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Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: **W.P. No.9078/2007**

M/s D.S. Textile Limited.

Versus

Federation of Pakistan, etc.

JUDGMENT

Date of hearing:	11.02.2016
Petitioners by:	Syed Waqar Hussain Naqvi, Advocate in Writ Petitions No.17177/2011, 17178/2011, 9077/2007, 9079/2007 and 13958/2008. Mr. Umar Abdullah, Advocate in Writ Petitions No.21790/2007, 9818/2007 and 5828/2006. Mr. Adnan Ahmad Paracha, Advocate on behalf of Mr. Shafqat Mehmood Chohan, Advocate in Writ Petitions No.1317/2006 and 1323/2006. Mr. Muzamil Akhtar Shabir, Advocate for petitioner in W.P. No.1385/2005.
Respondents by:	Mr. Nasar Ahmad, Deputy Attorney General for Pakistan. Mr. Imtiaz Ahmad Kaifi, Addl. Advocate General, Punjab. Mr. Anwaar Hussain, Assistant Advocate General, Punjab assisted by Mr. Imran Khan and Ms. Rutaaba Gul, Advocates. Mr. Ahmad Hasan Khan, Assistant Advocate General, Punjab. Mirza Muhammad Aziz-ur-Rahman, Advocate. Ch. Abrar Ahmad, Director Law, Local Government. Muhammad Fahad, Law Officer, Local Government. Azhar Hussain Shah, Advocate/Legal Advisor, District Government, Sheikhpura. Arif Hussain, ETO, Hafizabad.

	Iftikhar Ahmad Khan, Tax Inspector, Hafizabad.
Assisted by:	M/s. Qaisar Abbas and Mohsin Mumtaz, Research Associates & Civil Judges, Lahore High Court Research Centre (LHCRC).

Syed Mansoor Ali Shah, J:- Petitioners,¹ are companies, engaged in the business of cleaning, dying, preparing or manufacturing cloth and yarn (textiles) and have challenged the constitutionality and legality of license fee imposed by the local government for the grant of license to carry on the above business within the limits of the local government.

Facts

2. License Fee has been levied under section 116, read with section 39(b) of the Punjab Local Government Ordinance, 2001 (“Ordinance”) by the respective local governments in Punjab. Every local government (District Government) has issued separate notification to this effect. For reference, one of the notifications issued by Zila Council, Sargodha dated 05.10.2004 is reproduced hereunder:

The Punjab Gazette
Published by Authority
Lahore Tuesday October 5, 2004
NOTIFICATION

District Officer (Accounts/Budget) 127/A (Tax), in exercise of powers vested upon him under section 39 (1) of the Punjab Local Government Ordinance 2001, Zila Council, Sargodha has been pleased to approve vide resolution No.200 passed in its meeting held on 15-4-2004 the levy of the Taxes Fees in Sargodha District mentioned in column No.2 of the following schedule on the ratio mentioned in column No.3 under the provision of section 116 of the Punjab Local Government Ordinance- 2001, with effect from 01-07-2004.

¹ Petitioner in the instant case alongwith petitioners in the connected petitions listed in Schedule A are collectively referred to as **Petitioners**.

<u>SCHEDULE</u>		
Sr. No.	Name of Item	Rate
	<u>License Fee</u>	
	i. Ice Factory	Rs.2000 per annum
	ii. Ice Cream Factory	Rs.1500 per annum
	iii.	
	iv.	
	v.	
	vi.	
	vii. Manufacturing by any process whatever cloth or yarn	Rs.50,000 per annum
	viii.	
	ix.	

3. As a matter of background, impugned *license fee*, was earlier challenged by the petitioners before this Court and was struck down in *Adil Textile Mills case*² primarily on the ground that there were no services rendered in return for the said fee. In other words, there was *no quid pro quo*. The judgment was assailed before the august Supreme Court of Pakistan by the local government and the case was remanded to the Zila Nazim, for a fresh decision, after attending to the objections of the petitioners, vide order dated 10.07.2006 passed in CA No.1764 to 1782/2005.

