
(1992) 04 PAT CK 0035
In the Patna High Court
Case No : Civil Revision No. 1839 of 1991

Chanda Nath

APPELLANT

Vs

Janak Kishore Devi and Others

RESPONDENT

Date of Decision : 07-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0035

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The present revision application is directed against the order dated 4.9.91, passed by learned 2nd Subjudge Buxar, in Title Suit No. 65(A) of 1998 by which the Court below has rejected the petition filed by the Plaintiff-Petitioner seeking exemption from paying court-fees on the ground that her annual income is below 3500/-.

2. On 15.7.91 an application was filed by the Petitioner before the Court below seeking exemption from payment of court-fees along with an Income certificate granted by the Circle Officer, Buxar, to the effect that the annual income of the Petitioner is only Rs. 3500/- per annum. The Defendants tiled their objection to the grant of such prayer of exemption from payment of court-fees.

3. The Court below after hearing the parties rejected the application filed by the Plaintiff-Petitioner inter alia, on the ground that the application has not been filed in the prescribed proforma.

4. learned Counsel appearing for the Petitioner has availed the impugned order on the ground that the law does not envisage any prescribed proforma and once a certificate of income issued/by the Circle Officer is filed before the Court certifying income to be less than Rs. 6000/- then it is incumbent upon the trial Court to grant exemption from payment of court fee. In support of his submissions learned Counsel for the Petitioner has placed reliance on the case of Sk. Mohammad Osaid and Others Vs. Sk. Abdul Wahid and Others etc., learned Counsel has, also placed reliance on a Government notification No S.O. 157

dated 8.2.1988 issued by the State Government u/s 35 of the Court-fees Act, 1870 (hereinafter to be referred to as the Act only).

5. Since in this case the dispute involved is with regard to payment of court-fees, therefore, the State of Bihar was made a party to the application and accordingly learned Advocate General appeared in the case. He has submitted that for availing the benefit of the remissions envisaged under the aforesaid notification, the Petitioner should have followed the procedure laid down under the provisions of Bihar State Weaker Sections Legal Aid Act, 1983 (hereinafter to be referred to as the "Legal Aid Act" only) and she could not have sought exemption from payment of court-fee by only filing some application in the trial Court along with an alleged certificate of income issued by the Circle Officer.

6. For proper appreciation of the rival contentions it is necessary to examine the provisions of the Court-fees Act, the notifications issued thereunder, as also the provisions of the Legal Aid Act. The notification in question providing remission of court-fees in relation to certain classes of people has been issued u/s 35 of the Court-fees Act as substituted by Court-fees (Bihar Amendment) Act, 1977, which reads as under:

35. Power to remit or reduce Court-fees. - The State Government may, subject to such condition or restriction as it may think fit to impose, by order published in the Official Gazette, reduce or remit in relation to all or any class of persons, in the whole or any part of the State., all or any of the fees mentioned in the First and Second Schedules to this Act and may in like manner cancel or vary such order.

The First notification in the series is S.O. 1207 dated 19th August, 1981, which was issued after the enforcement of the Bihar State Legal Aid Scheme, 1981, published in Hindi with authoritative text translated in English, pursuant to Article 348(3) of the Constitution. The Hindi and the English texts have been published in the Gazette, which are being quoted hereunder:

,I- vks- 1207 19 vxLr] 1981 & fcgkj jkT; esa ykxw gksus ds fy, dksVZ Qhl ,sDV[1870 ? vf/kfu;e 7] 1870 ? dh /kkjk 35 }kjk izn?k "kfDr;ksa dk iz;ksx djrs gq, fcgkj jkT;iky fuEukafdr dksVZ Qhl dk ifjgkj Lohd`r djrs gSa A

