

(1942) 04 BOM CK 0011
In the Bombay High Court
Case No : O.C.J. Suit No. 1056 of 1939

Sir Byramji Jeejeebhoy

APPELLANT

Vs

The Province of Bombay (No. 1)

RESPONDENT

Date of Decision : 14-04-1942

Acts Referred:

City of Bombay Municipal Council Act, 1938 — Section 202
Government of India Act, 1915 — Section 100

Citation : AIR 1942 Bom 310 : (1942) 44 BOMLR 682

Hon'ble Judges : Blackwell, J

Bench : Single Bench

Judgement

Blackwell, J.—This is a chamber summons adjourned into Court for a review of taxation.

2. The plaintiff who is the owner of certain Immovable properties in the City of Bombay sought by this suit a declaration that Part VI of the Bombay Finance Act of 1932, incorporated therein by the Bombay Finance (Amendment) Act, 1939, is ultra vires of the Bombay Provincial Legislature, and a declaration that the urban Immovable property tax purporting to be levied by Section 22 which forms part of the said Part VI of the Bombay Finance Act, 1932, is illegal and invalid. He also sought further declarations that certain notices served on him by the Bombay Municipality u/s 202 of the City of Bombay Municipal Act under powers purporting to be conferred by the impugned Act were invalid so far as they related to the Urban Immovable Property Act, and other consequential relief.

3. This suit was dismissed with costs and the 1st defendants lodged their bill of costs for taxation. Objections were taken in by the plaintiff, the disputed item being that relating to instructions for brief. The amount charged was Rs. 5,000. The amount allowed by the Taxing Master as between party and party was Rs. 600. The Taxing Master took the view that attorneys in Bombay are not entitled to any remuneration for looking up law or for ascertaining whether taxes of a similar nature had been levied by other Provincial Governments upon the ground

that although looking up the various statutes might be regarded as work done on facts the comparison of those statutes with the Government of India Act was a question of law.

4. In *Parashuram D. Shamdassani Vs. The Tata Industrial Bank Ltd.*, Macleod C.J. stated that it had been generally recognised that the Courts in India will follow the decisions of the English Courts in matters of taxation, and he said that the Taxing Officer should follow as far as it can be ascertained the practice observed in England. He referred to the precedents of bills of costs in *Bannehr & Porter's* Guide to Costs, and said that it could be seen from those that instructions for brief are only discretionary in witness actions, and that they were probably intended to cover the trouble and expense incurred in collecting evidence for the trial of an action. Nothing, he said, beyond a nominal charge is allowed for instructions in matters which are heard on affidavit, the reason being that all the materials for preparing the brief have already been charged for.

5. It is necessary to have regard to the rules of this High Court in order to determine whether the practice prevailing in England is in any particular respect to be departed from, seeing that the practice here would be governed by the rules so far as they stand.

6. Rule 562 (i) provides that no costs are to be allowed on taxation which do not appear to the Taxing Master to have been necessary or proper for the attainment of justice or defending the rights of the party or which appear to the Taxing Master to have been incurred through over caution, negligence, or mistake, or merely at the desire of the party. There would appear to be nothing in this rule which would differentiate our practice from the practice prevailing in England.

7. Rule 562 (iii) provides that in allowing costs for the drawing and copying of observations to counsel in the brief the Taxing Master shall disallow the costs of detailed comments on any question of law or the discussion of the authorities in point or of any prolixity in the statement of facts. It is necessary to bear this rule in mind having regard to an argument which was founded upon it by the Advocate General on behalf of the 1st defendants to which I shall refer later.

8. Rule 563 deals with fees or allowances, which are discretionary, as instructions for brief are, as appears from Item 14 in the Table of Fees, and provides that the Taxing Master shall take into consideration the other fees and allowances to the attorney and counsel, if any, in respect of the work to which any such allowance applies, the nature or importance of the suit or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and cost of the proceedings and all other circumstances.

9. So far as the English practice is concerned it would appear that instructions for brief are directed to the gathering of facts. In this connection reference may be made to the Annual Practice (1941) at page 1911. It will be seen from the notes there appearing that on trial of non-witness actions and other matters therein mentioned which do not require witnesses a nominal fee of only one Guinea is

allowed. Similarly on a motion for injunction a nominal fee of 13s. Ad. is allowed. In witness matters on the other hand the instructions for brief is a discretionary item. Reference may also be made in this connection to Porter and Wortham's Guide to Costs, 13th Edition, page 963, Item 19. In *Slingsby v. Attorney General* [1918] P. 236 Lord Justice Swinfen Eady said as follows (page 240):--

In my opinion, the heading "Instructions for Brief" is intended to cover those items, the nature of which is thus stated by Master King in his book on Costs on the High Court Scale at pages 37, 28: "A summary statement in the bill carried in for taxation of the details of the matters to which regard is to be had under this item"--this is, under the item "Instructions for Brief"--greatly facilitates the task of arriving at a proper allowance." Then he refers to *Hill v. Peel* (1870) L.R. 5 C.P. 172. "The length of the documents perused (in cases in which perusal has not previously been charged), the names of the witnesses who have been attended, the places to which journeys have been made, with the time occupied in each, and the amount of the traveling expenses, should be stated." If those details are given in the bill it enables the Master to form a considered judgment as to the sum which is proper to be allowed under the heading "Instructions for Brief"

10. It would therefore appear that according to the English practice solicitors are not entitled to be remunerated in respect of looking up the law.

