
(1982) 08 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 924 of 1979

D and H Secheron Electrodes (Pvt.) Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 18-08-1982

Acts Referred:

Constitution of India, 1950 — Article 14
Court Fees Act, 1870 — Article 1A

Citation : AIR 1983 MP 5 : (1983) ILR (MP) 20 : (1983) JIJ 1 : (1982) 27 MPLJ 653

Hon'ble Judges : G.P. Singh, C.J.; B.C. Varma, J

Bench : Division Bench

Advocate : S.N. Kohli, for the Appellant; A.M. Mathur, General, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.

The petitioner has filed a suit, being Civil Suit No. 27-A of 1979, against the Union of India, in the Court of the District Judge, Indore, for recovery of Rs. 39,75,168/-. The petitioner has paid under protest Rs. 1,28,960/- as court-fee on the plaint in the said suit. The petitioner's submission in this petition under Article 226 of the Constitution is that the Court-Fees (Madhya Pradesh Amendment) Act, 1975 (Act No. 24 of 1975), hereinafter referred to as the 1975 Act, which has enhanced the court-fee is ultra vires and void. If the 1975 Act is declared as void, the petitioner will be required to pay only Rupees 18,750/- as court-fee. The petitioner in this petition prays for declaration of invalidity of the 1975 Act and the refund of excess amount of court-fee paid by it under protest on the plaint in the suit mentioned above.

The ad valorem court-fee payable in Madhya Pradesh before the 1975 Act was governed by Article 1-A substituted in Schedule 1 of the Court-fees Act by the Court-Fees (Madhya Pradesh Amendment) Act, 1966 (Act No. 12 of 1956), which

reads as follows :--

SCHEDULE 1

Number 1-A Complaint, written statement pleading a set-off of counter claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3.

when the amount or value of subject matter in dispute does not exceed five rupees. When such amount or value exceeds five rupees or part thereof, in excess of five rupees, up to one hundred rupees.

Proper for Fifty Paise

Fifty Paise

When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof.

One rupee

The excess of one-hundred rupees up to one thousand rupees.

When such amount or value exceeds one thousand for every one hundred rupees or part thereof, in excess of one thousand rupees up to ten thousand rupees.

Ten rupees

When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupee up to twenty thousand rupees.

Thirty seventh rupees and fifty paise

When such amount or value exceeds twenty thousand rupees for every, one thousand rupees or part thereof the excess of twenty thousand rupees, up to one lakh of rupees

Fiftyrupees

When such amount or value exceeds one lakh of rupee, for every one thousand rupees or part thereof, in excess of one lakh of rupees up to two lakhs of rupees.

Fiftyrupees

When such amount or value exceeds two lakhs of rupees, for every one thousand rupees or part thereof, in excess of two lakhs of rupees up to three lakhs of rupees

Thirtyrupees

Provided that the maximum fee leviable shall not exceed eighteen thousand seven hundred and fifty rupees.

The 1975 Act has, not altered the rate of court-fee payable up to the value of Rs 1,000. By Section 2 of this Act, the following charges were made in Article 1-A:--

"(1) In Article 1-A

(i) in column pertaining to proper fees for the words, "too

rupees", "Thirty seven rupees and fifty paise" "Fifty rupees" and "Forty rupees", the words "Twelve rupees", "Fifty rupees", "Seventy five rupees" and "Sixty rupees" shall respectively be substituted;

(ii) for the entry "When such amount or value exceeds two lakhs of rupees, for every one thousand rupees or part thereof, in excess of two lakhs of rupees the following entries shall be substituted, namely :

Thirty rupees

"When such amount or value exceeds two lakhs of rupees, for every one thousand rupees or part thereof in excess of two lakhs of rupees up to three lakhs of rupees.

Forty five rupees

When such amount of value exceeds three for every one thousand rupees or part thereof, in excess of three lakhs of rupees"lakhs of rupees

Thirty rupees

(iii) the first proviso shall be omitted

If it will be seen that both before and after the 1975 Act the mode adopted by Article 1-A for regulating the imposition of ad valorem court-fee is the slab system with the rate tapering off as the value of the subject matter increases. Before the 1975 Act the first proviso to Article 1-A had put a ceiling on the court-fee at Rs. 18,750/-. The 1975 Act has increased the rate of court-fee on the slabs over Rs. 1,000/- and has also removed the ceiling by omitting the proviso. The court-fee not payable on the value of rupees, three lakhs is Rs. 18,500/- and for every one thousand or part thereof in excess of three lakhs, a sum of Rs. 30/- is payable without any maximum limit.

