
(2005) 07 KL CK 0059

In the High Court Of Kerala

Case No : Writ Petition No's. 31706 and 32652 of 2004

Steel Industrials Kerala Ltd.

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 20-07-2005

Acts Referred:

Constitution of India, 1950 — Article 16, 39A

Citation : (2005) 4 KLT 81

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : B.S. Krishnan, K.B. Muhamed Kutty, Antony Dominic, E.K. Nandakumar, A.K. Jayasankar Nambiar, Anil D. Nair, Priya Mahesh, K.M. Firoz, K. Anand, Latha Krishnan, C.K. Thanu Pillai, Renjith Thampan, Premjit Nagendran, T.K. Shaij Raj, N. Muraleedharan Nair, A. Kumar, E.P. Govindan, Manoj Kumar M., V.K. Shamsudheen, John Ramesh and K.I. John, for the Appellant; Raju Joseph, Spl. Government Pleader (Taxes), for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—These Writ Petitions are filed challenging the constitutional validity of Section 76 of the Kerala Court-fees and Suits Valuation Act, 1959 (Kerala Act X of 1960), hereinafter "the CF Act", for short, and the notification issued by the Government of Kerala as per S.R.O.No. 226/2002 published in the Kerala Gazette Extra-ordinary No. 420 dated 5-4-2002, by which, the Government authorized levy of additional court-fee in exercise of power under Sub-section (1) of Section 76 of the CF Act. After the issuance of the aforesaid Notification, the Chairman of the Sales Tax Appellate Tribunal issued a Circular, which is also under challenge.

2. The petitioners are assesseees under the Commercial Tax Laws, to wit, the Central Sales Tax Act, the Kerala General Sales Tax Act or the Value Added Tax Act. As against assessment orders and allied matters, they have statutory remedies by way of appeal to the Appellate Authorities or the Tribunals, as the case may be, as are constituted under the said enactments.

3. Section 76 of the CF Act reads as follows:

"76. Legal Benefit Fund.--

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, it shall be competent for Government to levy an additional court-fee, by notification in the Gazette, in respect of appeals or revisions to tribunals or appellate authorities, other than Civil and Criminal Courts, at a rate not exceeding one per cent of the amount involved in the dispute in cases where it is capable of valuation and in other cases at a rate not exceeding one hundred rupees for each appeal or revision.

(2) There shall be constituted a legal benefit fund to which shall be credited--

(i) the proceeds of the additional court-fee levied and collected under Sub-section (1);

(ii) fifty per cent of the court-fees levied and collected on mukhtarnama or vakalathnama under Article 16 of Schedule II of this Act.

(3) The fund constituted under Sub-section (2) shall be applied, and utilised for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession.

(4) The mode and manner in which legal service to the people may be made more efficient and social security measures for legal profession may be provided, shall be as prescribed by rules made by Government."

4. Though the aforesaid is part of the CF Act that came into force on 1-2-1962, the Kerala Legal Benefit Fund Rules, 1991 were made by the Government in exercise of power conferred by Sub-section (4) of Section 76, only with effect from 23-5-1991. The Kerala Legal Benefit Fund contemplated by Section 76(2) of the CF Act was constituted and notified as per S.R.O.No. 225/2002 in the Kerala Gazette Extra-ordinary No. 419 dated 5-4-2002.

5. By S.R.O.No. 226/2002 published in the Kerala Gazette Extra-ordinary No. 420 dated 5-4-2002, hereinafter referred to as the "Notification", the Government authorized levy of additional court-fee in exercise of power under Sub-section (1) of Section 76 of the CF Act. The said notification with Explanatory Note is as follows:

"NOTIFICATION

S.R.O.No. 226/2002 (Published in K.G.Exty.No. 420 dated 05-04-2002) - In exercise of the powers conferred by Sub-section (1) of Section 76 of the Kerala Court Fees and Suits Valuation Act, 1959, the Government of Kerala hereby authorise the levy by the Tribunals and appellate authorities constituted by or under any special or local law, other than Civil and Criminal Courts of additional court fee in respect of each appeal or revision at the rate of 0.5% of the amount involved in the dispute in cases where it is capable of valuation and in other