4. As a consequence, the matter was argued before the Zila Nazim, who after hearing the parties dismissed the claim of the petitioners vide impugned order dated 23-6-2007, thereafter, demand notice dated 13-9-2007 was issued to the petitioners for the recovery of the *license fee* for the years 2003-2004 to 2007-2008. Interim relief was granted by this Court, in these

² M/s. *Adil Textile Mills case v. Government of Punjab* (PLD 2005 Lahore 677),

petitions, hence the recovery of the *license fee* has been suspended since the year 2007.

Arguments

5. Learned counsel for the petitioners contend that the impugned *license fee* is unconstitutional and illegal because it is in effect a *tax*. In support of this argument, they have relied on the definition of the word “tax” under the Ordinance³ which includes “any cess, fee, rate, toll or other impost leviable under the Ordinance.” They, therefore, submit that the license fee is a tax and the provincial legislature lacks the legislative competence to impose such a tax because corporations can only be subjected to Tax on Corporations, which falls within the legislative competence of the Federal Legislature under item No. 48 of the Federal Legislative List (List). They argued that, if at all, only the Federal Legislature under item No. 54 of the List could charge license fee.

6. In the alternative, the petitioners have also argued that as no services are being rendered against the charge of *license fee*, therefore, in the absence of *quid pro quo*, the impugned *license fee* amounts to a “tax.” They placed reliance on Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another v. Durrani Ceramics and others (2014 SCMR 1630), Messrs Lucky Cement Factory Limited and others v. The Government of N.W.F.P. through Secretary Local Government and Rural Development Department, Peshawar and others (2013 SCMR 1511), Messrs East and West Steamship Company, a partnership Firm, carrying on business at Karachi, by its Partner Rustom F. Cowasjee, Parsi, residing at Karachi v. Pakistan, to be served through the Secretary to

³ Section 2(xxxi)

Government of Pakistan, Ministry of Commerce, Karachi, (2) The Shipping Authority, Government of Pakistan, Ministry of Commerce, Department of Shipping Control, El-Markas, Bunder Road, Karachi and (3) The District Magistrate, Karachi (PLD 1958 Supreme Court (Pak.) 41) and ICI Pakistan Ltd. v. Tehsil Council, Pind Dadan Khan and others (PLD 2007 Supreme Court 428)

7. Deputy Attorney General, as well as, the learned Additional and Assistant Advocates General, on the other hand, have argued that *license fee* is distinct from *fee* and referred to Article 73(3)(a) of the Constitution of the Islamic Republic of Pakistan, 1973 to highlight this distinction. It is submitted that while *fee* is charged against “service rendered,” *license fee* is charged to maintain the regulatory framework of the local government through a licensing system and does not require a *quid pro quo*. Reliance is placed on Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another v. Durrani Ceramics and others (2014 SCMR 1630), Messrs Nishat Chunian Ltd. through Chief Officer v. Province of Punjab through Secretary, Local Government and 2 others (2013 CLC 34), A.P. Paper Mills Ltd. v. Govt. of A.P. and another (2000) 8 Supreme Court Cases 167, Delhi Race Club Limited v. Union of India and Others. (2012) 8 SCC 680.

8. I have heard the opposing arguments of the learned counsel for the parties, examined the record and have gone through case law cited at the bar.

Opinion of the Court

9. Every citizen has the right to enter into a lawful trade or business under Article 18 of the Constitution. However, this

fundamental right does not prevent the regulation of any trade or profession by a licensing system.⁴ “Regulation” means “a rule, principle, or condition that governs procedure or behavior.”⁵ Regulation is “sustained and focused control exercised by a public agency over activities that are valued by a community has been referred to as expressing a central meaning. Regulation is also used in the following senses: (a) where regulation involves the promulgation of a binding set of rules to be applied by a body devoted to this purpose. (b) where regulation covers all state actions that are designed to influence business or social behaviour. The concept of regulation is often thought to of as an activity that restricts behaviour and prevents the occurrence of certain undesirable activities (a “red light concept”). The broader view, is however, that the influence of regulation may also be enabling or facilitative (‘green light’ concept) or a mix of both⁶. “License” means “official or legal permission to engage in a regulated activity.”⁷

10. Under Article 140A of the Constitution, each Province is to establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local government. Local Government System is fundamentally a regulatory scheme provided in detail under the Ordinance⁸ for improvement of governance and delivery of services devolved on the local

⁴ Proviso to Article 18

⁵ Collins English Dictionary – Complete and Unabridged, 12th Edition 2014 © Harper Collins Publishers, 2014 quoted by The Free Dictionary by Farlex.

