
(1973) 02 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5354 of 1970

Smt. Gindori Bibi

APPELLANT

Vs

The Taxing Officer and Others

RESPONDENT

Date of Decision : 26-02-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 All 490 : (1973) 43 AWR 613

Hon'ble Judges : R.B. Mishra, J;K.B. Asthana, J;Gopi Nath, J

Bench : Full Bench

Advocate : Bashir Ahmad, for the Appellant; V.K. Burman, for the Respondent

Final Decision : Disposed Of

Judgement

K.B. Asthana, J.—Smt. Gindori Bibi filed a Suit No. 44 of 1951 before the District Judge of Mathura against the Treashrer of Charitable Endowments for U. P. and others for a declaration that the plaintiff being the legal heiress of the property left by her husband Sri Beniram Kapoor and the same not being subject to any legal trust for charitable purposes, decree be passed divesting the Treasurer of Charitable Endowments of U. P. and the defendants Nos. 2 to 7 of the property given in Schedule A of the plaint and from management and administration of the same, A decree for rendition of accounts was also claimed. In the plaint it was averred that the death of Sri Beniram Kapoor occurred on 15-9-1943 at Mathura and the plaintiff as his widow and legal heiress succeeded to the property left by him and obtained possession of the same. Then a reference was made, to a Will having been executed by Sri Beniram Kapoor on 27-3-1934 entrusting the management of his estate to the Collector of Mathura and for payment of cash to his daughter and maintenance to the plaintiff.

It was averred that the Will was not validly executed and any trust created therein was illegal and invalid. The relief for declaration was valued at Rs. 70,000/- but a Court-fee of Rs. 18/12/- was paid. The relief for accounting was-valued at Rs. 200/-and Court-fee of Rs. 19/6/- was paid. The Inspector of

Stamps reported that in his opinion ad valorem Court-fee was payable u/s 7(iv-A) of the Court-fees Act. The learned Civil Judge, trying the suit held that proper Court-fee was paid and rejected the report. The Chief Inspector of Stamps then came up to the High Court in revision u/s 6-B of the Court-fees Act, but the revision was dismissed as the plaint had been amended in the court below. Thereafter the suit proceeded and was dismissed. Smt Gindori Bibi being unsuccessful filed a first appeal in the High Court on a Court-fee of Rs. 222.50. The Stamp Reporter of the High Court made a report on 1-7-1966 pointing out a deficiency of Rs. 15,315/-. The learned Counsel for the plaintiff appellant objected and his objection was considered by the Taxing Officer, who by his order dated 11-8-1970 rejected the objection and upheld the report of the Stamp Reporter. It appears that the relief claimed in the memorandum of appeal was then allowed to be amended.

A fresh report was made by the Stamp Reporter to the effect that besides the declaratory Court-fee of Rs. 200/- under Article 17(iii) of Schedule II of the Court-fees Act the plaintiff-appellant was further liable to pay ad valorem Court-fee of Rs. 7,735/- under Section 7(iv-A) on the market value of the property in suit as the relief claimed invoked the cancellation and adjudging void of a will. A deficiency of Rs. 7,735/- was reported. Against the report the learned counsel for the appellant filed an objection claiming that the memorandum of appeal was sufficiently stamped. The Taxing Officer heard the learned counsel for the appellant and by his order dated 13-8-1970 rejected the objection and called upon the plaintiff-appellant to make good the deficiency of Rs. 7,735/- in the Court-fee on the memorandum of appeal. On 26-8-1970 the learned counsel for the appellant filed an application before the Taxing Officer praying that the Taxing Officer be pleased to refer the case for final decision to the Chief Justice or any Hon'ble Judge to be appointed by the Chief Justice u/s 5 of the Court-fees Act. The Taxing Officer on the same date passed the following order:--

"The Taxing Officer has already given his decision and no question of any reference of the matter to the Court by Taxing Officer arises. The counsel presenting this application insists that it must be accepted by the Taxing Officer. Hence the application is taken from and the above order passed. It is again made clear that the Taxing Officer has no reason to make any reference to the Court as prayed. The application is, therefore, filed."

