

(1987) 11 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No's. 31 of 1987 etc.

E.I.D. Parry (India) Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-11-1987

Acts Referred:

Constitution of India, 1950 — Article 1, 14, 246

Mysore Court-fees and Suits Valuation Act, 1958 — Section 20

Citation : (1988) ILR (Kar) 105

Hon'ble Judges : Rama Jois, J;Murlidher Rao, J

Bench : Division Bench

Advocate : S. Ramaswamy Iyengar, for the Appellant; M.R. Achar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.—In this batch of Writ Petitions, the following common question of law arises for consideration :

"Whether Section 20 of the Karnataka Court Fees and Suits Valuation Act, 1958 ("the Act" for short) which provides for payment of court fee at the rate of ten per cent ad valorem, computed on the basis of the monetary value of the suit claim without any ceiling and/or a tapering rate of court fee over and above a specified limit, is constitutionally valid?"

2. The provisions of the Constitution which are relevant to the above question are : Article 245(1) of the Constitution empowers the Parliament to make laws for the whole or any part of the territory of India and the Legislature of a State to make laws for the whole or any part of the State subject to the provisions of the Constitution. Under Article 246(1) the Parliament has the exclusive power to make laws with respect to any of the matters enumerated in List-1 of the VII Schedule. Under Article 246(3), the Legislature of a State has the exclusive power to make laws with respect to any of the matters enumerated in List-II. Under Article 246(2) both the Parliament and the State Legislature have got the

power to make law, subject to the provisions of Article 254. Entries 77 and 96 in List-1 read thus :

"77 Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein: persons entitled to practice before the Supreme Court.

XXX XXX XXX 96. Fees in respect of any of the matters in this List, but not including fees taken in any Court."

(Underlining by us)

Entries 3 and 66 of the State List reads :

"3. Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

XXX XXX XXX 66. Fees in respect of any of the matters in this List, but not including fees taken in any Court."

(Underlining by us)

Entries 11A and 47 of the Concurrent List reads :

"11A. Administration of justice; constitution and organisation of all Courts, except the Supreme Court and the High Courts.

47. Fees in respect of any of the matters in this List, but not including fees taken in any Court."

(Underlining by us)

The Legislature of the State has enacted the Act. Section 20 of the Act provides that the fee payable under the Act shall be determined or computed in accordance with the provisions of Chapters-IV, VI, VIII and schedule -I and II of the Act. The first article of Schedule which is the subject matter of challenge in these petitions reads :

SCHEDULE-1

Ad valorem Fees

Article

Particulars

Proper fee

1. Plaint, written statement, pleading a set off or counterclaim or memorandum of appeal presented to any court When the amount or value of the subject matter in dispute- (i) does not exceed ten rupees One rupee

(ii) exceeds ten rupees for every ten rupees or part thereof in excess of ten rupees One rupee

Section 20 read with Article 1 of Schedule-1, as amended by Act 21 of 1979 which came into force on 31-3-1979, provides for payment of ad valorem Court fee at the rate of 10 per cent of the value of the suit claim. There are several Sections in Chapter IV of the Act which provide for the method of computation of the value of the claim involved in a suit. Section 21 deals with suits for money and provides that the fee payable shall be computed on the amount claimed. The other Sections which provides for computation of the value of the claim in a given suit in terms of money are: suits for maintenance and annuities (Section 22), suits for recovery of movable property (Section 23), suits for declaration with or without consequential reliefs (Section 24), suits for injunction (Section 26) suits relating to trust property (Section 27), suits for possession under the Specific Relief Act (Section 28), suits for possession not otherwise provided for (Section 29), suits for enforcing pre-emption rights (Section 31), suits relating to mortgages (Section 32), suits for accounts (Section 33), suits for dissolution of partnership (Section 34), partition suits (Section 35), suits for joint possession (Section 36), suits for cancellation of decrees (Section 38), suits for specific performance (Section 40), suits between landlord and tenant (Section 41), suits for mesne profits (Section 42), interpleader suits (Section 45). The Court fee payable is 10 per cent ad valorem on the value of the suit claim, as computed under the relevant Section applicable. u/s 49 the fee payable on a memorandum of appeal is the same as the fee payable in the Court of first instance in a given case. There is no challenge to the constitutional validity of any of these Sections in these petitions. But what is challenged is the constitutionality of the levy of Court fee at the rate of 10 per cent ad valorem.

3. The learned Counsel for the petitioners urged the following contentions :

(i) Administration of justice being a fundamental duty of the State, the expenditure on the establishments of Courts and their maintenance has to be met by the Consolidated Fund and therefore the levy of court fee is unconstitutional;

(ii) Even on the basis, the State is empowered to make a law providing for levy of court fee, the provision providing for payment of ad valorem court fee without ceiling is oppressive and suffers from the vice of want of quid pro quo between the levy and the individual who is required to pay heavy court fees in cases in which the money value of the suit claim is considerably high, for the reason that as between two heavy suits there is no difference between the quantum of service rendered by the Court in deciding them notwithstanding the fact that the value of the claim in one is greater than the other. For the same reason the provision is violative of Articles 14, 19(1)(g) and 21 of the Constitution.