⁶ *Understanding Regulation- Theory, Strategy and Practise*. Robert Baldwin, Martic Crowe and Martin Lodge. Oxford. 2nd Ed. pp. 2-3

⁷ Free Dictionary by Farlex.

⁸ This has been repealed by the Punjab Local Government Act, 2013 (albeit partially as the entire Act has not been enforced) but as the license fee, in question, was imposed under PLGO, hence the reference and discussion is restricted to PLGO.

government.⁹ The regulatory scheme of the local government provides for approval of master plans, zoning, land use plans, including environmental control, urban design, urban renewal, ecological balances, public transport, mass transit systems, approve development schemes, integrated system of water reservoirs, water sources, treatment plants, drainage, liquid and solid waste disposal, sanitation and municipal services.¹⁰ One of the regulatory tools of the local government is to provide licensing system for setting up dangerous articles and offensive trades. Dangerous and offensive articles and trades, *inter alia*, include: “cleaning, dyeing, preparing or manufacturing by any process whatever, cloth or yarn in indigo and other colours.”¹¹ Petitioners are engaged in this business. Except under and in conformity with the conditions of a license granted by the concerned local government, no person can carry on any dangerous or offensive trade and no premises can be used or offered to be used for any dangerous or offensive trade.¹² No person can carry on trade for which a license is required, without first obtaining the license.¹³ Similarly, for environmental protection, the local government is to prepare and implement schemes for the prevention of pollution emitted by factories, etc.¹⁴ Sixth Schedule to the Ordinance provides an elaborate regulatory scheme for the improvement of governance and delivery of services devolved on the local government.

11. Coming to the tools for effective governance and regulation of the Local Government System, Section 116 [read with section 39(b)] of the Ordinance provides that the Local

⁹ section 16(3).

¹⁰ Section 40.

¹¹ Item 8 – Annex A to the 6th Schedule.

¹² Para 44 of the 6th Schedule.

¹³ Para 66 – 6th Schedule

¹⁴ Para 48 *ibid*

Government may levy taxes, cesses, fees, rates, rents, tolls, charges, surcharges and levies as specified in the Second Schedule. Item 6 of Part-I of the Second Schedule provides for “fees for licenses or permits and penalties or fines for violations.” While item 7 provides for fees for specific services rendered by District Government. Similar is the position in case of Zila Council in a City District or Tehsil Council or Town Council.¹⁵

12. Rule 3 (iii) (f) of Punjab Local Governments (Fees for Licensing and Permits and Licensing of Professions and Vocations) Rules, 2002 (“Rules”), *inter alia*, provides that District Government shall levy a fee for issue of license or permits for cleaning, dyeing, preparing or manufacturing by any process whatever cloth or yarn in indigo and other colours. As per Rule 4 of the Rules, the process adopted for the determination and quantification of the license fee is as per the procedure provided under the Punjab Local Governments (Taxation) Rules, 2001.

13. The Ordinance provides for fee for licenses and permits and fee for specific services.¹⁶ The legal and constitutional question that surfaces is whether LICENSE FEE and FEE are two distinct charges having their own characteristics?

“License fee” is not a “tax”

14. Petitioners have argued that the impugned license fee is infact a “tax” because tax defined in section 2(xxxi) includes “fees.” Based on this premise they argued that the petitioners, which are mostly companies, can only be subjected to

¹⁵ Items 6 in Part-II, item 9 of Part-III, item 6 of Part-IV of the Second Schedule.

