III. I have, therefore, no hesitation in repelling the argument of the learned counsel for the State.

In this view of the matter, it is not necessary to advert to the second contention.

For the reasons given above, this petition is allowed, the judgment and decree of the learned Additional Judge, Small Cause Court is set aside and the case is remitted to him for decision after admitting into evidence the acknowledgment in dispute after recovery of the deficient stamp and penalty.

There will be no order as to costs.

The parties are directed to appear before the trial Court on the 12th June, 1964.

INDER DEV DUA, J.—I agree.

Dua, J.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

THE DELHI CLOTH & GENERAL MILLS CO. LTD., AND OTHERS,—*Petitioners*

versus

THE CHIEF COMMISSIONER, DELHI AND ANOTHER,—*Respondents.*

Civil Writ No. 227-D of 1962

1964

May, 7th.

Registration Act (XVI of 1908)—Ss. 78 and 79—Notification prescribing table of fees for registration based on value or consideration money specified in the document sought to be registered—Whether ultra vires *and inoperative—Fee charged on basis of value or consideration—Whether a fee or tax.*

Held, that notification No. F. 12(20)/52 GAR, dated the 15th December, 1952, issued under sections 78 and 79 of the Indian Registration Act, 1908, prescribing a table of fees to be charged for the registration of the documents on the basis of the value or consideration money specified in the document sought to be registered is *ultra vires* and inoperative because the fee demanded is not a fee but a tax for the following reasons:—

(1) That the fee is not, deposited in a separate head or account but is merged in the general revenue of the State. It is not solely used for the maintenance of the registration department but goes into a consolidated fund which is utilised for various other governmental functions;

(2) that there is no reasonable co-relation between the fee levied and the cost of maintenance and administration of the registration department. To illustrate, a document running into several pages may be liable to a nominal fee whereas a document running into a single page may be liable to an exorbitant fee. Moreover, this may happen in the case of the same individual when he goes to the registration department with two documents; one chargeable to very nominal fee and the other to an exorbitant fee under the prescribed scale. It is also clear that the Act has no co-relation with the capacity of an individual to pay. This is being stated pertinently because certain fees may be justified if their imposition has something to do with the capacity of the individual to pay but all fees cannot be justified on that basis. For that purpose one has to keep in view the purpose and object of the Act. In the present case the purpose and object of the Act have no relation to the paying capacity of an individual.

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue orders, directions, or appropriate writs:—

(a) to the Respondents not to give effect to the said Notification No. F. 12 (20)/52-GAR, dated the

15th December, 1952, and not to impose registration fee of Rs. 1,25,157.50 nP., on the said Debenture Trust Deed, dated the 10th April, 1962, executed by the Delhi Cloth and General Mills Co., Ltd.;

(b) *to direct the learned Sub-Registrar, Delhi, Respondent No. 2 to register the said Debenture Trust Deed presented before him on 14th May, 1962, for registration;*

(c) *to direct a very expeditious hearing of the writ petition on a very early actual date so that the same can be disposed of well in advance of the last date allowed for presentation of the document for registration, viz., 10th August, 1962; and*

(d) *to make such further or other orders as this Hon'ble Court may deem fit and proper.*

N. C. CHATTERJEE, P. C. KHANNA, ADVOCATES, for the Petitioner.

S. N. SHANKER AND DALJIT SINGH, ADVOCATES, for the Respondents.

JUDGMENT.

MAHAJAN, J.—The short question that arises for determination in this petition under Article 226 of the Constitution is whether the demand of Rs. 1,25,157.50 nP., as registration fee is, in fact, a fee or a tax. The contention of the petitioners is that it is a tax and not a fee. Mahajan, J.

Petitioner No. 1 is the Delhi Cloth and General Mills Company Limited, Bara Hindu Rao, Delhi—hereinafter referred to as the Company. Petitioners Nos. 2 and 3 are the Directors of the said Company and petitioners Nos. 4 and 5 are the trustees. The respondents are the Chief Commissioner, Delhi, and the Sub-Registrar, Delhi.

