

The Pazundaung Bazaar Company, Limited, and others - - *Appellants*

v.

The Municipal Corporation of the City of Rangoon - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 19TH MAY, 1931.

Present at the Hearing :

LORD RUSSELL OF KILLOWEN.

LORD MACMILLAN.

SIR DINSHAH MULLA.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

The question involved in this appeal is whether certain sums which were charged to the appellants by the Rangoon Corporation, by way of fees for licences to keep open private markets in the city of Rangoon, were validly charged by the Corporation under the powers contained in the City of Rangoon Municipal Act, 1922. This Act may conveniently be referred to as the Act of 1922.

The provisions of the Act of 1922, under which the licence fees in question were charged, are Section 125, which provides that no one shall keep open a private market without a licence granted by the Corporation ; and Section 178, which empowers the Corporation to charge a fee for such licence.

The relevant provisions of Section 178 run thus :—

“ 178.—(2) Whenever it is provided in this Act that a licence or a permission may be given for any purpose, such licence or permission shall specify the period for which, and the conditions and limitations subject to which, the same is granted, and shall be signed in the prescribed manner.

“ (3) For every such licence or permission a fee may be charged at such rate as shall from time to time be fixed by the Corporation.”

The appellants are five limited companies who, between them, own some or all of the eight private markets existing in Rangoon. Each of the appellants brought a separate suit against the Corporation for the purpose of establishing the illegality of the charge which it had been compelled to pay. The plaintiffs were successful at the trials, but on appeals to the High Court of Judicature at Rangoon on its appellate side, the decrees below were set aside and the suits were all dismissed. It is from the decrees dismissing their suits that the five companies present this consolidated appeal to His Majesty in Council.

There is an antecedent history to this litigation which must be included in any statement of the relevant facts.

Section 230 of the Act of 1922 gave power to the Corporation to add to the Schedules to the Act rules, not inconsistent with the provisions of the Act, to provide for any of the matters dealt with in such Schedules. In the year 1924 the Corporation, in purported exercise of that power, added a rule which provided that the licence fee for private markets should be 10 rupees for every 100 feet of the floor area.

The present appellants filed suits against the Corporation, challenging the validity of the rule. At the trials Cunliffe J. decreed the suits, declared the rule to be *ultra vires* and illegal, and granted an injunction restraining the Corporation from collecting the licence fees on the scale laid down by the rule or on any other scale than "the bare scale necessary for the proper financing of such licences." Upon appeal by the Corporation, the decision that the rule was *ultra vires* and illegal was affirmed, but upon a wholly different ground, viz., that the Corporation could not fix the fees by rule, but only by resolution. The case is reported in I.L.R. 5 Rangoon 212. Having stated the ground of their decision, which, as they truly said, would ordinarily be sufficient to dispose of the appeals, the Judges on appeal proceeded, apparently at the request of the parties, to consider whether a resolution of the Corporation to the same effect as the rule, would be reasonable or not. In considering this question, they stated their view that the Act of 1922 gave power to the Corporation to charge a fee which would save the Corporation from being out of pocket by reason of the duties and liabilities imposed on it by the Act of 1922 of the supervision and regulation of private markets. As their Lordships read the judgment, the Judges on appeal expressed the view that the Corporation was not restricted to charging licence fees on "the bare scale" indicated by Cunliffe J., but could charge them on such a scale as would cover the extra costs occasioned by the statutory supervision and regulation of private markets. They would appear, however, to have considered that a charge of 10 rupees for every 100 feet of floor area would be unreasonable even from this point of view. The order made on appeal is dated the 11th January, 1927, and affirms the decree of the Court below.

As a logical consequence of the views expressed in the judgment on appeal, while it was right that the declaration and

injunction as to the rule should remain in force, it would appear to be wrong that that part of the injunction which related to the "bare scale" should remain on foot. The matter, however, is of little importance in view of the fresh litigation which has ensued.

Having, with the assent of the present appellants, obtained an expression of the views of the Judges on appeal as to the Corporation's powers in relation to licence fees for private markets, the Corporation proceeded to act, as they believed, in accordance with the views so expressed. The order of events seems to have been as follows :—

The Finance Committee of the Corporation met on the 8th February, 1927, and considered the matter of licence fees to be charged for licences granted to private markets. The Committee had before them a note which had been prepared by the Corporation's assessor, and which stated two things, viz., (1) that the recent decision of the High Court had laid down that the licence fees to be charged in respect of the private markets must be a reasonable fee based on the costs of supervision and regulation of the markets, and (2) that the total cost on a moderate estimate to the Corporation of the regulation and supervision of the private markets was Rs. 12,308 per annum.