2. Smt. Gindori Bibi then filed a petition under Articles 226 and 227 of the Constitution of India for the quashing of orders passed by the Stamp Reporter and the Taxing Officer in respect of the Court-fee payable on the memorandum of first appeal filed in the High Court by her. A memorandum was also sought for directing the Taxing Officer to refer the question of deficiency in Court-fee to the Court u/s 5 of the Court-fees Act.

3. The petition was heard by our brother K. N. Singh. On behalf of the petitioner reliance was placed on a Division Bench decision of this Court in Civil Misc. Writ Petn. No. 252 of 1961 (All), Pateshwari Prasad Singh v. Taxing Officer, decided on

9-3-1964, in support of the contention that the High Court had power to issue a writ of mandamus to the Taxing Officer directing him to refer the question of deficiency to the court u/s 5 of the Court-fees Act. Brother K. N. Singh doubted the correctness of the aforesaid Division Bench decision and by his order dated 19-4-1972 referred the following three questions for the consideration of a larger Bench:--

1. Whether the Taxing Officer while exercising his jurisdiction u/s 5 of the Court-fees Act is under a mandatory duty to refer the question regarding payment of Court-fee to the Chief Justice or the Taxing Judge?.
2. Whether the question that the point involved was of general importance is to be decided by the Taxing Officer himself or by this Court in exercise of jurisdiction under Article 226 of the Constitution?.
3. Whether any mandamus can be issued to the Taxing Officer under Article 226 of the Constitution compelling him to refer the question regarding payment of Court-fees u/s 5 of the Court-fees Act to the Chief Justice or the Taxing Judge even though the Taxing Officer himself has decided the question on merits?.
4. When the matter came up before a Division Bench of this Court, after hearing the learned counsel for the parties, it felt that the matter should more appropriately engage the attention of a Full Bench. This is how the reference has come before this Bench.
5. The answer to the questions referred will turn on the interpretation of the language of Section 5 of the Court-fees Act. That section runs as follows:--

"Section 5. When any difference arises between the Officer whose duty it is to see that any fee is paid under this Chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the Taxing Officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be Taxing Officer within the meaning of the first paragraph of this Section."

6. As the marginal note to the section shows It prescribes the procedure in case of difference as to necessity or amount of fee. The Stamp Reporter of the High Court is the Officer u/s 5 whose duty is to see the necessity of paying a fee or the amount thereof on any document received or furnished in the High Court,

inter alia, in its appellate jurisdiction. When any difference arises between the Stamp Reporter and the appellant's learned counsel in regard to the amount of fee payable on the memorandum of appeal the question shall be referred to the Taxing Officer. The Joint Registrar of the High Court is the Taxing Officer u/s 5. Finality attaches to the decision of the Taxing Officer in the sense that no appeal or revision lies therefrom, but where the Taxing Officer is of the opinion that the question is one of general importance he shall refer the question to the final decision of the Chief Justice of the High Court or of such Judge of the High Court as the Chief Justice appoints either generally or specially in this behalf referred to hereafter for convenience as the "Taxing Judge".

7. According to Section 5 on a difference arising between the Stamp Reporter and the appellant's counsel as to the amount of Court-fee payable on the memorandum of appeal the question shall be referred to the Taxing Officer who shall decide the question and finality will attach to his decision. Neither the appellant nor the State have any right to question the decision of the Taxing Officer before the court by way of appeal or revision. It is the Taxing Officer himself who can destroy the finality of his decision if he forms an opinion that the said question was of general importance in which case he shall refer the question for the final decision of the Taxing Judge.

8. In the case of Pateshwari Prasad Singh v. Taxing Officer, C. M. W. P. No. 252 of 1961, D/- 3-9-1964 (All) (supra) the Division Bench took the view that once it were found that the question of necessity of fee or deficiency in the amount thereof was of general importance the Taxing Officer was bound to refer it for the final decision of the Taxing Judge. Since it was conceded in the said case that the question was of general importance the Division Bench accepted the writ petition, quashed the order of the Taxing Officer and directed him to make a reference to the Taxing Judge. The Division Bench was not invited to consider the question as to whether the Taxing Officer could be compelled by a writ of mandamus to form an opinion as to the importance of the question and if so at what stage of the proceedings. Also before the Division Bench no point was raised whether the Court could form an opinion as to the nature and importance of the question in the exercise of its jurisdiction under Article 226 of the Constitution.

