The Chief Commissioner, Delhi and Another

Vs

The Delhi Cloth and General Mills Co. Ltd. and Others,

Civil Appeal No. 1959 of 1968

(Jaswant Singh, Syed M. Fazal Ali, JJ)

07.04.1978

JUDGMENT

FAZAL ALI, J. -

This appeal by certificate is directed against the judgment and order of the Circuit Bench of the Punjab High Court at Delhi dated May 7, 1964 and arises in the following circumstances :

1A. The Respondent Company floated debenture loan of Rs. 2.50 crore and to secure the repayment of the said loan, executed debenture trust deed dated April 10, 1962 mortgaging certain properties of the Company for consideration of Rs. 2.50 crore in favour of the trustees who were petitioners before the High Court. Further details have been given in the judgment of the High Court and it is not necessary to repeat them here. It appears that stamps to the extent of Rs. 2,50,300 were paid under the Indian Stamp Act and apart from that when the document was presented for registration, a registration fee of Rs. 1,25,157.50 was demanded by the Sub-Registrar under a notification issued by the Chief Commissioner of Delhi, which is the impugned notification in this case. The registration fee was paid by the respondents under compulsion but the trustees filed a petition in the High Court challenging the validity of the notification and the exorbitant amount realised as registration fee.

2. The short point taken before the High Court by the Respondent was that the registration fee levied under the notification dated December 15, 1962 was an illegal levy as it did not fulfil the essential conditions of a fee within the meaning of the Constitution. The plea of the trustees found favour with the High Court which held that the fee charged by the Registration Department under the notification was an illegal impost and could not be levied. The High Court accordingly quashed the notification directed refund of the fee.

3. The main point which arises for consideration in this case is as to whether or not the fee charged under the notification issued by the Chief Commissioner was a legal impost justified by the provisions of the Constitution. It is well-settled that a fee in order to legal fee, must satisfy two conditions -

> (i) there must be an element of quid pro quo that is to say, the authority levying the fee must render some service for the fee levied however remote the service may be;
>
> (ii) that the fee realised must be spent for the purposes of the imposition and should not form part of the general revenues of the State.

4. In the instant case, it was not disputed before the High Court that the fee realised by the Registration Department under the notification above mentioned was to form part of the general revenues of the State. It is, therefore, manifest that the second element of a fee was wholly wanting in this case and the High Court was, therefore, right in striking down the notification. Mr. Bhatt, appearing in support of the appeal, submitted that by virtue of the fact that the document was registered, the respondents obtained initial advantage in using the document as an authentic piece of evidence and as proof of title and this was, therefore, a sufficient service rendered for the imposition of the fee. Even assuming that this was so, the second essential ingredient of a valid fee, viz., that the fee realised must be co-related with expenditure incurred on registration so as to be spent on maintenance of registration organisation, was not satisfied in this case and on this ground alone the fee could not be imposed. In Mahant Sri Jagannath Ramanuj Das v. The State of Orissa (1954 SCR 1046, 1053-4 : AIR 1954 SC 400), this Court observed as follows :

> Two elements are thus essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly. But this by itself, is not enough to make the imposition a fee, if the payments demanded for rendering of such services are not set apart or specifically appropriated for that purpose but are merged in the general revenue of the State to be spent for general public purposes.

The same view was reiterated in Ratilal Panachand Gandhi v. The State of Bombay (1954 SCR 1055 : AIR 1954 SC 388).

5. In a recent decision of this Court in the case of State of Maharashtra v. The Salvation Army, Western India Territory ((1975) 3 SCR 475 : (1975) 1 SCC 509 : 1975 SCC (Tax) 145), this Court observed as follows (SCC p. 516-7) :

> Thus, two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accept either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes.

In view of the long course of decisions of this Court, the view taken by the High Court was absolutely correct and we are unable to find any error of law. We understand that the notification has now been amended and maximum fee of Rs. 100 has been fixed. Thus the point becomes more or less academic except for cases arising during a particular period.

6. For these reasons, therefore, we find no merit in this appeal which fails and is accordingly, dismissed without any order as to costs.

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