
(1990) 07 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 1815 of 1990

Kishore Kumar Kataruka

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-07-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Court Fees Act, 1870 — Article 11 Schedule 1

Citation : (1990) 2 PLJR 366

Hon'ble Judges : G.G. Sohani, C.J;S.C. Mookherji, J

Bench : Division Bench

Advocate : G.C. Bharuka and Ramesh Kumar Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

1. Heard learned counsel on the question of admission. With the consent of learned counsel for both the parties the matter is disposed of at the stage of admission. This is a writ petition filed under Article 226 of the Constitution of India and is directed against the order dated 1-3-1990 passed by the learned Additional District Judge III, Patna, in Probate Case No. 65 of 1989. The petitioner contends that the provisions of Article 11 of Schedule 1 of the Court-fees, Act, 1870, levying court-fees in respect of applications and letters of administration beyond Rs. 19,500/- are ultra vires and unconstitutional.

2. At the time of hearing learned counsel for the applicant brought to our notice a decision of the Supreme Court in P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, . The following observations of the Supreme Court in that decision are pertinent:--

Indeed, where a proceeding for grant of probate and letters of administration becomes a contentious matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs. 15,000/- on the Court-fee is fixed, there is no logical

justification for singling out this proceeding for an ad valorem impost without the benefit of some upper limit prescribed by the same statute respecting all other litigants. Neither before the High Court--nor before us here--was the impost sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate "fee" for another distinct source. It is purported to be collected and sought to be justified only as court-fee and nothing else.

The discrimination brought about by the statute, in our opinion, fails to pass the constitutional muster as rightly pointed out by the High Court. The High Court, in our opinion, rightly, held :

"There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Article 14 of the Constitution. On this ground also item 10 cannot be sustained.

We approve this reasoning of the High Court and the decision of the High Court is sustained on this ground alone.

3. It is not disputed before us on behalf of the respondents that the decision of the Supreme Court in the aforesaid case is directly attracted in the present case.

4. Following that decision, therefore, we hold that Article 11 of Schedule I of the Court-fees Act, 1870, as amended by the State of Bihar, in so far as it provides for levy of Court-fees on probate and letters of administration beyond Rs. 19,500/-, which is the upper limit, as prescribed for all other suits and proceedings under the proviso to Article I of the aforesaid Schedule, is discriminatory and to that extent Article 11 of Schedule I of the Court-fees Act, 1870, as amended by the State of Bihar, is struck down. This writ application is allowed accordingly. The order dated 1.3.1990 passed by the Additional District Judge III, Patna in Probate Case No. 65 of 1989 is set aside. There will be no order as to costs. The amount of Court-fees in excess of Rs. 19,500/-, if paid by the applicant, shall be refunded