The assessor's note was inaccurate if, and in so far as, it states or suggests that the High Court had laid down that the licence fees *must* be based on the cost of supervision and regulation. What the High Court had said was that the fees must be reasonable, and might be based on such cost. The Finance Committee appears to have accepted the assessor's figure as to cost, and to have adopted that as a proper basis for the licence fees, for they made a recommendation to the Corporation in the following terms :—

"The Committee recommends that a total licence fee of Rs. 12,308 be charged on the eight private markets in Rangoon, and that the amount be allocated among the said markets in the ratio that the assessable value of each of the markets bears to the total assessable value of the eight private markets."

That recommendation of the Finance Committee was embodied as the 10th item in a report to the Corporation, dated the 8th February, 1927. This report was considered at a meeting of the Corporation held on the 1st March, 1927, when the following motion was passed : "That the report of the Finance Committee dated the 8th February, 1927, be adopted."

In accordance with this resolution of the Corporation, the total sum of Rs. 12,308 was divided among the private markets in the proportions of the rateable values of the respective markets, and the sum which by this process became attributable to each private market was charged as the licence fee for a year for that particular market. Incidentally, it may be observed that the sums so charged were less by more than half than the licence fees which were the subject matter of the former litigation.

To take a concrete case, the amount which by the above process became attributable to a private market owned by the Sooratee Bara Bazaar Company, Ltd., and known as "A" bazaar, was Rs. 2,295. On the 2nd April, 1927, the Corporation's assessor wrote to that Company (hereinafter referred to as the Sooratee Company), stating that it was necessary to apply forthwith for a licence for the year ending the 31st March, 1928, and that Rs. 2,295 was the licence fee fixed by the Corporation in respect of their market. The fee was paid, and there was also paid a similar fee (retrospectively, by arrangement between the parties) in respect of the year ending the 31st March, 1927.

The Sooratee Company owned four other private markets, and in respect of each of them the same procedure was followed as above indicated in respect of "A" bazaar, with the result that the Sooratee Company paid by way of licence fees for their five private markets a sum of Rs. 9,125 in respect of each of the two years ending the 31st March, 1927, and the 31st March, 1928. respectively.

In September, 1927, the Sooratee Company instituted their present suit against the Corporation. At this point it may be stated that what is here described as having happened in relation to the Sooratee Company, and the private markets belonging thereto, also happened in relation to the other appellants and their private markets. It is, however, sufficient to detail only the facts in relation to the Sooratee Company.

The relief claimed by the Sooratee Company was (1) a declaration that the new scale of licence fees was unreasonable and *ultra vires*; (2) an injunction to restrain the Corporation from levying the fees on the new scale or on any scale which is in excess of what is necessary for the proper financing of the licences; and (3) repayment of Rs. 18,250.

Similar suits were instituted by the other appellants. The suits were all tried together, and by consent of the parties it was arranged that the evidence in one suit should be treated as evidence in all the others, and that the evidence in the former proceedings should be treated as evidence in these suits.

In the suit of the Sooratee Company a decree was pronounced on the 19th February, 1929, which so far as material was in the following terms:--

"It is hereby declared that the licence fee upon a private market should be at the flat rate of Rs. 150 (Rupees one hundred and fifty only) per annum per market and that the present scale of fees is unreasonable and *ultra vires*.

"It is ordered and decreed that plaintiffs be and they are hereby granted an injunction against the Municipal Corporation of the City of Rangoon preventing them from levying any licence fee upon their private markets at a greater amount than Rs. 150 (Rupees one hundred and fifty only) per market per annum.

"It is ordered and decreed that the defendant Corporation do return to the plaintiff Company the sum of Rs. 16,750 (Rupees sixteen thousand seven hundred and fifty only), being the balance of the amount collected

by the defendant Corporation from the plaintiffs as licence fee in respect of their market, together with the costs of the suit as taxed by the Officer of the Court."

A decree on the same lines was pronounced in the other suits. The Corporation appealed from all the said decrees to the High Court of Judicature at Rangoon, Civil Appellate Jurisdiction. By a decree dated the 29th October, 1929, and made on the appeal in the suit by the Sooratee Company, the said decree of the 19th February, 1929, was set aside and the suit of the Sooratee Company was dismissed. Similar decrees were pronounced in the other appeals.

In the appeal now under consideration the plaintiffs in the various suits do not seek to have restored the decrees of the Trial Judge so far as they declare that the licence fees should be at a flat rate of Rs. 150 per annum per market, and grant injunctions restraining the Corporation from levying a licence fee of a greater amount; but they ask to have the decrees of the Appellate Court set aside and claim injunctions restraining the Corporation from levying licence fees on the new scale, and orders for the repayment of the sums paid.

