
(1993) 04 GUJ CK 0010
In the Gujarat High Court

Bhupendrakumar Narsinhbhai Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

Bombay Court Fees Act, 1959 — Section 28, 29
Constitution of India, 1950 — Article 14, 14

Citation : (1994) 1 GLR 237

Hon'ble Judges : R.K. Abichandani, J; R.A. Mehta, J

Bench : Division Bench

Judgement

R.A. Mehta, J.—The question raised in this petition is directly covered by the judgment of the Supreme Court in the case of P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, confirming the judgment of the Bombay High Court in the case of Jyoti Nikul Jariwala and Another Vs. State of Maharashtra and Another, .

2. The petitioner applied for succession certificate and letters of administration on the death of his father. The application was registered as Succession Miscellaneous Application No. 166 of 1990 in the Court of the Civil Judge (S.D.), Baroda. The succession certificate has been ordered to be issued in favour of the petitioner. However, the actual issuance of succession certificate is held up on account of non-payment of Courtfees. According to the respondent authorities, having regard to the valuation of the property of Rs. 7,52,760/- the Court-fees payable would be Rs. 54,000/-.

3. Section 29 of the Bombay Court Fees Act provides for the payment of Court fees in respect of probate and letters of administration which reads as follows:

29.(1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the Form Forth in the Third Schedule, and the Court is satisfied that the fee mentioned in No. 10 of the First Schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any report made by the Collector u/s 28, Sub-section (3).

4. Item Nos. 10 and 11 in the Schedule are as follows:

10. Probate of a will or letters of administration with or without will Annexed. Under column Nos. 2 and 3 ad valorem fee is prescribed.

11. Certificate under Part X of the Indian Succession Act, 1925. The fees leviable in the case of a probate (Article 10) on the amount or value of any debt or security specified in the Certificate....

5. Thus, the succession certificate which the petitioner is ordered to be issued is required to be issued subject to the Court-fees under Item 11 of the Schedule and that fees is the same as per Article 10 and the proper Court-fees payable is ad valorem fees depending on the value of the subject-matter of the probate or succession certificate.

6. It is contended that under Article 1 regarding proper fees on plaint or memo of appeal, there is a similar provision of ad valorem fees and the proviso to Article 1 reads as under:

Provided that maximum fees leviable on a plaint or memo of appeal or cross-objections shall be Rs. 15,000/-.

7. In similar circumstances, an identical provision of the same Act applicable in Maharashtra, has been struck down by the Bombay High Court in the aforesaid judgment. The judgment was challenged before the Supreme Court and the Supreme Court has in the case of P.M. Ashwathanarayana Selly and Ors. v. State of Karnafaka (supra) in para 36 on page 120 and 121 approved the final order of the Bombay High Court. That para 36 of the Supreme Court judgment concludes the matter. That para reads as follows:

36. Re: Contention (d).

In the appeal of the State of Maharashtra arising out of the Bombay Court-fees Act, 1959, the High Court has struck down the impugned provisions on the ground that the levy of Court-fee on proceedings for grant of probate and letters of administration ad valorem without the upper limit prescribed for all other litigants-the Court-fee in the present case amounts to Rs. 6,14,814/- is discriminatory. The High Court has also held that, there is no intelligible or rational differentia between the two class of litigations and that having regard to the fact that what is recovered is a fee, the purported classification has no rational nexus to the object. The argument was noticed by the learned single Judge thus:

Petitioners next contend that the impugned Clause discriminates as between different types of suitors and that there is no justification for this discrimination. Plaintiffs who go to Civil Courts claiming decrees are not required to pay Court-fees in excess of Rs. 15,000/-. This is irrespective of the amounts claimed over

and above Rs. 15,00,000/-. As against this, persons claiming probates have no such relief in the form of an upper limit to fee payable.

This contention was accepted by the learned single Judge who has upheld the appeal. Indeed, where proceeding for grant of probate and letters of administration becomes a contentions matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs. 15,000/- on the Court-fee is fixed, there is no logical justification for singling out this proceeding for an ad valorem impost without the benefit of some upper limit prescribed by the same Statute respecting all other litigants. Neither before the High Court-nor before us here was the impost sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate "fee" for another distinct source. It is purported to be collected and sought to be justified only as Court fees and nothing else.

The discrimination brought about by the Statute, in our opinion, fails to pass the constitutional muster as rightly pointed out by the High Court. The High Court, in our opinion rightly, held:

There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Article 14 of the Constitution. On this ground also Item 10 cannot be sustained.

We approve this reasoning of the High Court and the decision of the High Court is sustained on this ground alone. In view of this any other ground urged against the constitutionality of the levy is unnecessary to be examined.

In view of the aforesaid pronouncement of the Supreme Court, the same result should follow in this petition.

8. The Bombay High Court had issued the following direction in para 6 of the judgment in the case of Ms. Jyoti Nikul Jariwala (*supra*). That para reads as follows:

To sum up Item 10 suffers from the vice of violation of Article 14 of the Constitution and also in that the fee chargeable thereunder, is out of all proportion to the value of the service rendered to the seekers of probates and letters of administration. I now come to the nature of relief to be granted to the petitioners. Item 10 of Schedule-1, to the extent it does not have an upper limit corresponding to that payable by the plaintiffs seeking decrees from the Civil Courts, will have to be declared void. Until the said Article is duly amended, petitioners shall not be required to pay more than the maximum payable by persons seeking decrees in Civil Suits, i.e., Rs. 15,000/-. The office shall revise the fee payable by the petitioners in the light of what has been stated earlier. Rule in these terms made absolute, with parties being left to bear their own costs.

8.1 The appeal of the State of Maharashtra against the aforesaid judgment has been dismissed by the Supreme Court and the order of the Bombay High Court has been confirmed.

9. In that view of the matter, we also adopt the same course and issue the following directions:

The petition is allowed. Rule is made absolute by holding that Item No. 10 of Schedule I of the Bombay Court-fees Act, 1959 as applicable to Gujarat suffers from the vice of violation of Article 14 of the Constitution to the extent it does not have an upper limit corresponding to that payable by the plaintiffs seeking decrees from the Civil Court and to that extent and effect, the provision is declared void. It is further directed that until the said Article is duly amended, the petitioners shall not be required to pay more than maximum payable by persons seeking decrees in civil suits, i.e., Rs. 15,000/-. The petitioner is therefore, directed to pay a proper Court-fee of Rs. 15,000/- on the succession certificate ordered to be issued to the petitioner and on payment of such Court-fees, the succession certificate shall be issued to the petitioner. Rule made absolute with no order as to costs.