
(2009) 09 AHC CK 0070
In the Allahabad High Court

Shri Ram Das

APPELLANT

Vs

Punjab Iron Stores and Others

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Constitution of India, 1950 — Article 245
Court Fees Act, 1870 — Section 5

Citation : AIR 2010 All 42 : (2010) 1 AWC 93 : (2011) 1 RCR(Civil) 73 : (2011) 1 RCR(Civil) 73

Hon'ble Judges : C.K. Prasad, C.J.; Vikram Nath, J.; R.K. Agrawal, J.; Pankaj Mithal, J.; A.P. Sahi, J

Bench : Full Bench

Judgement

C.K. Prasad, C.J.—This appeal has come up for consideration before us on a reference made by a learned single Judge by his order dated 18.8.1975. The facts, which led the learned single Judge to make reference, are as follows:

2. The plaintiff is the appellant. The defendants are his sole selling agent and the plaintiff filed the suit for accounting against the defendants in respect of commission sale made by them at its sole selling agent. The plaintiff valued the suit at Rs. 15,437.50 and on the suit so valued, paid an ad-valorem court fee of Rs. 1,208.25. The trial court decreed the suit with cost on 9.9.1958 but while decreeing so, directed that for the purpose of commission the account of sale effected by the defendants between 18.2.1951 to 15.2.1954, shall alone be considered. It further observed that defendants 3 to 5 shall not be personally liable for the decretal liability. Three first appeals were filed in this Court, one at the instance of the plaintiff, other filed by defendants 3 to 5 and third by the defendant firm and in each of these appeals, the appellants paid a court fee at Rs. 1,208.25 respectively on the memorandum of appeal. However, before these appeals could be taken up and disposed of by this Court, all were transferred to the court of District Judge. Kanpur in view of the provisions of U.P. Civil Law Amendment Act. 1970. On transfer, these appeals were heard by 1st Addl. District Judge, Kanpur, who by his judgment and decree dated 3.7.1972

dismissed the appeal of the plaintiff with cost and the appeal filed by defendants 3 to 5 was allowed. As regards, the appeal preferred by the defendant firm, the same was partly allowed and the decree of the trial court was modified.

3. Against aforesaid judgment and decree, plaintiff filed the present second appeal in this Court and he valued the appeal at Rs. 15,437.50 on which court fee of Rs. 1,570.00 was . payable. However, the appellant did not pay the court fee but stated that "no Court fee is being paid, as the plaintiff appellant contends that the provisions of the Court Fees Act as amended in Uttar Pradesh from time to time are ultra vires the State Legislature, void and unenforceable inasmuch as the amount of fee prescribed by the provisions of that Act bears no relation to the cost of administering justice."

4. As the plea involved necessity of payment of court fee, a reference was made u/s 5 of the Court Fees Act, in which, the. learned single Judge observed as follows:

It would, therefore, be necessary in this case to find out whether the ad-valorem court fees imposed amounts to a tax. It will, therefore, be necessary to see if there is some sort of a co-relation between the income from court fees and the expenditure incurred for the administration of justice in this State.

5. The learned Judge directed the matter to be laid before Hon"ble the Chief Justice for constituting a larger Bench for decision of the following question:

Whether the provisions of the Court Fees Act as amended from time to time in the State of Uttar Pradesh are ultra vires of State Legislature.

6. Hon"ble the Chief Justice on a reference so made, directed the matter to be heard by a five Judges" Bench and that is how, the matter has been listed before us.

7. A brief history in regard to the levy of court fee deserves notice. Before arrival of British Rule in India, there was no levy on the party approaching the Court for redressal of its grievance. Historians say that during Mughal Rule and prior thereto, there was no fee payable on administration of justice and it was totally free. With the advent of British Rule in this country, regulations were framed imposing court fee and was nominal at the beginning. It was gradually increased to prevent institutions from frivolous and uncalled for litigations on an assumption that it shall act as deterrent to the abuse of the process of the Court. Many do not feel that levy of fee had put restraint on frivolous and groundless litigations. However, in recent times, the scale of fee has been raised to an extent which has given rise to feeling to many that it is no longer a fee but tax on the litigants. Caveators say that in modern times, expenditure on administration of justice has tremendously increased and therefore, in order to meet those expenditures, sharp increase in the court fee is the only answer. Without influenced by any of these considerations, we intend to consider the question involved on its own merit.

8. In fairness to Mr. Kunal Ravi Singh appearing on behalf of the appellant, he does not contend that State Legislature lacks competence to enact or make amendment in Court Fees Act. However, according to him the power to legislate in respect of fee cannot be used to raise revenue of the State. It is contended that the amount of court fee realized is not spent for the administration of justice and therefore, the fee partakes the character of tax and hence it is ultra vires.

9. Mr. S.P. Kesarwani, however, appearing on behalf of the State submits that the quid pro quo need not be established arithmetically and if it is found that its object is not to raise revenue for the general purposes of the State, the act of the Legislature cannot be said to be ultra vires.