¹⁶ Items 6 & 7 of Part-I of the Second Schedule

corporation tax under item No. 48 of Part-1 of the Federal Legislative List, hence the impugned imposition is unconstitutional. This argument is hollow and misconceived. The word “tax” is defined in section 2(xxxi) of the Ordinance to include “fees,” however, it is subject to the rider that the said definition does not hold if there is anything repugnant in the subject or context. Section 116 of the Ordinance clearly spells out that a local government may levy taxes, fees, rates, cesses, rents, tolls, charges, surcharge and levies specified in the Second Schedule. The items in the Second Schedule further clarify that license fee is distinct from a tax and is charged for licenses and permits. License fee is not a tax but a fee or a *regulatory charge* for granting businesses to carry out their trade within the jurisdiction of the local government. License fee is the instrument through which the licensing system is enforced. It is to regulate various trades within the jurisdiction of the local government, hence the incidence is not on the legal form of the business i.e., company, partnership or sole proprietorship but on the nature of the business. License fee is, therefore, not a tax and does not in any manner overlap with federal corporation tax.

15. Our jurisprudence evolved over the years has examined “fee” in the context of *services rendered in return* i.e., *quid pro quo*. The recent judgment of the Supreme Court of Pakistan in *Durrani Ceramics*,¹⁷ eloquently summarizes the consistent view of our Courts on the subject in the following manner:

Whereas 'tax' is a common burden for raising revenue and upon collection becomes part of public revenue of the State, 'fee' is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a

¹⁷ 2014 SCM1630

community or a specific area. However, the benefit so accrued may not be measurable in exactitude. So long as the levy is to the advantage of the payers, consequential benefit to the community at large would not render the levy a 'tax.'
(emphasis supplied)

The distinction between *License fee* and *fee*, has come up for discussion, perhaps for the first time, and therefore requires deeper examination. A good start is the Constitution itself. Article 73(3) (a) of the Constitution provides as under:

73(3): A Bill shall not be deemed to be Money Bill by reason only that it provides:-

(a) for the imposition or alteration of any fine or other pecuniary penalty or **for the demand or payment of a license fee or a fee or charge for any service rendered.**” (emphasis supplied)

Reading of the above shows that, in the first instance, *license fee* and *fee* are not tax. But more importantly, while *fee (simpliciter)* or *user fee* is charged for services rendered in return (i.e., *quid pro quo*), *License fee*, is distinct from *fee* (or *user fee*) and does not require services to be rendered in return. This is so evident from the reading of the above constitutional provision.

16. *License fee* has been defined as “1. A monetary charge imposed by a governmental authority for the privilege of pursuing a particular occupation, business or activity. 2. A charge of this type accompanied by a requirement that the licensee take some action, or be subjected to regulation or

restrictions.”¹⁸ “A fee paid to the government for the privilege of being licensed to do something.”¹⁹ (*emphasis supplied*)

17. Articles 110(2) and 199(2) of the Constitution of India are almost similar to our Article 73(3)(a) and bring out the difference between *license fee* and *fee* more clearly. Both Articles 110(2) and Article 199(2) provide the same, as under:

A Bill shall not be deemed to be a Money Bill by reason only that it provides... for the demand or payment of **fees for licenses or fee for services rendered**, ...” (*emphasis supplied*)

Review of the Indian jurisprudence brings out the difference between *license fee* and *fee*. In *Delhi Race Club case*²⁰ Indian Supreme Court of India, while examining all the case law, to date, held as follows:

“24. It is pertinent to note that in *Liberty Cinema* (supra), the Court had identified the existence of two distinct kinds of fee and traced its presence to the Constitution itself. It was observed that in our Constitution, fee for licence and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a bare reading of Articles 110(2) and 199(2) of the Constitution, where both the expressions are used, indicating thereby that they are not the same. Quoting *Shannon v. Lower Mainland Dairy Products Board*, AIR 1939 PC 36 with approval, it was observed thus :-

"if licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the Province or for both purposes...It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue."

¹⁸ Black's Law Dictionary 9th ed. p.1005

¹⁹ The Free Dictionary by Farlex.

²⁰ *Delhi Race Club Ltd. v. Union of India (SC)* (2012)8 SCC 680

25. The same principle was reiterated in Secunderabad Hyderabad Hotels Owners' Association case (supra) where the existence of two types of fee and the distinction between them has been highlighted as follows:

"9. It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. *Licence fee can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.*"

(Emphasis supplied by us)

26. Dealing with such regulatory fees, this Court in ***Vam Organic Chemicals Ltd. & Anr. v. State of U.P. & Ors., (1997) 2 SCC 715***; observed that in case of a regulatory fee, like the licence fee, no quid pro quo is necessary, but such fee should not be excessive. The same distinction between regulatory and compensatory fees has been highlighted in ***P. Kannadasan v. State of T.N., (1996) 5 SCC 670, para 36***; ***State of Tripura v. Sudhir Ranjan Nath, (1997) 3 SCC 665, 673***; B.S.E. Brokers' Forum case (supra) and followed in several later decisions.