11. In the present case the only point in issue was a question of law. No facts were in dispute. The Taxing Master in his judgment referred to an unreported judgment of Mr. Justice Mirza in *In re Indian Printing and Publishing Company, Ltd.: In re Natvarlal J. Shah* (1926) *In re Indian Companies Act, 1913*, decided by Mirza J., on August 24, 1926 (Unrep.). In his judgment the learned Judge said that under the English practice it would appear that no instruction charges are given to attorneys for rinding authorities for counsel, that being regarded as a part of counsel's duty for which he is paid by the brief fee. The learned Judge went on to say that in this Court in Bombay it is generally the attorney who works up the law and the facts of the case and presents them to counsel in the brief. Notwithstanding this, he said that it had been the practice of this Court following the English practice to disregard the attorney's labour with regard to the law on the subject in fixing the instruction charges for the brief.

12. The Advocate General relied upon Rule 562 (iii) and argued that that rule contemplated that the English practice should not be followed in this connection. He said that the rule allowed costs to the attorneys for the drawing and copying of observations to counsel in the brief though it directed the Taxing Master to disallow the costs of detailed comments on any question of law or the discussion of the authorities in point. He submitted that it would be anomalous if the Taxing Master were entitled to allow the costs for the drawing and copying of observations to counsel containing comments on any question of law provided they were not detailed and a reference to authorities provided there were no discussion upon them if the attorneys were not to be remunerated for their

labour in looking up and commenting upon the law and looking up the authorities. I confess that there is considerable force in this argument. I have however to bear in mind that the practice to which Mr. Justice Mirza referred in his judgment in 1926 is a very old standing practice which has prevailed notwithstanding Rule 562 (iii) which has also been in existence under another number for a great many years. Item 14 is the item in the Table of Fees which deals with instructions for brief. It includes perusal of papers and examining witnesses, but there is nothing in it to suggest that anything is to be allowed for looking up the law. Consequently I think that I ought to take the view that notwithstanding that rule it has been regarded as proper to follow the English practice whereby no remuneration is allowed to attorneys for looking up the law. If that rule is to be departed from, I think that it should be done by an alteration of the rules and the item in the table of fees.

13. Although no specific point was taken in the objections to the next matter which was argued on this summons it was argued before the Taxing Master and dealt with by him. In his judgment the Taxing Master said that the second argument of the Advocate General was that the question as to whether taxes of a similar nature had been levied by other Provincial Governments was a question of fact and the finding and perusals of such statutes was undertaken for the purpose of ascertaining those facts. A reference to the bill under the item "Instructions for Brief" will show that a number of Acts in various provinces throughout India are stated to have been looked up by the attorneys and also the British North America Act, 1867, and the Commonwealth of Australia Act, 1900. The Taxing Master said in his judgment that although the looking up of various Statutes might be regarded as work done on facts, in his opinion the comparison of those Statutes with the Act to which the present suit relates was a question of law, and that he had not considered that work when estimating the item of instructions.

14. I am of opinion that ascertaining whether taxes on land and buildings had been levied pursuant to Statutes in India and elsewhere was a question of fact, although no doubt the bearing which such Statutes would have on the construction of Section 100 of the Government of India Act would be a question of law. Legislative practice in various places is in my opinion a question of fact. In the report of this case in 42 Bom. L.R. 10, the learned Chief Justice in the course of his judgment said at page 45:--

In construing the Government of India Act, 1935, the Court is entitled to look to the legislative practice prevailing in England and in India at the time when it was passed. On this principle the Court can clearly look at the provisions of the English and Indian Income Tax Acts, and the Court may also have regard to the fact, to which the Advocate General has called our attention, that taxes on lands and buildings imposed primarily upon the owner and made a charge upon the lands and buildings concerned have been for many years a well recognised form of taxation in India in municipal affairs. In this connection we were referred to

the Bombay Municipal Act, 1888, the Bombay Municipal Boroughs Act of 1925, the Madras Act IV of 1919, the Calcutta Municipal Act of 1923, the United Provinces Act of 1916, the Central Provinces Act of 1922, the Punjab Act III of 1911, the Bihar and Orissa Act VII of 1922, and the Karachi Municipal Act of 1933, in. all of which a tax of this nature was authorised by the Provincial Government, though admittedly with the consent of the Governor-General. It is argued that the Legislature must have intended to enable Provincial Governments to continue to impose taxes of this nature when they included lands and buildings in item 42...

15. In *Re Petition of Right of De Keyser's Royal Hotel, Limited: De Keyser's Royal Hotel, Limited v. The King* (1919) 120 L.T. 396, investigations into the question of prerogative in the past were allowed as instructions for brief. Swinfen Eady M.R. at page 412 said:--

But before any search was undertaken by the Crown there had been an expensive investigation made by those instructing the suppliants. The proper plan will be this, not to give a direction that these costs should be taxed item by item in the ordinary way of a taxation, but that the costs of the preliminary search are to be allowed and taken into consideration by the taxing master in the item of "Instructions for Brief". He will allow such a sum as he may think proper.

16. I think that the Taxing Master was wrong in refusing to take into consideration the fact that the attorneys for the 1st defendants had conducted considerable investigations with a view to ascertaining as a matter of fact what the practice was with regard to taxation upon land and buildings in various Provinces throughout India and elsewhere.

17. Accordingly, I send this matter back to the Taxing Master with a direction to take that investigation into consideration and to re-tax the item of Instructions for Brief. At the end of his judgment the Taxing Master said that as the importance of the matter could not be over-estimated the course he had adopted was to allow substantial fees for three counsel and to allow instructions to the attorneys only for work done on facts as the other work was outside their sphere. As he will now take into consideration the looking up of these various Statutes as coming under the heading of questions of fact he may think it proper to reduce counsel's fees. That will be a matter entirely for him, but it will be open to him to do so if he thinks proper.

18. As the 1st defendants have succeeded in part and failed in part, I direct that each party to this summons should Bear their own costs.