The State Legislature's power to levy court-fee is derived from Entry 3 of List II which confers, power of legislation in respect of "court-fees taken in all Courts except the Supreme Court". The nature and character of court-fee which the State Legislature can impose under this Entry was decided by the Supreme Court in *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, which was an appeal against the judgment of the Madras High Court reported in ILR (1968) 1 Mad 247. It was held in this case that court-fee is not a tax but in true sense a fee for services rendered to the suitor; and the amount recovered by the State as court-fee must, therefore, bear correlation with what the State has to spend for the administration of civil justice and that the litigant cannot be made to contribute towards the general public

revenues unrelated to the expenses for administration of civil justice. The Supreme Court also observed that in case of a challenge to the levy of court-fee it is for the State to establish that what has been levied in court-fee properly so-called.

The learned counsel for the petitioner first contended before us that the State has been unable to justify the enhancement of court-fee by the 1975 Act and to establish correlationship of the amount recovered as court-fee with the expenses for administration of civil justice.

Paragraph 5 of the return filed by the State gives figures of cost of administration of justice from 1973-74 to 1980-81. The return also discloses the amount of court-fee recovered during these years. It is stated in the return that it is not possible to work out with any exactitude the cost of expenditure of civil justice separately, but the cost of administration of criminal justice would be nominal. The figures of expenditure given in the return cover both the cost of administration of criminal Justice and the cost of administration of civil Justice. In our State the same Judicial Officer functions both as a Civil Court and as a Criminal Court. All Civil Judges have been conferred power to function as Judicial Magistrates. Similarly, all Additional District Judges and District Judges are empowered to act as Sessions Judges. There is no separate establishment for Criminal and Civil Courts. In the High Court also, there is no separate establishment for criminal cases. It is this difficulty which prevents the State in stating exactly as to what is spent exclusively for administration of civil justice. The figures disclose that 70 to 80 per cent of the total expenditure is of the "non-voted" category being charged on the consolidated fund of the State. This expenditure relates to the administration of justice through the High Court. Criminal work in the High Court is much less as compared to civil work. Subordinate Courts no doubt decide more criminal cases as compared to civil cases, but criminal cases are easy to dispose of and are less exacting, although, it is not possible for us to agree that the cost of administration of criminal justice is merely nominal; but, taking a broad and rough estimate, it can reasonably be said that the cost of administration of criminal justice would not be more than one-half of the total amount which the State has to spend on administration of justice. It is on this basis that we would examine whether the state has been able to establish a correlationship between the expenses incurred towards administration of civil justice and the amount of court-fee recovered.

The State had to spend for the administration of justice Rs. 3,25,48,000/-, 3,91,04,000, 4,21,85,000/- 4,57,64,000/- 4,85,25,000/- 5,24,09,000/- and Rupees 6,17,85,000/- respectively for the years 1974-75, 1975-76, 1976-77, 1977-78, 1978-79, 1979-80 and 1980-81. Taking half as the amount spent on administration of criminal justice, the figures of expenditure incurred for administration of civil justice for the years 1974-75 to 1980-81 work out respectively as Rs. 1,62,74,000/- 1,95,52,000/-, 2,10,92,000/-, 2,28,82,000/- 2,42,62,500/-, 2,62,04,500/-; and 3,08,82,500/-. The amount of court-fee