The Delhi Cloth and General Mills Co., Ltd and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

The Company floated debenture loan of Rs. 2.5 crores and to secure the repayment of the said loan executed debenture trust deed on the 10th April, 1962, mortgaging some of its properties for the consideration of Rs. 2.50 crores in favour of petitioners Nos. 4 and 5 as trustees for debenture-holders, under the said debenture trust deed. The Collector of stamps, Delhi, assessed the stamp duty on the debenture trust deed at Rs. 2,50,300 under the Indian Stamp Act. This duty was paid by the Company. When the debenture trust deed was presented before the Sub-Registrar, Delhi, on the 14th May, 1962, for registration: the Sub-Registrar demanded a sum of Rs. 1,25,157.50 nP., as registration fee. This demand was made in pursuance of notification No. F. 12(20)/52-GAR, dated the 15th December, 1952, issued under sections 78 and 79 of the Indian Registration Act, 1908. The notification is Annexure 'A' to the petition. In this the table of fees for registration has been set out. The basis of the fee for registration is the value or consideration money specified in the document sought to be registered. The minimum fee chargeable is Rs. 2-8-0. If the value or consideration money is up to Rs. 1,000, the maximum fee leviable is Rs. 12-8-0. For documents in which the value or consideration money is between Rs. 300 and Rs. 1,000 various amounts are specified in the Schedule ranging from Rs. 2-12-0 to Rs 12-8-0. For documents in which the value or consideration money is above Rs. 1,000, for every one thousand rupees, a fee of Rs. 5 is payable in addition to the sum of Rs. 12-8-0, which is the fee for the first one thousand rupees. In this manner, the fee calculated on the sum of Rs. 2.50 crores comes to Rs. 1,25,157.50 nP. The stand taken up by the petitioners was that this fee was not, in

fact, a fee but was tax in the guise of fee. Consequently the petitioners took back the document and moved the present petition in this Court. They maintain that they are prepared to pay any reasonable fee for registration of the document, that the fee demanded from them for registration has no co-relation with the services to be rendered under the Indian Registration Act and is so excessive that it is merely a pretence for fee, that it is not fee and in reality is a tax and as such its levy is illegal and void and unconstitutional.

In paragraph 15 of the petition, it is stated that:—

> "the petitioners understand that registration fee is mixed with the other revenues of Delhi Administration and the amount so realised is spent by respondent No. 1. not only on the establishment of the office of the respondent No. 2 but also on other accounts not connected in any way with the office of the respondent No. 2. The amount of registration fees is thus used as a part of general revenue of the state."

It is further maintained that the work involved in the registration of documents is the same irrespective of the value or consideration money, the length or the nature of the document. The levy of fee on the basis of the scale based on the value or consideration money is attacked as being discriminatory and thus violative of article 14 of the Constitution. The notification is also attacked as being violative of Article 19(1)(f) and (g) of the Constitution as imposing an illegal impost. In

The Delhi Cloth and General Mills Co., Ltd. and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

the end it is prayed that the notification in question be not given effect to and that the Sub-Registrar be directed to register the debenture trust deed on payment of some reasonable fee which was proportionate to the services to be rendered.

In the return filed by the State in reply to paragraphs 11 and 15 of the petition, it is stated as follows:—

> "* * * With reference to para 11, I deny that the fee-demanded for registration has no co-relation with the services rendered, or that it is a mere pretence of fee or that it is in the nature of tax or that its levy is illegal or void or unconstitutional. The fee demanded is absolutely in accordance with valid law. It has direct co-relation to the services rendered and the benefit derived by the person seeking registration of document. The document in the present case would, on registration, entitle the petitioner company to secure repayment of a huge sum of Rs. 2.5 crores. It is not necessary that the amount collected as registration fee should in every case be approximate to the expenses incurred by the Government in rendering any particular service. The amount collected remains a 'fee' as long as it is a payment for a special work done for the benefit of the person paying.
>
> I do not dispute the facts stated in para 15 of the petition. I, however, submit that

the mere fact that amounts collected on account of registration fee are merged in general revenues would not make it a tax. I submit that whether or not a particular levy is a tax would always be a question of fact to be determined in the circumstances of each case. In the present case I submit that the amount levied as registration fee is a fee and not a tax."

It would thus be clear that it is not disputed that the registration fee forms part of the general revenue of the State and is not credited to any distinct or separate account. It is not utilised for the exclusive purposes of the services rendered for which the levy is collected but is utilised as revenue for the general purposes of the administration.

It would also be clear that the scale of fees prescribed in the Schedule Annexure 'A' has no co-relation to the raising of necessary funds to meet the legitimate expense in connection with the registration of documents and the maintenance of the Registration Department. The fee has also no connection with the length of the document. A document running into ten or twenty pages of the value of Rs. 500 is chargeable to Rs. 8 as fee, while a document of the value of Rs. 2.50 crores is chargeable to a fee of Rs. 1,25,157.50 nP. though it may be just a page. This disparity assumes greater importance if one keeps in mind that the services contemplated by the Registration Act and actually rendered are common to both the cases. On the face of it, it is hard to follow the relationship between the fee and the service rendered or to be rendered.

