

Mr. Raymond Wingate's opinion conception took place in or Francis Isar, about the last week of August, 1953.

I.C.S.

v.

Mrs. Roma
Jyotrmoyi
Isar (R. J.
Isar), and
another

—————
Bhandari, C.J.

If the husband was in this country while his wife was abroad for a period prior to the birth of the child rendering it impossible for him to have been the father, it is obvious that the case is one of non-access and that the wife committed adultery either with the co-respondent or with some other person.

For these reasons I am satisfied that, even if the evidence of the spouses which is likely to have the effect of bastardising the child born during wedlock were excluded from consideration, there is abundant material on the file to justify the conclusion that acts of intimacy took place between the respondent and the co-respondent after she had left for England on the 11th June, 1953, I would accordingly uphold the order of the learned District Judge and confirm the decree *nisi* granted in favour of the petitioner. The parties will bear their own costs. The petitioner has relinquished his claim to damages against the co-respondent.

Khosla, J.

KHOSLA, J. I agree.

Kapur, J.

KAPUR, J. So do I.

CIVIL WRIT

Before Bhandari, C.J. and Bishan Narain, J.

GOPI PARSHAD,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent*

Civil Writ No. 259 of 1955.

1956
—————
Aug., 9th

Punjab Tobacco Vend Fees Act (XII of 1954)—Sections 4 and 5—Punjab Tobacco Vend Fees Rules, 1954, Rule 4—

Constitution of India—Articles 14, 19, 226 and 266—Punjab Tobacco Vend Fees Act and Rule 4 made thereunder whether ultra vires of the Constitution of India Articles 14 and 19—Object of the Act—Licence fee or tax, distinction between—Court, Power of, under Article 226 to determine whether a payment of fee is excessive—“Revenues.” meaning of in Article 266 of the Constitution—Power of classification for purposes of legislation—Limitations upon.

Held, that (1) Neither the Punjab Tobacco Vend Fees Act nor rule 4 of the rules framed thereunder can be regarded as invalid as being repugnant to the provisions of the Constitution of India.

(2) A licence is a privilege granted by the State to do something which without the grant would be illegal, and a licence fee is an imposition or exaction on the right to use or dispose of property, to pursue a business, occupation or calling or to exercise a privilege. A licence fee is imposed primarily with the object of reimbursing the State for the services rendered by it, while a tax is exacted with the object of providing revenue for the State and enabling it to carry on the duties of Government. A licence is a price paid for a privilege while a tax is an enforced contribution levied on persons, property or income for governmental needs. If the amount exacted is required to cover the actual expenses of issuing the licence and inspecting and controlling the business or occupation it is a licence fee proper and not a tax. But the mere fact that these fees yield a revenue in excess of that required for the purpose of regulation will not convert the fees into a tax where the object of the imposition is not to raise revenue but to regulate or control the particular business.

(3) That although the ultimate power of deciding whether a licence fee is reasonable or excessive vests in a Court of law, the Court will be most reluctant to declare a licence fee to be unjust or unreasonable unless the objector establishes a flagrant case and oppressive abuse of power by the authority imposing the fee.

(4) That the Punjab Tobacco Vend Fees Act is a regulatory measure. It was enacted with the object of licensing the possession and sale of tobacco. Its provisions indicate

that the Act has been enacted principally with the object of regulating and restricting the sale of tobacco and not with the object of providing revenue for the State.

Petition under Article 226 of the Constitution of India praying as under :—

- (a) *that this Hon'ble Court may be pleased to issue an appropriate writ, direction or order to the respondent holding that rule 4 of the Punjab Tobacco Vend Fees Rules, 1955, is unconstitutional and, therefore, invalid and not binding upon the petitioner ;*
- (b) *that this Hon'ble Court may be pleased to issue an appropriate writ, direction or order to the respondent and its subordinate officers and servants commanding them not to call upon the petitioner to obtain a license in form T. I. on payment of Rs. 500, as licence fee or in any other prescribed form ;*
- (c) *that during the pendency of this petition; status quo ante be maintained and the respondent may be prohibited from calling upon the petitioner to obtain a licence in Form T.I. or any other prescribed form on payment of the illegally prescribed licence fee ;*
- (d) *that this Hon'ble Court may be pleased to issue such other appropriate writ, direction or order as it may deem fit under the circumstances of the case ;*
- (e) *that the costs of this petition be awarded to the petitioner.*

H. L. SARIN, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

JUDGMENT

BHANDARI, C. J. This petition under Article 226 of the Constitution raises the question whether the imposition authorised by the Punjab Tobacco Vend Fees Act, 1954, constitutes a tax or a licence fee.