recovered in these years is respectively Rs. 1,87,73,000/- 1,93,71,000/-, 1,89,70,000/- 2,23,10,000/- 2,26,42,000/-, 2,25,03,000/- and Rs. 3,13,26,330/-. The figures of expenses quoted above do not include the expenditure on construction of buildings. It was stated at the bar by the learned Advocate General, which statement was not disputed by the learned counsel for the petitioner, that these figures do not also include the amount spent by the Government on its law officers. The very fact that the State had to spend more from 1975-76 onwards except in 1980-81 towards the administration of civil justice as compared to what it recovered as court-fee goes to show that the State has been successful in establishing the required correlationship to support the enhancement of court-fee by the 1975 Act. It is well established that correlationship necessary to sustain a fee need only be of a general nature and arithmetical exactitude has not to be established. In *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, while dealing with the market fee levied under the Punjab Agricultural Produce Markets Act, 1961, the Supreme Court held that the element of quid pro quo may not be possible, or even necessary to be established with arithmetical exactitude but that it must be established broadly and reasonably by the authorities who charge the fee that the amount is being spent for rendering services to those on whom falls the burden of the fee. It was further held that at least a good and substantial portion of the amount collected on account of fee, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services. Applying these tests and even making some allowance for mistake in the broad estimate that we have made that at least half of the total expenses of administration of justice must be for administration of criminal justice we are satisfied that the State has succeeded in establishing the correlationship that the amount recovered as court-fee substantially goes for meeting the expenses of administration of civil justice and that does not go to augment the general revenues of the State.

Learned counsel for the petitioner next contended that the removal of ceiling brings about a serious infirmity in the 1975 Act. It is argued by the learned counsel that a person like the petitioner who has to recover Rs. 39,75,168/- has now to pay Rs. 1,28,960/- as court-fee and this amount bears no relation to the service rendered to the petitioner. The learned counsel submitted that simply because the claim is high, it cannot be said that the State will have to spend more for administering justice in that case.

In the case of *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, the Supreme Court observed that while levying court-fee the appropriate legislature is competent to take into account the value of the subject matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost of the upkeep of Courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matter. The Supreme Court further observed that the State is free to levy a small fee in some cases, a large fee in others,

subject of course to the provisions of Article 14. The Supreme Court also approved the observations of the Madras High Court that "if, in substance the levy is not to raise revenues also for the general purposes of the State, the mere absence of uniformity or the fact that it has no direct relation to actual services rendered by the authority to each individual who obtains the benefit of the service, or that some of the contributories do not obtain the same degree of services as others say, will not change the essential character of the levy". The observations of the Supreme Court clearly show that the value of the subject matter of the claim is a relevant factor in fixing the amount of court-fee. It is true that it cannot be laid down as an inflexible rule that the Court has always to spend more lime or that the State has to spend more money in administering justice in claims of higher valuation but there is nothing unreasonable in holding generally that the value of the service rendered to the suitor is related to the value of the claim laid by him which the Court adjudicates. The value of the claim of a suitor is thus a very important relevant factor in fixing the amount of court-fee and in the absence of any better guideline if the State has chosen to link the charge of court-fee with the value of the subject matter of the claim, no fault can be found with it. We have already mentioned that the rate of court-fee under Article 1-A follows the slab system with the rate tapering off as the value of the subject matter increases. This is a reasonable way of fixing the amount chargeable as court-fee. It will also be seen that the fee for a claim in excess of Rs. 3,00,000/- is only Rs. 30/- per thousand i.e. 3%. A moderate rate of court-fee for a claim above Rs. 3,00,000/- cannot be held to be unreasonable even though there is no maximum or ceiling. In "Zenith Lamps" case, the Supreme Court was dealing with a case where there was no maximum. The Madras Court-fees Act, 1955 challenged in that case provided for a uniform ad valorem fee at 7 1/2 per cent without any limit. There is not a word in the judgment of the Supreme Court that since there was no ceiling, the imposition was invalid. Had the Supreme Court been of this view that the absence of ceiling by itself made the imposition invalid, it would not have set aside the judgment of the High Court and remanded the case for fresh decision after giving opportunity to the respondents in the appeal to file affidavits in reply to the supplemental counter-affidavit of the State that it was not making any profit out of the administration of civil justice. Learned counsel for the petitioner relied upon the judgment of the Madras High Court in that case but that also does not help the petitioner. Indeed, there are observations to the effect that there need be no maximum as the absence of maximum will curb the vice of swelling up of claims by litigation. All that the Madras High Court said was that after a certain limit a low regulated fee should be charged and if this is done without fixing a maximum, there would be no invalidity. The learned Judges there were critical of the Madras Court-fees Act, 1955, as it had completely removed the slab system and provided for a uniform levy of 7 1/2 per cent without any limit. The relevant observations are as follows :--

"We do not say that there should be a maximum. Under the Madras Court-fees

Act of 1922 there was no maximum, but after the value of the claim reached Rupees 50,000/-, the levy, though without limit, was comparatively a nominal sum. There may be some justifications for not fixing a maximum. Human nature being what it is, if no court-fee at all is payable beyond a certain limit, the tendency to swell up the claim may manifest itself in some cases for fairly obvious reasons. Beyond a limit, a regulation fee may be justified." (p. 369.)

