ALLAHABAD HIGH COURT

Khacheru Singh

Vs

S.D.O. Khurja

(O Mootham, CJ. R Dayal and B Mukerji, JJ.)

22.01.1960

JUDGMENT

Mootham, C.J.

1. This Bench has been constituted under Section 5 of the Court-fees Act, 1870 (hereinafter referred to as the principal Act) to determine the court-fee payable on a petition under Article 226 of the Constitution. A petition under this Article was presented to the Court on which a court-fee of Rs. 5/- had been paid. That fee was considered insufficient by the Taxing Officer who was of opinion that as a consequence of the amendment made in the principal Act by the U. P. Court-fees (Second Amendment) Act, 1958 (U. P. Act XLIV of 1958) and the Court-fees (Uttar Pradesh Amendment) Ordinance, 1959 (U. P. Ordinance II of 1959) the proper fee was Rs. 50/-. The Ordinance has now been replaced by the Court-fees (Uttar Pradesh Amendment Act, 1959 (U. P. Act X of 1959) and the provisions of the principal Act so amended which call for consideration are Section 4 and Clause (e) of Article 1 of Schedule II. These provisions, so far as they are material, read as follows:

"Section 4. No documents of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed ..... in the High Court of Judicature at Allahabad in the exercise of its .... jurisdiction to issue directions, orders or writs under the Constitution of India unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said Schedules as a proper fee for such document."

Clause (e) of Article 1 of Schedule II:
Clause
(e) of Art. 1 of Schedule II:
"Application or petition
(e) When presented to a High Court Fifty Rupees.
Under Art. 226 of the Constitution...

,, The validity of these provisions so far as they purport to impose court-fee on petitions under Article 226 is challenged by the petitioner.

2. The argument is two-fold. It is contended, first, that the levy imposed by the amendment is not

a fee but a tax and is therefore beyond the competence of the State Legislature. Secondly, it is urged that the Court when acting under Article 226 is exercising a power and not a jurisdiction and that the amendment of Section 4 of the Principal Act is ineffective to achieve its purpose.

3. The second of these submissions can in my opinion be disposed of shortly. "Jurisdiction" is defined in Murray's Dictionary as meaning "Power or authority in general . . . the extent or range of judicial or administrative power; the territory over which such power extends." I have no doubt that a jurisdiction is conferred on this Court by Article 226 to issue directions, orders or writs, and that it is in the exercise of that jurisdiction that it issues directions, orders and writs.

4. Mr. Jagdish Swarup who appears for the petitioner has, in a very careful and interesting argument, invited our attention to the history of the legislation in India with regard to the imposition of court-fees and to the distinction between a tax and a fee, ordinarily so called, adumbrated by the Supreme Court in *Commissioner Hindu Religious Endowments, Madras v. Lakshmindra Tirtha Swamiar,*[1] . I think however that the answer to the matter at issue lies in a narrow compass.

5. Under Article 246(3) of the Constitution the legislature of a State has power to make laws for such State with respect to any of the matters enumerated in List II in the Seventh Schedule. It is common ground that the only entries in that List relevant for our present purpose are entries 3 and 66. They 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 the Supreme Court.""66. Fees in respect of any of the matters in this List, but not including fees taken in any court."
It is not disputed that the phrase "fees taken in all courts" in entry 3 includes those impositions which can properly be described as "court-fees," and it follows that the word "fees" in entry 66 will not include such court-fees. The only question therefore is whether the impugned legislation is in respect of a fee taken in a court within the meaning of entry 3. If it is, it is valid legislation.

6. Learned counsel contends that a fee taken in a court within the meaning of entry 3 must be a levy which has the essential characteristic of a fee, that is to say it must be a payment for services rendered which is reasonably related to the expenses incurred in providing that service. He does not seek to contend that there is no quid pro quo for the court-fee chargeable on petitions under Article 226, but he urges that as the State Government was already making a very large profit out of court-fees the entire amending Act of 1959 increasing those fees is ultra vires. The Advocate General on the other hand argues that the fees with regard to which the State Government has the power to legislate under entry 3 are taxes and no question of quid' pro quo arises.

7. The history of the imposition of court-fees in India goes back to the Regulations of Madras in 1782, of Bengal in 1795 and of Bombay in 1802. Then comes the first Court-fees Act (Act XXXVI of 1860) to be followed by Act X of 1862, Act XXVI of 1867 and Act VII of 1870. Mr. Jagdish Swarup has not argued that that the fees imposed by any of these enactments were envisaged as charges for services rendered. I have not been able to examine the Madras and Bombay Regulations but the preamble to the Bengal Regulation of 1795 scathingly criticised later by Lord Macauiay makes it quite clear that the purpose of that Regulation was to place

some check on public recourse to the courts. It has not, I think, ever been seriously doubted that one of the main objects of the subsequent Court-fees Act was to provide revenue for the purposes of the general administration "...the object of these provisions, as indeed of the whole Act, is to lay down rules for the collection of one form of taxation", Mahmud, J. said in Muhammad Salim v. Nabian Bibi[2], The Privy Council in Rachappa Subrao v. Shidappa Venkatarao[3], pointed out that the Court-fees Act was not passed to arm a litigant with a weapon of technicality against his opponents "but to secure revenue for the benefit of the State", and in F. A. Shihan v. Abdul Alim; AIR 1930 Gal 787, the Court-fees Act was bluntly described by Rankin, C. J., as a taxing statute.