The petitioner, who is carrying on business as a dealer in cigarettes and *bidis* in Sonapat, has been required to take out a distributing agent's licence on payment of a licence fee of Rs. 500 under rule 4 of the rules framed under the Tobacco Vend Act, 1954. He declines to take out the licence in question and challenges the validity of the rule on various grounds, among others being that the State Government is imposing a tax in the garb of a licence fee, that the licence fee is discriminatory and that it amounts to unreasonable restriction on trade and business.

A licence fee on the sale of tobacco was imposed for the first time by the Punjab Tobacco Vend Fees Act, 1934, which was enacted with the object of regulating the sale of manufactured tobacco in municipal and certain other areas. Section 3 imposed a statutory obligation on all vendors of tobacco to take out a dealer's licence and section 4 declared that every licence shall be granted on payment of such fees as may be prescribed by the State Government. The State Government prescribed an annual licence fee at the rate of Rs. 2 in the year 1935 but increased it to Rs. 3 in 1939, Rs. 5 in 1941 and Rs. 20 in 1950. The Act of 1934 was repealed in the year 1952 but was re-enacted in substantially the same form in the year 1954. Rule 4 of the rules framed under the new Act authorises the issue of the

Gopi Parshad following kinds of licences on the fees mentioned against each, namely—

v.
The State of
Punjab

_____ C.J.
Bhandari,

(1) Manufacturer's or
distributing agent's
licence .. Rs. 500 per annum

(2) Licence for a dealer
who has more than
one assistant or
employee .. Rs. 240 per annum

(3) Licence for a dealer
who has only one
assistant or em-
ployee .. Rs. 60 per annum

(4) Licence for a dealer
or hawker who has
no assistant or
employee .. Rs. 30 per annum

The Constitution confers ample power on a State Legislature to divide the various business vocations into classes for the purpose of levying taxes and fees and to levy varying amounts on different professions, trades, callings and employments. A licence is a privilege granted by the State to do something which without the grant would be illegal, and a licence fee is an imposition or exaction on the right to use or dispose of property, to pursue a business, occupation or calling or to exercise a privilege. A licence fee is imposed primarily with the object of reimbursing the State for the services rendered by it, while a

tax is exacted with the object of providing revenue for the State and enabling it to carry on the duties of Government, *Ratilal v. State of Bombay* (1). A licence is a price paid for privilege while a tax is an enforced contribution levied on persons, property or income for governmental needs, *Pittsburgh Railway Co. v. City of Pittsburgh* (2). Charges may be levied either for purposes of regulation or for purposes of revenue or for both purposes. If the primary object of the charge is to regulate or restrain it is a licence fee; if on the other hand the primary object is to produce revenue it is a licence tax.

Gopi Parshad
v.
The State of
Punjab
Bhandari, C.J.

In order to determine whether licence legislation is a regulatory or a revenue measure, it is necessary to examine the operation, practical results and incidents and the substance and natural and legal effects of the language employed in the statute by which the charge has been imposed. Although the name by which the Legislature chooses to designate a particular charge is not conclusive, it is an important factor in determining whether the particular imposition is a tax or a licence fee, *Flint v. Stone Tracy Co.* (3), *Camas Stage Co. v. Kozeri* (4). It is necessary also to ascertain the power, whether regulatory or taxing, under which the amount is demanded and the purpose for which the demand is made. If the amount is exacted solely for revenue purposes and the payment thereof confers a right to carry on the business or occupation without the performance of any further conditions it is tax, *Tarver v. Albany* (5). If, on the other hand, the charge is levied

(1) A.I.R. 1954 S.C. 388
 (2) 60 A. 1077, 1078
 (3) 220 U.S. 107
 (4) 25 American Law Reports 27
 (5) 127 Se. A. 56

Gopi Parshad v. The State of Punjab
 Bhandari, C.J.

