

(1981) 06 BOM CK 0011

In the Bombay High Court

Case No : Chamber Summons No. 120 of 1976 in Suit No. 199 of 1976

Indian Organic Chemicals Ltd.

APPELLANT

Vs

Chemtex Fibres Inc.

RESPONDENT

Date of Decision : 30-06-1981

Acts Referred:

Constitution of India, 1950 — Article 134A, 226

Citation : (1981) 83 BOMLR 406 : (1982) MhLj 698

Hon'ble Judges : Pratap, J;Desai, J

Bench : Division Bench

Judgement

Desai, J.—This is an unusual chamber summons taken out by the plaintiff in Suit No. 199 of 1976 filed on the Original Side of the High Court of Judicature at Bombay. The chamber summons has been referred for disposal to a division bench under Rule 59 of the Original Side Rules.

2. In the chamber summons Messrs. Indian Organic Chemicals Ltd, (hereinafter referred to as the "plaintiff") has sought a declaration that the Bombay Court Fees (Second Amendment) Act, 1974 be declared as ultra vires the powers of the State Legislature and, therefore, null, void and of no effect whatsoever. In addition to the three defendants to the suit the Advocate General State of Maharashtra, and the State of Maharashtra have been joined as party respondents 1 and 2 to the chamber summons and the plaintiff has in the chamber summons also sought an injunction against the Second respondent viz. the State of Maharashtra, that it should be restrained from recovering Court fees in excess of Its. 15000 from the plaintiff. It would appear that the amount of Court-fees payable on the plaintiff's claim in suit on ad valorem basis after the enactment of the impugned legislation came to Rs. 5,60,000 and the plaintiff was required before the plaint was accepted and allowed to be numbered to deposit the alleged excess amount of Rs. 5,45,000 with the Prothonotary and Senior Master and hence by the third prayer to the chamber summons the plaintiff seeks a refund of this amount of Rs. 5,45,000 which has been ordered to be

deposited with the Prothonotary and Senior Master. The other prayers are for costs and incidental reliefs.

3. Several affidavits have been filed on behalf of the plaintiff and on behalf of the State of Maharashtra in this proceeding. Before dealing with the same in detail and depth, however, it may be mentioned that the plaintiff's challenge to the Bombay Court Fees (Second Amendment) Act, 1974, hereinafter referred to as the "impugned Act" is on a double, if not a triple footing. In the first instance it has been averred in the affidavits and urged at the bar strenuously, particularly at the final stages of arguments that the impugned Act constitutes a mala fide piece of legislation and that the Legislature was "inveigled" into passing this enactment for collateral purpose and out of motives which cannot be accepted as bona fide. The principal challenge, however, proceeds on the footing that Court-fees in excess of Rs. 15,000 attempted to be exacted under the impugned Act would alter the character of the levy and would convert it from a fee into a tax. As stated earlier, on the subject-matter of its suit which is Rs. 5,56,30,731.87 P. the Court-fees payable by the plaintiff prior to the impugned Act was Rs. 15,000 which was the statutory ceiling of Court fees in the State of Bombay (as also in successor State of Maharashtra). The ceiling having been removed by the impugned Act the plaintiff would on ad valorem basis be liable to Court-fees of Rs. 5,60,000. The plaintiff has also alleged that although in the statement of objects and reasons it has been stated that the amendment is occasioned by the increase in the cost of the administration of justice and the unreasonable and grossly exorbitant amounts sought to be collected from the plaintiff and similar litigants after the impugned Act. According to the plaintiff, even prior to the said Act the State of Maharashtra was making a profit out of the administration of justice and the result of the impugned Act would be to enhance the said profit. Thus, in other words, the amendment has been attacked as a colourable and fraudulent exercise of legislative power seeking to augment public revenue by imposing a tax in the guise of levying a "fee". According to the plaintiff further, whenever an increase in Court fees is contemplated by legislation, such contemplated increase must be justified by facts and figures in order to show that the actual expenditure at the time of the increase exceeds the income from Court-fees. In the affidavit in support the plaintiff has also contended that the amounts collected by way of Court-fees must be specifically earmarked to meet the expenses of rendering the services relating to the administration of justice. According to the plaintiff in the State of Maharashtra the collections are merged in the general revenue and are not set apart or appropriated for rendering these services. The collections then would, according to the plaintiff's submission amount to compulsory exactions of money and would cease to constitute payment for any specific service rendered.

4. Before dealing in depth with each of the heads of challenge and considering the material brought on record in support and in rebuttal thereof, it would be proper to give a brief historical survey of Court fees legislation in this State. Prior to the enactment and coming into force of the Bombay Court Fees Act, 1959,

Court-fees was a central subject and in the central enactment there was always a ceiling on the amount of Court-fees payable. The Bombay Court Fees Act, 1959, however, as originally enacted, failed to contain provision imposing such ceiling, but this obviously was an accidental omission and by Act 16 of 1960 enacted within a few months a ceiling was introduced and such ceiling on the amount of Court-fees remained operative upto such time as the impugned Act was enacted in 1974 and came into force. Thus upto 1974, except for a few months there was always in this State (and its predecessor) a ceiling on the amount of Court-fees payable by plaintiffs to civil litigation. The ceiling, however, was revised upwards from time to time.

5. The bill for the amending Act of 1974 is dated August 27, 1974 and the same was introduced in the Legislature on September 2, 1974. It was enacted by the legislature and assented to by the Governor on December 5, 1974. It was thereafter published in the Government Gazette on December 12, 1974. As these dates are somewhat material to the first head of attack, the statement of objects and reasons to the Act of 1974 appearing under the signature of Shri H. G. Vartak, Minister of Revenue, may be fully set out. It reads as under:

STATEMENT OF OBJECTS REASONS"

Under Article 1 and the Table of rates in Schedule I to the Bombay Court-fees Act 1950 (Bom XXXVI of 1959), in cases not otherwise provided for in the Act, the party filing suits, appeal or cross objection has to pay an ad valorem fee in proportion to the amount or value of its claim. But there is a maximum limit of Rs. 15,000 for such fees with the result that a person having a claim of Rs. 12,70,000 pays a fee of Rs. 15,000 and a person having a claim of Rupees one crore or more also pays the same fee. In order to meet the increasing cost of administration of civil justice, it is considered necessary to remove the higher limit of court-fees on suits, appeals and cross objections aforesaid and to make the parties pay in proportion to their claims at the upper levels also without making any discrimination, and thus to restore the position prevailing when the Act was originally passed in 1959.