9. Brother K. N. Singh in his referring order first considered the merits of the question and found that the Taxing Officer had not committed any such error as to be amenable to a writ of certiorari. Then he considered the argument raised on behalf of the petitioner that the Taxing Officer failed to exercise the jurisdiction vested in him in refusing to refer the question in respect of the appellant's liability to pay Court-fees on ad valorem basis. It appears that the argument presented before the learned Judge by the learned counsel proceeded on the assumption that the question raised was one of general importance and the Taxing Officer was under a legal duty to refer the matter to the Taxing Judge. The learned Judge construed the language of Section 5 as vesting a discretion in

the Taxing Officer to refer or not to refer the question for final decision of the Taxing Judge and opined that since it was a matter of discretion, no mandamus could be issued directing the Taxing Officer to refer the question. The learned Judge also doubted the jurisdiction of this Court to consider, whether the question was one of general importance.

10. Thus the crucial question that requires consideration is whether a reference to the Taxing Judge by the Taxing Officer is only a matter of discretion on latter's part or is he under a duty to make a reference after forming an opinion as to the importance of the question of court-fee payable, more so when invited to do so. On this part of the case it was suggested by the learned counsel for the petitioner that the Division Bench in C. M. W. P. No. 252 of 1961, D/- 3-9-1964 (All) rightly held that Section 5 imposed a duty on the Taxing Officer to make a reference to the Taxing Judge once it were found that the question was of general importance. The learned counsel, however, ultimately conceded that on the language of Section 5 it is the Taxing Officer who has to form an opinion whether the question was of general importance.

He, however, submitted that once it was established before the Taxing Officer that the question was one of general importance, the matter will fall out of his jurisdiction and it will be the Taxing Judge who at once will have the jurisdiction to decide the question, the reference will then be mandatory under the scheme of the section as once the question is one of general importance the final decision will be that of the Taxing Judge. It was pointed out that by refusing to consider whether the question was one of general importance, the Taxing Officer can always seize jurisdiction and render his own decision final, a situation which could not be countenanced on the language of the section for its object would be frustrated, if a discretion were held to be vesting in the Taxing Officer, to form or not to form an opinion as to the importance of the question of Court-fee and the suitor would be deprived of the benefit of the final decision of the Taxing Judge even though the question be one of general importance.

11. The learned Standing Counsel appearing for the respondents contended that primarily under the section the Taxing Officer has the jurisdiction to record a decision on the question referred to him by the Stamp Reporter and once he takes a decision thereon he would be functus officio and then no question would arise of forming of an opinion by him whether the question was of general importance. The Taxing Officer cannot, therefore, be invited after he had rendered his final decision to refer the question for the final decision of the Taxing Judge as it is at his discretion to form an opinion which discretion must be exercised by him before rendering his own decision on the merits of the question of Court-fee.

This argument of the learned Standing Counsel involves a construction on the language of the section that the Taxing Officer is not required or is under no duty to record his own decision whether the question is one of general importance as the case will then fall out of his jurisdiction. It was suggested by the learned

Standing Counsel that the appellant on whose memorandum of appeal the deficiency was reported ought to have invited the Taxing Officer to form an opinion as to the importance of the question before the Taxing Officer rendered his decision on merits and the petitioner having omitted to do so, the Taxing Officer rightly rejected his application for making a reference and this Court in the exercise of its jurisdiction under Article 226 of the Constitution cannot compel the Taxing Officer to make a reference to the Taxing Judge, howsoever, it may appear to this Court that the question as to deficiency in Court-fee which arose was one of general importance.

12. On a close examination of the arguments advanced by the learned counsel for the parties there appears to be a parallelism to certain extent in their approach in regard to the respective power and jurisdiction of the Taxing Officer and the Taxing Judge conferred by Section 5. It is implicit in the approach of both the learned counsel that there is a division of power, all ordinary questions referred by the Stamp Reporter in respect of the Court-fee fall within the jurisdiction of the Taxing Officer for decision while all questions which are of general importance are to be decided by the Taxing Judge, that is to say under the scheme of the section the Taxing Officer is precluded from rendering a decision on the questions which are of general importance. This is an approach which is difficult to be accepted. There is no doubt that the language of Section 5 as also of many other sections of the Court-fees Act is complicated and defective. It has been observed by learned Judges in many cases decided by various High Courts that the Court-fees Act is notorious for its bad drafting. However,, that is hardly a matter for consideration. However involved and defective the drafting of a provision of the statute be it is the duty of the Court to interpret and construe it.