8. It is nevertheless urged by Mr. Jagdish Swarup that entry 3 in List II refers to 'fees', and that whatever may have been the position before the commencement of the Constitution the State Government cannot now, in the guise of a court-fee impose a levy which has not the essential characteristic of a fee as defined by the Supreme Court.

9. In 1954 SCR 1005: (AIR 1954 SC ,282) it was pointed out that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden while a fee is a payment for a special benefit or privilege, and it laid emphasis, as learned counsel had said, on the necessity of a correspondence between the amount of the fee and the cost of the benefit conferred. *In Jagannath Ramanuj Das v. State of Orissa,*[4] distinction between a tax and a fee was further considered. On page 1053 (of SCR): (at p. 403 of AIR) the Court said:

> "Our Constitution, however, has made a distinction between a tax and a fee for legislative purposes and while there are various entrias in the three lists with regard to various forms of taxation, there is an entry at the end of each one of these lists as regards fees which could be levied in respect of every one of the matters that are included therein. A tax is undoubtedly in the nature of compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. But the essential thing in a tax is that the imposition is made for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the payers of the tax. The taxes collected are all merged in the general revenue of the State to be applied for general public purposes. Thus, tax is a common burden and the only return which the tax payer gets is the participation in the common benefits of the State. Fees, on the other hand, are payments primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom payments are demanded. Thus in fees there is always an element of quid pro quo which is absent in a tax."

Mukherjee, J., who delivered the Judgment of the Court, then proceeded to point out that the fact that a payment is levied in consideration of certain services rendered is not by itself 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 emphasis in this case, it will be observed, tends to be placed on the third characteristic of a fee namely that the moneys received do not form part of the general revenues of the State but are set apart for the purpose for which the fee was imposed.

10. The distinction drawn by the Supreme Court in the two cases to which I have referred and reiterated in Ratilal panachand v. State of Bombay, 1954 SCR 1055: (AIR 1954 SC 388),

between a tax and a fee may I think be summarized thus: A tax is a compulsory exaction for public purposes without reference to any special benefit conferred upon the payers; and the moneys so collected from part of the public funds. A fee, on the other hand, although also a payment in the public interest, is primarily a payment for a benefit conferred on or service rendered to the persons required to pay the fee; the amount of the levy is directly related to the expense incurred in providing the benefit or service and the moneys so received are not merged in the public funds but are set apart for the purpose for which the fee was levied.

11. Now it is common ground in the present case that the fees realised under the Court-fees Act are not appropriated for any specific purpose but form part of the general revenues of the State. It is, therefore, difficult to hold that a fee under this Act (although undoubtedly a tax in the general sense of an imposition) is either a tax or a fee as these terms have been defined in the case to which I have referred. It is not an exaction imposed without reference to any special benefit conferred on the payers, for it is imposed only on those persons who wish to file documents in a court or to obtain copies of certain documents, the filing of the document or the obtaining of the copy being of direct benefit to the person concerned. It would appear therefore not to be a tax as so defined. Nor clearly is it a fee as so defined if only for the reason that the moneys realised have not been set apart but have merged in the public revenue of the State.

12. The question therefore arises whether the definition of fee to be found in the Supreme Court cases to which reference has been made is intended to be exhaustive. I do not. think that it is. The Court was in those cases considering the meaning which should be given to the word "fees" appearing in the last Entry in Lists II and III and in the penultimate entry in List I in the Seventh Schedule; and it contrasted the scope of the Legislature's competence to impose a levy under one of these entries with its power to impose a levy under those entries which specifically refer to a tax. No reference, it is to be observed, was made by the Supreme Court to Entry 3 in List II or to the corresponding entry (Entry 77) of List I. The Court moreover makes an reference to Articles 146(3) or 229(3). The former provides that "Article 146(3). The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall he charged upon the Consolidated Funds of India, and any fees or O'ther moneys taken by the Court shall form part of that fund."the latter is in the same terms save for the substitution of the phrase 'Consolidated Fund of the State' for the phrase 'Consolidated Funds of India' appearing in the former. It clearly follows, I think, from the fact that the fees or other money taken by the Supreme Court or a High Court are to be credited to the Consolidated Fund that such fees cannot be fees of the kind which the Supreme Court had under consideration, for an essential characteristic of such a fee is that it shall be set apart and not merged in the general revenue of the State. It accordingly appears that there exists another class of imposition, also called a fee in the Constitution which differs from the type of fee which the Supreme Court had under consideration and that the definition of fee to be found in the three Supreme Court decisions of 1954 is not exhaustive.