II. G. VARTAK Minister of Revenue.

6. We propose to deal with first of the three legal submissions which were ably and persuasively urged by Mr. Seervai who appeared in support of the chamber summons. In his submission it was incumbent on this Court to strike down the legislation as having been enacted mala fide and not for the purposes indicated in the above statement of objects and reasons but for demonstrably collateral purposes. According to him the object of removing the ceiling was to deter public-minded social workers from challenging governmental action in which the subject-matter of the litigation ran into astronomical figures although the plaintiff did not claim, apart from their general rights as citizens, any special rights for themselves in the same. According to him the object of removal of ceiling on Court-fees was to make it impossible for such citizens to vindicate general rights

of citizens, particularly against improper governmental action. The precise plea, however, did not rest upon such general considerations but was based upon a specific matter which was pending in the High Court at the relevant period.

7. This matter pertained to what came to be popularly known as the "Backbay Scandal." Various plots of land reclaimed from the sea at the Backbay in the South Bombay area were disposed of by the Government and according to the petitioners before the High Court this disposal was in total violation of the prescribed rules, without following the procedure laid down by Government resolutions and orders and in most cases, at a considerable if not gross undervaluation. Three petitioners purporting to act in a representative capacity filed a miscellaneous petition on the Original Side of the High Court which came up for admission before Rege J. The learned Judge felt that various disputed questions of fact were involved and, in his opinion, these could be properly gone into adequately, fully and properly only in a regular civil suit. Thus in August 1974 on this limited footing the petition was act admitted and no rule was issued.

8. At that time since there was a ceiling on Court-fees imposed, such a suit could have been filed on payment of Court-fees of Rs. 15,000 although the value of the subject-matter of the suit being various plots of land at Backbay (South Bombay) ran into crores of rupees. The sales of these plots of land were under the Government Rules dealt with by the Revenue Department of the Government of Maharashtra and indeed apart from the State of Maharashtra the petitioners in their petition had joined specifically, inter alia, the then Chief Minister and the then Minister of Revenue as party respondents to their petition. It is intriguing but not surprising according to the argument of Counsel that a bill for removal of the statutory ceiling on Court-fees came to be introduced within one month of this miscellaneous petition being rejected by Rege J. The effect of removal of ceiling may now be considered. Once the ceiling was removed, a regular suit on the Original Side of the High Court, whether filed in a representative capacity or not, whether the plaintiffs were claiming any personal reliefs in the subject-matter of the litigation or not, would be required to be valued on ad valorem basis and the Court-fee payable would run into lacs of rupees. According to Mr. Seervai the specific and precise object of the impugned legislation; was not to meet the increasing cost of administration of civil justice or to put an end to any alleged existing discrimination, but to make the filing of such suits difficult if not impossible and thereby to prevent the exposure in a Court of law of such "scandalous" state of affairs. As a matter of judicial history it may be pointed out that the three petitioners aggrieved by the rejection of their petition by Rege J. preferred an, appeal which came to be allowed by a Division Bench in December 1974 when on behalf of the petitioners a statement was made at the bar that the petition would be pressed only on the law points and the petitioners will accept for the purposes of the petition the factual position as revealed in the return filed on behalf of the State of Maharashtra. On such a statement being made the appeal was allowed and rule was issued. The said miscellaneous petition, along; with allied petitions came to be heard subsequently by Gandhi J.

After a very lengthy trial which went on for nearly four to six months, Gandhi J. substantially upheld the principal contentions of the petitioners. On behalf of the State of Maharashtra it was inter alia contended in the said matter that the State of Maharashtra was not bound to observe the rules for disposal of Government land which had been framed under the Land Revenue Code and that the petitioners had no right to impugn the Government decisions to dispose of its property viz. the plots of land to whomsoever it liked and on whatever conditions, including the price that it deemed fit. These contentions were decisively rejected by the learned Judge who found that the State had sold and disposed of the plots, in total violation of Rules which were binding on it and in total breach of all canons of propriety. The learned Judge specifically found the conduct of various Ministers, in the Government, including the said Minister of Revenue, unsatisfactory. However, instead of declaring all such sales null and void and directing fresh sales in compliance with the Rules, the learned Judge for various reasons indicated in the judgement, gave an option to the purchasers to regularise the sales, on payment of 33.1/3 per cent more than the prices at which they had earlier contracted to purchase these plots of land. Thus, obviously according to the learned Judge the land was sold at an under-valuation of about one-third. It may be mentioned in passing that from this judgment some of these purchasers as also the State of Maharashtra, preferred appeals but ultimately those appeals were not pressed and were allowed to be withdrawn. The purchasers accepted the one-third enhancement in the price as directed by Gandhi J. and presumably the State accepted the legal position and the general observations as to the conduct of the Ministers as laid by Gandhi J. in his judgment.

10. It is in this background, according to Mr. Seervai, that the very Minister of Revenue whose conduct was being impugned in the Writ Petition chose to introduce in the State legislature the amendment Act of 1974 ostensibly to meet the enhanced cost of civil justice, but in reality according to Counsel to obstruct judicial scrutiny of the actions of his department and of his own.

11. In our opinion, although Mr. Seervai has been able to establish a fairly plausible case as regards mala fides on part of the then Minister of Revenue, the same is of no avail to him for the purposes of impugning the law duly enacted by the legislature. What Mr. Seervai has been able to establish at the highest is perhaps that the bill was introduced mala fide by the concerned Minister and that the statement of objects and reasons appended thereto did not reflect the real objects and that in this manner the legislature was induced to enact the law on "false pretences". The fact, however, remains that the law has been duly enacted by the legislature by the necessary majority. It is true that this was a Government measure introduced by the Government. In our opinion, even assuming, that improper motives or mala fides on the part of the executive (or one minister) are established and at least a very strong case had been made out in respect thereof by the plaintiff, this is not sufficient to upset the legislative mandate contained in the amending Act of 1974 duly enacted by both houses of

the Maharashtra Legislature by necessary majority. If any person feels that the introduction) of the legislative measure and the basis for its recommendation by the executive to the legislature is made mala fide or for collateral purposes, it is not open to the party to impugn the enactment in a Court of law on such grounds to obtain a declaration that the law is invalid. The remedy of the party, in our opinion, was to make a representation to the legislative body pointing out the mischief sought to be supported by the legislation and to prevent enactment of the law by proper lobbying". It is equally open to the party to canvass public opinion and legislative opinion subsequently as that a climate is created for the repeal or modification of the offending legislation. It is not open, in our opinion", under our Constitution to impugn a law of the type we are considering duly enacted by the legislature, admittedly within the powers of the legislature and not offending any constitutional provision merely on the ground that the introduction of the bill constituted mala fide action on the part of a minister. Thus we find no substance in the first submission and the impugned law cannot be declared null or void on the basis of this plea.

