RAOJIBHAI DAHYABHAI PATEL

v.

BA TOWN COUNCIL

[SUPREME COURT, 1978 (Stuart J.), 16th June]

Civil Jurisdiction

Local Government—business licences—whether licence fees discriminatory, unreasonable and ultra vires the Act—Business Licencing Act 1976 *s.* 17(2)*—Ba (Business Licence Fees) By-Laws* 1976.

The plaintiff, a practicing Barrister and Solicitor, sought a declaration that the business licence fee levied upon him by the Ba Town Council was discriminatory and unreasonable and that the By-Law under which the fees were payable was ultra vires the Act.

Held: The fact that one local authority levied fees for a licence at a different rate from another local authority did not establish discrimination. The By-Law was neither unreasonable nor absurd and was intra-vires the Act.

Cases referred to:

McEldowny v. Forde [1969] 3 All E. R. 1039

Kruse v. Johnson [1898] 2 Q. B. 91

Sparks v. Edward Ash Ltd. [1943] 1 All E. R. 1

Repton School Governors v. Repton R. D. C. [1918] 2 K. B. 133

Action in the Supreme Court for a declaration and recovery of money paid to the defendant.

Plaintiff in person

G. P. Shankar for the defendant.

STUART J.:

Mr Raojibhai Dahyabhai Patel who is a barrister and solicitor practising at Ba demurs to the licence fee charged him by the Ba Town Council under the Business Licencing Act 1976 to practise his profession. He claims that the Ba (Business Licence Fees) By-Laws 1976 are discriminatory unreasonable and ultra vires, and hence invalid and not binding upon him. He also claims a refund of the sum of $200 paid by him as business licence for 1977, an injunction restraining the Ba Town Council from claiming a business licence fee from him and costs. The application was made by originating summons and was supported by the appellant's own affidavit which discloses that the applicant practises his profession at Varoka within the town of Ba under the name or style of R. D. Patel & Company. He paid his licence fee on 26th April 1977, and when he paid it he sent a letter to the Town Clerk at Ba protesting that the Ba Town Council had no right in law to levy the fee. He sent a copy of that letter to the Attorney-General of Fiji and his affidavit deposed that

almost ten months later he had received no reply. No affidavit was filed on behalf of the Town Council, and no attempt was made by anyone to join the Attorney-General as a party, although one would have thought it might have been desirable that either he or the proper Minister should have been joined.

The applicant appeared in person and told the Court that the facts were not disputed, and that he did not dispute the licencing authority. Although Mr. Patel's contention is that the by-laws are discriminatory, in that the Minister has approved charges for occupations at different rates by different councils, it must be remembered that his action is only against the Ba Town Council, so that what the Minister has allowed to be done in other places is quite irrelevant. All that is relevant is what he has approved for the Ba Town Council to do, so that his contention that the by-laws are discriminatory may be put aside. That leaves for consideration his contention that they are unreasonable and ultra vires. Mr. Patel says that they are ultra vires both the town council and the Minister.

It might be convenient first of all to consider the scheme of the statute. First of all there is a definition section, which contains no definition of Minister, but does contain a definition of business as any firm of trade commerce craftsmanship calling or other activity carried on for the purpose of gain. Mr. Patel as I understood him did not dispute that he engaged himself in a calling or activity carried on for the purposes of gain. The only other definition material to this action is 'municipality' and that part of it which is relevant defines a municipality as a town constituted under the provisions of the Local Government Act 1972. Here again, it is not disputed that Ba is such a town. Then section 3 establishes the council of a municipality as the licensing authority for the purposes of the Act. Section 4 provides that the Minister may by notice in the Gazette designate any business as being one in respect of which a licence is required by the Act, and by notice dated 17th August 1976, the Minister for Urban Development, Housing and Social Welfare designated over a hundred businesses as businesses for which licences were required under the Act. Among these businesses was that of a barrister and solicitor. Again, as I understand him, Mr. Patel does not challenge the action of the Town Council or the Minister in including that particular business among those meet to be required to have a licence. Section 5 of the Act forbids any person to carry on a designated business without a licence and section 6 deals with the form and duration of the licence. Section 7(1) provides for a licence to be issued in respect of a business carried on by a partnership to be issued in the name under which the business is carried on, but subsection (2) provides that a hawker and any person who carries on business from no fixed address shall be licensed individually, and members of a partnership are made liable for breach by its members. I would add that the Court was not addressed upon the possibility of conflict between the terms of section 7(1) and the terms of section 2 of the by-laws so I refrain from considering the matter. Then come sections dealing with licences, registration of business name, and transfer of licences and business premises. Then comes section 17 which contains the power to make regulations.

Section 17(1) is not material but it provides for the Minister to make regulations in respect of a business carried on outside a municipality. Section 17(2) provides for the council of a municipality to make regulations with the consent of the Minister, and is as follows:

"(2) The Council of a municipality, with the approval of the Minister, may make by-laws prescribing fees to be charged under the provisions of this Act Provided that the Council may differentiate in respect of such fees between different types or classes of business." A

It was under this section that on 9th December 1976 the Ba Town Council issued the Ba (Business Licence Fees) By-laws 1976, which received the approval of the Minister for Urban Development, Housing and Social Welfare on 15th December 1976 and fixed the licence fee for a barrister and solicitor at $200. Those by-laws were duly gazetted on 24th December 1976. B