As a result of a close and careful argument before the Board, the point in dispute between the parties was brought within a narrow compass. It was conceded that, as representing the cost to the Corporation of the regulation and supervision of the private markets, the sum of Rs. 12,308 was a reasonable and proper sum. In addition to this, the evidence would appear to establish the fact that the sum covers only the extra burden placed on the Corporation by reason of extra supervision and inspection of private markets, and does not include anything in respect of what are termed conservancy services.

It was, however, contended (1) that the Corporation had no power under Section 178 (3) of the Act of 1922 to charge fees at a rate higher than necessary to provide thereby for the cost of issuing the licences and ensuring that those who kept open private markets held the necessary licences for that purpose; (2) that in any event the licence fees here in issue had not been charged "at a rate" as required by Section 178 (3); and (3) that the Corporation had not charged a fee for each licence as required by the section, but had charged one total licence fee for all the private markets, which they had divided in certain proportions among all the owners thereof. Upon all or some of these grounds it was argued that the sums in question had been illegally exacted from the appellants and should be repaid accordingly.

The learned Trial Judge appears to have thought that the main question to consider was whether the services rendered by the Corporation to the private markets and their owners were normal services or special services. He came to the conclusion that the services were normal in the sense that they were in character similar to the services rendered to other citizens of Rangoon and would have been rendered even if the power to

impose licence fees for private markets did not exist. Having come to the conclusion that no special services were rendered, he adhered to the view which he had entertained in the earlier litigation, viz., that the Corporation could not charge more than was necessary to cover "the cost of the issue, inspection, stationery and office expenses of the controlling authority." These words, which occur in his later judgment, appear to indicate the meaning of the phrase, otherwise difficult to understand, which occurs in the original injunction—"the proper financing of such licences." The "inspection" refers no doubt merely to inspection of licences.

Upon this footing the licence fees charged were no doubt not justified by the Act of 1922. The learned Judge thereupon proceeded himself to fix the licence fees, a proceeding which was obviously quite unjustifiable and which the appellants in no way seek to justify.

In the course of his judgment the learned Judge examined the statements made in his own judgment and in the Court of Appeal in the former litigation, and expressed the view that the "supervision of a licence" did not mean the "supervision of the object licensed." It is to be observed, however, that the Court of Appeal used no such words. In fact, the expression used in the Court of Appeal was "supervision and regulation of private markets"; in other words and in very truth the supervision and regulation of the object licensed.

On appeal in the present litigation to the High Court the views of the Court of Appeal in the previous litigation were, their Lordships think, correctly interpreted, and it was decided that the licence fee might reasonably cover the cost of all special services necessitated by the duties and liabilities imposed upon the Corporation in respect of the supervision and regulation of private markets.

With this conclusion their Lordships agree, and if in the present case the Corporation have in good faith charged the fees in question and fixed the amount thereof upon the footing that the sums paid would cover the cost aforesaid, their Lordships would feel unable to hold that it was beyond the powers of the Corporation to exact payment of those fees.

Of the *bona fides* of the Corporation there can be no doubt, for they have endeavoured only to follow the views of the Court of Appeal. That the amount charged is not excessive for the purpose aforesaid cannot, in their Lordships' opinion, be disputed, and indeed is not in dispute. Nor is there anything in the Act of 1922 which in their Lordships' view prevents the Corporation from charging a licence fee which has been fixed with a view to providing for the said cost. The words of Section 178 (3) contain nothing prohibiting such a charge or inconsistent with such a charge.

The only question which remains is the question whether the Corporation in acting as hereinbefore described has, as

required by Section 178 (3), charged a fee for each private market at a rate fixed by the Corporation. In form what the Corporation (by adopting the report of the Finance Committee) did was to arrive at the total amount of the cost which was to be covered by the sums payable by all the private markets. This total sum (described by the Committee as "a total licence fee") they divided among all the private markets in proportion to their respective assessable values. The sums so arrived at were, in the case of each private market, a percentage, and, in each case, the same percentage of its assessable value. A sum which represented that percentage was then charged to each private market as its licence fee for the right to keep it open for a year.

In these circumstances their Lordships feel unable to hold that the licence fees which were charged, and in respect of which the suits in question were brought, were not fees charged at a rate fixed by the Corporation within the meaning of Section 178 (3) of the Act of 1922, and validly charged under the powers conferred upon the Corporation by that section.

Their Lordships are for the reasons stated of opinion that this appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

THE PAZUNDAUNG BAZAAR COMPANY,
LIMITED, AND OTHERS

v.

THE MUNICIPAL CORPORATION OF THE
CITY OF RANGOON.

DELIVERED BY LORD RUSSELL OF KILLOWEN.

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