12. Before turning to the affidavits and the annexures thereto it is necessary to set down the correct legal position as to the levy by way of Court fees. The legal position seems to have been settled by the Supreme Court in *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, After considering various legislative entries the Supreme Court observed:

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.

13. The Supreme Court went on to observe that once the conclusion was reached that "fees taken in Court" cannot be equated to "taxes," there was no essential difference between fees taken in court and other fees. According to the Supreme Court the word "fees" must bear the same connotation in Entry 77, list I and Entry 96 list I or Entry 3 list II and Entry 66 list II. The Supreme Court observed further in *Zenith Lamps" case (supra)* that the true nature of fees has been laid down by the Supreme Court in *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, In the above case it was observed at page 1186 by Hegde J. as follows:

From the above discussion, it is clear that before any 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.

14. The Supreme Court then went on to consider what was requisite in a valid scheme of Court-fees. The relevant observations are to be found in para. 31 of the report. The same read as under:

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 a 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 correlation with the fees collected and the cost of administration of civil justice.

15. In para. 46 of *Zenith Lamps*" case (supra) the Supreme Court observed that whenever the State Legislature generally increases fees it must establish that it is necessary to increase Court fees in order to meet the cost of administration of civil justice. According to the Supreme Court as soon as the broad co-relationship between the cost of administration of civil justice and the levy of Court fees ceases, the imposition becomes a tax and beyond the competence of the State Legislature.

16. Thus in *Zenith Lamps*" case (supra) the Supreme Court upheld the view of the Madras High Court which was under consideration and which was to the effect that the Court-fees must contain the essential element of fees as laid down in other decisions by the Supreme Court. The Supreme Court also upheld the following approach which had been propounded by the Madras High Court in: *Zenith lamps and Electricals, Limited v. The Registrar, High Court, Madras* ILR (1968) 1 Mad. 247

If the element of revenue for the general purposes of the State predominates, than the taxing element takes hold of the levy and it ceases to have any relation to the cost of administration of the laws to which it relates, it becomes a tax. Its validity has then to be determined with reference to its character as a tax and it has to be seen whether the Legislature has the power to impose the particular tax. When a levy is impugned as a colourable exercise of legislative power, the State being charged with raising a tax under the guise of levying a fee, courts have to scrutinize the scheme of the levy carefully, and a determine whether, in fact there is correlation between the services and the levy, or whether the levy is excessive to such an extent as to be a pretence of a fee and not a fee in reality. 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 the 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 service as others may, will not change the essential character of the levy.

17. In our opinion it is this approach that must govern our consideration of the material brought forth in the various affidavits.

18. In *Central Coal Fields Ltd. and Another Vs. Jaiswal Coal Co. and Others*, Krishna Iyer J. observed that although the matter before the Supreme Court had ended well, it had lessons to teach and bore testimony to one of the banes of the Indian litigative process. Krishna Iyer J. observed that it was deplorable,

that the culture of the *magnum curia* notwithstanding the Anglo-Indian forensic system and currently free India's court process - should insist on payment of court-fees 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 88A to ensure that opportunities for securing justice are not denied to any citizen by reason of economic...disabilities.

These comments were made in the context of litigation where if an ordinary suit was filed the plaintiff was required to pay Court-fee of Rs. 28 lakhs but would be pertinent even where the Court-fee fixed by the statute is five lakhs or ten. This is certainly a taxing pre-condition for intending litigants but the question is whether it has ceased to be a "fee" and become a "tax"?

19. It may be mentioned in passing -"that the Bombay High Court in *The Central Provinces Syndicate (Private) Ltd. Vs. Commissioner of Income Tax, Nagpur*, , had taken the view that the Bombay Court-fees Act of 1959 was in essence a taxing statute and that the fees collected under the said Act were for the purposes of raising the general public revenue. This was when a Division Bench of the Court was considering the validity of the levy of Court-fees in, a group of Income Tax applications. It would appear that in view of the decisive Supreme Court pronouncement subsequently given in *Zenith Lamps*" case (supra) the said decision of the Bombay High Court would not now reflect the correct legal position.

20. Counsel appearing on behalf of the petitioner submitted that although it would be the Supreme Court decision in *Zenith Lamps*" case (supra) which would lay down a binding law as far as all High Courts are concerned, considerable valuable material having relevance on the question and of great persuasive authority would be available from a perusal of the original Madras High Court decision which was carried tot the Supreme Court. This decision is to be found reported in *Zenith Lamps v. Registrar, High Court, Madras*, (supra).

21. Natesan J. speaking for the Bench has initially set down the history of the levy of Court-fees as applicable to suits on the Original Side of the Madras High Court. Ultimately it is found that the Division Bench was considering the levy as

existed under the Madras Court-fees and Suits Valuation Act, 1955, which had totally given up the slab system and the tapering scale on the slab earlier in vogue and imposed uniform levy of 7 1/2 per cent ad valorem on the subject-matter of the claim without any limit whatsoever. In a very learned and exhaustive judgment are to be found pertinent observations of the Division Bench of the Madras High Court dealing exhaustively with various facts of the problems. Some of these with which we are fully in agreement may be extracted.