cases at the rate of Rupees fifty in each such case. The amount so collected shall be credited to the Kerala Legal Benefit Fund constituted under Sub-section (2) of Section 76 of the Kerala Court Fees and Suits Valuation Act, 1959.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As per Sub-section (2) of Section 76 of the Kerala Court Fees and Suits Valuation Act, 1959 the Government have constituted the Kerala Legal Benefit Fund with effect from 5th April, 2002 vide Notification published as S.R.O.No. 225/2002 dated 5-4-2002. Sub-section (1) of Section 76 of the Act empowers the Government to levy additional court fee in respect of appeals Or revisions to tribunals and appellate authorities by notification in the Gazette. Government have decided that an additional court fee is to be levied at the rate of 0.5% of the amount involved in the dispute in cases where it is capable of valuation and in other cases at the rate of Rupees fifty in each case. The additional court fees so levied by tribunals and appellate authorities on appeals or revisions as the case may be shall be credited to the Kerala Legal Benefit Fund.

This notification is intended to achieve the above object."

6. The Circular issued by the Chairman of the Sales Tax Appellate Tribunal, after the issuance of the aforesaid notification, reads as follows:

No. A2-1672/20G2.

Kerala Agrl. Income Tax & Sales Tax Appellate Tribunal, Thiruvananthapuram. Dt. 12-2-2004

CIRCULAR NO. 1/2004

Sub: KAIT & STAT -- Levy of Additional Court Fee - Instructions issued -- reg.

Ref: 1) G.O.(P)No. 116/2002/Law dtd.5-4-2002.

2) Govt.Lr.No. 16527/G3/01/Law dtd.18-10-2002 and 24-3-2003.

3) Govt.Lr.No. 1405/G3/04/Law dtd. 5-2-2004.

As per Sub-section (2) of Section 76 of the Kerala Court Fees & Suits Valuation Act 1959, the Government have constituted the Legal Benefit Fund with effect from 5-4-2002 vide Notification published as S.R.O. No. 225/2002 dtd. 5-4-2002. Sub-section (1) of Section 76 of the Act empowers the Government to levy Additional Court Fee in respect of the appeals or revisions to Tribunals and Appellate Authorities, by Notification in the Gazette. Government have decided that an Additional Court Fee is to be levied at the rate of 0.5% of the amount involved in the dispute in cases where it is capable of valuation and in other cases at the rate of Rupees Fifty in each case. The additional court fee so levied by Tribunals and appellate authorities on appeals or revisions as the case may be

shall be credited to the Legal Benefit Fund.

In the light of the above Notification, and clarification issued vide Government Letter No. 16527/G3/200/Law dt. 24.3.2003 by the Law Secretary, appeals and revisions to the Kerala Agrl. Income Tax & Sales Tax Appellate Tribunal will attract additional court fees under the Court Fees and Suits Valuation Act 1959. For this purpose, on the basis of Government Letter 3rd cited, the following guidelines for levying Additional Court Fee are issued:

(1) In all the Benches including the Headquarters Bench, Addl. Court Fee shall be levied by affixing Court Fee Stamps for the amount calculated at the rate of 0.5% of the disputed tax involved in each case wherein it is capable of valuation and in other cases at the rate of Rs. 50/- in each such case in addition to institution fee.

(2) Register should be opened for making entries regarding the levy of additional court fee by the Section Clerk dealing with appeals.

(3) The levy of additional court fee will take effect from 16-2-2004.

Receipt of this Circular should be acknowledged.

Sd/- Chairman.

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7. The aforesaid statutory provision, the notification S.R.O. No. 226/2002 and the Circular of the Chairman or the Appellate Tribunal are impugned in these Writ Petitions

8. The arguments advanced on behalf of the petitioners can be noticed as follows:

a. Section 76 of the CF Act, to the extent it imposes levy of fee on proceedings before the Tribunals, goes beyond the legislative competence of the State.

b. Even assuming the existence of such power, the impugned provision is one imposing an additional court-fee and hence, can be imposed only in cases where the levy of a court-fee is provided for, by the Act itself.

c. The effect of Section 2(2) of Act X of 1960 is that it takes away all levy, including that by Section 76 and therefore, the chargeability of a fee u/s 76 gets confined to those proceedings, which do not get excluded u/s 2(2). By reason of Section 2(2) of the CF Act, the provisions as to payment of fee, as are contained in the Statutes providing the appeals/revisions govern such proceedings and hence, there can be no question of imposing any additional court-fee.

