

(1984) 12 AHC CK 0042

In the Allahabad High Court

Case No : Spl. Appeal No. 18 of 1973 (connected with Spl. Appeal No. 20 of 1973)

Ram Bahadur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-12-1984

Acts Referred:

Court Fees Act, 1870 — Article 1(e)(2), Schedule 2

Citation : (1984) 12 AHC CK 0042

Hon'ble Judges : K.N.Goyal, J and Brijesh Kumar, J

Final Decision : Dismissed

Judgement

K.N. Goyal, J.—In these special appeals against the judgment of the learned Single Judges, of this Court the appellants have paid a court fee of Rupees five on each memorandum. When the Stamp Reporter pointed out that the court fees of Rupees hundred was due in view of the amendment made in Schedule II, Article 2, of the Court Fees Act by Court Fee (U. P.) Amendment Act, 1970 which came into force from 15th January, 1971, the appellants filed objections against the report. Those objections have been pending for the last more than eleven years because it had been pointed out that similar objections were engaging the attention of a Full Bench of five Judges at Allahabad. The learned counsel for the appellants Sri Akhilesh Sahai stated that the Full Bench case, which is pending at Allahabad, related to a Second Appeal and our decision on these objections need not await the decision of the Full Bench, as the appellants would not like the decision in their cases to be delayed any further. We have looked into the correspondence made between the Additional Registrar, Lucknow Bench, Lucknow and the Registrar at Allahabad. It appears that the case referred to the Full Bench is Second Appeal No. 10 of 1972. The cases before us relate to special appeals in which a fixed court fee of Rupees hundred has been levied while in the Second Appeal court fee is payable on the same scale as in a civil suit. Thus the questions before us are not identical with the questions referred to the Full Bench. We, therefore, accede to the request of the learned counsel for the

decision of this case without awaiting the Full Bench Decision.

2. We have heard learned counsel for the appellants. The first objection is that the special appeal should be covered by Article 1 (e) (5) which reads as follows :

?Application or petition in any other case not otherwise provided for five rupees?.

3. The court fees of Rupees hundred has been provided for in the same Article under Clause (e) (2) which reads as follows :

?Application or petition under Article 226 or Article 227 of the Constitution or by way of special appeal against a judgment or order including a judgment or order passed on a petition filed before the commencement of the Court Fees (Uttar Pradesh Amendment) Act, 1870 passed by a Single Judge of the High Court thereon one hundred rupees.?

4. The learned counsel in this connection has referred to the provisions of the High Court Rules, particularly Chapter VIII Rule 5 under which the special appeals have been preferred. Chapter VIII Rule 5 does not say anything about court fee due on special appeals but only speaks of maintainability of special appeal. Now it is clear that subclause (5) would be attracted only if case is not otherwise provided for by any of the remaining subclauses. As special appeals arising out of writ jurisdiction have been specifically taken care of by subclause (2) of clause (e), subclause (5) cannot be attracted. Thus this objection has no force.

5. A more fundamental objection raised is that the State cannot charge court fee for adding to its general revenues. The principle is well settled, as laid down in *State of Madras v. Zenith Lamps and Electrical Ltd.* (AIR 1973 SC 724), that fees taken in court cannot be equated to tax. The amount of court fee realised by the State is expected to be spent on the administration of civil justice in the State. It cannot even be spent on administration of criminal justice, as administration of Criminal justice is the responsibility of the State and the citizens cannot be asked to pay for it, and at any rate the civil litigants cannot be asked to pay for administration of criminal justice. In the instant case, however, no facts and figures have been placed before the Court which may indicate that the State is not spending a more or less equivalent amount on administration of Civil justice corresponding to the realisation of court fee in civil cases. Mere arguments have been set out in the objections without any recital of relevant facts and figures. In view of the fact that the arguments have not been sought to be substantiated by factual foundation, we do not think it necessary in the instant case to call upon the State to justify the levy of enhanced court fee on writ petitions and on special appeals, though in a suitable case, with proper pleading that question could conceivably be agitated. The question regarding legal validity of charging court fee of KB, 100/ on each Writ Petition has been referred for consideration of a Full Bench, in *Raghunandan v. Anadh Sugar Mill's* W. P. No. 1014 of 1979 by Hon"ble K.N. Goyal, J, by order dated 18/4/1985.

6. In this view of the matter we find no force in the objection. It is hereby rejected.

7. Learned counsel for the appellants prays for and is allowed one month's time to make good deficiency in court fee.

(Objection rejected.)