27. In ***A.P. Paper Mills Ltd. (supra)***, a bench of three learned Judges of this Court was called upon to examine the validity of the revision of licence fee under the Andhra Pradesh Factories Rules, 1950. The levy of licence fee was challenged inter-alia on the grounds that the fee imposed being in fact a tax, the State had no power to levy the same; the Rules or the Factories Act, 1948, did not provide any criteria or guidelines for fixation of licence fee and that the State had no power to impose or enhance the licence fee for any alleged services rendered or proposed to be rendered under other legislations other than the concerned Act, as the power is

delegated under that particular Act only. On an analysis of the provisions of that Act and the Rules made thereunder, the Court came to the conclusion that the licence fee in this case was a regulatory fee and not a fee for any special services rendered; there was no mention of any special service to be rendered to the payer of the licence fee in the provisions and the purpose of the licence was to enable the authorities to supervise, regulate and monitor the activities relating to factories with a view to secure proper enforcement of the provisions. It was observed that the nature of the provisions made it clear that for proper enforcement of the statutory provisions, persons possessing considerable experience and expertise were required. On the question whether the element of quid pro quo, as it is understood in common legal parlance, was applicable to a regulatory fee, as in that case, speaking for the bench, D.P. Mohapatra, J., concluded thus :

"32. From the conspectus of the views taken in the decided cases noted above it is clear that the impugned licence fee is regulatory in character. Therefore, *stricto sensu* the element of quid pro quo does not apply in the case. The question to be considered is if there is a reasonable correlation between the levy of the licence fee and the purpose for which the provisions of the Act and the Rules have been enacted/framed. As noted earlier, the High Court has answered the question in the affirmative. We have carefully examined the provisions of the Act and the Rules and also the pleadings of the parties. We find that the High Court has given cogent and valid reasons for the findings recorded by it and the said findings do not suffer from any serious illegality. It is our considered view that the licence fee has correlation with the purpose for which the statute and the rules have been enacted."

28. Thus, it is clear that a licence fee imposed for regulatory purposes is not conditioned by the fact that there must be a quid pro quo for the services rendered, but that, such licence fee must be reasonable and not excessive. It would again not be possible to work out with arithmetical equivalence the amount of fee which could be said to be reasonable or otherwise. If there is a broad correlation between the expenditure which the State incurs and the fees charged, the fees could be sustained as reasonable.

29. As noted above, in the present case, the object of the Act, as synthesised from its provisions, is to regulate, monitor, control and encourage the sport of horse-racing. For this purpose, licences are issued subject to certain conditions. The compliance with the licence conditions is inevitable for renewal of the licences as well as significant to avoid any penalty under the Act. To ensure such compliance, as aforesaid, district officers/ entertainment tax officers are entrusted with the duty of inspection. The nature of inspection enjoined by the Act is not of a general nature but requires expertise and training and also constant vigil on the activities of the race course. The expenses incurred in carrying out such regular inspections have to be considerable. Hence, in our opinion, the licence fee imposed in the present case is a regulatory fee and need not necessarily entail rendition of specific services in return but at the same time should not be excessive. In any case, the appellant has not challenged the amount of the levy as unreasonable and expropriatory or excessive. The argument on behalf of the appellant that inspection does not constitute a service rendered in lieu of the fee charged, based upon the observations in the Liberty Cinema case (supra) is equally fallacious. In *Delhi Cloth & General Mills Co. Ltd. v. The Chief Commissioner, Delhi, (1969) 3 SCC 925* while holding that the levy involved in that case was a fee as opposed to tax, this Court held as follows:

"....In each case where the question arises whether the levy is in the nature of a fee the entire scheme of the statutory provisions, the duties and obligations imposed on the inspecting staff and the nature of work done by them will have to be examined for the purpose of determining the rendering of the services which would make the levy a fee. It is quite apparent that in the Liberty Cinema case it was found that no service of any kind was being or could be rendered and for that reason the levy was held to be a tax and not a fee...."