1- dksVZQhl ?fcgkj la"kks/ku? vf/kfu;e] 1977? fcgkj vf/kfu;e 20 @ 1977? dh /kkjk 3 ds vuqlkj dkuwuh lgk;rk ikusokys lHkh vuqlwfp tkfr] tutkfr ,oa Hkwfeghu O;fDr;ksa rFkk vU; JsF.k;ksa ds mu O;fDr;ksa dks] ftudh okf"kZd vkenuh 4]000 #- ?pkj gtkj #i;s? ls vf/kd ugha gks] dks dksVZ Qhl] izkslsl Qhl vkSj odkyrukek Qhl dk ifjgkj Lohd`r djrs gSa A

fcgkj jkT;iky ds vkns"k ls] g- cztfD"kksj flag fc"ks"k lfpo A

S.O. 1207 the 19th August, 1981. - In exercise of the powers conferred by Section 35 of the Court fees Act, 1870 (VII of 1870) in its application for the State of Bihar, the Governor of Bihar is pleased to make the remissions hereinafter set forth namely:

(2) To remit the Court fee, Process fee and Vakalatnama fee for persons belonging to Scheduled Castes, Scheduled Tribes, Landless persons and such other persons whose annual income does not exceed Rs. 4,000/- (Rupees four thousand) who are eligible for legal aid in the entire State in accordance with Section 3 of Bihar Act 20 of 1977, the Court fee (Bihar Amendment) Act, 1977.

By order of the Government of Bihar

Sd/- B.K. Singh, Spl. Secretary

Subsequently another notification S.O. 569 dated 1st April, 1982 containing exactly the same provision as in the official notification No. S.O. 1207 was again notified in the official Gazette. Subsequently, after the enforcement of the Legal Aid Act, another notification dated 31st October, 1983, with its English translation was published in the Gazette, which are as below:

AA vf/klwpuk AA

dkSVZ Qh ,sDV] 1870 ?vf/kfu;e 7] 1870? dh /kkjk 35 }kjk izn?k "kfDr;ksa dk iz;ksx ,oa fo?k foHkkx dh vf/klwpuk la;k 1207] fnukad 10- 08- 1981 dk vkaf"kd la"kks/ku djrs gq;s fcgkj ds jkT; iky fuEukfdr dksVZ Qhl dk ifjgkj Lohd`r djrs gSa % &

fcgkj jkT; detksj oxZ fof/kd lgk;rk vf/kfu;e] 1983 dh /kkjk & 17 ds vuqlkj dkuwuh lgk;rk ikus okys lHkh vuqlwfr tkfr] tu & thfr ,oa Hkwfeghu O;fDr;ksa rFkk vU; Jsf.k;ksa ds mu O;fDr;ksa dh] ftudh okf"kZd vkenuh 5000 ? ikap gtkj :i;s ? ls vf/kd ugha gks rks dksVZ Qhl izksls Qhl vkSj odkyrukek Qhl dk ifjgkj Lohd`r djrs gSa A

fcgkj jkT;iky ds vkns"k ls] g- A vkj- ,u- ?kks"k ljdkj ds fo"ks"k lfpo] fo?k foHkkx A

No. S3-10-14/83-9882/F. the 31st October, 1983. - In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870 (VII of 1870) in its application to the State of Bihar and in partial modification of the orders contained in F.D's S.O. No. 1207, dated the 19th August, 1981, the Governor of Bihar is pleased to make the remissions hereinafter set forth, hereby;

To remit the Court-fee, Process fee and Vakalatnama fee for persons belonging to Scheduled Castes, Schedule d Tribes, Landless persons and such other persons whose annual income does not exceed Rs. 5,000 (Rupees five thousand) and who are eligible for legal aid in the entire State in accordance with Section 17 of the Bihar State Weaker Section Legal Aid Act, 1983.

Then again another notification S.O. 157 dated 8th February, 1988 was issued in THE same terms as above excepting raising the quantum of income limit to Rs. 6000/- keeping in view a similar amendment having been made u/s 17 of the Legal Aid Act, No notification issued u/s 35 of the Act has been brought to my notice raising toy limit of income to Rs. 9000/- as a consequence of amendment to that effect in Section 17 of the Legal Aid Act by Bihar Act 4 of 1990.

