
(1996) 08 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 203/89

Smt. Suman Uday Bhobe

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 05-08-1996

Acts Referred:

Constitution of India, 1950 — Article 14
Motor Vehicles Act, 1988 — Section 140, 165, 166

Citation : (1996) 98 BOMLR 873

Hon'ble Judges : T.K. Chandrashekhara Das, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.K. Chandrashekhara Das, J.—The petitioner challenges the vires of Rule 278 of the Goa Motor Vehicle Rules, 1991, as being unconstitutional and arbitrary. As per this Rule the State of Goa has prescribed certain court fees to be payable alongwith the application for compensation u/s 166 of the Motor Vehicles Act, 1988, before the Motor Accident Claims Tribunal.

2. Rule 278 of the Goa Motor Vehicle Rules is extracted below:- Rule 278:- Fees -

(1) Every application for compensation shall be accompanied by a fee deposited by a challan in accordance with the following scale, viz.

Provided that, an application under Rule 277 for a claim u/s 140 shall be accompanied by a fee of Rs. 20/- only by challan.

(2) The Claims Tribunal may, exempt a party from the payment of fee specified under Sub-rule (1) provided that where a claim of the party has been excepted by Claims Tribunal the party shall have to pay the prescribed fee.

3. It is averred in the petition that the petitioner's husband Shri Uday Bhobe and her daughter Kum. Sonia Bhobe died in a motor accident which occurred on 25th September, 1992, while a D.G.M. Toyota pickup van came and collided with the

Fiat car wherein the petitioner, her husband, and children were travelling. In the accident the petitioner and her other two minor children also suffered serious multiple injuries. She wanted to prefer a claim of Rs. 36 lakhs in total as compensation before the Motor Accident Claims Tribunal. It is the further case of the petitioner that in order to file this claim she has to pay a sum of Rs. 36,000/- as court fees. She says that in the State of Goa, no court fee at such an exorbitant rate is payable before any judicial forum for prosecuting civil remedies. It is a fact that by the Goa, Daman & Diu (Laws) No. 2 Regulation 1963 (No. 11 of 1963) the Court Fees Act, 1870 was extended to Goa. By Notification No. 2/9-1/89-LD dated 10th April, 1989, published in Official Gazette, Sr. II dated 13th April, 1989, remission was made as regards court fee in all the Courts, except High Court. After the coming into force of the Motor Vehicles Act, 1988, Rules were framed and Rule 278 provided for payment of fee alongwith application for compensation. By Notification No. 2/9-1/89-LD dated 21st March, 1993, published in the Official Gazette Sr. I, dated 31st March, 1993, the Government rescinded the Notification No. 2/9-1/89-LD dated 10th April, 1989, with effect from 1st April, 1993, and thereby re-introduced the provisions of the Court Fees Act in all the Courts in Goa. Therefore, the petitioner's contention that where in all other forums there was an exemption of payment of court fee, at the time when cause of action arose for the petitioner in 1992, it is arbitrary and discriminatory to charge the Court fee only in cases of accident claims before the Motor Accident Claims Tribunal. Another line of argument of the petitioner is that but for Section 165 of the Motor Vehicles Act and the Rules made thereunder, all claims for compensation and damages on account of motor accidents will lie in ordinary civil Courts in Torts. If Section 165 was not there and Motor Accident Claims Tribunal had not been established, the petitioner would have filed a suit for damages, of course without any liability of making payment of court fee. Therefore, it is a clear case of discrimination that the accident Claims alone have been singled out for a different treatment from that of other civil disputes. The petitioner further contended that no maximum ceiling of, court fee has been prescribed under the Rules, whereas in other States the maximum amount of court fee has been limited, therefore, the Rule is bad. The District Court on which the jurisdiction of Motor Accident Claims Tribunal has been conferred, is being run at the expense of court fees paid under motor accident claims. In other words, the entire District Court and establishment has been run by the Government only with the court fee collected by way of this fee, when Court fee under the Court Fee Act was in force in the Union Territory of Goa. Daman and Diu from 10th April, 1985 till 30th May, 1987 and in the State of Goa for the period 31st May, 1987 to 31st March 1993. In other words, the State Government is extracting, fee disproportionate to the services rendered to the court fee payer. On this and among other grounds the petitioner challenges the legality of the Rule 278 of the Goa Motor Vehicle Rules. The petitioner had obtained an interim direction from this Court at the time of admission of this Writ Petition to the second respondent, i.e. the Presiding Officer, Motor Accident Claims Tribunal, Panaji, to entertain the claim petition of the petitioner without

payment of fee as per Rule 278.