30. The observations made in the Delhi Cloth and General Mills (supra) apply squarely to the instant case. The scheme of the Act; its object as elucidated in its provisions and Rules made therein; nature of conditions imposed in the licences; inspection to ensure its compliance and non- renewal of the licence as well as penalty in

case of contravention of the licence conditions, make the Act fall in the category of imposts where contributions are required to be made for the purpose of maintaining an Authority and the staff for supervising and controlling a public activity viz. the horse racing. Besides, the presence of a large institution like the race course enjoins additional burden on the civic authorities to maintain and develop the surrounding area for the convenience of the public at large. This Court echoed a similar view in the Secunderabad Hyderabad Hotels Owners' Association case (supra) as follows:

"(8)...Undoubtedly, the Corporation has the general duty to provide scavenging and sanitation services including removal of garbage and maintaining hygienic conditions in the city for the benefit of all persons living in the city. Nevertheless, hotels and eating houses by reason of the nature of their occupation, do impose an additional burden on the municipal corporation in discharging its duties of lifting of garbage, maintenance of hygiene and sanitation since a large number of persons use the premises either for lodging or for eating; the food is prepared in large quantity unlike individual households and the resulting garbage is also much more than what would otherwise be in the case of individual households....."

31. Thus, the licence fee levied in the present case, being regulatory in nature, the Government need not render some defined or specific services in return as long as the fee satisfies the limitation of being reasonable. We may reiterate here that the amount of licence fee charged from the appellant has not been challenged as being excessive. Thus, in light of the above observations relating to inspection and other provisions of the Act, we hold that the licence fee charged has a broad co-relation with the object and purpose for which the Act and the 2001 Rules have been enacted."

18. The difference between *fee* and *licence fee* has come up for discussion in the Canadian and Australian jurisdictions. Canadian constitutional literature provides that a regulatory charge is a charge that is raised to pay for the costs of providing a regulatory scheme. The Regulatory charge or fee is not a tax because it is only used to defray the expenses related to the

regulatory scheme as opposed to revenues raised for the general expenditures of the government. The main feature of a regulatory charge that differentiates it from a tax is that, even if it bears all the hallmarks of a tax, it is connected to a form of regulatory scheme. “To determine whether a governmental levy is connected to a regulatory scheme, the Supreme Court of Canada has devised a two-step approach. The first step is to look for regulatory scheme. In *Westbank*, Gonthier J., for the Court, held that to identify the existence of a relevant regulatory scheme, a court had to look for the presence of some or all the following indicia normally present in a regulatory scheme: (1) a complete, complex and detailed code of regulation; (2) a regulatory purpose with the objective to affect some behavior; (3) the costs, or an appropriate estimation of the costs of the regulation; (4) a relationship between the person being regulated and the regulation, where the person being regulated either benefits from, or causes the need for in the regulation. It is important to note that these elements are not mandatory or exhaustive, in that there may be a regulatory scheme, even if some of these elements cannot be found, and that other elements may be considered.²¹”

19. The second step in determining whether a levy is connected to a regulatory scheme is to find a relationship between the charge and the scheme itself. This will be the case when the revenues raised by the charge are tied to the costs of the regulatory scheme or where the charges have, as a regulatory purpose, the objective to alter or regulate certain behavior.²² In other words, the dominant features, or the pith

²¹ *Westbank First Nation v. British Columbia Hydro and Power Authority* ([1999] SCJ No. 38). See *The Law of the Canadian Constitution* by Guy Régimbald & Dwight Newman. Lexis Nexis. 1st edition P 344.