The Delhi Cloth and General Mills Co., Ltd. and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

At this stage it will be proper to examine the scheme of the Registration Act and its purpose.

As observed in *Veerappa Chetty* v. *Kadiresan Chetty* (1)—

> "The primary object of registration is to check forgery and to provide good evidence of the genuineness of written instruments."

The Privy Council in *Hemanta Kumari Debi* v. *Midnapur Zamindary Company* (2) while dealing with the Indian Registration Act, observed that "the purpose of the statute is to provide a method of public registration of documents." Part II of the Act deals with the Registration Establishment. There is to be an Inspector-General of Registration for each State or an officer who will exercise his powers or duties (Section 3). There have to be Districts and Sub-Districts for the purposes of the Act (section 5). There has to be a Registrar for a District and a Sub-Registrar for a Sub-District (Section 6). Offices of Registrar and Sub-Registrar have also to be established (Section 7). There can be amalgamation of the two offices. Provision is also made for any vacancy in the office of the Registrar or Sub-Registrar, their absence and for their establishment. The registering officers have to use a seal, books and fire-proof boxes.

Part III deals with what documents have to be registered and can be registered (sections 17 and 18) as well as the various registers to be maintained in connection therewith. Parts IV, V, VI; VII, VIII, IX, X, XI and XII deal with the time of

(1) 20 I. C. 385.
(2) 46 I. A. 240.

presentation, the place of registration, the presentation of documents for registration, the enforcing of appearance of executants and witnesses, presentation of wills and authorities to adopt, the deposit of wills, the effects of registration and non-registration, the duties and powers of registering officer, and the refusal to register. Part XIII deals with fees for registration, searches and copies.

The fees are to be fixed by the State Government (section 78). Table of fees has to be published (section 79). The fees are payable on presentation of document sought to be registered (section 80).

Part XIV deals with various penalties for various lapses and omissions and commissions. In the last part the only provision that may be noticed is section 89, which makes it incumbent on officers granting a loan under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, to send a copy of the order; and on a civil or a revenue Court to send a copy of the sale certificate to the registering officer to be filed.

It can be safely concluded from the entire scheme and purpose of the Act that it does not provide for the collection of taxes. It makes a provision in public interest for record of documents mainly documents of title. A department has to be established and maintained and for that purpose the act only provides for levy of fees.

It is not the State's case that the income from fees is merely enough to cover the charges of the entire registration establishment or is slightly higher than that. It is also not its case that the income from registration fees is kept in a separate account or head and is spent on the establishment,

The Delhi Cloth and General Mills Co., Ltd. and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

On the other hand, the stand taken up is that it does not matter that the income from the registration fee is credited to the general revenues and is used for the various governmental functions.

It is in this background that the vexed question whether the fee in question is a tax or a fee has to be settled.

The test as to what is a fee as distinct from a tax has been settled by the Supreme Court and on that both the sides are agreed. The difficulty only arises in its application to the facts of a given case. According to the counsel for the petitioner, the test settles the matter in his favour while according to the State counsel it does not.

The earliest case before the Supreme Court was *The Commissioner, Hindu Religious Endowments Madras* v. *Sri Lakshmindra Thirtha Swamiar* (3). While dealing with the question: what is a fee and what is a tax? Mukherjee, J. (as he then was) observed as follows:—

> "It seems to us that though levying of fees is only a particular form of the exercise of the taxing power of the State, our Constitution has placed fees under a separate category for purposes of legislation and at the end of each one of the three legislative lists, it has given a power to the particular legislature to legislate on the imposition of fees in respect to everyone of the items dealt with in the list itself. Some idea as to what fees are, may be gathered from clause (2) of articles 110 and 119 referred to above which speak of fees for licences and for service rendered.
>
> * * * *

(3) 1954 S. C. R. 1005.

A neat definition of what 'tax' means has been given by Latham, C.J., of the High Court of Australia in *Matthews* v. *Chicory Marketing Board* (4). 'A Tax', according to the learned Chief Justice, 'is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered'. This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law. (*Vide Lower Mainland Dairy* v. *Crystal Dairy Ltd.* (5). The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of *quid pro quo* between the tax payer and the public authority (*See* Findlay Shirras on 'Science of Public Finance, Volume I, p. 203). Another feature of taxation is that as it is a part of the common burden, the quantum of imposition

(4) 60 C.L.R. 263,275.
(5) (1933) A. C. 168.