In *Ram Bahadur & Co. v. State of Karnataka* ATR 1979 Kant 119, the Karnataka High Court had to consider the validity of the Karnataka Court-fees Act, 1958, which like the Madras Act had abolished the slab system and imposed ad valorem court-fee at 7 1/2 per cent without any maximum. In upholding the validity of the Act, the High Court held that the absence of ceiling did not make the imposition invalid.

As already seen, the 1975 Act retains the slab system with the rate, decreasing with each higher slab. Beyond the value of rupees three lakhs, a low fee of Rs 30/- per thousand is charged without putting any ceiling. Such an imposition, though without any ceiling, cannot be held to be unreasonable or unconstitutional.

Learned counsel for the petitioner also relied upon the judgment of the Bombay High Court in *Indian Organic Chemicals Ltd. Vs. Chemtex Fibres Inc.*, . In this case the State of Maharashtra failed to support the increase of court-fee by showing that there was increase in the cost of administration of justice. On this point, therefore, the case is distinguishable. However, the case does hold that the abolition of the ceiling limit by itself made the fee excessive, grossly disproportionate and unreasonable and the imposition ceased to be a fee and to this extent it does support the learned counsel for the petitioner. With great respect, we are unable to agree with this view taken in that ease.

Learned counsel for the petitioner also referred to the decision of the Supreme Court in *Central Coal Fields Ltd. and Another Vs. Jaiswal Coal Co. and Others*, and relied upon the following observations (para 2):--

"While it is deplorable that some speculators gamble in litigation using the strategem of pauperism, it is more deplorable that the culture of the magna carta notwithstanding the Anglo-Indian forensic system -- and currently free India's Court process should insist on payment of court-fee on such a profiteering scale without correlative expenditure on the administration of civil justice that the levies often smack of sale of justice in the Indian Republic where equality before the law is a guaranteed constitutional fundamental and the legal system has been, directed by Article 39A "to ensure that opportunities for securing justice are not denied to any citizen by reason of economic disabilities". The right of effective access to justice has emerged in the Third World countries as the first among the new social rights what with public interest litigation, community based actions and pro bono publico proceedings. "Effective access to justice can thus be seen as the most basic requirement -- the most

basic "human right" --of a system which purports to guarantee legal rights."

These observations from the decision of the Supreme Court in Jaiswal Coal Co.'s case, which is a case decided by two Judges, do not go and could not go against the legal position established in The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., which is a case decided by a bench of five Judges. We have already held that the State has been successful in establishing the required correlationship between the amount of court-fee recovered under the 1975 Act and the expenditure incurred on the administration of civil justice. The State here, therefore, cannot be accused of insisting on payment of court-fee at a profiteering scale which smacks of sale of justice and it must be held to be outside the general and sweeping criticism of the Indian forensic system made in Jaiswal Coal Co.'s case. It may be that having regard to the provisions of Article 39A, court-fee is not a commendable source of revenue and the ideal thing may be to abolish court-fee altogether. But these considerations, which are matters of State policy cannot enable us to declare invalid a legislation which is well within the legislative competence of the State Legislature under Entry 3, List II of the Constitution. The indigent litigant is taken care of by Order 33 of the CPC and the numerous legal aid schemes of which we hear so much. The Jaiswal Coal Co.'s case was indeed a case where the provision of Order 33 were abused by a speculative litigant by the stratagem of inflating his claim to an astronomical sum. That case shows the need of amending Order 33 by making a provision in it to the effect that if the Court is of the opinion that the claim is unreasonably inflated, it may refuse permission to the applicant to sue as an indigent person.

For the reasons given above the challenge to the validity of the Court-fees (Madhya Pradesh Amendment) Act, 1975, fails. The petition is dismissed with costs. Counsel's fee Rs. 260/-. The outstanding amount of security deposit be refunded to the petitioner.