

Mota Singh and Others

Vs

State of Haryana and Others

Writ Petitions Nos. 5114-15, 5144-45 and 5147-59 of 1980

(D. A. Desai, E. S. Venkateramiah JJ)

01.10.1980

JUDGMENT

1. We have carefully gone through the office report prepared pursuant to the directions given by us. We are prima facie satisfied that the petitioners have not paid court fees legally payable and that the petitioners have so modeled the title clause of the petitions as may indicate that the payment of the legally payable court fee could be evaded. Having regard to the nature of these cases where every owner of a truck plying his truck for transport of goods has a liability to pay tax impugned in the petition, each one has his own independent cause of action. A firm as understood under the Partnership Act or a company as under the Indian Companies Act, if it is entitled in law to commence action either in the firm name or in the company's name, can do so by filing a petition for the benefit of the company or the partnership and in such a case court fee would be payable denuding upon the legal status of the petitioner. But it is too much to expect that different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay only one set of court fee simply because they have joined as petitioners in one petition. Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person would be liable to pay legally payable court fee on his petition. It would be a travesty of law if one were to hold that as each one uses highway, he has common cause of action with the rest of truck pliers.

2. We are, therefore, of the opinion that the office should scrutinize afresh each one of the cases referred to in the office report and ascertain whether requisite court fee has been paid in each of them. In ascertaining this fact, the office should ascertain whether there are number of petitions who are combined in one petition; the position of each qua the co-petitioners, and the relief claimed, and determine the liability of each such petitioners to pay court fee for the relief sought by him. If on such ascertainment and determination court fee is shown to be payable by different petitioners who have joined together in one petition learned advocates appearing for them should be called upon to make good the deficit court fee by or before October 31, 1980.

3. If the deficit court fee is not paid in any case by the learned advocate appearing for such party, in order to avoid any hardship and injustice to the innocent parties the office should bring the matter to the notice of the court and seek a direction whether a notice be issued to each of such petitioner in respect of whom deficit court fee is not paid intimating to him that he should pay up the deficit court fee within the time to be specified in the notice and giving further intimation that if the deficit court fee is not made on or before the specified date the petition will be posted for further orders before the court on November 4, 1980.

4. We also direct that all cases shows in the office report in any event be posted before the court on November 4, 1980, with a report whether the deficit court fee in each case has been paid or not.

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