22. In the first place the following observations to be found at pages 328 and 329 illustrate an important aspect of this problem:

In our view, there is another aspect of the matter. The actual suitor, who goes to the Court and avails himself of the machinery of the administration of justice which the State provides in discharge of one of its fundamental functions, is not the only person benefited by this activity of the State. For every cause that comes to the Court, many may not arise at all, the very existence of the Court and the fact that the State through its machinery would enforce rights and obligations recognized by law deter many a would be defaulter from carrying out his obligations. The existence of rights declared, recognized or given by laws, will be of little avail if there is no machinery for securing them when denied. Laws are automatically adhered to and obligations duly discharged by a person not necessarily and always from a recognition of a sense of duty, but because of the existence of a machinery for enforcement and the consequences that might follow, if the aggrieved party seeks his remedy through Court. A suitor who goes to Court and seeks a special benefit, may be liable for a fee but whether there are enough cases or not, some Courts at least would have to be maintained, and when the suitors are few it would be taxing them if they are called upon to bear the entire cost of the administration of justice in all its branches without any reference whatsoever to the services rendered to the few that are driven to the Courts to seek justice. In such a case suitors are called upon to meet also costs of the general expenses of a department of the Government without any correlation, to the services rendered....

23. The general approach which seems to have been substantially approved by the Supreme Court later on is indicated in the following passage to be found at pages 340 and 341 of the Madras judgment:

...Fees as already stated may be of various kinds, and there can be no general definition applicable to all cases. They may have characteristics according to the need or occasion of the levy. But the essential element is that it is a levy in consideration of services performed by the State for the benefit of the individual, who is called upon to make the payment, and it cannot be an exaction that cannot be reasonably correlated to the services. Of course, there is some element of taxation in a fee; there cannot but be. All the same the essential distinction is there, and the question will always be to look for the pith and substance, whether the taxing element predominates. If the element of revenue for the general purposes of the State predominates, then the taxing element

takes hold of the levy and it ceases to have any relation to the cost of administration of the laws to which it relates; it becomes a tax. Its validity has then to be determined with reference to its character as a tax and it has to be seen whether the legislature has the power to impose the particular tax. When a levy is impugned as a colourable exercise of legislative power, the State being charged with raising a tax under the guise of levying a fee, Courts have to scrutinize the scheme of the levy carefully, and determine whether, in fact, there is correlation between the services and the levy, or whether the levy is excessive to such an extent as to be a pretence of a fee and not a fee in reality. 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 the 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 service as others may, will not change the essential character of the levy. Nor can the feature that it is not separately funded be decisive in the matter. However, when not funded, reasonable correlation must be established* and it must be shown that the receipts are meant for the services. When a levy is challenged as unreasonable and beyond the legislative power which authorised only a fee, the decision will have ultimately to depend upon the particular facts of the case...

The Division Bench thereafter very fairly and correctly observed that there need not be exact correlation and concedes that in many cases this may be a practical impossibility, but according to the Bench and with this we agree:

the levy should not be so distributed that it is grossly disproportionate to the services, or requirements.

24. Thereafter we find the Division Bench dealing with the figures submitted by the returns made on behalf of the State of Madras. It has been observed that there is no justification in calling upon the civil suitors to bear the cost of administration of criminal justice. We are in total agreement with the above view. Similarly it has been observed on that very page (page 358) that private suitors ought not to be required to meet the expenses of the Government incurred when the suits are being instituted or defended by the State and in connection with maintaining of officers like the Government pleaders and others assisting the State and giving advice in the conduct or defence of civil actions. We also concur in this.

25. The Court thereafter considers the propriety in fixing the levy of Court-fees on ad valorem basis depending on the subject-matter of the plaint. It observes: (at pages 368 and 369):

.. .Court-fees, to a certain extent, may properly be in proportion to the claim. The value of the claim has been made a basis of fixing the forum for adjudication. The privilege of a first appeal on facts and the forum of the appeal, further appeal and appeal to the Supreme Court depend generally on the value

of the suit. In a suit of small cause nature no second appeal is available. The time taken in Court will to a certain extent depend on the suitor's interest in the litigation. The suitor's interest in the litigation will ordinarily depend on the benefit he hopes to gain therefrom. No doubt the benefit will be, relative to the suitor, and depend on several factors, may not be capable of being evaluated in all cases purely in terms of money, but the money value of the claim will have its own weight and relevance. One can therefore assume that the value of the claim will have relevance in fixing the levy, but we can see no core-relation when the levy is raised in direct proportion to the claim. In this context we may point out that in the taxation of cost, Advocate's fee is not calculated at a uniform rate but tapers, and sharply, as the claim goes up. Irrespective of the magnitude of the claim and the complexity of the case and the anxiety of the suitor, a limit will be reached so far as the service that could be rendered in Courts is concerned. Judicial time is not spent in direct proportion to the value of the claim. It may have relation to the question involved. That appears to be the reason behind the maximum Court-fee originally prevalent and even now found in some States. 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 Rs. 50,000, the levy though without limit was comparatively a nominal sum. There may be some justification 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. We have not heard any special argument that an upgraded levy and without limit is reasonable. So far as Courts are concerned, they will have to give the same care and attention to all claims irrespective of their magnitude.

These observations may be regarded as the crux of the problem before us. Ultimately after considering the challenge and the arguments advanced in rebuttal thereof the Division Bench of the Madras High Court observed (at page 372):

.. .The problem is in the distribution of the levy in a practical and reasonable manner so as to fall fairly equitably on all suitors, that no particular class or section of them is disproportionately hit and made to bear more than their fair share of the expenditure on the administration of justice, on considerations not germane in the context of the levy authorised by law. There can be no exact correlation, but the present levy of its incidence on suits with large claims, cannot but be manifestly unreasonable. As it is, as the value of the claim goes up, the levy becomes more and more unrelated to the object of the levy. A few suitors would be made to bear a heavy share of the expenditure unrelated to the services required by them with the result that, when the claims are high, only one of the two essential elements of a levy to be regarded as a fee is left. While the occasion for the levy is the demand of special service by the suitor that is, one element is present, there is no reasonable correlation between the levy and the services that is the second element is lacking. The levy becomes excessive,

grossly disproportionate and unreasonable qua the particular suitor, it ceases to be a fee and becomes a tax for him.

26. According to Mr. Seervai when the ceiling was removed in Maharashtra by the impugned Act a few suitors such as the plaintiff in the present case are being made to bear an unduly heavy share of the expenditure incurred on administration of Justice unrelated to the service required by or furnished to them with the result that the levy has become excessive, grossly disproportionate and unreasonable qua the particular suitors. According to him, therefore, the levy has ceased to have the character of a "fee" and has become a "tax." This vice in his submission is inherent in the amending Act of 1974 and the same, therefore, is required to be struck down in its entirety. This argument is independent of the question whether in fact any enhancement in collection of Court-fees became necessary in August 1974 to meet the enhanced cost of administration of justice as indicated in the statement of objects and reasons.