7. The Legal Aid Scheme was framed and brought into force by the State Government under its executive powers envisaged under Article 162 of the Constitution, keeping in view the directive principles of the Stated policy as enshrined under Article 39-A of the Constitution, which reads as under:

39-A. The State shall ensure that the operation of legal system promotes justice on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or scheme or in any other way, to ensure that opportunities of securing justice are not denied to any citizen by reason of economic or other disabilities.

This scheme was repealed by Bihar State Weaker Section Legal Aid Ordinance, 1982, promulgated on 23rd September, 1982, which incorporated all the provisions of the Scheme Subsequently the same was given final legislative sanction by enacting Bihar State Weaker Section Legal Aid Act, 1983, (Act 2 of 1983). Section 17 of the Legal Aid Act, provided as to who would be eligible for legal aid and read as under:

17. Legal aid or advice may be given to persons, who are bona fide residents of the State of Bihar and whose total annual income from all sources, whether in cash or in kind does not exceed Rs. 5000/- provided that the limitation as to annual income shall not apply to infirm persons or persons belonging to the Scheduled Castes and Scheduled Tribes and Landless persons.

The limitation of annual income has been subsequently raised first to Rs. 6000/- and then to Rs. 9000/- by amending Acts 10 of 1987 and 4 of 1990 respectively. Section 18 of the Legal Aid Act, inter alia, provides that before giving legal aid to the applicant, the Committee shall in order to ascertain the merit or demerit of the case, consider the nature and extent of evidence available and also genuineness of the claim of the applicant for which legal aid is sought for. Section 19 of the Legal Aid Act provides for mode of legal aid and Clause (A) thereof contemplates about the form of payment of court-fees, process fees, expenses of witnesses and all other charges payable or incurred in connection with legal proceedings. Section 20 of the Legal Aid Act carves out certain nature of cases in which no legal aid can be given even if the person is otherwise eligible for the same within the meaning of Section 17 of the Legal Aid Act. Section 21 of the Legal Aid Act provides for making of an application for seeking legal aid and the statutory form of application has been appended as form "A", to the Act. On receipt of such an application and after making necessary enquiry, the concerned Legal Aid Committee has to grant a certificate of eligibility in the statutory form "B", which is also appended to the said Act. Sub-section (5) of Section 21 of the Legal Aid Act makes it incumbent upon the District Legal Aid Committee to send a copy of the order granting legal aid to that Court in which the legal proceeding is to be instituted or is pending for disposal and has also to inform to the Executive Committee of the Legal Aid Board, (in the English text of the said Act, ml U;k;ky; as appearing in the original Hindi version, has been translated as "High Court"). The aforesaid provisions of the Act clearly shows that the eligibility

of a person claiming legal aid including that in respect of court-fees, has to be examined, ascertained and determined by the Statutory committee constituted under the said Act in accordance with the procedure laid down thereunder. This jurisdiction cannot be exercised by the Civil Court. Once a person is found to be entitled to legal aid under the said Act and he is so granted, he, as a matter of right, becomes entitled to get remission from payment of court-fees pursuant to the notification issued u/s 35 of the Court-fees Act, as referred to above. It was only for this reason that the Legislature itself has made it mandatory on the part of the Legal Aid Committee to send a copy of the certificate of eligibility in the statutory form "B" to the Court concerned, on receipt whereof, the Court concerned is left with no option than to grant remission of court fees to the aided person.