(iii) The levy of court fee at the fixed rate of Rs. 100-00 on the writ petitions and the fixed court fee in several other types of cases on one hand and ad valorem court fees on claims for recovery of money and/or the monetary value of the suit claim is discriminatory and therefore violative of Article 14 of the Constitution.

4. Elaborating the above contentions, the learned Counsel submitted as follows :

As can be seen from the relevant entries in the 7th Schedule, in the Union List, in the State List and the Concurrent List, the Constitution makes a clear distinction between the fee for the collection of which the Legislature is competent to make laws in respect of all matters on which the appropriate Legislature has the power to make the law and the levy of court fee. Therefore, the consideration or the criteria to find out as to whether the fee levied under the authority of a law in respect of any matter, other than court fees, in the nature of things, must be different from the criteria to find out as to whether the levy of court fee by law made by the appropriate Legislature, is justified or not. One of the noble objectives of the Constitution as enshrined in the Preamble is to ensure Justice - Social, Economic and Political. From this it follows, just as maintaining the army for the defence of the Country or the Police for maintenance of Law and Order or establishing and maintaining educational institutions, it is a fundamental duty of the State to establish and maintain the Courts to provide an effective and inexpensive justice to the citizens who are wronged by an individual or the State. Therefore, the expenditure in respect of the establishment of the Courts including recurring expenditure, has to be met by the general revenues of the State. It is not competent for the Legislature to make a law providing for levy of ad valorem court fee, as has been provided for under the provisions of the Act, because as a result, a person who has the right to recover a heavy amount would be unable to approach the Court if he were to be not in position to pay the heavy court fee. Therefore, even on the basis that it is competent to levy court fee, it should be at reasonable rate. Any provision providing for levy of court fee without a ceiling limit or a tapering rate after a specified amount, acts oppressive and thereby deprives a citizen of his right to a remedy. The learned Counsel also produced a statement showing the rates of court fee fixed under the Court Fees Act, 1870, which is still in force in the Union Territories, and the laws of various States in the Country. Learned Counsel pointed out that except in the southern States of Andhra Pradesh, Karnataka, Kerala, Tamilnadu and Pondicherry and in Rajasthan, in which a provision has been made for levy of court fee ad valorem, in most of the States and also under the provisions of the Court Fees Act, 1870, applicable to the Union territories, the maximum court fee provided for, varies from Rs. 3,000-00 to Rs. 15,000-00 and in a few cases a lower rate of fee is prescribed beyond a specified limit. The learned Counsel pointed out that there would be little difference in the time occupied for disposal of a claim involving Rs. 10 lakhs or Rs. 1 crore or even more than that, and even so whereas in the case for claim of Rs. 10 lakhs the person concerned is required to pay a court fee of Rs. 1 lakh and whereas in respect of a claim involving Rs.1 crore, the person concerned is required to pay a court fee of Rs. 10 lakhs, and therefore even on the basis that the criteria of quid pro quo is applicable to test the validity of court fees, the quid pro quo does not exist, as there is practically no difference between the service rendered to a plaintiff who claims relief of the value of Rs. 10 lakhs and the plaintiff who claims relief of the value amounting to more than

Rs.10 lakhs. Therefore, the impugned levy is liable to be declared invalid as arbitrary and therefore violative of Article 14 and also on the ground that it imposes unreasonable restriction on the right to do business guaranteed under Article 19(1)(g) and also violative of Article 21 from which the right to secure justice, which is incidental to right to life flows.

5. The learned Counsel also submitted that the prescription of ad valorem court fee was discriminatory and therefore violative of Article 14 of the Constitution. In this behalf they pointed out that a court fee of Rs. 100-00 alone is prescribed for writ petitions and similarly there are number of other types of cases for which a small fixed court fee is provided for under the Act. Some of them are, suits for declaration of validity or invalidity of adoption Rs. 25-00 minimum and Rs. 250-00 maximum (vide:Section 25), suits relating to easements - minimum Rs. 100-00 and if the right is valued above Rs. 1000-00 only by the plaintiff, 10 per cent ad valorem (vide:Section 30), suits relating to public matters - Rs. 50-00 (vide:Section 44), petitions under Sections 53 and 54 of the Provincial Insolvency Act - maximum Rs. 500-00 (vide:Article 4 of Schedule-I). There is no rational basis or nexus for making such classification for the levy of court fee at different rates.

6. Sri M.R.Achar, learned Government Advocate, appearing for the State, per contra, submitted that all the contentions urged for the petitioners are fully covered by the decision of the Supreme Court in the case of The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., The learned Counsel pointed out that the constitutional validity of this very Act was in issue before a Division Bench of this Court in the case of Ram Bhadur Thakur and Co. and Another Vs. State of Karnataka, and its validity was upheld by the Division Bench in the light of the ratio of the Judgment of the Supreme Court in the case of The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., .

7. The learned Counsel for the petitioners, however, maintained that the Supreme Court had not decided any question of law in Zenith Lamps case" but it had only directed the Madras High Court to find out as to whether there existed quid pro quo between the levy of court fee under the provisions of the Madras Act and the cost of administration of civil justice in that State and the Division Bench of this Court wrongly proceeded on the basis that the Supreme Court had upheld the constitutionality of the levy of ad valorem court fee subject only to the existence of quid pro quo.