4. A detailed reply has been filed on behalf of the first respondent, State of Goa, by the Under Secretary (Transport), refuting the allegations contained in the Writ Petition. It is averred in the reply that there is correlation with the fees charged and the service rendered. The Motor Accident Claims Tribunal is only one of the Tribunals from the entire judicial set up and therefore it should not be considered in isolation. It is further contended that though there is maximum limit under the Court Fees Act, the impugned Rule cannot be suggested to be arbitrary on account of absence of such maximum limit as the entire schedule of fees has to be considered. In fact, the fees charged are very much on the lower side. It is also averred that before the Motor Accident Claims Tribunal established disputes are comparatively less in number than civil litigation. Therefore, it is not desirable to increase the level of court fee which is made applicable to the Civil Court. It is also averred among other things that provision for court fee under Rule 278 is made for immediate relief in case of death or disability u/s 140 of the Motor Vehicles Act, whereas this could not have been achieved if those provisions are not implemented and a Civil Court cannot be said to be an efficacious forum for meeting out such immediate urgent contingencies. It is also further contended that though in 1989 the application of the Court Fees Act as far as State of Goa is concerned has been rescinded, by a further Notification dated 31st March, 1993, and subsequently by another Notification dated 28th June, 1994, the Notification dated 31st March, 1993 was also rescinded. It is further averred that almost all neighbouring States have levied higher rates of court fee as far as Motor Accident Claims Tribunal is concerned.

5. Faced with the above rival contentions of the parties, we have to decide the points that emerge from the contentions whether the fees prescribed under Rule 278 of the Rules, as aforesaid, are liable to be struck down on the ground that no quid pro quo is established in the levy of fees and by reason of not prescribing a maximum limit as is done in the Court Fees Act (7 of 1870) the fees become illegal and unenforceable. These points of course are no more res Integra because these points were already covered by the decisions of the Apex Court. When we examine the first question as regards the quid pro quo is concerned, the pleadings and particulars given by the State Government are before us. The State Government alongwith statement Exhibit R-5 regarding the maintenance of the Motor Accident Claims Tribunal. Based on this statement the learned Counsel for the petitioner has contended that the expenditure shown for the maintenance of the Motor Accident Claims Tribunal is not for the Motor Accident Claims Tribunal alone. As the District and Sessions Court is designated as Motor Accident Claims Tribunal, it involves the expenditure of the District and Sessions Judge also. Therefore, he argues that the figures shown in Exhibit R-5 do not reflect the actual expenditure and therefore the figures contained in the statement Exhibit R-5 cannot be relied upon to satisfy the requirement of quid pro quo. We cannot agree with the argument of the learned Counsel for the petitioner. Evidently, salary and expenses for maintenance of the Motor Accident Claims Tribunal is

comparatively larger than the collections made towards the fees by the Claims Tribunal. The difference in the collection and the expenditure is very vast and the Government will have to meet it either by the imposition of independent court fee for other civil proceedings or by defraying from their own exchequer. But, however, in order to satisfy the principle of quid pro quo the Apex Court has time and again stated that there need not be any exactitude of figures of the expenditure and receipt. It is sufficient that there is a broad correlation between the fees collected and cost of administration of civil justice. In *P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others*, , the Supreme Court inter alia in para 16 has stated as follows:

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 scheme that a State may have. There must be a broad relationship with the fees collected and the cost of administration of civil justice.

Therefore, the only guideline laid down by the Supreme Court is that the fees collected by way of court fees cannot be utilised by the State for a purpose unconnected with the administration of justice. It can be seen from the above observations of the Supreme Court that it is enough if there is a broad correlation between the fees collected and the service rendered to satisfy the principle of quid pro quo. They should be utilised for the administration of justice or meeting the expenditure for establishment and maintenance of the Tribunal or Courts. Another contention that has been taken incidentally by the learned Counsel Shri Kantak who is appearing for the petitioner, is that the system of collection of tax on the basis of ad valorem is not justified. He contended that whatever may be the quantum of the damage that has been claimed the quantum of work involved in each case depends upon the nature of the dispute. The claim of the petitioner has nothing to do with the quantum of work. Sometimes the quantum of work will be less, where a large amount of compensation is claimed. On the other hand, in some cases, the claim made may be for a lesser amount, but the volume of work that has to be undertaken by the Court sometimes is very heavy. In the result, the individual who pays the Court fee is not getting the benefit proportionate to the work done in each case. This approach also has been deprecated by the Supreme Court which held in the said judgment in paragraph 15 as follows:

