acquittal in the First Schedule to the Limitation Act (Article 157) is three months from an order of acquittal under the Code of Criminal Procedure. It is pointed out that a different period has not been prescribed by sub-section (3) of section 417 of that Code and it is only for filing an application for leave to appeal that a period of two months has been prescribed, there being no such provision in the First Schedule to the Limitation Act itself. Such an argument was effectively answered by Chagla C. J. who delivered the judgment in *Canara Bank, Limited* v. *Warden Insurance Company Limited* (1), to which Gajendragadkar J. (now on the Bench of the Supreme Court) was a party, by saying that the period of limitation may be different under two different circumstances. It may be different if it modifies or alters a period of limitation fixed by the First Schedule to the Limitation Act. It may also be different in the sense that it departs from the period of limitation fixed for various appeals under the Limitation Act. "If the First Schedule to the Limitation Act omits laying down any period of limitation for a particular appeal and the special law provides a period of limitation, then to that extent the special law is different from the Limitation Act." It may be somewhat unfortunate that in fit cases the benefit of section 5 of the Limitation Act cannot be extended to an application for leave to appeal preferred under section 417(4) of the Code of Criminal Procedure but then it is for the legislature to rectify the defect or remove the lacuna.

In the result, this appeal is dismissed on the ground of bar of limitation.

R.S.

FULL BENCH

Before D. Falshaw, A. N. Grover and Harbans Singh, JJ.

THE STATE OF PUNJAB,—*Appellant.*

versus

THE MODEL WOOLLEN AND SILK MILLS AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 476 of 1958.

1961

Nov., 6th

District Boards Act (XX of 1883)—Section 31(6)—Levy of licence fee on the owners for working, erecting or

(1) A.I.R. 1953 Bom. 35.

re-erecting, etc., any engines on the horse-power of each engine—Whether valid—Tax and fee—Distinction between

Held, that the licence fee imposed by the notification, dated 17th September, 1954, is a tax and not a fee. It lacks the essential element of *quid pro quo,* it is excessive and unreasonable *qua* the licencees like the respondent who happen 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 Municipal Board.

Held, that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of *quid pro quo* between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. The other essential feature of fee is that it bears proper proportion to the expenses that are to be incurred and that the impost is not unreasonable and excessive.

Case referred by a Division Bench consisting of Hon'ble Mr. Justice Dulat and Hon'ble Mr. Justice Capoor on 19th October, 1960, to a larger Bench for decision owing to the importance of the questions of law involved in the case. The case was finally decided by a Full Bench consisting of Hon'ble Mr. Justice Falshaw, Hon'ble Mr. Justice

Grover and Hon'ble Mr. Justice Harbans Singh, on 6th November, 1961.

Appeal under Clause 10 of the Letters Patent against the order passed by Hon'ble Mr. Justice Mehar Singh, on 27th October, 1958, in Civil Writ No. 155 of 1958.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND M. R. SHARMA, ADVOCATE, for the Appellant.

BHAGIRATH DASS AND BAL KRISHAN JHINGAN, ADVOCATES, for the Respondents.

JUDGMENT

Grover, J.

GROVER, J.—By a petition under Article 226 of the Constitution the respondent challenged the validity of the levy of what was called a licence fee imposed under section 31(6) of the Punjab District Boards Act, 1883, by means of a notification dated the 17th September, 1954. This fee was payable by the owner for working, erecting or re-erecting or causing to be worked, erected or re-erected any engines other than an engine installed in a motor vehicle and was to come into force on 1st January, 1955. The scale was to be as follows:—

Description of engine	*Annual fee.* Rs.
(1) Engines of 10 horse-power or below	... 10
(2) Engines of over 10 horse-power to 20 horse-power	... 15
(3) Engines of over 20 horse-power to 30 horse-power	.. 20
(4) Engines above 30 horse-power	... 30

Mehar Singh J. held that the licence fee was a tax, which it was not within the competence of the State Government to impose under the entries in

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List II of the Seventh Schedule to the Constitution, and as under section 30 of the Punjab District Boards Act the District Board could impose only that tax which the State Government was empowered to impose, the levy was illegal and *ultra vires* the powers of the District Board. The State of Punjab as also the District Board, Amritsar, who had been impleaded as respondents to the petition, filed an appeal under clause 10 of the Letters Patent against the judgment of the learned Single Judge. That came up before a Bench consisting of Dulat and Capoor JJ., who considered that the matter was of importance as it involved determination of principles upon which a licence fee was to be distinguished from a tax and that it should be decided by a larger Bench. That is how the appeal has been placed before us for disposal.