27. Now it is true that in Madras initially before the 1955 Act there was in existence a scheme of levy of Court-fees with a slab system correlated with a tapering levy without any maximum and the observations of the Division Bench of the Madras High Court earlier extracted at pages 368 and 369 do seem to reflect the view of the said Division Bench that in its opinion it was not necessary for a valid Court-fees Act to provide for a maximum or a ceiling particularly where the scheme embodied a slab system with a tapering levy. We find, however, some logical incompatibility with the observations on these two pages with the further observations also extracted at page 372. Further, in the present case we are not considering a case where Court-fees have been levied for a long period without any ceiling or maximum limit and such omission is challenged for the first time after the law has held the field for that long period. What we are here considering is abolition of an existing ceiling by the impugned Act. 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 to this question must be in the negative. Even if the State had satisfied itself that there was necessity for enhanced collection of Court-fees, there could have been a rationalisation of the structure and such rationalisation could, inter alia, result in the raising of the ceiling. The challenge on the basis of this aspect of the argument which we are at present considering would have lost much of its force if for instance the ceiling had stood enhanced from say Rs.

15,000 to Rs. 20,000 or even Rs. 25,000. In such a case the Court might not be able to observe that the levy had become so excessive, grossly disproportionate and is unreasonable qua a particular suitor that it has ceased to be a "fee" and had become a "tax". In the case before us the fact that the plaintiff on its claim is called upon to pay after the amending Act of 1974 Court-fees of Rs. 5,60,000 eloquently testifies to the harshness, the excessive character and the unreasonableness of the levy and once such conclusions are reached, it will have to be held that this levy at the higher figure which is secured by the impugned Act has converted the "exaction" from a "fee" into a "tax". If that be the result secured through the enactment, which has brought about this result would be liable to be struck down.

28. Once having reached the above conclusion, it is clear that this Court is not really called upon to go into the figures annexed to the various affidavits and to decide whether in August 1974 at or before the time of introduction of the said bill which fructified into the impugned Act, the State of Maharashtra had satisfied itself that enhancement in the levy of Court-fees had become necessary by reason of increased cost of administration of justice. As a matter of fact, a perusal of the affidavit filed on behalf of the State would seem to suggest that no real or proper enquiry was made into this question at all and indeed the first of the affidavits filed on behalf of the State, as will be pointed out subsequently, maintains a position contrary to the law laid down by the Supreme Court in *Zenith lamps*" case.(supra).

29. This chamber summons was taken out on February 27, 1976 and the affidavit in support thereof also bears the same date. The first return on behalf of the State of Maharashtra was filed some time in March 1979 i.e. after a period of over three years. One Purushottam Ganesh Bhide, then Assistant Secretary to the Government of Maharashtra, Law and Judiciary Department, is the deponent of the said affidavit.

30. Some of the statements to be found in the said return deserve to be reproduced. In para. 5 (a) of the affidavit in support it had been submitted on behalf of the plaintiff that the imposition exacted under the impugned Act is a tax and not a fee and hence the said Act is void, illegal and liable to be struck down. In reply thereof the said Assistant Secretary in the Law and Judiciary Department denied that in the matter of Court-fees the State legislature was only entitled to levy a fee and not a tax as alleged. (Para. 6 of the affidavit in reply.) In other words, in March 1976 the attention of the State had been drawn to the fact that the levy of Court-fees was required to be balanced by the element of quid pro quo which is inherent in the concept of a fee but the State even three years later maintained to the contrary and submitted that the levy of Court-fees could be equated with taxes. This stand was totally at variance with the judgment given by the Supreme Court in *Zenith lamps*" case (supra) which had been reported as far back as 1973. Thus, although the Supreme Court had laid down the law of the land in the matter of Court-fees indicating the proper and correct approach,

the State of Maharashtra or perhaps the said Assistant Secretary perhaps thought that this law laid down by the Supreme Court was not binding in Maharashtra. Similarly we find a number of other submissions in the said affidavit patently and obviously contrary to the law laid down by the Supreme Court in the *Zenith Lamps*" decision (supra) which law the Constitution of India declares as binding on all authorities within the Union of India. In para. 11 of the return the deponent maintains that it is competent for the State to reimburse itself for costs incurred in the administration of justice by levy of Court-fees and goes on to maintain that Court-fees could be imposed for compensating the Government both for the costs of civil as well as criminal administration of justice-(emphasis supplied in italics). In para. 8 of the affidavit, according to Bhide the actual expenditure of the administration of justice in March 1979 exceeded the income from Court-fees, This, according to the return was borne out by the Statement Ex. 1 annexed to the said return. The said return also refers to the revision of pay scales according to Bhole Commission which was effective from April 1, 1976. The return conveniently omits to mention that this Commission was not even constituted in August 1974 when the Bill for the impugned Act was moved in the legislature. Turning to the statement annexed as Ex. 1 to the return it is found that the statement does not differentiate between expenses incurred for civil justice and criminal justice and is for 9 to 10 years 1967-77, The last three years out of the said ten years are subsequent to the initiation and enactment of the offending legislation.

31. To this return the plaintiff filed an affidavit in rejoinder. As contrasted with the period taken by the State of Maharashtra which has filed its return and not a satisfactory one-after three years, the plaintiff filed their affidavit in rejoinder in March 1979. It was pointed out in the rejoinder that the statement Ex. 1 annexed to the return was on the face of it contrary to the law laid down by the Supreme Court in *Zenith lamps*" case (supra). It was pointed out further that the Supreme Court had held in the said case that where Court-fees are increased, the burden of proving the necessity of that increase is on the Government. As the statement Ex. 1 was not in accordance with the guidelines propounded by the Supreme Court, it was inter alia submitted that the State Government had failed to discharge the burden of proof which rested upon it, and had failed to justify or substantiate the necessity for enacting the impugned enactment. In the affidavit in rejoinder filed on behalf of the plaintiff attention was also drawn to the report of the law Commission and the views expounded therein that the expenses incurred by the Government in engaging Counsel to fight their civil litigation cannot be considered as part of the administration of justice inasmuch as Government was a litigant like any ordinary litigant. It was further submitted in the said affidavit in rejoinder that as far as the High Court was concerned, the High Court administers public justice not only in criminal appeals and in civil cases but also in the exercise of its powers under Article 226 of the Constitution of India. It was submitted that the principles which governed the allocation between civil and criminal justice would also apply to the work done by the High