d. The imposition by Section 76 of the CF Act amounts to an unreasonable restriction on the right of appeal and it impairs such right by making the onerous imposition of such additional fee, that too, ad valorem, without any outer limit.

e. The imposition has no nexus to any object sought to be achieved in relation to

the service available to the petitioners and therefore, it is a tax and not a fee. There is no nexus between the person liable to pay and the beneficiary of Section 76(2). There is no quid pro quo.

f. The amounts so collected goes to the general revenue fund of the State and therefore, it is a tax and not a fee. The levy flows directly into the gross revenue of the State and is, therefore, a tax proper.

g. Even assuming that it is a fee, it is disproportionately high and thereby it partakes the characteristics of a tax rather than a fee. It is a piece of colourable legislation and when its veil is pierced, it would easily be seen to be an unauthorized imposition.

h. The imposition is confiscatory in nature since there is no power of even refund of additional court-fee or for payment of costs and the State gets automatically enriched by even a per se erroneous and illegal order by a Government servant exercising statutory authority under the Act. Even if the Appellate Authority or the Tribunal reverses a perverse and groundless assessment order, the assessee is deprived of the fee that he would pay before the Appellate Authority or the Tribunal for having such an order reversed.

i. The imposition is shocking to conscience and infracts Wednesbury principles and the doctrine of proportionality.

j. Schedule I of Act X of 1960 relates more to private law litigations, while Schedule II thereof relates more to public law litigations. Law has always contemplated different yardsticks of court-fee and had always provided a minimal court-fee in public law matters.

k. The expression "amount involved in the dispute" occurring in S.R.O.226/2002 is vague.

l. Section 76 is a delegated power of legislation and S.R.O.No. 226/2002 amounts to sub-delegation of such legislative power, which is unauthorized.

m The notification has not been laid on the table of the Legislature as provided by Section 85(2) of the Act and hence, bad.

9. On behalf of the State, it is urged that the impugned provision is within the legislative competence of the State and that the neither said provision, nor the impugned notification is bad on any count, It is pointed out that the Circular issued by the Chairman of the Tribunal is only clarificatory and is, in fact, not in excess of the notification.

10. The issues that arise for determination are considered as follows:

Legislative competence to make law as provided by Section 76 of the CF Act:

11. The CF Act received the assent of the President on 27-7-1960 and was published in the Kerala Gazette dated 30-7-1960 and came into force on the appointed day, 1-2-1962, as notified by the Government in terms of Section 1(3)

of that Act. Entry 3 in List II (State List) of the Seventh Schedule of the Constitution, as it then stood, provided administration of justice as a distinct topic since Entry 3, then, read as follows:

"3. Administration of justice, constitution and organization of all courts except the Supreme Court and the High Court; officers and servants of the High Court; procedure in Rent and: Revenue Courts; fees taken in all courts except to the Supreme Court".

12. None of the legislative heads, the items in the Lists, is to be read in a narrow or restricted sense and each general word should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in it. This position of law was particularly emphasized in *United Provinces v. Atiga Begum* (AIR 1941 EC. 16). The same position was affirmed by the Supreme Court in *Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others*, , wherein it was observed that it is well settled that the language of the Entries in the Seventh Schedule must be given the widest scope of which their meaning is fairly capable, because they set up a machinery of Government and are not mere acts of a legislature subordinate to the Constitution. It is trite law that each of the Entries in the three Lists in the Seventh Schedule to the Constitution is a separate legislative head and the only limit is that the law cannot be so couched to go beyond the legislative competence, it is a well-recognised, rule of construction that the items in a legislative list in a Constitution should be read and understood in the full sense of the terms used, so as to give them the widest scope permissible by the context in which these terms have been used. (See *State of Bihar and Ors. v. Shree Baidyanath Ayurved Bhawan (P) Ltd. and Ors.*, 2005 (1) KLT (SC) 79 : AIR 2005 SCW 515, *Godfrey Phillips India Ltd. and Anr. v. State of U.P. and Ors.* (2005) 139 STC 537).

13. By the 42nd Amendment to the Constitution in 1976, administration of justice became a concurrent subject, having been included as Entry 11A in List III and necessary modifications having been made to Entry 3 in List II.