8. The Supreme Court in the case of The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., in the first instance considered the scope of the relevant entries in the VII Schedule to the Constitution relating to the levy of court fees as also the general entries regarding the levy of court fee and concluded thus:

"30. It seems plain that "fees taken in Court" are not taxes, for if it were so, the

word "taxes" would have been used or some other indication given. It seems to us that this conclusion is strengthened by two considerations. First, taxes that can be levied by the Union are mentioned in List I from Entry 82; in List II taxes that can be imposed start from Entry 45. Secondly the very use of the words "not including fees taken in any court" in Entry 96 List I, and Entry 66 List II, shows that they would otherwise have fallen within these Entries. It follows that "fees taken in Court" cannot be equated to Taxes". If this is so, is there any essential difference between fees taken in court and other fees? We are unable to appreciate why the word "fees" bears a different meaning in Entry 77, List I and Entry 96, List I or entry 3 List II and Entry 66 List II. All these relevant cases on the nature of "fees" were reviewed in the Indian Mica Micanite Industries Vs. The State of Bihar and Others, by Hegde J, and he observed :

"From the above discussion, it is clear that before the levy can be upheld as a fee, it must be shown that the levy has reasonable relationship with the services rendered by the Government. In other words, the levy must be proved to be a quid pro quo for the services rendered. But in these matters, it will be impossible to have an exact relationship. The relationship expected is one of a general character and not as of arithmetical exactitude."

31. But even if the meaning is the same, what is "fees" in a particular case depends on the subject matter in relation to which fees are imposed. In this case we are concerned with the administration of civil justice in a State. The fees must have relation to the administration of civil justice. While levying fees, the appropriate legislature is competent to take into account all relevant factors, 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 certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Article 14. But one thing the legislature is not competent to do, and that is to make litigants contribute to the increase of general public revenue. In other words, it cannot tax litigation, and make litigations pay, say for road building or education or other beneficial schemes that a State may have. There must be a broad relationship with the fees collected and the cost of administration of civil justice.

XXX XXX XXX 45. With respect, the fees taken in courts and the fees mentioned in Entry 66 List I are the same kind. They may differ from each other only because they relate to different subject matters and the subject matter may dictate what kind of fees can be levied conveniently, but the overall limitation is that fees cannot be levied for the increase of general revenue. For instance if a State were to double court fees with the object of providing money for road building or building schools the enactment would be held to be void."

The ratio of the above Judgment is the levy of court fee is constitutionally valid but the total amount of court-fee collected cannot exceed the expenditure

incurred on administration of civil justice. As on the question of fact of quid pro quo, sufficient material had not been placed before the Court, the matter was remitted to the Madras High Court, to decide the validity of the levy depending upon the finding on that question of fact.

9. The Division Bench of this Court in Ram Bhadur Thakur and Co. and Another Vs. State of Karnataka, considered the validity of the Karnataka Act Prior to its amendment by Amending Act 21/1979, which provided for the levy of court-fee at 7 1/2 percent ad valorem and held that the levy was valid as the total expenditure on administration of civil justice was more than the total amount of court fee collected. The conclusions were as follows:

"33. As Court-fee is a quid pro quo for the service rendered by the administration of civil justice, ad valorem court-fee which is proportionate to the value of the relief sought for from the Courts, makes a reasonable classification of litigants according to the value of the service they seek and hence does not offend Article 14 of the Constitution.

34. Once court fee levied under Article 1 of Schedule I to the Act, is held to be a fee and not a tax and is constitutionally valid, it follows that levy of such fee cannot be regarded as infringing the provisions of Clause (f) or (g) of Article 19 or Article 41 of the Constitution."

In the face of the above binding decision of the Supreme Court and a decision of the Division Bench of this Court both on question of law and fact, the learned Government Advocate submitted that the contentions urged for the petitioners have to be rejected.

10. The learned Counsel for the petitioners, however, submitted that some of the arguments advanced by them, now, in particular the argument that it was one of the fundamental duties of the state to provide for inexpensive remedy for the redressal of the grievances and enforcement of the rights of the citizen by establishing and maintaining the Court, at the State expense, was not advanced and considered by the Supreme Court and therefore the ratio in The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., does not come in the way of our holding that ad valorem court-fee without a ceiling was oppressive and therefore violative of Article 14 of the constitution on the ground it is arbitrary. They also maintained that the question of want of quid pro quo in the case of heavy suits had not been advanced before the Supreme Court and therefore it was also open for our consideration.

11. We shall now proceed to consider the three contentions urged for the petitioners in the light of the Judgment of the Supreme Court in The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.,

12. The submission of the petitioners that it is one of the fundamental duties of the State to establish and maintain the Courts for enabling the citizens to enforce

their rights through them is unexceptionable. But the contention based on this, that the law enacted providing for levy of court fee is unconstitutional is patently untenable, for, what is provided for in the Constitution itself cannot be regarded as unconstitutional. As shown earlier the relevant entries in the three lists of the Seventh Schedule to the constitution read with Article 246 expressly empower the appropriate Legislature to make law providing for the levy of Court fee. On consideration of these constitutional provisions, the Supreme Court upheld the competence of the Legislature to make a law prescribing payment of court fee, subject to the condition it should not acquire the nature of tax i.e., the total amount of fee collected must not exceed to any substantial extent over the total expenditure on Administration of civil justice. Therefore the first contention is devoid of any merit.

