniyam provides:

Licence fee etc. A Zila Parishad or a Kshettra Samiti may charge a fee to be fixed by bye-law for any licence, sanction or permission which it is entitled or required to grant under this Act.

Section 239-E confers on the Parishad the power of framing bye-laws prohibiting the use of any place, in default of licence granted by the Parishad or otherwise than in accordance with the conditions of licence so granted as a factory or other places of business. The learned Counsel for the appellant produced before us at

the time of the hearing of the appeal bye-laws Nos. 3 and 5 which were framed by the District Board, Aligarh under the U. P. District Boards. Act 1922 and which were said to be still in force. The provision in the aforesaid bye-laws is that nobody can carry on a flour mill without obtaining a licence for that purpose, after depositing the prescribed licence fee. Thus, it is clear that the Adhiniyam as well as the bye-laws expressly use the expression 'licence fee', Hence, it is not open to the appellant now to change its case and contend that the levy was actually a tax.

8. No evidence was adduced by the prosecuting agency in the instant case except the statement of the Licence Inspector, He made an unequivocal admission that to his knowledge there was nothing to show that the Zila Parishad had incurred any special expenses in connection with the regulation of the trade carried on by the accused. The Licence Inspector Sri Viri Singh deposed that he did not know as to whether the Zila Parishad incurred any expenses or provided any amenities to the licencees who run the flour mill. He added that he had never bothered to find out as to whether the Parishad afforded any such amenities or incurred any such expenditure. Thus, the element of quid pro quo is conspicuous by its absence in the present case where the Zila Parishad was charging a fee from the licencees.

9. The learned Counsel for the appellant submitted that the accused had not led any evidence to prove that the Zila Parishad Aligarh did not incur any expenditure on the trade and the ignorance of the Licence Inspector did not discharge the onus of proof which rested on the accused. Reliance was placed on a decision of C. B. Capoor, J., in Criminal Appeal No. 1299 of 1963 decided on 11-12-1964 (All). That was also a case in which the Zila Parishad, Aligarh had prosecuted the accused for an offence under Section 175 of the U. P. District Boards Act. He had been acquitted on the ground that the District Board, Aligarh did not provide amenities to the owner of mill and did not incur any expenditure on the trade or their calling for the carrying on of which the licence was required by the bye-laws. The Parishad filed an appeal in this Court and contended that the accused did not adduce any evidence to support the above contention. C. B. Capoor. J. accepted the contention of the Parishad that the onus of establishing that the Parishad did not incur any such expenditure lay on the accused and it was his duty to adduce evidence in that behalf. With great respect we are unable to agree with the view

expressed in that decision. It is a settled principle of Criminal jurisprudence that the accused, in fact, is always entitled to hold his tongue and the primary burden of proving its case never shifts from the prosecution to the accused. Where the accused from the very inception consistently raised the plea that the Zila Parishad did not incur any expenditure on the regulation of his trade, the Parishad could not escape the burden of proving the contrary. In fact, it is obvious that the Parishad was peculiarly cognizant of the fact as to whether or not it incurred any expenditure on that account. The facts of the case fully attract the provisions of section 106 of the Indian Evidence Act which embodies the rule stated in Taylor. Section 379, thus:

The second exception to the above-named general rule is thus, that where the subject-matter of the allegation lies peculiarly within the knowledge of one of the parties, the party must prove it whether it be of an affirmative or a negative character, and even though there be a presumption of law in his favour (*Dickson v. Evans* (1794) 6 T.R. 57 (60); *R. v. Turner* (1816) 5 M. and Sel. 206).

The statement of the accused was *prima facie* sufficient to show that the particular fact about the incurring of expenditure was peculiarly within the knowledge of the Zila Parishad and this cast the onus on that party to disprove the allegation of the accused. In our opinion to expect the accused to prove the negative in such case would be virtually to ask him to attempt the impossible. The Zila Parishad could have easily produced its record and proved by documentary evidence that it incurred expenses in providing amenities to the licencees. Thus the conclusion becomes irresistible in the case that the appellant failed to discharge the burden of proving the facts which were peculiarly within its special knowledge. The same view was expressed in two single Judge decisions of this Court. See Criminal Revision No. 72 of 1962 *Chandra Bhan v. Dist. Board, Aligarh* decided by Broome, J. on 7-12-1962 and Criminal Revision No. 2032 of 1966 *Bhagwan Das v. State of U.P.* decided by H. C. P Tripathi, J. on 4-3-1968.

10. For these reasons we hold that no licence fee could be charged from or levied by the Zila Parishad upon the accused-respondent for running the flour mill and he could not be convicted for the offence alleged to have been committed by him,

11. In the result this appeal fails and is dismissed.

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