14. Article 39A introduced by the 42nd Amendment provides, among the directive principles of State policy in Part IV of the Constitution, for equal justice and free legal aid. Article 39A reads as follows:

"39A. Equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

15. As already noticed, administration of justice is a distinct topic, be it under Entry 11A in List III where it now stands or at Entry 3 in List II as it stood prior to the 42nd Amendment to the Constitution. The gaze of Article 39A continues to instill any legislation referable to the topic of administration of justice. So much

so, a piece of legislation in the form of Section 76 of the CF Act is well within the competence of the State Legislature and it continues to be so even while the impugned notification was issued as per S.R.O.226/2002 since even by that time, there was no law made by the Parliament for constitution of any legal benefit fund as provided by Section 76 of the CF Act and therefore, no question of repugnancy arises, in spite of the absence of concurrence, since as of now, there is no such requirement. The impugned provision and the notification are not made referable to Entry 54 or Entry 66 of the State List and are sustainable, in so far as legislative competence is concerned, with reference to Entry 11A in the Concurrent List.

16. Competence to make laws for levy, collection and enforcement of taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92A of the Union List rests with the State, by virtue of Entry 54 of List II. The competency to make laws for levy, collection and enforcement of taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce rests with the Union, by virtue of Entry 54 of List II. Entry 92 in List I authorizes the Union to make laws for levy, collection and enforcement of taxes on the sale or purchase of newspapers and on advertisements published therein. While Entry 96 in List I authorizes the Union to legislate as regards fees in respect of matters in the said List, excluding fees to be taken in any court, similar entry as regards the State List is provided by Entry 66 in List II. The reference to these entries in the Lists in the Seventh Schedule is being made to conclude that the impugned legislation is independently referable to Entry 11A of List III and that such entry has an independent standing and therefore, the constitutional validity on account of legislative competence is answerable in the affirmative by reference to that entry alone. Hence, the State legislature had and continues to have the competence to make law as provided by Section 76 of the CF Act.

Whether Section 76 is an imposition of a tax or fee?

17. This question would take within its sweep, the questions as to whether the person paying such fee, receives any service referable to such fee, thereby, whether there exists any quid pro quo for the levy and as to whether there is nexus, if any, between the person liable to pay and the benefits that may emanate out of the provisions of Section 76(2) or whether there is any nexus between the beneficiaries of the provisions u/s 76(2) and the persons paying the fee.

18. Though reference to different decisions was made to demonstrate the distinction between fee and tax and as to when a fee would grow to be treated as a tax, in view of the arguments which centered more on the quality of imposition of ad valorem additional court fee as per the impugned legislation, it is sufficient to notice the decision of the Apex Court in P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, . Their Lordships stated thus:

"Another review of all the earlier pronouncements of this Court on the conceptual distinction between a "fee" and a "tax" and the various contexts in which the distinction becomes telling is an idle parade of familiar learning and unnecessary. What emerges from these pronouncements is that if the essential character of the impost is that some special service is intended or envisaged as a quid pro quo to the class of citizens which is intended to be benefited by the service and there is a broad and general correlation between the amount so raised and the expenses involved in providing the services, the impost would partake the character of a "fee" notwithstanding the circumstance that the identity of the amount so raised is not always kept distinguished but is merged in the general revenues of the State and notwithstanding the fact that such special services, for which the amount is raised, are, as they very often do, incidentally or indirectly benefit the general public also. The test is the primary object of the levy and the essential purpose it is intended to achieve."

19. As already noticed, the imposition is not as a fee for an appeal, but an imposition to satisfy the mandate of Article 39A of the Constitution, for which the State has the competence to legislate, the source being Entry 11A of List III as it now stands, when the notification is issued. Hence, in any view of the matter, the imposition is not void and inoperative.

Rule of Laying

20. Section 85 of the Act provides only a rule of simple laying. The force of the Statute from the date of its publication does not depend upon the laying. A simple laying requirement, providing no affirmative procedure, is only directory and does not affect the validity of the law or its coming into force. (See *Atlas Cycle Industries Ltd.*'s case AIR 1979 SC 1149 and *The Quarry Owners Association Vs. The State of Bihar and Others*, .

The impact of Section 2(2) on Section 76 of CF Act

21. Section 76 starts with a non-obstante clause that it shall be competent for the Government to make the levy provided for by the said section notwithstanding anything contained in the Act or any other law for the time being in force. This means that the provisions regarding Legal Benefit Fund, which is the exclusive subject, dealt with in the solitary section in Chapter VIII of Act X of 1960 stand by themselves. It is independent of the other provisions of the CF Act, including Section 2 thereof.