Court in administering justice under Article 226 of the Constitution of India and the expenses incurred for dealing with writ petition under Article 226 also ought to be excluded from consideration when scrutinising the justification for enhancing the levy of Court-fees. It may be mentioned that in the said affidavit in rejoinder details were given in para. 10 as to what according to the plaintiff were the real reasons or motives for moving the Amendment Act of 1974. It was pointed out that Rege J. dismissed the miscellaneous petition challenging the sale of plots at Backbay by a judgment which was delivered from August 5 to 8, 1974 and the Bill in respect of the impugned Act came to be prepared on August 22, 1974 and was introduced on the floor of the legislature on September 2, 1974. It was contended that the aim of the measure was to stifle further litigation by way of suits to expose a public scandal.

32. It is quite clear that had the matter rested at that stage, it would have to be held that the State had failed to discharge the burden to justify the increase in Court-fees which burden was cast on it by the decision of the Supreme Court in *Zenith Lamps*" case (supra). The burden cannot be discharged on general principles to be found contained in the statement of objects and reasons of the bill which ultimately came to be enacted as the impugned Act or by the type of statement which is annexed as Ex. 1 to the return. The return was both delayed and defective. It reveals ignorance of the law laid down by the Supreme Court or defiance of the same.

33. The relief sought for by the plaintiff could have been and would ordinarily have been sought for by a writ petition. Normally pleadings in such matters are supposed to be completed when the affidavit in rejoinder is filed by the petitioner or plaintiff. In the instant case, however, it would appear that the State of Maharashtra became aware of the correct legal position and started working on proper lines only after a copy of the rejoinder was received by it which exposed the underlying infirmities of the approach in the return earlier filed on behalf of the State by Assistant Secretary Bhide. This is borne out by the affidavit in surrejoinder which is declared in July 1979. The affidavit in sur-rejoinder is clearly an exercise in ex post facto justification. What ought to have been done in 1974 and was not done is now sought to be done in 1979, surely an instance of putting the cart before the horse. This lends credibility to the plaintiff's contention, that the impugned Act was only ostensibly for the purposes indicated in the statement of objects and reasons but was in reality enacted in order to prevent a suit being filed in respect of this scandalous state of affairs subsequently discovered to exist by Gandhi J. in respect of sale of plots of land at Backbay. On May, 1979 the Assistant Secretary Bhide for the first time sought from the High Court break-up of figures between expenditure incurred for civil justice and criminal justice. Ex. G. collectively to the said affidavit in- sur-rejoinder also annexes a copy of confidential letter dated November 29, 1975 addressed by the Registrar, High Court, Appellate Side, to the Secretary, Government of Maharashtra, Law and Judiciary Department drawing attention to the decision of the Supreme Court in *Zenith Lamps*" case (supra) and specially

pointing out that the question of enhancing Court-fees was required to be related to the cost of administering civil justice only. It is difficult to appreciate how after receipt of this letter dated November 29, 1975 the State of Maharashtra could have filed its return in March 1979 making submissions contrary to the principles laid down in *Zenith Lamps*" case (supra) which principles had been brought to the attention of the Secretary, Law and Judiciary Department, by the above letter of the High Court. Surely the return filed in this matter by the Assistant Secretary can- hardly be characterised as responsible or proper. The Courts ordinarily expect the State to make an effort to file a proper return which expectation has been belied in this matter. The High Court by its said letter dated November 29, 1975 also drew the attention of the Government to various figures and the conclusion of the High Court in para. 7 of the said letter was "that on the basis of these statistics there is no ease for revision of the Court-fees." Now it would appear from the said correspondence that initially there was some letter of the High Court dated February 8, 1973 in which some erroneous conclusions were forwarded to the Government and this error was brought to the attention of the Government by the High Court by its letter dated March 15, 1975. This earlier letter was followed up by the letter dated November 29, 1975. Despite the clear opinion of the High Court, however, the Government persisted in filing a return which was based on submissions at variance with the decision, of the Supreme Court in *Zenith Lamps*" case, (supra). Ordinarily, these pleadings should have been sufficient for holding against the Government even apart from the basic fallacy earlier adverted to in removing the ceiling on Court-fees which appears to us to be essential if the statute levying Court-fees is to be cleaned of any feature which may convert a fee into a tax. Here we have the instance of a Government which has something proper and which on some unfounded and baseless assumptions it removes, in order to serve two ostensible purposes set out in the statement of objects and reasons viz. (1) to meet the higher cost of administration of justice and (2) to prevent discrimination. This discrimination is a figment of the Government's imagination and based entirely on a false view of what services are rendered by the Courts to litigants. According to the Government's thinking higher services or better services are rendered to a litigant who has a higher claim. In our opinion there is no justification for this line of thinking. We are aware when this comment is made that this line of thinking has appealed to a Division Bench of the Karnataka High Court and the said judgment is *Ram Bhadur Thakur and Co. and Another Vs. State of Karnataka*, With respect to the Division Bench of the Karnataka High Court, we are unable to find any logical basis by which the observations to be found in para. 32 of the report can be supported.

34. Chandrasheker C. J. of the Karnataka High Court speaking for the Division Bench poses the following question:

Why should not a plaintiff or an appellant who seeks the services of a civil court to recover Rs. ten lakhs, pay ten times the Court-fee payable by a plaintiff or appellant to seek the service of a civil court to recover rupees one lakh only.

The answer which did not appeal to the Division Bench is fairly obvious. If the levy of Court-fees is not to partake of the characteristics of a tax or in the words of Krishna Iyer J. to amount to a sale of justice and is to retain the characteristics of a fee then there is no warrant for the State seeking to recover nearly ten times the Court-fees from the former litigant (i.e. one having a claim of Rs. ten lakhs) as would be recovered from the latter since services are not rendered by Courts to such litigants depending upon the largeness of the claim. As a matter of fact such litigant who has a claim of Rs. ten lakhs is occasionally an initial loser in that amount which he is seeking to recover from the defendant. To ask him to pay higher Court-fees in such a situation would perhaps tantamount to like adding insult to injury.