13. As far as the second contention is concerned, it may be seen from the judgment in *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, the Supreme Court was called upon to consider the constitutional validity of the Madras Act which provided for the levy of ad valorem court fee at the rate of seven and a half per cent on the suit claim. The Supreme Court upheld it subject to the existence of quid pro quo between the total amount of court fee collected under that law and the total amount of expenditure incurred by the State for rendering service i.e. the total expenditure incurred annually on administration of civil justice. Therefore, if it is shown that the total amount collected pursuant to the provisions of the Act is not more than the expenditure incurred, the constitutional validity of the law prescribing payment of ad valorem court fee has to be upheld. The fact that a contention regarding oppressive nature of the levy of court fee on ad valorem basis and the contention that there would be no quid pro quo in the case of heavy suits on the ground that no greater service is rendered to the plaintiff in such suits than in other heavy suits were not advanced before the Supreme Court, makes no difference. The law declared by the Supreme Court; by virtue of Article 141 of the Constitution; is binding and it is not open for this Court to consider the constitutional validity of the same law and declare it invalid on the ground that an argument advanced before us had not been advanced before the Supreme Court. This position in law has also been laid down by the Supreme Court in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, It reads:

"The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided."

14. The learned Counsel for the petitioners, however, maintained that irrespective of the fact that the total amount of court fee collected was less than the total amount of expenditure incurred, still the Act which prescribes ad valorem court fee is liable to be struck down for want of quid pro quo in relation to individuals who are required to pay heavier court fee, as the service rendered

to them was no greater than in other heavy suits. In support of this they relied on a Division Bench Judgment of the Bombay High Court in *INDIAN ORGANIC CHEMICALS LTD v. CHEMTEX FIBRES Inc* 83 Bom LR 406 and pointed out that the Bombay High Court had struck down the levy of ad valorem court fee and in doing so, the Court had only followed the ratio in *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*,

15. The decision does support the submission. In the said case, the plaintiff therein sought for a declaration that the Bombay Court fees (Second Amendment) Act 1974, which provided for levy of court fee ad valorem at the rate of 10% on the total amount claimed in a plaint, was invalid. Prior to the said amendment, the maximum court fee under the Bombay Act was Rs. 15,000/-. The effect of the amendment was, the plaintiff who could have filed the suit on payment of Rs. 15,000/- had to pay a court fee of Rs. 5,60,000/- The plaintiff who had filed the plaint by paying a court fee of Rs. 15,000/- was called upon to pay the deficit court fee of Rs. 5,45,000/-. It is at that stage, the plaintiff sought for a declaration that the amendment was unconstitutional. The facts set out in the report would show that there was an allegation that the promulgation of the amendment to the Bombay Court Fees Act was mala fide under the circumstances which have been set out in great detail in the Judgment i.e., to prevent the filing of a suit for a declaration that disposal of large number of valuable sites for a meagre consideration were illegal. It is unnecessary for us to refer to the above details for the reason that no law enacted by the legislature, can be struck down on the ground that it is mala fide and in fact the said ground was rejected by the Division Bench. The amendment was, however, struck down by the Division Bench on other grounds. The reason for doing so are found at pages 415 and 422 of the report. At page 415 of the judgment of the Madras High Court in *ZENITH LAMPS v. REGISTRAR, HIGH COURT OF MADRAS* ILR 1968 Mad 247 in which it had been pointed out to the grossly disproportionate nature of the ad valorem court fee, qua the particular suitor in whose case it ceased to be a fee and became a tax, the Division Bench stated thus:

"In our opinion, to such an Act the principles adumbrated at page 372 must apply and in the case of suitors such as the plaintiff in the present case who are called upon to pay court-fees running into lakhs of rupees the grossly disproportionate nature of the levy, its unreasonableness and harshness are immediately discernible. It would appear that the impugned Act is required to be struck down on the basis of this principle irrespective of whether in fact in 1974 the State had satisfied itself by gathering proper material that the increasing cost of administration of justice required enhancement of the levy by way of court-fees. Even if we assume for the purposes of argument that this stands established by the State, the question arises whether increased collection can be secured in the manner envisaged in the impugned Act viz., by removal of the ceiling altogether and the answer of this question must be in the negative.

XXX XXX XXX We are of opinion that beyond a particular limit it is inconceivable

to accept that there is any element of quid pro quo. It is true that quid pro quo has not to be considered and measured regarding individual litigants. But in this particular case we have a well-defined class viz., of suitors who will be required to pay court-fees beyond Rs. 15,000/ bearing in mind the subject-matter of their claim. It is also not universally true that the legality of such legislation is to be considered generally and not with regard to particular litigants. The challenge to the impugned Act this specific manner will be a challenge of a few litigants and in their specific cases we are clearly of opinion that the levy of court-fees in excess of Rs. 15,000/- after the amendment Act of 1974 has injected in the levy the character of a tax and if that is the consequence of the enactment, the enactment will be required to be struck down as invalid We are equally of opinion that the State has failed to discharge the onus which it had, to justify the increase."

