(2007) 03 BOM CK 0090

In the Bombay High Court

Case No : Civil Rev. Application No''s. 128 to 131 of 2005

Executive Engineer, Jalgaon Medicum Project Division — APPELLANT

Vs

Dy. Registrar (Estt.) and Taxing Officer, Bombay High Court and Another — RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

- Bombay Court Fees Act, 1959 — Section 7
- Constitution of India, 1950 — Article 12
- Maharashtra Tapi Irrigation Development Corporation Act, 1997 — Section 26, 27

Citation : (2007) 6 BomCR 877 : (2007) 4 MhLj 181

Hon'ble Judges : P.V. Kakade, J

Bench : Single Bench

Advocate : M.S. Deshmukh, N.B. Patil, A.G.P, for the Appellant;

Judgement

P.V. Kakade, J.—Heard learned Counsel for the petitioner as well as learned A.G.P. for respondent-State. Perused the record. This Revision Application is filed against the order passed by Deputy Registrar, Establishment and Taxing Officer, Bombay High Court, Bench at Aurangabad issuing direction to the petitioner that in each case he shall pay the Court Fees as referred in para 11 of the order of the said Authority.

2. The petitioner is the Executive Engineer of Medium Project Division, Jalgaon which is working under corporation "Tapi Irrigation Development Corporation". They filed in all four First Appeals and common question arose regarding payment of Court Fees as they sought exemption on the ground that they were "State" within the meaning of Article 12 of Constitution of India and therefore were entitled for the exemption in the payment of Court Fees in view of the recent amendment in Bombay Court Fees Act.

3. While presenting Appeals the petitioner did not pay the Court Fees and claimed exemption, however Office raised objection and sought payment of Court Fees and therefore the matter came to be referred to the Taxing Officer.

4. It was submitted on behalf of the petitioner that they were entitled for exemption in view of the Ordinance of Governor bearing No. XXXI of 2004 and later Act No. XXII of 2004 of the Legislature amending Section 7 of Bombay Court Fees Act exempting the State from the payment of Court Fees. It was the contention of the petitioners that they represented the corporation which was a State within the meaning of Article 12 of Constitution of India and exempted from the payment of Court Fees. Taxing Officer after hearing both the parties, raised issues to the effect, whether the appellant was a "State and acquiring body and whether they were exempted from payment of Court Fees. Both the points, for the reasons recorded, were answered in the negative and the plea of the petitioners came to be rejected, hence the present Petitions.

5. It is evident that the Governor has promulgated one Ordinance bearing No. XXXI of 2004 and amended Section 7 of the Bombay Court Fees Act, 1959. In Sub-section (i) after the word "claimed", the word "or challenged" were inserted and proviso is added to that sub-section, making the provision, that where the State Government is an acquiring body, it shall not be liable for payment of fee in such Appeal. Section 7 of the Bombay Court Fees Act makes a provision for the payment of Court Fees on memorandum of appeal against an award, relating to the compensation under any Act for the time being in force for the acquisition of land for public purposes. Computation of Court Fees for a memorandum of appeal is according to the difference between the amount awarded and amount claimed by the petitioner. Now in view of the amendment and insertion of word "or challenged", an appeal challenging the award is also covered and the proviso added by the amendment exempts the payment of fees to such appeal, if it is a State Government and it is acquiring body.

6. Now, in this regard it is to be noted that the above referred Ordinance was repealed, in view of the coming into force of the Act No. XXII of 2004 and the Act is passed by the Legislature amending the provision as referred in the Ordinance. Thus, in view of the Act No. XXII of 2004 coming into force on 28-9-2004, Section 7 of Bombay Court Fees Act is suitably amended and State Government is exempted from payment of Court Fees to the memorandum of appeal if it is an acquiring body.

Now the petitioners are claiming that they are State and consequently exempted from payment of Court Fees. Therefore it is to be seen as to what is the nomenclature used in the title of the appeal. Name of the appellant is not a State but Executive Engineer of the Medium Project Division, Jalgaon who claims to be representing acquiring body and also State. It is significant to note that in the lower Court also the petitioner was not shown as State but the Special Land Acquisition Officer and present petitioner Executive Engineer, Medium Project Division were shown as respondents. It was case sought to be made out on behalf the petitioners that by virtue of Article 12 of the Constitution of India, definition of "State" is laid down which includes local and other authorities within the territory of India or under the control of Government of India. According to the petitioners they represent corporation constituted under the provisions of the State Act No. IV of 1998 which came into force on 4-12-1997. The Act is named as "Maharashtra Tapi Irrigation Development Corporation Act, 1997" and it is a State instrumentality for promotion and operation of irrigation projects and therefore it is a "State" as per Article 12 of the Constitution of India. The Taxing Officer while determining the issue has taken a view that definition of "State" is restricted to Part III of the Constitution of India for enforcement of fundamental right. In the present case it is not shown that this definition of "State" is also extended to include Section 7 of the Bombay Court Fees Act.

In this regard it was submitted on behalf of the petitioners that Corporation was funded by the Government and most of the part of fund comes from the Government. The Government has also taken a guarantee for the repayment of loans and interest given to the corporation and therefore it is a State instrumentality and thus it is a "State". In this regard it has to be noted that to have an exemption in the payment of Court Fees it is not only required for the petitioners to show that it is a "State", in addition the petitioners must show that it is "acquiring body" also. Section 26 of the Tapi Irrigation Development Act, 1997 makes a specific provision so far as the acquisition of land is concerned wherein it is specifically provided that the State Government may for carrying out the purposes of this Act, compulsorily acquire the land under the Land Acquisition Act and acquisition of any land for any of the said purpose shall be deemed to be a public purpose within the meaning of said Act. Therefore this provision itself shows that the State Government is an "acquiring body" and not the petitioners. Further Section 27 of the said Act provides that for the furtherance of the object of the Act, the State Government may place that land at the disposal of the Corporation. This provision itself shows that the Corporation is not at all "acquiring body" and only State Government is "acquiring body" and therefore it has to be concluded that petitioner in this case is not "State and acquiring body" and therefore is not entitled for exemption from payment of Court Fees.

7. In view of this position, I do not see any reason why the order passed by the Deputy Registrar, Establishment and Taxing Officer of this Bench should be interfered with, as it is just, legal and proper and therefore would require no interference. In the result all the Civil Revision Applications stand dismissed. Under the circumstances, there shall not be any order of cost. The learned Counsel for the petitioner states that they have already deposited requisite Court Fees in the Court. Therefore it is needless to say that those amounts shall be applied for payment of Court Fees in the said Appeals.