The facts are set out fully in the judgment of the learned Single Judge. All that need be mentioned is that in the mills of the respondent, previously the machines and various sheds were connected through pulleys and shafts and were being driven by electric motors of high horse power fitted in each shed. There were three electric motors of 25 horse power in the weaving shed and one electric motor of 30 horse power in the finishing department. Later on, with a view to saving the electric energy, electric motors were installed for individual drives to each machine thus eliminating to a great extent the pulleys and the shafts system. For this purpose the respondent installed the electric motors in the following manner:—

(1) Weaving Shed: 54 electric motors of $1\frac{1}{2}$ horse power each and 3 electric motors of 10 horse power each.

(2) Finishing Department: 5 electric motors of 5 horse power each, 3 electric motors of $7\frac{1}{2}$ horse power each and 2 electric motors of $1\frac{1}{2}$ horse power each.

The net result was that instead of 3 electric motors of 25 horse power each and one electric motor of 30 horse power, 67 electric motors of small horse power, as mentioned above, came to be installed. By virtue of the aforesaid notification the respondent was called upon to pay comparatively a much larger amount of fee owing to the installation of 67 electric motors of smaller horse power than what he would have had to pay if he had allowed only 4 electric motors of high horse power to remain. In other words, he would have been liable to pay Rs. 80 per annum for the 4 high power engines with an aggregate of 105 horse power whereas now he would have to pay Rs. 670 annually for engines of 161½ horse power.

Certain regulations had been promulgated by means of a notification dated 17th September, 1954 under sub-section (2) of section 56 of the Punjab District Boards Act. According to these regulations, no person was to work, erect or re-erect or cause to be worked, erected or re-erected an engine other than engines installed exclusively for irrigation purposes in any place within the area subject to the authority of the Board except under a licence granted in this behalf by the Secretary of the Board. On receiving an application for such purpose the Chairman was to get the facts stated in the application proclaimed by beat of drum in the *abadi* in which the engine was to be installed and any inhabitant of the *abadi* could submit an objection in writing within thirty days. After disposing of these objections a licence in form A appended to the regulations was to be granted to the owner of the engine on payment of a fee notified in the notification dated 17th September, 1954. The licence was to be valid up to 31st March next after which it was to be renewable on payment of fee as aforesaid. The licence issued under these regulations was subject to the condition that the licensee or his agent or workman was bound to permit the Board's Secretary, Engineer, Medical Officer of Health or any other person authorised in this behalf to inspect the premises at all reasonable time and without notice. He was also to make

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adequate arrangements for the extinction of any outbreak of fire and for keeping the premises in a clean and sanitary condition providing adequate ventilation, suitable drains, urinals, etc., for the workmen employed. He was not to permit any such work which gave rise to offensive noises without the special authority of the Board and to affix a silencer in the exhaust pipe in such a way as to prevent the omission of any disagreeable sound. There were other conditions also, which need not be mentioned, which were meant to avoid any nuisance by discharge of offensive waste products or remission of gases by the engine during the process of working. The licence could be suspended or revoked by order of the Chairman of the Board on breach of any of the conditions and anyone committing the breach of the regulations could on conviction by a Magistrate be punished with a fine which could extend to Rs. 50 and in case of continuing breach with a further fine which could extend to Rs. 5 for every day during which the breach continued. These regulations were to come into force with effect from 1st January, 1958. In the return, which was filed by the present appellants to the petition under Article 226, the position taken up was that the fee, which was being levied by the impugned notification, was a licence fee only and had been levied for allowing the respondent the privilege of running the engine with the object of reimbursing the District Board for the services it rendered by taking measures for promoting the health, comfort, convenience and interest of the public and the industrial prosperity of the inhabitants residing in the area of the District Board including the respondent. It was further stated that "the District Board provides many amenities to the mill and its employees. The children of employees and their families are vaccinated by the District Board staff and derive help from Veterinary dispensaries in the District. The children of the employees are also reading in the District Board School". It was also said that the income realised from the fee was utilised in administering measures for preventing nuisances affecting the

health of the people. The total income from the licence fee to the District Board for one year was stated to be Rs. 4,355 only. Although no separate staff was being maintained for the administration of the provisions relating to electric motors, it was maintained that the staff of the District Board, which was being paid from the aforesaid income as also from other income of the Board, had been employed for the purpose.