(Underlining by us)

The Division Bench struck down the amendment on two grounds, namely:--

- (i) The Government was unable to prove that the increase in the rate of court fee was justified by the expenditure incurred on the Administration of civil justice.
- (ii) That there was no quid pro quo between the prayers of the heavy court fee and the quantum of services rendered to them.

16. As far as the first ground on which the Bombay Act was struck down is concerned, it is consistent with the ratio of the Judgment of the Supreme Court in *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, . In fact the Madras High Court has also struck down the Madras Act in *P.R. Sriramulu and Another, N. Krishnaraj (deceased) and Others and Tarapore and Company Vs. The Registrar, High Court and Others*, after recording a positive finding that the amount of court fee collected was far in excess of the expenditure incurred by the Tamil Nadu Government in respect of administration of civil justice. But as far as this State is concerned the Division Bench of this Court in *Ram Bhadur Thakur and Co. and Another Vs. State of Karnataka*, found that the expenditure on Administration of civil justice in this State was more, when the levy was 7 1/2 per cent ad valorem. Therefore the only point which arises for consideration is whether quid pro quo exists after the amendment increasing the rate to 10% ad valorem.

17. As far as the second ground, on which the Division Bench of the Bombay High Court struck down the Bombay Court Fee Amendment Act of 1974, is concerned, with great respect to their Lordships, we are unable to agree. In this behalf it should be mentioned that in *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, the challenge before the Supreme Court was to the constitutional validity of the Amendment to the Madras Act by which ad valorem court fee at the rate of seven and a half per cent without ceiling was prescribed. The Supreme Court upheld the validity of the provision and remitted the matter to the Madras High Court only to find out as to

whether the total amount of court fee collected was substantially more than the expenditure incurred for administration of civil justice in that State, or not, and if not to strike down the law. From this it follows that if the finding was that the expenditure was more than the total amount of court fee levied and collected under the amendment, the Madras High Court had to uphold its validity and could not have proceeded to declare that notwithstanding the said finding the Act was invalid as it prescribed ad valorem court fee and therefore it was disproportionate to the service rendered to certain individual suitors who were required to pay heavy court fee.

18. Further, the settled position in law by a series of decisions of the Supreme Court is that in answering the question as to whether a quid pro quo exists between the fee collected and the services rendered in a given case, what the Court is required to consider is the total collection of fee and the total expenditure validly incurred. This position is reiterated by the Supreme Court in *City Corporation of Calicut Vs. Thachambalath Sadasivan and Others*, of the Judgment reads:

"7. It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

(underlining by us)

Therefore, unless the total amount collected by way of court fee was far in excess of the total amount of expenditure incurred by the State for rendering service the law could not be declared unconstitutional. There is no question of considering as to whether the services rendered to particular plaintiff who has paid heavy court fee was or was not proportion to the fees paid by him. The Division Bench of the Bombay High Court after noticing this principle, in the very paragraph at page 422 extracted earlier, proceeded to hold that there was no quid pro quo in so far it related to the class of plaintiffs who filed heavy suits, that is, by paying a court fee of more than Rs. 15,000/-We were unable to persuade ourselves to take that view, for, all persons who pay ad valorem court fee fall into one category and the sub-classification of those who are required to pay higher court fee based on the value of the suit claim is not permissible in view of the ratio in *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, for, the direction of the Supreme Court to the Madras High Court was to find out as to whether the total amount of court fee collected was far in excess of the total amount spent on the

administration of civil justice and consequently it was in the nature of tax and not fee. After remand, the Madras High Court on a question of fact found that the expenditure was far less than the fee collected under the Madras Act and therefore held that it was unconstitutional, but not on the ground that there was no quid pro quo only in so far it related to plaintiffs filing heavier suits who were required to pay heavier court fee.

19. The learned Counsel for the petitioners, however, strenuously contended that existences of quid pro quo itself cannot be regarded as the only condition, to test the constitutional validity of a law prescribing the rate of court fee. Elaborating this submission, the learned Counsel stated as follows:

If we see the history of the laws regulating the court fee, there has always been a maximum of court fee prescribed. Even under most of the laws in force in different states, maximum court fee is prescribed as can be seen from the following statement.