22. As already noticed, going by the relevant entry in the Seventh Schedule as to the legislative field to which it is referable, Chapter VIII of the CF Act stands on its own. The use of the expression "additional court-fee" in Section 76(1) means only that what is payable u/s 76(1) shall be in addition to any fee payable on the appeal. This does not, as a corollary, mean that the payment of such fee u/s 76 need be made only in matters for which a court-fee is prescribed under the other chapters of the CF Act. In respect of appeals or revisions to Tribunals or Appellate Authorities other than civil and criminal courts, whether or not a court-

fee is payable under the provisions of the CF Act and whether or not a fee is payable under the law providing for such appeals, the fee provided by Section 76(1) has to be paid on a notification being issued authorizing the Government to levy such fee.

Vested right of appeal and impairment of it, if any - Whether the right of appeal is impaired by the imposition made? - Interpretation of the notification:

23. The imposition made by the impugned notification is at the rate of 0.5% of the amount involved in the dispute in cases where it is capable of valuation and in other cases, at the rate of Rs. 50/- in each case. The same is not vague, to result in the failing of the notification on any count of constitutionality. Even if there is any ambiguity, needing the said fiscal imposition to be interpreted in favour of the citizens, against the State, the reasonable interpretation of the said imposition can be only that the valuation for the purpose of the said levy has to be the value of the amount of the tax in dispute in the appeals/revisions which are filed under the Commercial Tax Laws, of which alone we are now concerned.

24. The adoption of the machinery under the KGST Act for the collection and enforcement of the tax payable under the Central Sales Tax Act, 1956 makes the provisions of the KGST Act applicable to such matters. Therefore, the Tribunal constituted under the KGST Act is authorised to hear the matters relating to the CST Act. The provisions of Section 76(1) of the CF Act get attracted to such situations also. The levy of a fee, as already noticed, is a matter of fiscal policy and the lack of perfection in a legislative measure does not necessarily imply its unconstitutionality. As rightly pointed out on behalf of the State, one ought not to be heard to contend that no law that arrived after him shall bind him.

25. However, as laid down by the Apex Court in *State of Bombay Vs. Supreme General Films Exchange Ltd.*, and by the Division Bench of this Court in *Usha v. F.C.I.* (1997 (1) KLT 264) and in *Procurator, R.C. Diocese, Calicut v. State of Kerala* (2003 (1) KLT 618), though the provisions relating to court-fee brought in after the commencement of the Us may be valid in law, the litigant ought to be entitled to prosecute his appellate remedy by remitting such fee as he would have paid for such appeal on the date of commencement of the Us unless the fiscal imposition thereafter has reduced his burden. Otherwise, it would impair the vested right of the litigant. Viewed in this angle, it is only reasonable to hold that the imposition made by the impugned notification, S.R.O.226/2002, ought to apply only to appeals/revisions arising from assessment orders issued in relation to and from the assessment year in which the said notification was issued on 5.4.2002. The impugned notification and the impugned Circular issued by the Chairman of the Sales Tax Appellate Tribunal are to be read down to the aforesaid extent.

Conclusions:

i. Section 76 of the Kerala Court-fees and Suits Valuation Act, 1959 (Kerala Act X of 1960), is valid;

ii. The fee payable as per the notification S.R.O.No. 226/2002 published in the Kerala Gazette Extra-ordinary No. 420 dated 5-4-2002, has to be on the amount of the tax in dispute.

iii. Such fee is payable only on appeals/revisions arising from assessment, orders issued in relation to and from the assessment year in which the said notification was issued on 5.4.2002.

iv. The Circular issued by the Chairman of the Sales Tax Appellate Tribunal will be read subject to the aforesaid modifications.

v. The levy as per S.R.O.No. 226/2002 shall be in terms of the declarations contained herein. It is so directed.

vi. The mode of collection shall be such that it is ensured that the amounts collected as per S.R.O.No. 226/2002 shall be credited to the Legal Benefit Fund, since such credit is provided for.

The Writ Petitions are disposed of in the above terms, with the declarations and directions as aforesaid. The levy as per S.R.O.No. 226/2002 shall be in terms of the declarations contained herein. It is so directed.