The learned Single Judge found that there was no relation of the amount actually collected as such fee to any amenity provided out of that amount substantially and particularly for those from whom it was collected and that the aforesaid amount formed part of the general revenues of the District Board along with the other revenues and was disbursed or expended on the general activities of the Board in relation to all the inhabitants and not in any way for the particular benefit of the licensees who paid the fee. Applying the tests laid down in *The Commissioner, Hindu Religious Endowments, Madras*, v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1); *Ratilal Panachand Gandhi and others* v. *State of Bombay and others* (2); and *Shri Jagannath Ramanuj Das and another* v. *State of Orissa and another* (3) the learned Judge held that the two elements, which were essential in order to make a levy a fee and not a tax, were lacking in the present case. These elements, according to him, were that the fee must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenues of the Board or the State, as the case may be, for being expended on general public purposes.

The learned Additional Advocate-General has assailed the correctness of this view and has sought to base his argument on the regulatory aspect of

(1) A.I.R. 1954 S.C. 282,
(2) A.I.R. 1954 S.C. 388.
(3) A.I.R. 1954 S.C. 400.

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the regulations promulgated by the District Board, the licence fee being imposed for carrying out their purpose. It is also said that since a licence is a privilege granted by the District Board to do something, which without the grant would be illegal, such a levy can be legitimately made, its object being not to raise revenue alone. Reliance has been placed mainly on a judgment of Bhandari C.J., and Bishan Narain J. in *Gopi Parshad* v. *The State of Punjab* (1), in which the validity of the Punjab Tobacco Vend Fees Act, 1954, and the rules framed thereunder came up for consideration. According to this decision, 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. 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 a tax. If on the other hand, the charge is levied 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. 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. It has been observed 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

(1) 1956 P.L.R. 480.

unreasonable unless the objector establishes a flagrant case and oppressive abuse of power by the authority imposing the fee. The Tobacco licence fee had been increased from Rs. 2 per annum in the year, 1934 to Rs. 500 per annum in the year 1954, and it was argued that the object was of augmenting the revenue. It was found that the staff for the administration and supervision of the Act of 1954 was a composite one and administered not only the Tobacco Vend Fees Act, 1954, but also the Punjab Excise Act, the Punjab Sales Tax Act and certain other allied enactments. According to the Bench, 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 had not been able to point to any piece of evidence which might justify the inference that it was a tax. The learned counsel for the respondent submits that in the Bench decision a good deal of reliance was placed on certain American authorities and there was only a passing reference to *Ratilal* v. *State of Bombay* (1), and that the law laid down by the Bench is not in accordance with the Supreme Court decisions. There are, however, very recent decisions of their Lordships on which counsel have relied in support of their respective contentions and it is necessary now to discuss them. *The District Board, Ghazipur* v. *Lakshmi Narain Sharma* (2) is the judgment given in appeal against a decision of the Allahabad High Court in *Lakshmi Narain Sharma* v. *The District Board, Ghazipur* (3). In order to properly understand and appreciate the observations made by their Lordships, the Allahabad decision may be referred to first. A set of bye-laws for the regulation and control of flour, rice and oil mills in the rural areas of the Ghazipur District had been made by the District Board of Ghazipur under section 174 of the District Boards Act, 1922.

(1) A.I.R. 1954 S.C. 388.
(2) A.I.R. 1961 S.C. 356.
(3) A.I.R. 1956 All. 433.