STATEMENT

Sl. No. Act Court fee payable

1. Central Act Rs.3,000/- is the Macimum
2. Assam &.Nagaland Rs. 10,000/- is the Maximum
3. Andaman & Nicobar Rs.10,000/- is the Maximum
4. Andhra Pradesh Rs.8% ad valorem
5. Bihar Rs. 10,000/- is the Macimum
6. Bombay Rs. 15,000/- is the Maximum
7. Gujarath Rs. 15,000/- is the Maximum
8. Haryana Rs. 16,370/- on Rs.3,00,000/- and in excess thereof 4%
9. Himachal Pradesh Re.0.50 P. for 100 upto 50,000/- and beyond that sum for every 50,000/- court fee of Rs.48.80
10. Jammu & Kashmir Rs.3,862.50 on Rs.4.00,000/- and in excess thereof for every Rs. 50,000/- CF is Rs.30/-
11. Karnataka 10% ad valorem
12. Kerala 10% ad valorem
13. Madhyapradesh Rs.10.000/- is the Maximum
14. Manipur, Meghalaya &
Tripura Rs.10.000/- is the Maximum
15. Orissa Rs. 1,791.25 on Rs.50,000/- and thereafter Rs.37. 50 for every

Rs.50,000/- (5000)

16. Punjab, Chandigarh & Delhi Rs.6,248/- on Rs.4,00,000/- in excess thereof on every 5,000/- CF is Rs.48.80 Ps.

17. Pondichery On claim in excess of Rs. 100/- 5% ad valorem

18. Rajasthan When claim exceeds Rs.5000/- Cf is 5% ad valorem

19. Tamil Nadu 7.5% ad valorem

20. Uttar Pradesh Rs.2,657.50 on Rs.30.000/- in excess thereof for every Rs.5000/- CF is Rs. 37.50 Ps.

21. West Bengal Rs.10.000/- is the Maximum

Except in the five southern States of Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, Pondicherry and in Rajasthan, maximum court fee is prescribed. In some cases lower rate of court fee is prescribed after a specified limit. The basis of prescribing maximum court fee, whether it is Rs. 3,000/- as prescribed under the Court Fees Act, 1870, which is still in force in the Union Territories, and/or at a higher rate of Rs. 15,000/- or Rs. 20,000/- as the cases may be, as prescribed under the different laws or a tapering rate after a prescribed limit as indicated in the statement extracted earlier, is not far to seek. It was obviously for the reason that in respect of heavy suits whether the claim involved is Rs. 10 lakhs or Rs. 1 crore or Rs. 10 crores, the time taken for the trial and the services rendered by the Court is approximately one and the same. Moreover, it is quite possible that trial of a case involving a claim of Rs. 1 crore might occupy less time than the trial of a case involving a claim of Rs. 10 lakhs. Therefore, the State is not expected to proceed on the basis of mere suit claim, but is expected to proceed on the basis that providing remedy through Court is the sovereign function and duty entrusted to it by the provision of the Constitution. The law relating to court fee to be reasonable must be such as would enable the citizens to have their claims adjudicated in the Courts established by the State on payment of court fee which is practicable and not oppressive or prohibitive. The provision under Order XXXIII of the C.P.C. for filing of suit by indigent persons without payment of court fee is of no assistance to persons who have not the requisite capacity to pay the heavy court fee, though not indigent. Tested in this background and also in the background of the objectives enshrined in the Preamble to the Constitution, namely, ensuring of Justice-Social and Economic, to all the citizens prescription of ad valorem court fee without fixing a maximum is oppressive, arbitrary and therefore liable to be struck down as violative of Article 14 of the Constitution, for, now it is beyond dispute that a legislative action is also liable to be declared unconstitutional if it were to be arbitrary. How ad valorem court fee is likely to become prohibitive or oppressive is highlighted by the Supreme Court itself the case of Central Coal Fields Ltd. and Another Vs. Jaiswal Coal Co. and Others, The facts of that case were these : The respondent therein filed is a suit Information pauperis before the District Court against the Central Coal Fields

Limited for recovering a sum of Rupees Three Crores. The appellant who was the defendant before the District Court did not appear before the Court on the day when the case was posted for hearing. The suit was decreed *ex parte*. The result was that the appellant could get that decree set aside by filing an appeal before the High Court, but only on payment of court fee of Rupees Three Million because the court fee prescribed was 10% *ad valorem*. In this situation, in order to avoid payment of court fee of Rs. 3 Million, the Appellant approached the Supreme Court under Article 136 of the Constitution in an SLP Finding the predicament in which the appellant had placed itself by its negligence by not appearing and filing the written statement before the Court, the Supreme Court resolved the dispute by making the parties to agree for arbitration. The result of the arbitration was the dismissal of the suit as decided by the Arbitrator and payment of fee of Rs. 25,000/- to the Arbitrator by the appellant who readily agreed to pay as it had saved court fee of Rs. 3 Million. In the context of the glaring facts of the case, Krishna Iyer, J., made the following observation:

"All is well that ends well" and that way we have something happy to deliver in this short order. Even so, this litigation has lessons to teach and promises to keep and surely bears testimony to many a bane of the Indian litigative process.

XXX XXX XXX While it is deplorable that some speculators gamble in litigation using the stratagem 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 collective 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."

These observations, the learned Counsel for the petitioners, contended were sufficient to strike down the *ad valorem* levy as unconstitutional.

20. As can be seen from the report, the attention of the two Judge Bench which decided *Central Coal Fields Ltd. and Another Vs. Jaiswal Coal Co. and Others*, appears to have not been invited to the Constitution Bench decision in *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, in which the levy of *ad valorem* court fee was upheld subject to the existence of *quid pro quo*. Further, the observations in *Central Coal. Field's case* ILR 1968 Mad 247 also indicates that levy of court fee without collective expenditure on the administration of civil justice on a profiteering scale, would be bad and not when the *quid pro quo* exists and no profit is made out of court fee.