15. Nor does the concept of a fee-and this is important-require for its sustenance the requirement that every member of the class on whom the fee is imposed, must receive a corresponding benefit or decree of benefit commensurate with or proportionate to the payment that he individually makes. It would be sufficient if the benefit of the special services is available to and received by the class as such. It is not necessary that every individual composing the class should be shown to have derived any direct benefit. A fee has also the element of a

compulsory exaction which it shares in common with the concept of a tax as the class of persons intended to be benefitted by the special services has no volition to decline the benefit of the services. A fee is, therefore, a charge for the special service rendered to a class of citizens by Government or Governmental agencies and is generally based on the expenses incurred in rendering the services.

The very same principle has been repeated and reiterated in the case of Secretary to Government of Madras and Anr. v. P.R. Sriramulu and Anr AIR 1996 S.C. 676. There also the ad valorem court fee had been imposed. In paragraph 14 of the said judgment the Supreme Court has observed thus:

14. Having regard to the decisions and various pronouncements cited above it is difficult to accept the reasoning and the view taken by the High Court in the impugned judgment. As discussed above, if the essential character of the levy is that some special service is intended as quid pro quo to the class of citizens which is intended to be benefitted by the service and a broad and general correlation between the amount so collected and the expenses incurred in providing the services is found to exist, then such levy would partake the character of a "fee", irrespective of the fact that such special services for which the amount by levy of fee is collected incidentally and indirectly benefit the general public also. In order to establish the correlation between the amount recovered by way of "fee" and the expenses incurred in providing the service they should not be examined so minutely to be weighed in golden scale to discern any difference between the two. It is not necessary to ascertain the same with any mathematical exactitude for finding the correlation but the test would be satisfied if a broad and general correlation is found to exist and once such a broad correlation between the totality of the expenses on the services rendered as a whole, on the one hand and the totality of the amount so raised by way of the fee on the other is established, it would be no part of the legitimate exercise in the examination of the constitutionality of the concept of the impost to embark upon its effect in the individual cases. If the aforesaid relation is found to exist in the levy of the fee, the levy cannot be said to be wanting in its essential character of a fee on the ground that the measure of its distribution on the persons or incidence is disproportionate to the actual services made available to them.

6. Therefore, the contention that the present court fee levied on the petitions before the Motor Accident Claims Tribunal do not satisfy the principle of quid pro quo and it does not proportionately give advantages to payer of fee are not sustainable in view of the aforesaid propositions of law laid down by the Supreme Court.

7. The next argument of the counsel for the petitioner is that there must be a maximum limit for the fee payable by the claimant. Unless the maximum limit is fixed the fee is liable to be declared as ultra vires of the Constitution and also it is liable to be struck down as it is discriminatory under Article 14 of the Constitution of India. This point has been also decided by the Supreme Court in

its decision in the Secretary to Government of Madras and Anr. v. P.R. Sriramulu and Anr. J.T. 1995 (8) 305 wherein it is observed thus:

From the entire discussion of the said decision it is clear that this Court did not strike down the ad valorem levy of Court Fees without upper limit and at the same time has expressed displeasure with regard to the scheme and it is for this reason that certain suggestions were made in para 95 of the said report in regard to the rationalisation of the Court Fees under the "Rajasthan Act and the Karnataka Act" where the rate of Court Fees was 10 per cent ad valorem which is not the case here before us.

Therefore, we cannot say that the fee is illegal when it does not prescribe an upper limit.

8. Lastly, Mr. Kantak, learned advocate argued that the hardship of the claimants who approach the Motor Accident Claims Tribunal, who in most cases have lost their bread winners of the family, cannot be made to be burdened with large amount of fees. This is also available particularly because it is a matter of fiscal policy. The Supreme Court has in AIR 1996 S.C. 676 (supra cited) expressed opinion about this predicament of the court fee payers. In paragraph 15 is *inter alia* observes thus:

15. These measures of 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 fiscal adjustments, the Courts give a large discretion to the Legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways.

In view of the discussion, none of the contentions raised by the Counsel for the petitioner is sustainable to declare that Rule 278 of the Motor Vehicle Rules is *ultra vires*.

9. In the result, the Writ Petition is dismissed. There shall be no order as to costs. But, however, the lower Court may consider whether the fee could be collected from the petitioner after the Tribunal has decided the matter and interim order passed by this Court shall continue till final disposal of the case.