It will be seen at once that the power of issuing subsidiary legislation under this Act of Parliament is given not to the Minister himself but to the councils of municipalities with the statutory check that any such subsidiary legislation has to have the approval of the Minister. This, of course, is not abnormal in local government, and what it means in this case is that the central government is abdicating one function of taxing the people and handing it over to the local bodies. It was not suggested to me that this was beyond the constitutional competence of Parliament, and hence of course, there can be no complaint that municipalities other than the Ba Town Council have thought fit to tax barristers and solicitors at a rate different from that fixed by that body. C

This is indeed the gravamen of Mr. Patel's complaint, and it seems to me that it has no substance. It seems to me perfectly clear that Parliament has given each municipality power to fix fees, and to fix fees varying with different types of business, provided it is a business designated by the Minister. I am prepared to accept that if a regulation is arbitrary or unreasonable, it may be ultra vires (see *McEldowney v Forde* (1969) 3 All E. R. 1039, 1056), but I am quite unable to see that the by-laws issued by the Ba Town Council offend in this way, nor was it pointed out to me, much less shewn to me how they so offend. If Mr. Patel wishes to challenge the Minister in his approval of differing fees for the same profession, then it seems to me that he should join the Minister or his alter ego, the Attorney-General, and if he seeks to shew that the fees are exorbitant or unreasonable, then he will require to produce evidence to support him. I would however say that I can see no reason why the licence fee for a barrister and solicitor in one place should not be $200 and in another place $100. It may well depend upon the amount of business the council considers to be available. I have stated that there is no definition of the expression 'Minister' in the Act, although it is mentioned in no fewer than four sections of the act. However the Minister for Urban Development, Housing and Social Welfare did in fact issue a notice on 4th November 1976 directing that the Act was to come into force on 1st January 1977, although there is nothing in the Act itself empowering that particular Minister so to act. Counsel did not advert to this matter at the original hearing and their attention was directed to it at a subsequent hearing, when the matter was called for further consideration. My attention was then directed to the definition of "Minister" in the Interpretation Act 1967, which was reprinted with the 1972 copy of the Laws of Fiji. That definition reads "Minister" means the Minister responsible for the administration of the Act or department of the Government concerned." If I read the statute in the light of that definition and bearing in mind what I might call the wholesale amendments to statutes effected by the three Constitution (Statutory Amendments) Orders 1970, I think it is quite clear that any further definition of the term 'Minister' beyond that given in the statute is unnecessary, and that D E F G H

whenever the word 'Minister' occurs in the act, there should be understood the following words 'Minister responsible for the administration of the act.' I think that the notice issued on 4th November 1976 by the Minister for Urban Development, Housing and Social Welfare must be deemed in default of proof to the contrary to have been issued by the Minister responsible for the administration of the act.

It is these by-laws that Mr. Patel complains about as being ultra vires, unreasonable and discriminatory.

Mr. Patel cited *Kruse v Johnson* (1898) 2 Q. B. 91, 99, 100, and perhaps it is worth setting out the words of Lord Russell of Killowen, the Lord Chief Justice of England. He said:

> "In this class of case it is right that the Courts should jealously watch the exercise of these powers, and guard against their unnecessary or unreasonable exercise to the public disadvantage. But, when the Court is called upon to consider the by-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such by-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, "benevolently" interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think courts of justice ought to be slow to condemn as invalid any by-law, so made under such conditions, on the ground of supposed unreasonableness. Notwithstanding what Cockburn C. J. said in *Bailey v Williamson* (1873) L. R. 8 Q. B. 118, 124, an analogous case, I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn by-laws, made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires." But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there."

That was a case in which a person persisted in singing in a public highway within fifty yards of a dwellinghouse after having been required by a police constable to desist. That was the substance of a by-law of the Kent County Council, and it was objected that the by-law was unreasonable because it did not require proof that the singing was causing annoyance, and because the standard was the request of a police constable rather than of someone alleged to be damnified by the singing. It

was held that the by-laws was reasonable and not invalid. Mr. Patel also referred to *Sparks v Edward Ash Limited* [1943] 1 All E. R. 1, and in that case Scott L. J. in a dessenting judgment referred to *Kruse v Johnson* and after quoting the passage which I have set out above went on to say at page 6:

> "If it is the duty of the Courts to recognise and trust the discretion of local authorities, much more must it be so in the case of a Minister directly responsible to Parliament, and entrusted by the constitution with the function of administering the department to which the relevant field of national activity is remitted."

Of course, in this particular case the Minister does not make the by-laws, but he is charged with the duty of approving the action of the local authority. Again, *Repton School Governors v Repton R. D. C.* [1918] 2 K. B. 133 was referred to. That was a case in which a by-law which while it was reasonable when applied to whole buildings became absurd when applied to additions to buildings, and the Court at page 137 approved the statement of Bailhache J. "One may certainly add this—that if the effect in a given case, which might be of frequent occurrence, of construing a by-law in a particular way would lead to a result quite unnecessary for the protection of public health, and would impose a serious restriction upon the ordinary rights of a property owner with no good object, I think one would be entitled to say that the by-law was void because it was unreasonable. One must of course be careful to see that the result is such as no one would desire, and would in itself be absurd, but if it is found to be so, then I think one is entitled, and indeed bound, to say that such a by-law is bad for unreasonableness."

Notwithstanding the words of Lord Russell of Killowen set out above, these particular by-laws must be construed strictly because they are in effect taxing provisions, but I can see no way in which the by-laws can be contrued to achieve a result which is unreasonable or absurd, nor was any such possible construction suggested to me. Likewise in neither the designated businesses nor the fees fixed for them was there any instance pointed out to me where it would reasonably be said "Parliament never intended to give authority to make such rules." In the result then, the application must fail, and the originating summons must be dismissed.

Plaintiff's claim dismissed.