21. In the *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, the Supreme Court traced the history of the

levy of court fee in India from the time of East India Company and interpreted the relevant entries in the Seventh Schedule to the Constitution and upheld the power of the Legislature to make law providing for the levy of court fee subject to existence of quid pro quo.

22. The submission of the learned Counsel for the petitioner is that as under the Constitution administration of civil justice is one of the fundamental duties of the State, as is discernible from its preamble which specifies justice Social and Economic, as one of the objectives of the Constitution, the State is in duty bound to make provision for securing justice by individuals through the Courts without much expense. This directive, which was implicit in the Preamble, they pointed out has been made explicit by inserting Article 49A into Part-IV of the Constitution. It reads :

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

23. There is considerable force in the submission that reasonableness of the ad valorem court fee as a condition for entering the portals of the court seeking justice has to be tested in this background. There is also substance in the submission that the existence of quid pro quo alone cannot be taken as the basis for saying that the levy is reasonable, in view of the basic duty of the State to provide a judicial system for the enforcement of the rights and claims of citizens at reasonable expense. To illustrate, the State is not levying fees for securing admission or instruction in Government educational institutions on quid pro quo basis. If the expenses incurred for construction of buildings of schools and colleges and purchase of the equipments as also the recurring expenditure were to be made the basis for quantifying and prescribing fee for admission to or tuition in, educational institutions, it would certainly be prohibitive for large majority of the citizens. It is true, that the duty of the State to provide education to the citizens is more fundamental than to provide the Courts for enforcement of rights that too for recovery of money or property to which citizens claims to be entitled to. Still as the latter duty is also a fundamental duty, it stands on a basis different from levy of fees for commercial activity by the Market Committees of the Municipalities and the like. In fact the court fee fixed under the Act in respect of various types of petitions and applications is very reasonable. To illustrate, generally for all petitions under Articles 226 and 227 of the Constitution, the fee fixed is only Rs. 100-00. For petitions seeking for the issue of a writ of Habeas Corpus, it is only Rs. 2-00. For raising industrial dispute by workmen, no court fee is payable. In respect of various other petitions, a reasonable and fixed court fee is prescribed. The fixation of such fee is in conformity with the duty of the State to provide inexpensive remedy. It is only for suits for recovery of money and property, ad valorem court fee at the rate of 10 per cent is prescribed, which

in the case of heavy claims becomes oppressive and prohibitive. The observations made by the Supreme Court, speaking through Krishna Iyer, J, in the case of Central Coal Fields Ltd. and Another Vs. Jaiswal Coal Co. and Others, do support the submission of the petitioners, but has no effect of over-ruling the ratio in The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., . Moreover the question as to whether an appropriate ceiling and/or tapering rate of court fee beyond a specified limit should be fixed by amending the law is pre-eminently a matter of policy to be decided by the Legislature and not a matter bearing on the question of legislative competence.

24. In view of the ratio in The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., the only ground for our consideration is as to whether the total amount of court fee collected after the amendment to the Act, by Act 21 of 1979 exceeds to any substantial extent over and above the expenses incurred for administration of civil justice in the State. As far as this question is concerned, certainly the burden is on the State to prove that there exists quid pro quo between the services rendered and the amount of fee collected. As regards this, the figures relating to the total amount of court fee collected and the total amount of expenditure incurred on the civil administration of justice including the High Court have been furnished for five years from 1980-81 to 1984-85. They are as below :

Year

Total Receipts

Total expenditure on civil/criminal administration of justice

Expenditure on criminal courts only

Expenditure on administration of Civil Justice Only

1980-81

5,22,08,513

7,11,78,329

31,45,210

6,80,33,119

1981-82

6,69,10,019

8,31,63,862

33,87,010

7,97,76,852

1982-83

8,28,46,359

9,81,25,480

40,06,319

9,41,19,161

1983-84

8,21,49,626

9,99,14,755

54,53,161

9,44,61,594

1984-85

8,00,18,673

12,15,90,418

66,20,986

12,15,90,418

In the statement of objection filed on behalf of the respondents, it is also specifically stated that the above figures do not include capital expenditure which itself constitutes a very substantial amount. The figures furnished at once indicate that the total recurring expenditure incurred by the Government on civil administration during these years subsequent to the amendment also was far more than the amount collected by way of court fees. The learned Counsel, however, submitted that the expenses incurred on the High Court has not been separately furnished and for finding out the quid pro quo, the said amount should be excluded. We find no substance in this submission for two reasons. Firstly, it is difficult to appreciate as to why the expenses incurred on the High Court cannot be regarded as expenditure incurred for administration of civil justice merely because the High Court is also invested with the jurisdiction to entertain appeals and revisions in respect of criminal matters. Secondly this aspect is also covered by the Division Bench judgment in the case of Ram Bhadur Thakur and Co. and Another Vs. State of Karnataka, Therefore, tested on the basis of the ratio of the judgment of the Supreme Court in the case of The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., and the decision of a Division Bench of this Court in the case of Ram Bhadur Thakur and Co. and Another Vs. State of Karnataka, there is no substance in the second contention that the levy is unconstitutional.

