
(1997) 04 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2924 of 1990 and 2791 of 1991

Maharaja Shree Umaid Mills Ltd., Pali

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1998 Raj 15 : (1997) 2 RLW 1037 : (1997) 1 WLN 555

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : M.S. Singhvi and B.L. Purohit, for the Appellant; G.M. Bhandari and P.R. Patel, for the Respondent

Final Decision : Dismissed

Judgement

1. Both these petitions are disposed of by this common order as the common question for decision is involved in these matters.

2. Writ Petition No. 2924/90 is filed by the petitioner Maharaja Shree Umaid Mills Ltd., Pali and the Writ Petition No. 2791/91 is filed by the petitioner Shree Rajasthan Syntex Ltd. Both the petitioners have challenged in these petitions the exorbitant enhancement of fees for testing and inspection of the petitioners' installation from the year 1977-78 and onwards. Except the service number, connected load and number of machinery connected to it rest of the particulars in both the petitions are same. The petitioners were required to pay the fees for testing and inspection of its installation under the provisions of notification dated 25-8-59 published in Govt. Gazette dated 27-8-59 made effective from 1-1-1959 by the State Govt. which provides that fees shall be charged in accordance with the scales prescribed in the Schedule to the notification dated 17-4-1956 published in Gazette dated 26-5-1956, The petitioners were required to pay the inspection fees initially at the rate prescribed under the old notification which is enhanced subsequently by notifications dated 16-6-1977 and 10-3-1988, Exs. 3 and 4 respectively. Exh. 7 and 8 are the demand notices in Writ Petition No.

2924/90 and Exs. 5 and 6 are demand notices in Writ Petition No. 2791/91. After the issuance of notification dated 16-6-1977 (Ex.3) the State Govt. issued another notification dated 10-3-1988 (Ex.4) enhancing the fees of Electrical Inspection of the premises of the customers. According to the petitioners it was exorbitant enhancement in the inspection fees. The petitioners have, therefore, challenged both the notifications dated 16-6-1977 (Ex.3) and 10-3-1988 (Ex.4) and the impugned demand notice issued against them as per the aforesaid notifications and also prayed that the respondents may be directed to refund the excess amount recovered from them under the impugned notifications dated 16-6-1977 and 10-3-1988, Exs. 3 and 4 respectively.

3. Both the learned Counsel Shri M. S. Singhvi and Shri B. L. Purohit for the petitioners submitted that no quid pro quo has been shown to justify the enhancement in the fees has to be accepted for want of any attempt on behalf of the respondents to justify the enhancement and the increase of this fees is so exorbitant particularly when the services rendered is the same and the installation remains the same. Therefore, it was submitted that in absence of any material produced to justify the enhancement, the vast difference in the amounts is by itself sufficient to indicate that there is no quid pro quo and the enhancement is arbitrary. It was, therefore; submitted that the impugned notifications as well as the impugned demand notices be quashed and set aside. In support of their contention both the learned Counsels have relied upon the Supreme Court decision reported in (i) Dilharshankar C. Bhachech Vs. Controller of Estate Duty, Ahmedabad, and (ii) District Council of the Jowai Autonomous Distt., Jowai and Others Vs. Dwet Singh Rymbai etc., and the unreported judgment of Division Bench of this Court delivered on 29th July, 1988 in D. B. Civil Writ Petition No. 334/1978 and other writ petitions.

4. The Deputy Govt. Advocate Shri Patel for the- respondents, however, submitted that the aforesaid judgments of the Supreme Court and the Division Bench judgement of this Court will not apply in the instant case because it was made clear by the Division Bench of this Court which allowed the group matters on 29th July, 1988 relating to the petitioners of those petitions only and qua those petitioners the notification dated 16-6-1977 (Ex.3) was held to be invalid and it was declared that those petitioners were liable to pay only the initial fees as prescribed prior to enhancement. Learned Counsel Shri Purohit and Singhvi submitted that the Division Bench of this Court has clearly held that the impugned notification dated 16-6-1977 was bad in law and that being the Division Bench judgment is binding to this Court. Mr. Patel further submitted that the petitioners have accepted the impugned notification dated 16-6-1977, Ex .3 and subsequent notification dated 10-3-1988, Ex.4 and they have never challenged the same till 1990 and 1991. He submitted that the earlier notification dated 16-6-1977 cannot be challenged now in view of the subsequent notification dated 10-3-1988, Ex.4. It is also submitted that even after the issuance of notification dated 10-3-1988 subsequent notifications have been issued and fees have been enhanced. Lastly, it was submitted that the Division Bench has