35. It is thus obvious from the above discussion that in 1974 the Government had done no exercise for really ascertaining whether there was any real increase in the cost of administration of justice. It is equally obvious that this exercise was undertaken for the first time in 1979 after receiving a categorical letter from the High Court to the effect that there was no warrant for any upward enhancement of Court-fees. Further, whatever was earlier done, as reflected in the returns, exposes the erroneous legal basis of the Government's view which is contrary to the law laid down by the Supreme Court. Thereafter in the affidavit in surrejoinder dated July 30, 1979 the Assistant Secretary conceded that it was not possible to separate from the accounts the cost of administration of civil and criminal justice. However, very curiously despite the clear pronouncement by the Supreme Court, in para. 5 the State maintained that irrespective of whatever the Supreme Court, had said the State's view was that the cost of administration of justice would include administration of civil as well as criminal justice. Obviously, the State of Maharashtra did not consider it bound by the law as laid down by the Supreme Court despite the clear constitutional position. However, as far as this Court is concerned, it is not permitted to do so. It would appear that in the said affidavit in sur-rejoinder there is reference to certain figures of break-up between civil and criminal justice worked by the High Court at the request of the Government. In our opinion, it is not necessary or proper to refer to these figures. We have ascertained for ourselves from the Appellate Side office that these figures had been worked out on an ad hoc basis and not on any proper detailed consideration. It would appear that on receipt of the request from the Government what the High Court did was to write to various District Judges and most of the District Judges, if not all, have apportioned the cost of administration of justice between the civil and criminal sides on ad hoc footing i.e. either 50 : 50 or 2/3rd : 1/3rd or 1/3rd : 2/3rd, We have seen the original correspondence between the High Court and the District Judges and apart from giving the bald figures the rationale or the basis of the ratio adopted has not been gone into or explained by the District Judges concerned. Here it may be pointed out that the limitation as to staff experienced by Courts right upto the High Court level makes it impossible for the Courts to supply the information in depth which the Government wanted. In any case, the Government was required to seek this

information in 1974 and not in 1979 as it did to justify the ex post facto step taken precipitously five years earlier and the aim of this exercise was obviously to maintain its stand despite the High Court's view to the contrary as expressed in the letter dated November 29, 1975.

36. The matters came up for further hearing before us on January 21, 1980. It is at that time that this Court scrutinised the above correspondence and found it unsafe to rely on the figures which the Government had secured from the High Court. It was then discussed that it would be appropriate to consider the figures as are found in the budget books of the state for the relevant years. This necessitated further affidavits being filed as it was discovered that during the five years under consideration there had been a fundamental change in the method adopted by the budget, particularly as regards the establishment costs of the Courts. No reason was suggested why this change took place, but this necessitated further adjournment till ultimately on October 6, 1980 a final affidavit was filed by the Government. However what this Court had sought for was an agreed statement prepared by the parties in collaboration as per oral directions given by the Court from time to time. Unfortunately, the parties were unable or unwilling to tender an agreed statement.

37. During the course of arguments it was submitted on behalf of the plaintiffs that there is no reason why the litigant should meet the total cost of the administration of civil justice as this was clearly a duty of a civilised State and the State must necessarily make a contribution towards such administration. It was submitted further that in connection with the levy of Court-fees, expenses of only the administration of civil justice must -be taken into account and expenses incurred for criminal justice and for public justice (writ jurisdiction of the High Court under Article 226 of the Constitution of India) must be excluded. It was suggested that broadly speaking as far as the Bombay High Court was concerned, the apportionment between civil and criminal justice should be in proportion of 2 : 1 and for other Courts it may be in the proportion of 1 : 1. It was submitted in the course of oral arguments that bearing in mind the increasing extent of writ work, the ratio 2 : 1 suggested by the plaintiffs was more than fair to the Government and that the truer ratio (after excluding expenses pertaining to writ matters) to-day would be 3 : 2 or even 1:1. It was submitted further that, the amount spent by Government on its legal advisers and Counsel is not part of the cost of administration of justice and must be excluded. As far as the figures are concerned, there was one item in respect of which parties adopted diametrically opposed stand. This was an item concerning court buildings and quarters for judicial officers. It was submitted on behalf of the plaintiff that the capital cost of a building having a life of fifty to sixty years cannot be thrown on civil litigants in a particular year. Again various difficulties in apportionment of such capital costs were indicated to us. Separate detailed figures of repairs for instance were not available. It was also pointed out that English practice was to exclude this item from the cost of administration of justice and this seems to have been also the view of the Madras High Court when

it reconsidered the Zenith lamps" case (supra) after remand from the Supreme Court. It was submitted by the plaintiff that the cost of administration of civil justice must principally consist of the salaries and the other incidental expenses of the Judges and their staff (necessary for civil judicial work) and cannot include in its compass capital cost of buildings, whether for Courts or quarters for judicial officers or the amounts spent for maintenance of such buildings. It may also be pointed out that the initial proposal for increasing the levy was made by the Government by its letter dated July 24, 1972 where it was made clear that the Government desired to augment revenue by increasing the existing rates of taxes and fees. This was obviously the original idea of the Government.

38. In our opinion, it is somewhat futile to go deeper into this morass of figures. The exercise which ought to have been done by the Government prior to 1974 was not done by it. It proceeded to initiate legislation on erroneous considerations without doing proper home-work which it was enjoined to do. It did not and perhaps even to-day does not have clear concepts of what is and what is not required to be considered. The return initially filed was totally unsatisfactory and the further affidavits have also not been fully helpful. As the burden rested: on the State, several adjournments were taken to work out the figures. Despite all the- indulgence shown, it is difficult to accept any of the figures submitted as fully reliable. It is sufficient to observe that if the figures for the five financial years immediately preceding August 1974 are considered i.e. for the five years, the last of which will end with March 31, 1974, then there was no case at all for seeking to collect additional amount by way of increased levy of Court-fees. We are not concerned with the effect of Bhole Commission's recommendations which were subsequent to the impugned Act or the enhanced pay scales and allowances as a result of the rampant inflation of later years, particularly the last two to three years. If there is any deficit or short fall in 1978 or 1979, then such deficit may justify an enhancement in the levy of Court-fees in 1979 or 1980, but cannot be used for justifying an increase in 1974.