13. It appears to us that there is no division of functions or jurisdiction under the provisions of this section in the sense as canvassed by the learned counsel. A direct reference by the Stamp Reporter for rendering of a final decision by the Taxing Judge is not envisaged. Every reference at first has to be made to the Taxing Officer by the Stamp Reporter. The Stamp Reporter is not required to classify the question as a preliminary step in the category either of ordinary importance or of general importance. Once a question is referred to the Taxing Officer on a difference arising between the Stamp Reporter and the suitor, it is the duty of the former to render a decision thereon irrespective of the fact whether the question was of ordinary importance or of general importance. The Taxing Officer is under a duty to render his decision on merits. Having done that the Taxing Officer has to consider whether the question is one of general importance and once he is of opinion that the question is one of general importance, then the decision rendered by him on merits will not be final and he will be under a duty to refer the question for the final decision of the Taxing Judge. Thus the procedural scheme under the section is that the Taxing Judge will get the jurisdiction to render a final decision on the question of the Court-fee only when the Taxing Officer refers the question.

The stage for reference by the Taxing Officer to the Taxing Judge would only arrive after the rendering of the decision on merits by him on the question referred by the Stamp Reporter. We do not find any substance in the contention that a reference by the Taxing Officer to the Taxing Judge on a question of general importance has to be made without first rendering on merits of his own decision thereon. There is no dichotomy of functions or jurisdiction under the scheme of this section. Every reference on a question of difference has first to be considered and decided by the Taxing Officer whose decision ordinarily would be final but the decision of the Taxing Officer would not be final if it is found by him that the question was one of general importance; then the procedure prescribed casts a duty on the Taxing Officer to refer the question for final decision of the Taxing Judge.

14. Having cleared as best we could the meaning which could intelligently be given to the involved language now we proceed to consider whether the words "except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice" occurring in Section 5, leave it to the sweet will of the Taxing Officer not to form an opinion as to the importance of the question. If that were so then simply by declining to form an opinion the Taxing Officer can always give finality to his own decision and deprive the aggrieved party from getting the benefit of the opinion of the Taxing Judge though the question be one of general importance. We ought not countenance a construction of the section as to vest a discretion in the Taxing Officer in such a matter of crucial concern to the litigant unless we are compelled to do so by the force of the language.

15. Can the expression "when the question is, in his opinion, one of general importance" be construed as imposing a duty on the Taxing Officer to examine the nature of the question in every case and form an opinion as to its importance as on that will depend the exercise of power by the Taxing Judge for the benefit of the suitor or the Government as the case be? It appears to us beyond doubt and it has not been disputed that once the Taxing Officer formed an opinion that the question was one of general importance then he is bound to refer the question for the final decision of the Taxing Judge. No discretion is left in that event with the Taxing Officer. He is under a duty to make a reference of the question to the Taxing Judge where he is of the opinion that the question is one of general importance.

The object of the section calling for the final decision of the Taxing Judge on a question of general importance would be frustrated if it were held that it was at the discretion of the Taxing Officer to form an opinion or not to form an opinion. There is nothing in the scheme of this section preventing a suitor to invite by application the Taxing Officer to form an opinion as to the importance of the question. A suitor or the State as the case be will be under no necessity to invite the opinion of the Taxing Officer on the importance of the question for obtaining the final decision of the Taxing Judge until and unless the Taxing Officer rendered

on merits his decision on the question adverse either to the suitor or the State.

16. The Taxing Officer has to perform a judicial function u/s 5. In forming an opinion as to the importance of the question he is under a duty to act judicially and not arbitrarily. We think any opinion rendered by him on the importance of the question may be amenable to a writ of certiorari if in forming his opinion the Taxing Officer proceeded arbitrarily and against established judicial principles. It is not open to the Taxing Officer to decline at his sweet will forming of an opinion on the importance of the question. In the case of *The Commissioner of Income Tax Vs. Mcmillan and Co.*, the Supreme Court had occasion to construe the expression "in the opinion of the Income Tax Officer" occurring in the proviso to Section 13 of the Income Tax Act, 1922 and held that those words did not confer a mere discretionary power and in the context it imposed a statutory duty on the Income Tax Officer to examine in every case the method of accounting employed by the assessee and to see whether or not it has been regularly employed and to determine whether income, profits and gains of the assessee could properly be deduced therefrom.