The Delhi Cloth and General Mills Co., Ltd. and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

upon the taxpayer depends generally upon his capacity to pay.

Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals 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 many 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 (*vide* Lutz on 'Public Finance' p. 215). These are undoubtedly some of the general characteristics, but as there may be various kinds of fees it is not possible to formulate a definition that would be applicable to all cases.

As regards the distinction between a tax and a fee, it is argued in the first place on behalf of the respondent that a fee is something voluntary which a person has got to pay if he wants certain services from the Government; but there is no obligation on his part to seek such services and if he does not want the services, he can avoid the obligation. The example given is of a licence fee. If a man wants a licence that is entirely his own choice and then only he has to pay the fees, but not otherwise. We think that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of imposition though in different degrees and that it is not totally absent in fees.

This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees. It is difficult, we think to conceive of a tax except, it be something like a poll tax, the incidence of which falls on all persons within a state. The house tax has to be paid only by those who own houses, the land tax by those who possess lands, municipal taxes or rates will fall on those who have properties within a municipality. Persons, who do not have houses, lands or properties within municipalities, would not have to pay these taxes, but nevertheless these impositions come within the category of taxes and nobody can say that it is a choice of these people to own lands or houses or specified kinds of properties so that there is no compulsion on them to pay taxes at all. Compulsion lies in the fact that the payment is enforceable by law against a man in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees. Of course, in some cases whether a man would come within the category of a service receiver may be a matter of his choice, but that by itself would not constitute a major test which can be taken as the criterion of this species of imposition. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for

The Delhi Cloth and General Mills Co., Ltd. and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest (*Vide* Findlay Shirras on Science of Public Finance, Vol. I, p. 202). Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. As Seligman says, it is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action (*Vide* Seligman's Essays on Taxation, p. 408).

If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees 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 of the Constitution, ordinarily, there are two classes of cases where Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred. A most common illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the

amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases according to all the writers on public finance the tax element is predominant, (*Vide* Seligman's Essays on taxation p. 409), and if the money paid by licence holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regarded as a tax.

In the other 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. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax. There is really no generic difference between the tax and fees and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes (*ibid* p. 406).

Our Constitution has, for legislative purposes, made a distinction between a tax and a fee and while there are various entries in the legislative lists with regard to various forms of taxes, there is an entry at the end of each one of the three lists as regards fees which could be levied in respect of any of the matters that is included in it. The implication seems to be that fees have special

The Delhi Cloth and General Mills and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

reference to governmental action undertaken in respect to any of these matters."

In that case, the so-called fees was held to be a tax because the material fact which negatived the theory of fees in that case was that the money raised by levy of the contribution was not earmarked or specified for defraying the expenses that the Government has to incur in performing the services. All the collections went to the consolidated fund of the State and all the expenses were to be met not out of those collections but out of the general revenue by a proper method of appropriation as was done in cases of other governmental expenses.

This matter was again considered in *Ratilal Panachand Gandhi* v. *State of Bombay* (6), and *Sri Jagannath Ramnuj Das* v. *State of Orissa* (7). In both these cases, the same test was reiterated. It is only necessary to set out the relevant observations in *Ratilal's case* which are as follows:—

> "Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes.

As has been pointed out in the Madras case mentioned above, too much stress should

(6) A.I.R. 1954 S. C. 388.
(7) A.I.R. 1954 S. C. 400.

not be laid on the presence or absence of what has been called the 'coercive' element. It is not correct to say that as distinguished from taxation which is compulsory payment, the payment of fees is always voluntary, it being a matter of choice with individuals either to accept the service or not for which fees are to be paid. We may cite for example the case of a licence fee for a motor car. It is argued that this would be a fee and not a tax, as it is optional with a person either to own a motor car or not and in case he does not choose to have a motor car, he need not pay any fees at all. But the same argument can be applied in the case of a house tax or land tax.

Such taxes are levied only on those people who own lands or houses and it could be said with equal propriety that a man need not own any house or land and in that event he could avoid the payment of these taxes. In the second place, even if the payment of a motor licence fee is a voluntary payment, it can still be regarded as a tax if the fees that are realised on motor licences have no relation to the expenses that the Government incurs in keeping an office or bureau for the granting of licences and the collections are not appropriated for that purpose but go to the general revenue. Judging by this test, it appears to us that the High Court was perfectly right in holding that the contributions imposed under section 58 of

The Delhi Cloth and General Mills and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

the Bombay Public Trusts Act are really fees and not taxes.