39. As stated earlier, it is unnecessary to set down the figures submitted by either side. The onus was entirely on the State. It has been demonstrated that there was no proper enquiry made before the bill for the amending Act was introduced in 1974 and even after 1979 there has been more or less a speculative and roving enquiry, some of it in Court itself. The result obviously is an unsatisfactory one and we do not have any very satisfactory statement on which full reliance can be placed. If the onus is on the State, in this state of affairs, it must be held that the State of Maharashtra has failed to discharge this onus. In other words, it has failed to substantiate its case that there was a real basis for enhancing the levy of Court-fees.

40. Further, and this is of vital importance, it has to be observed that in 1974 there was no attempt really to find out what was the extent of the possible deficit in the cost of administration of civil justice in the current or the next two to three years and to what extent it could be met by way of increase in levy of Court-

fees. Further any increase in the collection of Court-fees from removal of an existing ceiling is at best speculative and no figures were sought from the courts as to what difference in the collection would have been made in the earlier years had there been no ceiling. It was impossible for any responsible person to state with confidence in December 1974 that by reason of the removal of the ceiling the State was likely to enhance the collection by a particular amount in the next financial year.

41. Before closing the judgment we would like to observe that going through the Court-fees Act and the schedules it is found that there are a number of irrational anomalies in the enactment by reason of which the load is not evenly or properly distributed. There is undoubtedly a case for rationalisation of the structure of Court-fees and it is a moot point whether the State can, instead of attempting to rationalise the structure of Court-fees and by so doing recovering enhanced amounts, remove the ceiling and introduce the element of tax totally at variance with the concept of fee. It is possible to conceive of a Court-fees Act without a ceiling, but in such a case the tapering scale must be so graded that in effect, though not in strict theory, a limit will be reached. We have already observed that it is not possible to accept the submission that higher services are rendered by the Court to a litigant who has a greater claim or that it is just to charge him higher amount before rendering him any service. It is equally impossible to accept the position that if a ceiling was not imposed people would frivolously inflate their claims. If claims are inflated frivolously, even a successful plaintiff who obtains a decree for an amount much less than that claimed can be denied his costs or even made to pay costs. This would be the proper deterrent and not a schedule of Court-fees without any ceiling.

42. In our opinion, the plaintiff is entitled to succeed principally on the basis of the second of the three arguments, although in respect of each of them they have made out a substantial case. To recapitulate, the plaintiff has made out a strong prima facie case to suggest that the Minister of Revenue was motivated by collateral objectives when he proposed the said bill. In our opinion, however, the collateral motives on part of the Minister (the Executive) will not render a law passed by the Legislature invalid, null or void. However, we are clearly of opinion that removal of the existing ceiling on Court-fees which was Rs. 15,000 prior to the amendment Act of 1974 has introduced at certain levels of claims the element of tax. 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 in 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. The other ground mentioned in the statement of objects and reasons is patently fallacious and has only to be stated to be rejected. It is based on an erroneous view of the alleged services rendered to litigants having higher claims.

43. On these considerations, therefore, the plaintiff company is entitled to succeed in its challenge. In our opinion the Act is unconstitutional on both grounds 2 and 3 viz. that it introduces an element of tax which is not permitted and that the State of Maharashtra has not been able to satisfy us that in 1974 there was any deficit in the cost of administration of justice, as properly understood which required enhancement of Court-fees. The plaintiff company will also be entitled to the consequential reliefs sought for in the chamber summons viz. the refund of the balance amount of Rs. 5,45,000 together with accrued interest. In the result, the chamber summons is made absolute in terms of prayers (a) and (c). The Prothonotary to refund to the plaintiff company the amount of Rs. 5,45,000 together with interest earned on the said amount upto the date of withdrawal of the deposit from the Bank. The Prothonotary to act on the minutes.

44. As far as costs are concerned, although costs most ordinarily follow the event, in writ matters occasionally the Courts have given a go-by to the above rule and left the parties to bear their own costs particularly when parties are attempting to vindicate public rights or general rights. In this case bearing in mind the initial delay in filing the return, the unsatisfactory nature of the return itself and the time taken to produce figures the State of Maharashtra has not behaved as a "model" litigant should. Considerable time and energy have thus been wasted. A number of adjournments were required to be given in the matter because the State had not done its home-work and did not have with it the necessary material from which a statement of figures could be submitted. Bearing all these circumstances in mind, in our opinion, the second respondents are required to be directed to pay to the plaintiff the costs of the chamber summons which we quantify at Rs. 5000 (five thousand). There will be an order accordingly. We are conscious that even this figure will not fully compensate the plaintiff and the plaintiff will have to bear at least a minimum of five times the amount which we have ordered as costs of the chamber summons. Under the circumstances, to order payment of costs at a lesser figure would only be to do injustice to the plaintiff. There are also a number of other connected matters but the brunt of the work has been taken by the plaintiff and, therefore, the order for costs, if any, made in the other matters will be for much smaller amount.

45. Mr. Dhanuka applied for (I) stay of the operation of this judgment for a period of eight weeks till he can move the Supreme Court and (2) leave to appeal to the Supreme Court.

46. As far as the latter application is concerned, although an oral application for leave is permissible under Article 134A of the Constitution of India, we think this is a fit matter in which a regular petition for leave to appeal to the Supreme Court may be filed as it would normally contain or at least give an indication of the grounds on which the appellant wishes to assail the decision of this Court.

47. As far as stay of the judgment is concerned, bearing in mind the considerations which have weighed with us in upholding the challenge to the impugned Act, we are of the opinion that this is not a fit matter in which stay should be considered let alone granted. As far as suits already filed in which questions of refund may arise, it would be open to the State of Maharashtra to suggest continuation of the deposit in Court in case the State of Maharashtra has good grounds to be doubtful of recovering the amounts from the respective plaintiffs in case the State of Maharashtra succeeds in its attempt to uphold the impugned Act in the Supreme Court. In the instant case it cannot be said that the order which we have made in terms of prayer (c) directing refund of the excess amount, namely, Rs. 5,45,000 together with accrued interest will become irrecoverable from the plaintiff-company. In that view of the matter, there is no reason for staying the operation either of the judgment or of the order in terms of prayer (c) in the instant case. Each of the other cases, however, will have to be considered on its specific merits.