²² *Ibid* Pp 344-345.

and substance, of the levy will be its regulatory characteristics and not its incident revenue raising nature.²³ In *Westbank*, the Supreme Court of Canada described the two categories of fee and noted that a levy may be a tax, but if it is not, then the court must determine whether the levy is a regulatory charge ancillary to a regulatory scheme or a charge related to a service rendered i.e., a *user fee*.²⁴ A user fee is a levy charged to the user of a service or product for the service or facility being provided or directly rendered, where the value charged generally represents the cost of the service or facility being provided or directly rendered. By contrast with *user fees* described above, regulatory charges are not necessarily imposed for the provision of specific services or facilities, but they are normally related to the rights and privileges allowed or granted by the government. The revenues raised under those types of regulatory charges must be used to finance the scheme or aim at altering individual behavior”.²⁵ In *Harper*²⁶ (from the Australian jurisdiction) Brennan J characterized license fee as consideration for a privilege. He said²⁷:

“When a natural resource is limited so that it is liable to damage, exhaustion or destruction by uncontrolled exploitation by the public, a statute which prohibits the public from exercising a common law right to exploit the resource and confers statutory rights on licensees to exploit the resource to a limited extent confers on those licensees a privilege analogous to a *profit a prendre*²⁸ in or over the property of another..”

²³ Ref: The Law of the Canadian Constitution by Guy Regimbald & Dwight Newman. Lexis Nexis. 1st edition p. 345.

²⁴ Ibid. p 346.

²⁵ Ibid. pp. 346-347

²⁶ *Harper v. Minister for Sea Fisheries* (1989) 168 CLR 314.

²⁷ *Principles of Australian Constitution Law*. Patrick Keyzer 4th edition. Lexis Nexis. p.148

²⁸ A right to take substances from the soil of another.

20. Examining the constitutional provisions and the jurisprudence developed in and out of Pakistan, it transpires that *fee simpliciter* or *user fee* requires a corresponding service to be rendered in return i.e., *a quid pro quo*. *License fee*, on the other hand, is architecturally different. It is a fee charged to permit or allow a person to operate within a regulatory scheme. A scheme designed to protect and improve public welfare. While *fee* has a micro objective of extending services to an identified person; *license fee* has a more macro objective and is charged to meet the administrative costs of maintaining a regulatory scheme for the benefit of the community, a particular sector or public at large. This distinction is constitutionally recognized under Article 73(3)(a). *Fee* and *license fee* are, therefore two distinct sub-species of charges, having their peculiar characteristics, as discussed above. The argument of the petitioners that in the absence of a *service in return*, license fee amounts to a tax, is not sustainable and is opposed to the clear provision of the Constitution. License fee, in essence, is a *regulatory fee* and not a *user fee* and does not require a service rendered in return. Hence, the impugned License Fee is constitutionally permissible and legally valid.

21. The determination of rate or quantum of license fee is a matter of concern for the Court. Neither the Ordinance, nor the Rules lay down parameters or formula or guidelines for determination of the rate of license fee. This dimension of the case has not been challenged or argued before the Court. Rule 4 of the Punjab Local Governments (Fees for Licensing and Permits and Licensing of Professions and Vocations) Rules, 2002 provides a methodology for determining license fee, which is the same as under Local Government (Taxation) Rules, 2001. Learned Law Officer has assured the Court that

the procedure under the Local Government (Taxation) Rules, 2001 has been followed before determining the quantum of license fee. I therefore, leave this question to be determined in some other case.

22. For the above reasons it is declared that the license fee is in effect a regulatory fee charged to meet and defray the administrative costs of maintaining regulation in the area and is neither a fee (or user fee) which requires services to be rendered in return or a tax to raise revenue for the State. Therefore, the charge of license fee is constitutional and lawful. Petitioners are, therefore, liable to pay the license fee. This petition is, therefore, **dismissed**.

23. This judgment decides the instant petition, as well as, connected writ petitions mentioned in **Schedule "A"**.

(Syed Mansoor Ali Shah)
Judge

*M. Tahir**

APPROVED FOR REPORTING

Announced on 20.04.2016

Judge

SCHEDULE-A

<u>Sr. No.</u>	<u>Writ Petition</u>
1.	Writ Petition No.5828/2006
2.	Writ Petition No.21790/2010
3.	Writ Petition No.17177/2011
4.	Writ Petition No.17178/2011
5.	Writ Petition No.1385/2005
6.	Writ Petition No.1317/2006
7.	Writ Petition No.1323/2006
8.	Writ Petition No.9077/2007
9.	Writ Petition No.9079/2007
10.	Writ Petition No.9818/2007
11.	Writ Petition No.13958/2008

**(Syed Mansoor Ali Shah)
Judge**

*M. Tahir**