24. As far as the third contention namely that the levy of ad valorem court fee on

the basis of the suit claim in the case of suits for recovery of money or property and fixed court fee of one hundred only on writ petitions and a reasonable fixed court fee for suits for declaration of adoption ass valid or invalid, on suits for enforcement of easementary rights or on petitions under the provisions of the Provincial Insolvency Act and the like is concerned, the classification on the face of it has a rational basis and has nexus to the object sought to be achieved. Petitions against the Government and its authorities or instrumentalities of the State invoking the extraordinary jurisdiction of the High Court for enforcement of constitutional and statutory rights stand entirely on a different footing. There is no comparison between it and the enforcement of contractual rights or right to recover property against private individuals or even against the Government. Similarly the classification of other types of cases for which a fixed court fee is prescribed have also a rational basis and have nexus to the object sought to be achieved, namely, providing inexpensive remedy. The petitioners have not been able to make out that either the classification is irrational or it has no nexus to the object sought to be achieved. For these reasons, we reject the third contention also.

25. For the aforesaid reasons, we answer the question set out first as follows :

"Section 20 of he Karnataka Court Fees and Suits Valuation Act. 1958, which provides for payment of court fee at the rate of ten per cent ad valorem, computed on the basis of the monetary value of the suit claim is constitutionally valid."

25. Sri K.S. Savanur, learned Counsel for the petitioner in W.P.No. 22646 of 1980 submitted that in view of Section 2(2) of the Act, the provisions of the Court Fees Act 1870 applies to the case and therefore only a maximum court fee of Rs. 3,000-00 was leviable. The suit concerned in this case was filed before the Munsiff, Kundgol, in Bombay Karnatak area. He relied on Section. 2(2) of the Act. It reads:

"2. Application of Act: xxx xxx (2) Where any other law contains provisions relating to the levy of fee in respect of proceedings under such other law, the provisions of this Act relating to the levy of fee in respect of such proceedings shall apply subject to the said provisions of such other law."

It is true that the Court Fees Act 1870 was in force in the Bombay-Karnataka area prior to 1-11-1956, the date of reorganisation of States under the provisions of the States Reorganisation Act, 1956, and it was continuing in force by virtue of Section 119 of the States Reorganisation Act. All that Sub-section (2) of Section 2 provides is that if any other law contains provisions relating to the levy of fee in respect of proceedings under such other law, the provisions of the Act relating to the levy of fee in respect of such proceedings shall apply subject to the said provisions of such other law. There is no other law in the State which provides for the institution of the suit and prescribing the court fee. Therefore, Section 2(2) is not at all attracted. Further, it may be seen from Section 79 of the

Act that the Court Fees Act 1870, in so far it applied to the Bombay-Karnataka area was repealed. The contention is therefore devoid of any merit.

26. The only aspect which remains for consideration is the submission made by the learned Counsel for the petitioners that as an appeal is pending before the Supreme Court against the Division-Bench judgment of this Court in Ram Bhadur Thakur and Co. and Another Vs. State of Karnataka, even in the event of our upholding the constitutional validity of the provisions of the Act, we should make a conditional order so that if the Supreme Court were to strike down the law in that appeal the benefit of the Judgment of the Supreme Court would ensure to their benefit even if they do not prefer any appeal against our judgment. The Supreme Court in the case of Shenoy and Co., Represented by its Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others, has laid down that any judgment rendered by the Supreme Court regarding the constitutional validity of a law would be binding on all the parties notwithstanding the fact that only one appeal was filed against a common Judgment of this Court and no appeals were preferred in other cases. The learned Government Advocate also submitted that in order to place the matter beyond controversy, he had no objection for the making of a conditional order to avoid the necessity of everyone of the petitioners preferring an appeal to Hon"ble the Supreme Court. He, however, submitted that our order should be subject to any order in the appeal against this order, if preferred by any one and not subject to the order in the appeal against the Judgment in Ram Bhadur Thakur and Co. and Another Vs. State of Karnataka, .

27. The learned Counsel for the petitioners, lastly submitted that in the event of our upholding the validity of the Act, the petitioners should be given reasonable time to pay the deficit court fee as the petitioners have paid only court fee of Rs. 3,000-00 in each of the cases, in view of the interim order made in each of the petitions.

28. In the result we make the following order:

(i) The challenge to the constitutional validity of the Karnataka Court Fees and Suits Valuation Act, 1958, as amended by Act 21 of 1979, fails and the writ petitions are dismissed.

(ii) The petitioners are given three months time to pay the balance of court fees on the plaint or appeal memorandum, as the case may be, subject to the condition that no final order in the suit or appeal shall be passed before the expiry of three months unless the balance of court fee is paid before the passing of such final order.

(iii) In the event of there being an order by the Supreme Court declaring the provisions of the Act as invalid in one or more of the appeals against this order, if preferred by any of the petitioners, the benefit of such declaration shall enure to the benefit of each of the petitioners and he shall be entitled to the refund of the excess of court fee paid, from the State Government.