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According to one of the bye-laws, any person desiring to start one of such mills as were specified in the bye-laws was required to obtain a licence from the Board on payment of a fee of Rs. 20. There was a provision that if a mill was used for more than one of the specified purposes, that is as a flour, rice or oil mill, a separate licence fee was to be paid in respect of each purpose. Before the High Court, challenge was made to the validity of these bye-laws by a petition under Article 226 of the Constitution, That petition was dismissed by the Single Judge. It came up on appeal before Mootham C.J. and Agarwala J. The first argument addressed to the Bench was that the licence fee of Rs. 20 per mill was not proportionate to the expenses incurred by the Board in regulating and controlling the flour, rice and oil mills and was in the nature of a tax. The affidavit filed in support of the petition contained no facts from which it could be inferred that the fee was excessive. The Board filed a counter affidavit that there were about one hundred mills affected by the bye-laws and that the Board had to maintain a staff to inspect the mills and to take such steps as were necessary to secure compliance with the provisions of the bye-laws. On the material before the Bench, it was held that a licence fee of Rs. 20, which *prima facie* was not unreasonable, was not excessive. It was next contended that although a licence fee of Rs. 20 in respect of a single mill might not be objectionable, it was unreasonable to charge a fee in respect of more than one mill if the additional mills were housed in the same building as the expenses of the Board were not thereby increased. The Bench considered that such expenses might well be increased as additional inspection, possibly by different inspectors, would be necessary, but in the absence of any evidence to the contrary the submission was not accepted. The validity of the bye-laws was also challenged on certain other grounds. The High Court set aside the judgment of the learned Single Judge and directed the issue of a writ of *mandamus*. In the appeal before the Supreme Court their Lordships referred to the three

contentions, which had been addressed to the High Court, namely—

"(i) After the constitution of Goan Sabha Barapur under the U.P. Panchayat Raj Act, No. XXVI of 1947, the District Board had been divested of its power and jurisdiction in the matter of regulation and control of trade under the relevant provisions of the U.P. District Boards Act, No. X of 1922;

(ii) the respondent had paid the necessary licence fees under the U.P. Rice and Dal Control Order, 1948 and the U.P. Pure Food Act, 1950 and could not be asked to pay the licence fees over again under the District Boards Act; and

(iii) in any case the levy was too high and not in proportion to the actual and probable expenses which the District Board would have to incur in "controlling or regulating trade and was meant to augment the general revenues of the District Board."

The third point was not discussed or decided finally because their Lordships rested their decision on the view taken on the first two points but at page 360 the following observations were made which are noteworthy :—

"The fee charged by the District Board is for regulation of obnoxious trades and the purpose of this regulation is different from the purpose for which fees are levied under the Essential Supplies Act and the Pure Food Act. Under these circumstances we see no reason for striking down the regulatory provisions made under the District Boards Act and the licence fee charged thereunder."

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It was further observed that there might be some overlapping between the regulatory provisions under the District Boards Act, but that could have no relevance on the validity of the bye-laws and the licence fee charged under them. The learned Additional Advocate-General contends that this decision read along with the Bench judgment of the Allahabad Court accords recognition to the rule that licence fees can be charged as a regulatory measure and that the view of this Court in *Gopi Parshad* v. *The State of Punjab* (1), that licence legislation is of a regulatory nature cannot be regarded to be wrong. But the impost can lose its regulatory character and assume that of revenue if certain elements coexist and for that we must turn to all the tests laid down in the three Supreme Court decisions, referred to before, and the latest pronouncement in *The Hingir-Rampur Coal Company Ltd., and others* v. *The State of Orissa and others* (2). In the last case the previous decisions also came up for discussion and their Lordships (this will mean reference to the majority judgment only) actually proceeded to determine the points in the light of what was laid down therein observing that the matter had been dealt with authoritatively in them.

In the Hingir-Rampur Coal Company's case the validity of the Orissa Mining Areas Development Fund Act, was challenged. The petitioners were carrying on the business of producing and selling coal excavated from its collieries at Rampur in the State of Orissa having taken on leases certain lands. Under the Act, which was impugned, and the rules framed thereunder a cess was levied and when the petitioners were called upon to submit monthly returns for the assessment of the cess, they challenged the validity of the legislation under which the cess was imposed. While considering the question whether the levy amounted to a fee relatable to Entry 23 read with Entry 66 in List II of the Seventh Schedule in the Constitution, their Lordships considered the difference

(1) 1956 P.L.R. 480.
(2) A.I.R. 1961 S.C. 459.

between the concept of tax and that of a fee. The following observations made in that connection at page 464 may be reproduced:—

> "It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of *quid pro quo* between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the "said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied."

Their Lordships made it clear that cases may arise where under the guise of levying a fee the Legislature may like to impose a tax and in such a colourable exercise of legislative power the Courts would have to scrutinise the scheme of the levy and determine "whether in fact there is a corelation between the service and the levy, or whether the levy is either not corelated with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality.