In the first place, the contributions which are collected under section 58 are to be credited to the Public Trust Administration Fund as constituted under section 57. This is a special fund which is to be applied exclusively for payment of charges for expenses incidental to the regulation of public trusts and for carrying into effect the provisions of the Act. It vests in the Charity Commissioner and the custody and investments of the money belonging to the fund and the disbursement and payment therefrom are to be effected not in the manner in which general revenues are disbursed but in the way prescribed by the rules made under the Act. The collections, therefore, are not merged in the general revenue, but they are earmarked and set apart for this particular purpose."

The decision in the *Hingir-Rampur Coal Co. Ltd.* v. *The State of Orissa* (8), illustrates the difficulty that arises in applying these tests to the facts of each individual case. The majority view held the imposition in this case as a fee while Wancho J. held to the contrary. The test as laid down in the cases of *Ratilal and Jagannath Ramanuj Das*, already cited, was accepted as the correct test. It will be useful to refer to the decision of the Supreme Court in *Sudhindra Tirtha Swamiar* v. *Commissioner for Hindu Religious and Charitable Endowments* (9). This is necessary

(8) A.I.R. 1961 S. C. 459.
(9) A.I.R. 1963 S. C. 966.

because the successful petitioner in *The Commissioner, Hindu Religious Endowments Madras* v. *Shri Laksmindra Tirtha Swamiar* (3) again questioned the imposition after the legislature had made the necessary changes in the law to meet the situation created by the Supreme Court decision already referred to (3). The imposition was held to be fee for the reasons which may best be stated in the words of the learned Judges of the Supreme Court,—

> "It was urged that there was no co-relation between the expenses incurred and the amounts collected as contributions, but there is no reliable evidence, on the record in support of this plea. Our attention was invited to Exhibit 'A' referred to in paragraph 2 of the supplemental counter affidavit of the State of Madras in Writ Petition No. 323 of 1955, in which an abstract of the receipts and charges was set out. It was stated in that document :—
>
> "During the period from 30th September, 1951 to 30th June, 1952 the total receipts under the head 'XXXVI Miscellaneous—(c) Miscellaneous—Administration of Madras Hindu Religious and Charitable Endowments Act, 1951' amounts to Rs. 3,16,013-1-3 and the total receipts under 'XLVI—Miscellaneous (d) fees for Government Audit' by way of contribution recovered from the religious institutions amounted to Rs. 2,27,531-4-10. The total expenditure during the said period towards salary and allowances of

The Delhi Cloth and General Mills and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

the officers and staff contingencies and fees paid to private auditors for auditing the accounts of religious institutions amounted to Rs. 6,93,539-10-3".

Then followed a chart for fasli years 1361, 1362, 1363 and 1364 setting out different heads such as Arrears Demand, Current Demand, Total Demand, Write Off, Net Demand, Collection and Balance. It appears from the Chart that there were large arrears in the collection of contributions and by the end of the fasli year 1364 the arrears exceed 15.50 lakhs. An abstract at the foot of the chart shows that the total actual collections amounted to Rs. 19.74 lakhs and the balance recoverable for the four fasli years was Rs. 15.75 lakhs. The total expenditure for $3\frac{1}{2}$ out of the four years was Rs. 26.4 lakhs. It is difficult to draw an inference from this document that the demand of contribution was wholly unrelated to the expenditure incurred out of the accumulations. No attempt was made before the High Court to establish that the levy of contribution at the rate of five per cent was so exorbitant that it could be said to have no true relation to the value of the services rendered to the endowments by the administration. Our attention was also invited to a statement of account showing that the Commissioner received when the Act of 1951 was brought into force and a total investment in fixed deposits, Government

stock certificates, debentures of co-operative land mortgage bank, national savings certificates and in banks, a total amount exceeding Rs. 18 lakhs. But this is the accumulation during a period of nearly 25 years when the Act of 1927 was in operation. There is no evidence on the record as to the sources from which the fund was accumulated. From this statement of account it would not be possible to infer that the contributions under section 76(1) of the Act of 1951 were wholly disproportionate to the value of the services to be rendered. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A fee being a levy in consideration of rendering

The Delhi Cloth and General Mills and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

service of a particular type, co-relation between the expenditure incurred by the Government and the levy must undoubtedly exist, but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may."