10. Rival submissions necessitate examination of the Constitutional Scheme. Article 245 of the Constitution of India confers on the Parliament power to make laws for the whole or any part of the territory of India and the Legislature of the State for the whole or any part of the State. Article 246 of the Constitution gives exclusive power to the Parliament to make laws with respect to any of the matters enumerated in List-I (Union List), whereas the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters in List II (State List) in the VIIth Schedule. Entry III of State List gives the State Legislature power to make laws inter alia in respect of fee taken in all Courts except the Supreme Court. In view of aforesaid, there is no difficulty in holding that the State Legislature has power to make law in respect of fee taken in all Courts except the Supreme Court.

11. As the State Legislature has been conferred with the power to make laws in respect of fees taken in all Courts, it cannot make law providing for charging tax.

12. In view of aforesaid, one is required to consider the distinction between fee and tax. Broadly speaking fees and taxes are both for the benefit of the State whereas the levy of fee must have co-relation with the expenditure for which it is collected. However, fee cannot be imposed for increasing the general revenue of the State. Further quid pro quo is not to be established with mathematical accuracy. This point is not res Integra and had been the subject matter of decisions of the Supreme Court in a large number of cases and hence does not require much deliberation. In the case of *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, the Supreme Court held as follows:

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 co-relationship with the fees collected and the cost of administration of civil justice.

13. Further while dealing with the issue, the Supreme Court in the case of Secretary to Government of Madras and Anr. v. P.R. Sriramulu and Anr. AIR 1996 SC 676, observed as follows:

15. As pointed out earlier with reference to the decisions of this Court the State enjoys the widest latitude where measure of economic regulations are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria, adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue. It is settled law that in view of the inherent complexity of the fiscal adjustments, the Courts give a large discretion to the Legislature in the matter of its references of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustment of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or there are better ways of adjusting the competing interests and the claims as the Legislature possesses the greatest freedom in such areas. It is also well-settled that lack of perfection in a legislative measure does not necessarily imply its constitutionality as no economic measure has so far been discovered which is free from all discriminatory impact and that in such a complex area in which no fool-proof device exists, the Court should be slow in imposing strict and rigorous standard of scrutiny by reason of which all local fiscal schemes may be subjected to criticism under the equal protection clause. Having regard to these settled principles the impugned judgment of the High Court could not be sustained.

16. ...it may be noted that factually it is neither possible nor practicable to give the exact break up of figures in regard to the expenses incurred under different heads and other departments of the Government in relation to the administration of civil justice.

14. In view of aforesaid enunciation of law in unequivocal terms, it is inexpedient to multiply the authority on this issue.

15. The next question, which requires consideration, is as to whether the State has to satisfy with mathematical precision that the fee collected is spent for the purpose it has been levied. In the present case, therefore, one has to see as to whether court fee levied is spent on administration of justice. One has to bear in

mind that there has to be a broad co-relationship with the fee collected with the cost of administration of civil justice and the State cannot enrich itself or to secure revenue for general administration by levy of fee. It is neither possible nor practicable to give exact breakup of the figures in regard to the expenses in relation to the administration of justice. It is not the requirement of law that the collection raised through the fee should exactly tally with the expenditure. The amount raised through the fee and expenses incurred in providing the services is not to be examined with exactitude with a view to ascertain any accurate or arithmetical equivalence. The test that the State cannot enrich itself by levy of fees would be satisfied if there is a broad co-relation between the amount raised from fee and the expenses incurred in administration of justice.

16. The Supreme Court had occasion to consider this question in the case of B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., and on a review of its earlier decisions the law has been laid down in categorical terms as follows:

While examining the reasonableness of the quantum of levy, the same will not be done with a view to find out whether there is a co-relatable quid pro quo to the quantum of levy, because as noticed hereinabove, the quid pro quo is not a condition precedent for the levy of a regulatory fee. Such examination will have to be made in the context of the levy being either excessive or unreasonable for the requirement of the authority for fulfilling its statutory obligations.

17. No facts and figures have been brought on record by the appellant so as to demonstrate that the fee levied is so high and intended to secure revenue for general administration. However, the State has placed on record the figures, which clearly show co-relationship with the amount of fee collected and the expenditure on administration of justice. Therefore, it cannot be said that in the garb of fee the impugned legislation provides for tax and thus it cannot be said to be a colourable exercise of power.

18. It is relevant here to state that a large number of authorities on the same issue have been brought to our notice but in order to avoid multiplicity of decisions, we have refrained from referring each one of them.

19. Accordingly the answer of the question formulated for our decision is in the negative and it is held that the provisions of the Court Fees Act as amended from time to time in the State of Uttar Pradesh is not ultra vires the State Legislature.

20. The appellant shall now deposit the court fee within four weeks from today, failing which appeal shall stand dismissed without further reference to the Bench.

21. If appellant so deposits the court fee, the appeal shall be placed for consideration on merit before the Judge in jurisdiction.

Reference is answered accordingly.