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In other words, whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case." While discussing the decision of the Privy Council in *Attorney-General for British Columbia* v. *Esquimalt and Nanaimo Ry. Co.* (1), their Lordships laid emphasis on the primary object of the levy and the essential purpose which it was intended to achieve as distinct from its ultimate or incidental results. A reference was also made to *Parton* v. *Milk Board (Victoria)* (2), in which the validity of levy imposed on dairymen and owners of milk depots by section 30 of the Milk Board Act of 1933 as subsequently amended had been challenged. Diyon J., held that the levy of the said contribution amounted to the imposition of a duty of excise. This decision, according to their Lordships, was substantially based on the ground that the statutory board performed no particular service for the dairyman or the owner of a milk depot for which the contribution would be considered a fee or recompense. In other words, the *quid pro quo* was absent *qua* the persons on whom the levy had been imposed. After examining the various provisions of the impugned Act and its scheme, their Lordships came to the conclusion—

> "Thus the scheme of the Act shows that the cess is levied against the class of persons owning mines in the notified area and it is levied to enable the State Government to render specific services to the said class by developing the notified mineral area. There is an element of *quid pro quo* in the scheme, the cess collected is constituted into a specific fund and it has not become a part of the consolidated fund, its application is regulated by a statute and is confined to its purposes, and there is a definite corelation between the impost and the purpose of the Act which is to render

(1) 1950 A.C. 87.
(2) (1949) 80 C.L.R. 229.

service to the notified area. These features of the Act impress upon the levy the character of a fee as distinct from a tax."

The learned Additional Advocate-General has sought to argue that all the tests were indicated or applied by the Supreme Court in cases where the validity of the statute or the statutory rules under which the impost had been made, had been challenged. In the present case, it is said, the validity of section 31(6) of the Punjab District Boards Act, has not been assailed and it was under that provision that the impugned notification dated 17th September, 1954, was made. This contention has only to be mentioned to be rejected. The District Board could only impose that levy under the aforesaid statutory provisions which the State was authorised to do and if the State could not impose a tax under any of the entries in List II or III, it was not open to the District Board to have levied that tax. It is consequently to be decided whether the licence fee, which has actually been imposed by virtue of the aforesaid notification, has the character of a tax or a fee. It is common ground that if it is not a tax, then it was validly leviable but if it is a tax, then it was beyond the powers of the District Board to impose it.

The learned Additional Advocate-General is justified in saying that we must take into consideration the regulations for the compliance with and pursuant to which a licence had to be taken out for which a fee had to be paid. It is pointed out that there are a number of duties which the officials of the Board have to carry out under the regulations and *prima facie* the licence fee, which has been imposed, is co-related to the object of the regulations which are intended primarily for abating nuisance and ensuring that the engines set up and the persons who are employed to work them get the benefit of certain services. Thus it is submitted that there is an element of *quid pro quo* in the imposition of the licence fee which has been impugned and although the proceeds

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therefrom would form a part of the consolidated fund of the Board, nevertheless the Board would be rendering services of the nature given in the return and as the Board does not maintain a separate fund, the licence fees have necessarily to go to its general fund. Our attention has been invited on behalf of the appellants to what was observed at page 464 by Gajendragadkar J., while delivering the majority judgment in *Hingir-Rampur Coal Company's case.* The learned Judge had referred to what Mukherjee J., (as he then was) had observed in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thiratha Swamiar of Sri Shirur Mutt* (1), that the circumstance about all collections going to the consolidated fund of the State and all the expenses being not met out of those collections, but out of the general revenues by a proper method of appropriation was not conclusive in deciding whether a levy was a tax or a fee. Although in the presence of the decision in *The District Board Ghazipur* v. *Lakshmi Narain Sharma* (2), and the general principles there can be no objection to a licence fee being imposed as a regulatory measure, it is not possible to accede to the view canvassed by the learned Advocate-General that the other tests that have been laid down by their Lordships of the Supreme Court can be ignored. The scheme of the regulations in the present case shows that the licence fee is levied with regard to those engines which are sought to be worked, erected or re-erected or are worked, erected or re-erected within the area of the Board. The object of the licence fee is to abate nuisance and to meet the expenses that may have to be incurred in the matter of inspection and other purposes set out in the regulations. This itself is meant not only for ensuring the health and safety of the persons, who would be engaged on working the engines but also for ensuring the health and safety and proper sanitary conditions for all the inhabitants residing in the neighbourhood. In that manner it has been said that there