We think in the context in which the expression "when the question is in his opinion, one of general importance" occurs in Section 5 does not leave any discretion with the Taxing Officer but impose a duty upon him to examine in each case before him whether the question was of general importance, more so when invited to do so by the party affected. The learned Standing Counsel in support of his contention that the Taxing Officer is under no duty to make a reference to the Taxing Judge on an application made to him after he had rendered his decision on the question referred relied upon the case of *Aijaz Uddin Vs. Taxing Officer, High Court and Others*, . It appears that in that case the Taxing Officer was invited by an application to make a reference after three months of the rendering of the decision by him on the question. In that connection Dwivedi, J. who decided the case observed;

"In para 5 of the petition it is admitted that the petitioner came to know of the impugned order in the middle of May, 1963. Nevertheless no earlier steps were taken by him to seek proper remedy against the order. Three months thereafter on August 16, 1963 for the first time he made an application to the Taxing Officer to refer the question of the Court-fees to the Taxing Judge. Thus the request was obviously belated and futile. After the Taxing Officer had decided the issue of Court-fee he could not refer the matter to the Taxing Judge."

17. We do not think that the above quoted observations of Dwivedi, J. lay down the law that the Taxing Officer had absolute discretion in the matter and could not be compelled to refer the question of Court-fee to the Taxing Judge. On the other hand in the observations quoted there is an implied hint that had the petitioner taken early steps the matter would have been different. The petitioner in fact was penalised by the learned Judge as the request for reference was obviously belated. Be that as it may, if the latter observation of Dwivedi, J. to the effect that after the Taxing Officer had decided the issue of Court-fee he could

not refer the matter to the Taxing Judge be taken to be as laying down a rule of law, we do not find ourselves in agreement with it.

18. It has not been disputed by the learned Standing Counsel that a discretion in the nature of mandamus can always be issued by the High Court in the exercise of its jurisdiction under Article 226 of the Constitution calling upon a Tribunal or an Authority under a duty to act judicially to perform its judicial function in the manner prescribed by law. Since we have held above that under the scheme of Section 5 the Taxing Officer is under a duty to form an opinion as to the importance of the question of the Court-fee payable a direction can be issued by the Court calling upon the Taxing Officer to form an opinion judicially on the importance of the question referred to him by the Stamp Reporter and if he finds that the question is of general importance then his decision on the merits of the question will not be final and he must refer it for the final decision of the Taxing Judge.

19. We are not impressed with the submission of the learned Standing Counsel that the Taxing Officer in his order dated 26-8-1970 had applied his mind to the importance of the question and he did not find the question as one of general importance that being implicit in his observation "the Taxing Officer had no reason to make any reference to the Court as prayed." We think the order of the Taxing Officer dated 26-8-1970 is primarily based on the circumstance that the Taxing Officer had already on merits rendered his decision, therefore, no question of any reference arose.

20. As a result of the discussion above, our answer to the first question referred is that the Taxing Officer while exercising his jurisdiction u/s 5 of the Court-fees Act was under a mandatory duty to form an opinion as to the importance of the question when invited to do so within a reasonable time even after he had rendered his own decision on the merits of the question and then refer the same for final decision of the Taxing Judge, if the question is found to be one of general importance.

21. Our answer to the second question is that it is for the Taxing Officer to decide judicially whether the question was one of general importance and this Court can quash the decision by a writ of certiorari in the exercise of its jurisdiction under Article 226 of the Constitution if it were found that the duty cast on him to form an opinion was not performed judicially.

22. Our answer to the third question referred is that a mandamus can be issued to the Taxing Officer under Article 226 of the Constitution compelling him to examine the case and form an opinion as to the importance of the question and then refer it to the Taxing Judge in the event of his finding that the question was one of general importance even though the Taxing Officer himself had decided the question on merits.