for the purpose of regulating a business or occupation and the statute requires compliance with certain conditions in addition to the payment of the prescribed sum, such a sum is a licence proper imposed by virtue of the power to regulate *United Artists Corporation v. James*, (1). The amount of the imposition or exaction must also be taken into consideration, for the amount of the charge may be so heavy or burdensome as to lead one irresistibly to the conclusion, considering the nature of the business or occupation to which it was applied, that although it was described as a fee it was in substance and effect, a tax. If the amount exacted is required to cover the actual expenses of issuing the licence and inspecting and controlling the business or occupation it is a licence fee proper and not a tax. But the mere fact that these fees yield a revenue in excess of that required for the purpose of regulation will not convert the fees into a tax where the object of the imposition is not to raise revenue but to regulate or control the particular business. *Youngblood v. Sexton* (2). It is absolutely impossible to fix a rate which will just suffice to regulate without yielding any revenue whatever.

But a question may well be asked what is the amount which may legitimately be charged on account of a licence which is issued for purposes of regulation only. It has been said that it is within the discretion of the legislative authority to impose such reasonable fee for a licence required for the purpose of regulation as it may think fit to impose, but the amount of fees must bear some reasonable relation to the extent and nature of the services rendered, *Ratilal v. State of Bombay* (3). The amount of licence fee need

(1) 23 F. Supp. 353
 (2) 20 American Reports 654
 (3) A.I.R. 1954 S.C. 388

not be confined to the mere expenses of issuing the licence but may include any reasonably proper cost of supervision, inspection, examination and regulation of the business in respect of which the licence is issued. *Vardachari v. State of Madras* (1).

Gopi Parshad
v.
The State of
Punjab

Bhandari, C.J.

It is not possible to lay down any hard and fast rules for the purpose of determining whether a particular fee is reasonable or otherwise, for what is reasonable must necessarily depend upon the character of the business regulated and the extent of regulation undertaken. In *City of Tucson v. Stewart* (2), the Court observed—

What is a reasonable licence fee must depend upon the sound discretion of the legislative body imposing it having reference to the circumstances and necessities of the case. It will be presumed the amount of the fee is reasonable unless it contrarily appears upon the face of the ordinance, bye-law or law itself, or is established by proper evidence. In determining whether a fee required for a licence is excessive or not, the expenses or amount of regulatory provisions and the nature of the subject of regulation should be considered, and if the amount is wholly out of proportion to the expenses involved it will be declared a tax."

It will be seen, therefore, that although the ultimate power of deciding whether a licence fee is reasonable or excessive vests in a Court of law,

(1) A.I.R. 1954 S.C. 388, 395

(2) 45 Airz. 36

Gopi Parshad
 v.
 The State of
 Punjab
 Bhandari, C.J.

the Court will be most reluctant to declare a licence fee to be unjust or unreasonable unless the objector establishes a flagrant case and oppressive abuse of power by the authority imposing the fee (*Lyons v. Cooper*), (1).

Judged in the light of the above tests it appears *prima facie* that the Act of 1954 is a regulatory measure. It was enacted with the object of licensing the possession and sale of tobacco and has been designated by the Legislature as the Punjab Tobacco Vend Fees Act, 1954. It prohibits the dealing in manufactured tobacco without licence and requires that in addition to taking out a dealer's licence on payment of such fee as may be prescribed by the State Government the dealer shall comply with the terms and conditions of the licence issued to him. Officers have power to enter and inspect places in which manufactured tobacco is kept for sale, to examine and take into possession accounts maintained in such places, to investigate offences punishable under the Act and to grant bail to persons who are alleged to have contravened the provisions of the Act. A person who sells manufactured tobacco without a dealer's licence and a holder of a dealer's licence who commits breach of the conditions subject to which the licence has been granted is punishable with a fine which may extend to Rs. 500. These provisions appear to indicate that the Act of 1954 has been enacted principally with the object of regulating and restraining the sale of tobacco and not with the object of providing revenue for the State.