(1) A.I.R. 1954 S.C. 282.
(2) A.I.R. 1961 S.C. 356.

is a co-relation between the impost and the purpose of the regulations. But one of the main elements lacking is that the fee collected will not be constituted into a specific fund and it will become a part of the consolidated fund, there being no specific appropriation in the general fund for the expenses which have to be incurred for the purposes given in the regulations. The other essential question is whether the licence fee that has been levied is in proper proportion to the expenses that are to be incurred and whether the impost is not unreasonble and excessive. That this aspect is of weighty consequence in deciding these matters receives support from the observations in *The Hingir-Rampur Coal Company Ltd., and others* v. *The State of Orissa and others* (1), at page 468 in paragraph 20. It has been already noticed that the Allahabad Court in *Lakshmi Narain Sharma* v. *The District Board Ghazipur* (2), kept that consideration in the forefront and in the appeal although the judgment was reversed on the other points, their Lordships did not express dissent from that approach.

In *The Maharaja Kishangarh Mills Limited* v. *Municipal Board Kishangarh and another* (3), a Full Bench of which Wanchoo, C.J., (as he then was) was a member, struck down a licence fee imposed by a notification on flour mills and other factories at a certain rate based on Horse Power. It was held that when a levy was being justified under item 66 of List II or item 47 of List III as a fee, it should be shown that it was for some service rendered by the State or by the Municipality to the particular person concerned and that its incidence is such as to meet the expense of the service rendered, more or less. The Municipal Board of Kishangarh did not make any bye-laws for inspection of factories and it was not rendering any service to the flour mills or factories to justify the levy. The impost in the circumstances could not be justified as a fee. The learned counsel for the respondent has naturally

(1) A.I.R. 1961 S.C. 459.
(2) A.I.R. 1956 All. 433.
(3) A.I.R. 1960 Raj. 135.

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relied a great deal on the Rajasthan decision because there the licence fee on the flour mills was according to the horse power. The view that has been expressed is that the relation between the fee and the service rendered to the individual must be clear and proximate and not remote and where it is remote what may euphemistically be called a fee for purposes of Local Government really becomes a tax for the general revenues of the Municipality. The previous decision in *Maharaja Shri Umaid Mills Limited* v. *State of Rajasthan* (1), was distinguished on the ground that there were certain regulations with respect to factories and an Inspectorate of Factories had been created and its expense had to be met. In the present case also regulations exist but no Inspectorate for the purposes mentioned in the regulations has been separately created. According to the aforesaid Full Bench decision also, it will have to be seen whether there is any proximity between the fee that has been levied and the service which is to be rendered. This would further bring in the question whether the fee that has been imposed is excessive or unreasonable or wholly disproportionate to the service which is to be rendered. If it is so, then also it cannot be said that there is a clear and proximate relation between the fee and the service to be rendered. In *Sarat Chandra Ghatak and others* v. *Corporation of Calcutta and another* (2), a licence fee had been imposed by certain rules framed by the Corporation of Calcutta on advertisements. Sinha J. had no doubt that the licence fee was intended to raise money for the purpose of running the Corporation. He relied on the rule that a licence fee could be imposed for the raising of funds for the particular purpose only, namely, some kind of service to be rendered and that there must be a *quid pro quo* which meant that the Municipality must render the corresponding service for the payment made. Moreover, the amount must be reasonable and proportionate to the service rendered. In that case an attempt had been made in

(1) A.I.R. 1954 Raj. 178.
(2) A.I.R. 1959 Cal. 36.