So far as our High Court is concerned, reference may be made to the *State of Punjab* v. *The Model Woollen & Silk Mills, Verka* (10) wherein a licence fee imposed on engines according to their horse-power was struck down as a tax and not a fee on the ground, to put it in the words of Grover, J., who delivered the judgment of the Full Bench, that:—

> "It lacks the essential elements of *quid pro quo*, it is excessive and unreasonable *qua* the licencees like the respondent who happens to put up larger number of engines of smaller horse power which presumably is conducive to more efficient and productive working of the industry, and it has gone merely to augment the general revenues of the District Board."

Applying the tests laid down in the decisions cited above to the facts of the present case, we are clearly of the view that the fee in the instant case is not a fee but in its very nature is a tax, The reasons why we hold so are:—

(1) That the fee is not deposited in a separate head or account but is merged in

(10) 1962 P.L.R. 179.

the general revenue of the State. It is not solely used for the maintenance of the registration department but goes into a consolidated fund which is utilised for various other governmental functions;

(2) that there is no reasonable co-relation between the fee levied and the cost of maintenance and administration of the registration department. To illustrate, a document running into several pages may be liable to a nominal fee whereas a document running into a single page may be liable to an exorbitant fee. An illustration to this effect has already been set out above in the earlier part of the judgment. Moreover, this may happen in the case of the same individual when he goes to the registration department with two documents, one chargeable to very nominal fee and the other to an exorbitant fee under the prescribed scale. It is also clear that the Act has no co-relation with the capacity of an individual to pay. This is being stated pertinently because certain fees may be justified if their imposition has something to do with the capacity of the individual to pay but all fees cannot be justified on that basis. For that purpose one has to keep in view the purpose and object of the Act. In the present case the purpose and the object of the Act have no relation to the paying capacity of an individual.

The Delhi Cloth and General Mills and others
v.
The Chief Commissioner, Delhi and another

Mahajan, J.

In view of the fact that the registration fee is credited to the general revenues of the State without distinction, a fact from which there is no escape on the material on the record, it must be held that the fee demanded is not a fee but a tax.

In view of our decision on the principal question, it is not necessary to decide the other two contentions raised, namely, one under Article 14 and the other under Article 19 of the Constitution. So far as the second contention is concerned, it cannot be raised because the petitioner is not a natural person but an artificial person. See in this connection, the decision of the Supreme Court in *State Trading Corporation of India Ltd.* v. *The Commercial Tax Officer* (11) wherein it was held:—

> "The word 'Citizen' in Article 19(1)(f) & (g) has no special meaning and refers to a natural person. The State Trading Corporation cannot be regarded either by itself or by taking it as the aggregate of citizens, as a citizen for the purpose of enforcing rights under Article 19(1)(f) and (g). The nationality of a Corporation is a different concept not to be confused with citizenship of natural persons. The State Trading Corporation is really a department of Government behind the Corporate veil and it is not possible to pierce the veil of incorporation in India to determine the citizenship of the members and then to give the Corporation the benefit of Article 19. The corporation cannot claim to enforce fundamental rights under Part III of the Constitution

(11) A.I.R. 1963 S. C. 1811.

against the State as defined in Article 12."

For the reasons given above, we allow this petition and hold the notification to be *ultra-vires* and inoperative. The document was registered in view of the interim order passed by Bedi and P. C. Pandit, JJ., on the 31st July, 1962. That order reads thus:—

"The parties want time to put in some affidavits. With the consent of the parties, we pass the following interim order:—

'The petitioners shall pay under protest an amount of Rs. 1,25,157.50 nP. demanded by respondent No. 2 as registration fee and thereupon the debenture trust deed shall be registered. The respondents undertake that in the event of the writ petition being decided in favour of the petitioners, the aforesaid amount shall be refunded to the petitioners except such amount as may be payable as registration fees in accordance with the decision of the High Court.' "

In accordance with the above order, the amount of Rs. 1,25,157.50 nP. has to be refunded excepting such amount as may be payable as registration fee. This amount cannot be determined at this stage, because there is no alternative scale of fees prescribed. The appropriate order, therefore, would be that the amount be refunded subject to the condition that the petitioners will pay to the Sub-Registrar such amount as is prescribed by lawful rules that may be made in this behalf prescribing fees for the registration of such documents. There will be no order as to costs.

B.R.T.