8. At this stage, I may refer to slight anomaly which has been created in the above referred English translation of the notification issued u/s 35 of the Court-fees Act. Hindi text of the notification, which is original in nature, provides that the remissions from court-fee will be admissible to the persons receiving legal aid u/s 17 of the Legal Aid Act whereas the English translation provides such remissions to the persons eligible for legal aid u/s 17 of the Legal Aid Act. In my opinion, this anomaly or error cannot lead to my major controversy in adjudication of the issues involved in this case because, as stated above, the authority to decide the eligibility of a person to receive legal aid has been conferred by the legislature to the Legal Aid Committee and the person found so eligible will be in effect the person receiving the legal aid u/s 17 of the Legal Aid Act. Therefore, in either situation, the question of eligibility of a person to receive legal aid cannot be decided by the concerned court. In any view of the matter, in the case of inconsistency or contradiction in the original Hindi text of the legislation and its authoritative English text, translated and published pursuant to Article 348(3) of the Constitution, Hindi text has to prevail. My view finds support from a Bench decision of this Court, *Rajendra Prasad Vs. The Chancellor, Magadh University, and Others*, wherein it has been said that, The English translation, though official, cannot over-ride the Hindi text. "The English version is the interpretation of the person entrusted with the task of translation. It cannot be equated with the original text." A similar view has been expressed by S.B. Sanyal, J. in the case of *Shyamlal Sah Vs. The State of Bihar*, .

9. So far as the decision in the case of *S.K. Md. Osaid (supra)* is concerned, it is of no assistance in the present case. In that case the only issue was as to whether the income of the co-Plaintiff is to be clubbed for the purpose of exemption of court-fee or whether the benefit should accrue to them on the basis of their individual income. After considering the various provisions of the Act, the rules of interpretation applicable to fiscal statutes, it was held that merely bringing of a joint suit on a joint cause of action, the co-Plaintiff cannot be denied the right to claim remission of court-fee by clubbing their income. No doubt, in the said case exemption was claimed in the Court on the strength of certificates of income granted by the concerned Anchal Adhikari but this fact by

itself is not enough to infra that this Court, as a proposition of law, has laid down that the trial court should grant remissions from court-fees merely on production of income certificate from the Anchal Adhikari without taking recourse to the provisions of the Legal Aid Act. It is well settled principle of precedents that a case is only an authority for what it actually decides. What is of essence in a decision is its ratio and not every observation found therein nor what logically follows. A case cannot be described as a precedent for proposition that may seem to follow logically either because of the facts involved in that case or because of certain observations made therein. This is the view, which has been, in substance, taken in the case of *Quinn v. Leathern* reported in 1901 AC 495 at p. 506, followed with approval in the cases of *State of Orissa v. Sudhansu Shekhar Mishra* AIR 1968 SC 467, *Krishna Kumar v. Union of India* AIR 1990 SC 1712 and *M/s. Orient Paper and Industries Ltd. and another Vs. State of Orissa and others*, .

10. For foregoing reasons, I am clearly of the opinion that the Court entertaining the suit has no jurisdiction to remit court-fees as envisaged under the notifications, referred to above only on the strength of Income certificate obtained and filed by the Plaintiff. I hold that such remissions in respect of court-fees can be granted to the persons eligible for legal aid only on receipt of statutory certificate of eligibility in the prescribed form "B" from the respective Legal Aid Committee, as discussed above.

11. The revision application is, accordingly dismissed. There shall be no order as to costs

12. Since the question involved in the preheat case is of general public importance and has a direct bearing on revenue of the State relating to judicial administration, therefore, a copy of this judgment should be sent to all the District and Sessions Judges of the State with a direction to circulate it amongst all the judicial officers for their information and needful.

13. Before parting with the judgment, I am finding myself unable to refrain from observing that the State Government should entrust the task of translation of the Ordinances and legislations including notifications to some more competent persons, who can discharge the function of translation with more accuracy. It is being increasingly felt and there is ample evidence to substantiate the fact that. English translation of legislations are made with utter negligence, callousness and in a most irresponsible manner without caring for a moment that such laws are made to be obeyed by the citizen at large and such unfortunate errors not only lead to confusion amongst the law abiding citizens but also lead to burdening the Court with unwarranted litigations.