the affidavits to show that there was a *quid pro quo*, but apart from mentioning that Inspectors were appointed to check the sanitation and safety measures adopted by different cinema-houses, nothing more had been established. The same learned Judge in *Liberty Cinema* v. *The Commissioner, Corporation of Calcutta and another* (1), following *Netram Agarwalla* v. *Chairman, Raiganj Municipality* (2), observed that while there was no limit to the quantum of a tax that could be levied unless it was such as would lead to the extinction of the particular occupation, trade or business in respect of which it was levied, there was a limit to the amount of a licence fee that could be imposed. Apart from the correlation to the expenses incurred, it had a further limitation, in that it must not be unreasonable or excessive. In *Pravulal Patadia* v. *State of Orissa and another* (3), a licence fee was purported to be levied on the owners of the brick-kilns within the jurisdiction of the Panchayat. It was admitted that the amount collected from owners of brick-kilns was not set apart for controlling that trade or for rendering service to persons who might take out licence for the purpose, but was absorbed in the general revenue of the Panchayat and utilised for other purposes. The levy was held, in essence, to be a tax and not a fee. According to the return made in the present case on behalf of the appellants, the total income from the impugned fee to the District Board in the relevant year was Rs. 4,355. The learned counsel for the respondent suggests that this figure should not be taken as final for the reasons that a number of licensees withheld payment of the fees owing to the institution of the petition under Article 226 of the Constitution by the respondent. However, even if this figure is to be accepted as representing the receipts from the licence fees realised by the District Board pursuant to the impugned notification, it has not been shown that a single penny has been utilised

(1) A.I.R. 1959 Cal. 45.
(2) 59 C.W.N. 872.
(3) A.I.R. 1960 Orissa 43.

The State of Punjab v. The Model Woollen and Silk Mills and another

Grover, J.

for the purpose of the regulations or the staff for carrying out the inspections. There is no indication whatsoever in the return that any additional staff would ever be employed in this behalf. It is further abundantly clear that the amount of licence fees has gone to augment the general revenues of the District Board. It has thus been established as a fact that so far as the present impost is concerned, the element of *quid pro quo* is completely absent and there is no direct or proximate relation or connection between the fee and the service rendered.

In order to be a fee the impost must also satisfy the requirement that it is not excessive or unreasonable. The respondent has shown that if only four engines with a total horse power of 105 were set up or worked, he would have to pay Rs. 80 only as licence fee; whereas for sixty-seven engines with a total horse power of 161½ the licence fee comes to Rs. 670. It is pointed out that merely because for the sake of efficient and greater production more engines of smaller horse power are set up, there can be no justification for the inordinate increase in the licence fee. It is submitted that in a rapidly developing economy and progressive industrialisation imposition of such a fee would suffer from the infirmity that it would constitute an unreasonable restriction on the fundamental right to carry on one's trade or business. The learned Additional Advocate-General submits that on the face of it an annual fee of Rs. 10 on an engine of 10 horse power or below cannot be regarded to be unreasonable or excessive and merely because the respondent has chosen to instal an excessive number of engines with a horse power below 10 the fee itself cannot lose its initial character of reasonableness and assume the impress of a tax. But on principle what has to be seen is how in actual working the scheme of the impost will operate and if it impinges unreasonably on those subjected to the levy and is excessive and wholly disproportionate to the services rendered, it cannot be justified on the ground that if lesser engines were installed,

lesser fee will have to be paid. Now, if the respondent had set up 4 engines of 25 horse power and 2 engines of 30 horse power the annual licence fee would have been only Rs. 120 for engines of a total horse power of 160 whereas by putting up 67 engines with an aggregate of 161½ horse power the fee comes to Rs. 670 the premises being the same. It has not been shown how such a scheme can be regarded as reasonable and not resulting in the fee being unduly excessive. It is not the case of the appellants that owing to larger number of engines any extra services had to be rendered. Indeed, that could not be so as no specific or particular services are being performed by the Board at all in this respect. Nor has the Board had to increase its staff owing to the necessity of inspecting larger number of engines or affording amenities to greater number of workmen employed owing to increase in the number of engines to be worked.

From what has been discussed above, the conclusion is inescapable that the licence fee imposed by the notification dated 17th September, 1954, is a tax and not a fee. It lacks the essential element of *quid pro quo*, it is excessive and unreasonable *qua* the licencees like the respondent who happen to put up larger number of engines of smaller horse 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 Municipal Board. If the impost is a tax, the judgment of the learned Single Judge must be upheld, as such a tax could not be validly levied for the reasons given by him. The appeal shall stand dismissed, but in the circumstances there will be no order as to costs.

D. FALSHAW, J.—I agree.

HARBANS SINGH, J.—I agree.

B.R.T.