allowed four petitions by common order dated 29th July, 1988 which were filed in 1978 and one was filed in 1984. He submitted that there is a gross delay on the part of the present petitioners to challenge the impugned notifications dated 16-6-1977 and 10-3-1988, therefore, on the ground of gross delay and laches these petitions should be dismissed. It was further submitted that these notifications apply to thousands of customers and only the present two petitioners have filed these petitions. One more argument was advanced by learned Counsel Shri Patel that those petitions were decided in favour of the petitioners in absence of any affidavit and the material placed before this Court, but in the present cases detail reply-affidavits have been filed and it has been shown that the enhancement has been made in accordance with law only, therefore, this Court should not quash the impugned notifications and demand notices.

5. In case of National Engineering Industries Ltd., Jaipur v. Electrical Inspector, Rajasthan, D.B. Civil Writ Petition No. 334/1978 the Division Bench of this Court has held that the increase to this extent cannot be upheld merely on the ground of fall in money value during this period. It has been further held that fees should be correlated to the expenses incurred for rendering the service and, therefore, at least some correlation between the amount of fees and the service rendered must be shown when challenge is made on this ground. It has also been held that unless there is some material produced to justify the enhancement, the vast difference in the amount is by itself sufficient to indicate that there is no quid pro quo and the enhancement was arbitrary. Going through the entire judgment of Division Bench it appears that no affidavit was filed in those matters. In any case, there is no reference of any such affidavits. But, in both these petitions reply-affidavits have been filed and it has been pointed out that the rates were neither changed every year nor at short interval. The rates were revised for the first time in 1977 by notification Ex.3 after 21 years. Subsequently it was further raised after 11 years in 1988 by notification Ex.4. The petitioners have never challenged the earlier notifications issued in 1977 (Ex.3) till 1990 or 1991. Even notification Ex.4 issued in 1988 was also challenged after a period of two years or more in 1990 and 1991. It was also pointed out that both the petitioners go on making payment of the inspection fees at the revised rates regularly from 1977-78 to 1989-90. It was also pointed out in the affidavit that the rates of inspection fees had to be revised as it was necessitated otherwise it would have created unnecessary burden on the public exchequer. It has also been stated in the affidavit that:-

6. "It is a matter of within the judicial notice that with the passage of time and inflation the rates have to be revised and sources of income have to be regularly increased so as to bear the extra burden of inflation and rising cost and no department can be expected to freeze its sources of income and bear rising inflation and the price and cost of overhead expenses."

7. The comparative figure of income and expenses of the office of Assistant

Electrical Inspectorate, Jodhpur for the year 1986 to 1991 is also annexed as Annex.R/1 along with the affidavit. It is also stated in the affidavit that the aforesaid judgment of Division Bench of this Court was delivered on 29th July, 1988, whereas, the Writ Petition No. 2924/90 was filed on 23-7-1990 i.e. after almost two years and the Writ Petition No. 2791/91 was filed only on 17-6-1991 i.e. almost after three years. Thus, there is a gross delay of more than 2-3 years and, therefore, on the ground of delay and laches alone both the writ petitions should be dismissed. In *Om Prakash Agarwal's* case (supra), the case was regarding the levy of cess under the Act. The Apex Court quashed the levy of cess and held that Section 3 is charging section and rest of the sections of the Act being just machinery or incidental provisions, the whole Act is liable to be quashed and entire, Act of 1983 was held to be unconstitutional on the ground that the State Legislature was not competent to enact it. In *District Council of Jowai Autonomous's* case (supra) the question was regarding levy of royalty on timber brought from private forests. The Apex Court held that levy is in the nature of tax, therefore, it is illegal and it cannot be justified as levy of fees or tax on lands which grow the trees. The cases on hand are not regarding levy of tax. The challenge in these cases is regarding enhancement in the fees for inspection. The petitioners have never challenged in their petitions that fees for inspection is illegal. Their case is regarding unjust enhancement of fees. Therefore, in my opinion the aforesaid judgments of Supreme Court in cases of *Om Prakash* (supra) and *District Council of the Jowai Autonomous* (supra) cited by both the learned Counsel for the petitioners have no application to the present cases. But, both the learned Counsel have rightly pointed out that the Division Bench of this Court has relied upon both the aforesaid Supreme Court decisions and held accordingly. It is a different matter whether the Division Bench has rightly or wrongly relied upon the Supreme Court decision to hold accordingly. Once the Division Bench has held that the aforesaid Supreme Court decisions are applicable then this Court is bound by the said judgment and cannot go beyond the same. However, the Division Bench while allowing those petitions made it very clear that unless there was some material produced to justify the enhancement, the vast difference in the amount is by itself sufficient to indicate that there is no quid pro quo and the enhancement was arbitrary. It has also held that fees should be co-related to the expenses incurred for rendering the services and, therefore, at least some co-relation between the amount of fees and the service rendered must be shown when challenge is made on this ground. As stated earlier in these cases detail reply-affidavits have been filed and cogent material is produced to justify the enhancement. It has also been pointed out that enhancement in fees is co-related to the expenses incurred for rendering the service. Not only that both the petitioners have never made any grievance regarding issuance of notification Ex.3 dated 16-6-1977 till 1990-91. Therefore, in my opinion the aforesaid Division Bench judgment of this Court will not be applicable here. Going through the reply-affidavits I am fully satisfied that there was enough material to justify the enhancement. It may be that there is a vast difference in the amount, but that itself would not be a ground to hold that the