Mr. H. L. Sarin, who appears for the petitioner, contends that although the Act of 1954 confers full power on Government to grant licences

(1) (1888) 30 Kan. 324

for the privilege of carrying on the trade in tobacco and although the power to license as a means of regulating carries with it the corresponding power to charge a fee sufficient to defray the expenses of issuing the licence, the power to license and regulate could not give the right to use a licence as a means of revenue or confer any authority to impose a tax under the cloak of a licence fee. The State in the present case has been increasing the licence fee from time to time and has in fact increased it from Rs. 2 per annum in the year 1934 to Rs. 500 per annum in the year 1954 with the object presumably of augmenting its revenue. This extraordinary and phenomenal increase, it is contended, must have resulted in a yield unreasonably disproportionate to the cost of regulation and must be attributed to a desire on the part of Government to use the licence as a mode of taxation for revenue. No facts have, however, been alleged on which to raise the conclusion that the aggregate income of the fees recovered from the licensees is greatly in excess of the cost of administration of the Act of 1954, excepting the circumstance that if the Act could be administered properly with a fee of Rs. 2 per annum it must be assumed that the fee of Rs. 500 which is now being charged covers much more than the cost of the administration.

Government have made a categorical denial of the assertion that receipts from duties under the Act of 1954 are greatly in excess of the expenditure incurred by the State in the regulation of the business for which it is exacted. According to the written statement presented by Government, the annual income from the Punjab Tobacco Vend Fees Act, 1954, during the year 1955-56 was estimated at Rs. 5,00,000 while the

Gopi Parshad
v.
The State of
Punjab
Bhandari, C.J.

Gopi Parshad v. The State of Punjab
 Bhandari, C.J.

total cost of administration of the Department is about Rs. 35,00,000. The staff for the administration and supervision of the Act of 1954 is a composite one and administers not only the Tobacco Vend Fees Act, 1954, but also the Punjab Excise Act, the Punjab Sales Tax Act and certain other allied enactments. The petitioner had the burden of showing that the fee demanded of him was wholly out of proportion to the expenses incurred by the State in regulating the trade, but he has not been able to invite our attention to any piece of evidence which might impose the inference which his counsel wishes us to draw. I am accordingly of the opinion that neither the Act of 1954 nor the rules which have been framed in exercise of the powers conferred by the said Act can be invalidated on the ground only that the imposition yields a revenue in excess of that required for the purpose of regulation.

In *Ratilal's case* (1), their Lordships of the Supreme Court expressed the view that a payment cannot be regarded as a fee unless the amount collected is earmarked to meet the expenses of rendering certain services and unless it is kept out of the general revenues of the State for being spent for general public purposes. The learned counsel for the petitioner contends that as the income derived from the licences issued under the Act of 1954 is collected and received into the treasury of the State and is appropriated for the payment of the expenses of the State it cannot be earmarked for the administration of the Act and cannot therefore be deemed to be an imposition of the nature of a fee. The learned Advocate-General points out, and in my opinion correctly, that it is not possible for any income

(1) A.I.R. 1954 SC. 388, 395

rom fees being kept out of the treasury and utilized for a particular purpose, for Article 266 of the Constitution declares that all revenue received by the Government of a State shall form one consolidated fund to be entitled "the Consolidated Fund of the State." The expression "revenues" appearing in this Article has not been defined but there can be no manner of doubt that it means "the income of the nation derived from its taxes, duties or other sources, for the payment of the nation's expenses." It is a term generally "used in referring to income of a government or governmental sub-division and as so used means all the public moneys which the State collects and receives from whatever source and in whatever manner." If all the income of the State must, in view of the constitutional requirements, be credited to and form part of the Consolidated Fund of the State, it is obvious that the income derived by the State from the imposition of licence fees cannot be kept out of the general revenues or be earmarked for special purposes.

Again, it is contended that this imposition is discriminatory and violative of the provisions of Article 14 for two reasons : First, because it applies only to dealers in tobacco who carry on business within the limits of municipalities, notified areas etc., and not to manufacturers and dealers who carry on their business in other parts of the State ; and secondly, because it discriminates between dealer and dealer requiring higher fees from some and lower fees from others.

Ever since the dawn of civilization law-makers in all countries have been continuously engaged in classifying persons and objects for the purpose of legislation and in passing laws applicable only to persons or objects within a particular class. The Constitution of India has fully

Gopi Parshad
v.
The State of
Punjab

Bhandari, C.J.