enhancement was arbitrary particularly when the prices are going up like a rocket speed. If this Court interferes with such notifications then it would create unnecessary burden on the public exchequer. This Court cannot interfere in a petition which is filed so late. It appears that only after the judgment delivered by this Court on 29th July, 1988 in *National Engineering Industries Ltd. v. Electrical Inspector*, these petitions have been filed challenging the earlier notification dated 16-6-1977 (Ex.3) and subsequent notification dated 10-3-1988 (Ex.4) and the demand notice issued against them. While allowing those four petitions by common order dated 29th July, 1988 the Division Bench made it very clear in its operative part that:-

"the enhancement of fees insofar as it relates to the petitioner in all these petitions is held to be invalid and it is declared that the petitioner is liable to pay only the initial fee as prescribed prior to the enhancement until such time as enhancement is made therein in accordance with law..... These petitions are allowed in this manner and to this extent only."

8-9. Out of four petitioners three of them approached this Court immediately in 1978 itself and one of them filed petition in 1984 and their petitions were allowed. The benefit, if any, has to be extended to those persons who are vigilant. If the present petitioners had approached this Court challenging the earlier notification Ex.3 issued in 1977 then there would have been different consideration. No relief can be granted to those persons who approach this Court very late. First petition is filed after two years of the judgment of Division Bench and second petition was filed after three years, thus, undue advantage cannot be given to such persons. If this Court interferes at this stage then others who have not approached this Court so far may also approach this Court and claim the same relief. That apart, I have also stated that the Division Bench judgment has no application now particularly when the State Govt. has produced enough material to justify the enhancement and co-relation between the amount of fees and the service rendered.

10. There is one more prayer in these petitions i.e. to refund the petitioners the excess amount recovered from them under the notification dated 16-6-1977 as well as notification dated 10-3-1988 as inspection charges in excess of what was payable under the provisions of notification of 1956 and 1959. If they had filed suit for recovering the amount then that suit would have been time-barred. Such relief cannot be granted by this Court in its extraordinary jurisdiction under Article 226 of the Constitution. The Court has to exercise its extraordinary jurisdiction in favour of those persons who have been meted out injustice. When thousands of persons of this State have not found anything wrong with either of the notification i.e. of 1977 or 1988 then two persons cannot be granted undue advantage. If this Court still interferes with such notifications then practically it will be impossible for the State Govt. to run administration because it would be extra burden on the public exchequer.

11. In view of the above discussion, both these petitions are dismissed for the

reason stated above with special cost of Rs. 5000/- each.

12. The petitioners have been granted blanket stay in both the cases. The stay granted earlier is vacated forthwith.

13. At this stage, an argument was advanced by the parties that there is no delay in filing both these petitions as they have approached this Court immediately against the demand notice issued in 1990 and 1991. It is nothing but an excuse to challenge the notifications. However, I must make it clear that these petitions are not dismissed only on the ground of delay and laches, but it is one of the grounds on which both these petitions are dismissed. At the cost of repetition, I must state that the Division Bench judgment has no application on the facts of these cases, in that cases unfortunately there was no reply and the matters were allowed. In these cases there is a detail reply-affidavit and each and every aspect of the case has been taken care of, therefore, this submission of the learned Counsel for the petitioners is also rejected.