Gopi Parshad
 v.
 The State of
 Punjab

 Bhandari, C.J.

preserved and safeguarded this power subject only to one limitation, namely that the classification should be reasonable and not arbitrary and must rest upon some ground of difference which bears a just or proper relation to the attempted classification so that all persons similarly circumstanced shall be treated alike. The essence of the Constitutional right of equal protection of the laws is that every one is entitled to stand before the law on equal terms with, to enjoy the same rights and privileges as are enjoyed by, and to bear the same burdens as are imposed upon, others in a like situation. It does not forbid discrimination with respect to things that are different or deprive the State of the power to resort to classification of subjects for legislative action or prohibit legislation which is limited to the territory within which it is to operate. It is open to the Legislature to decide for itself whether certain laws shall extend to the whole State or to one or more parts of the State, for there is nothing in Article 14 which requires uniformity throughout the State. All that is necessary is that the laws shall operate with substantial equality and uniformity on all persons and classes similarly situated within the territory to which they apply. A law is not void or inoperative because certain areas are included while others are omitted from the operation of the statute, *North Western Laundry v. Des Moines*, (1), or because it imposes restrictions on the conduct of certain businesses in designated localities, *Hordacheck v. Sebastian*, (2), and provisions and statutes establishing one system of laws in courts in one portion of the territory of the State different

(1) 239 U.S. 486

(2) 239 U.S. 394

m that in the remaining portion is not in viola- Gopi Parshad
 n of the provision relating to the equal pro- v.
 ction of the law, *Missouri v. Lewis* (1). The State of
 Punjab

Nor is there any substance in the objection Bhandari, C.J.
 at while prescribing licence fees under the
 ct of 1954 the State has discriminated between
 ealer and dealer by imposing different fees on
 ifferent classes of dealers in tobacco. Licensed
 ealers in tobacco have been divided, by the rules
 made under the Act of 1954 into four classes, the
 asis of the classification being the size and im-
 portance of the establishment in which they carry
 on their work. This classification is neither ar-
 bitrary nor unreasonable, for substantial diffe-
 rences in the size and importance of the establish-
 ment in which the business is conducted may be
 made the basis of classification. It is said that
 while a licence tax on a trade or business must
 be uniform and reasonable as to the class singled
 out, persons engaged in such trade or business
 may be sub-classified and a different licence tax
 imposed on each sub-division provided the classi-
 fication is made upon a natural and reasonable
 basis *Danville v. Quakermaid* (2). It is open to
 the Legislative power to sub-classify tobacco dea-
 lers according to whether theirs is a wholesale or
 retail business, *Hodge v. Muscative Country* (3),
 or according to the amount, quantity, or number of
 sales.

The objection that the Act of 1954 is obno-
 xious to the provisions of Article 19 is equally
 futile, for although every citizen of India is at
 liberty to pursue a lawful calling of his own
 choosing, this right is subject to the paramount

(1) 101 U.S. 22

(2) 4 J. American Law reports 590

(3) 196 U.S. 276

Gopi Parshad *v.* right of the State to impose such reasonable restrictions as the protection of the public may require. The Constitution does not confer unfettered discretion on any person to conduct a business so as to injure the public at large or any substantial group thereof. The Legislature has decided that no person shall carry on any business in tobacco unless he has obtained a licence in this behalf and I am unable to hold that this requirement is either unreasonable or not in the public interest.

The State of Punjab
Bhandari, C.J.

For these reasons I am of the opinion that neither the Act of 1954 nor rule 4 of the rules framed thereunder can be regarded as invalid on any of the grounds relied upon by the petitioner. The petition must accordingly be dismissed with costs.

Bishan Narain, J. BISHAN NARAIN, J. I agree.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Bishan Narain, J.

MAJOR-GENERAL H. WILLIAM R. E., ENGINEER-IN-CHIEF,—*Petitioner*

versus

C. A. CUPPU RAM,—*Respondent*

Letters Patent Appeal No. 18-D of 1954.

1956

Aug., 9th

Constitution of India—Articles 226 and 311—Writ of certiorari—Scope of—When can issue—Enquiry Officer—Proceedings by—Nature of—Government servant holding officiating post—Reduced in rank without notice or hearing—Whether Article 311 contravened.

Held that a writ of certiorari lies when the inferior Court or tribunal has exceeded its jurisdiction or when such