13. In my opinion the attack on the impugned provisions of the Court-fees (Uttar Pradesh Amendment) Act, 1959 fails and that those provisions are within the competence of the State Legislature and are valid, and I would answer the reference accordingly.

Dayal, J.

14. I agree with the answer proposed by my Lord the Chief Justice, but in view of the importance of the matter referred for opinion state my reasons for the same opinion.

15. The main contention for the petitioner is that the amendments made by the U. P. Legislature in the Court-Fees Act are beyond its powers under item 3, List II, Seventh Schedule of the Constitution as the court-fee levied is a tax and not a fee. It is contended that though court-fee is charged for services rendered, the amount realised is out of all proportion to the amount spent by the State over the administration of justice and is not credited to a special fund but is credited to the general revenues. In this connection reliance is placed on the cases of AIR 1954 SC 282; AIR 1954 SC 388 and AIR 1954 SC 400. The leading judgment on the point is in the first case. The other two cases just summarise what has been laid down in the first case. These cases did neither deal with the validity of the Court-fees Act nor did they give an exhaustive definition of the expression "fees". In each of these three cases the validity of the provision about contributions to be made by the Mutt or temple to the state was considered. In the first case such contribution was to go to the consolidated fund of the State and the expenses in connection with the supervision over the endowments were to be met out of the general revenues just as it is done in relation to other government expenses. It was held that the contribution levied in the case was a tax and not a fee. In considering whether certain fees amount to tax or not the characteristics of a tax and a fee were considered and it was held that in the generic sense all fees were included in the word 'tax' and that the constitution had for legislative purposes made a distinction between a tax and a fee. B. K. Mukherjea, J., said at page 295 :

"It seems to us that though levying of fees is only a particular form of the exercise of the taxing powers of the State, our Constitution has placed fees under a separate category for purposes of legislation and at the end of each one of the three legislative lists, it has given a power to the particular Legislature to legislate on the imposition of fees in respect to every one of the items dealt with in the list itself. Some idea as to what fees are may be gathered from Clause (2) of Articles 110 and 119 (sic 199) referred to above which speak of fees for licences and for services rendered. The question for our consideration really is, what are the indicia or special charactertistics that distinguish a fee from a tax proper?" It is clear from these observations that their Lordships were considering the content of the word 'fees' in item No. 26 list I, item No. 66, List II, and item No. 47, List III, of the seventh schedule of the Consitution, each of which is:

"Fees in respect of any of the matters in this List, but not including fees taken in any court."

16. In considering the content of the word 'fees' reference was made to Articles 110 and 199 of the Constitution. The second Clause of Article 110 is:

> "(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or, for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes."

Clause (2) of Article 199 is identical with Clause (2) Article 110.

17. The conception of fees is to be gathered from the following observations at page 295:

"Coming now to fees, a fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the lees are uniform and no account is taken of the varying abilities of different recipients to pay, vide Lutz on 'Public Finance' p. 215. These are undoubtedly some of the general characteristics, but 'as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.' " (Underlined (here in ' ') by me).
These observations do not give any exhaustive definition of the word 'fee' and contemplate fees which are charged not for any special service rendered or if charged for special service rendered are not based on the actual expenses incurred by Government in rendering that service.

18. The distinction between a tax and a fee is expressed thus at p. 295:

> "The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a parti of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest, vide Findlay Shirras on 'Science of Public Finance'. Vol. I, p. 202. Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives."

Finally it is said at p. 296:

> "If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services. As indicated in Article 110 of the Constitution, 'ordinarily' there are two classes of cases where Government imposes 'fees' upon, persons. In the first class of cases, Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred." (Underlined (here in ' ') by me).
> It is to be noted that the two classes of cases referred to here are not said to be the only cases in which Government can impose fees.

(19) Again it is said at p. 296:

"In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax. There is really no generic difference between the tax and fees and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees, and taxes,"It does not follow from this observation that, if the money paid is not set apart and not appropriated specifically for the performance of some positive work for the benefit of persons but is merged in the public revenues for the benefit of the

general public, it cannot be a fee. This point is made clear in the observations made later at the same page which are:"But the material fact which negatives the theory of fees in the present ease is that the money raised by levy of the contribution is not earmaked or specified for defraying the expenses that the Government has to incur in performing the services. All the collections go to the consolidated fund of the State and all the expenses have to be met not out of these collections but out of the general revenues by a proper method of appropriation as is done in case of other Government expenses. 'That in itself might not be conclusive,' but in this case there is total absence of any correlation between the expenses incurred by the Government and the amount raised by contribution under the provision of Section 76 and in these circumstances the theory of a return or counter payment or 'quid pro quo' cannot have any possible application to this case" (Underlined (here in ' ') by me).The contribution levied under Section 76 of the Madras Hindu Religious and Charitable Endowments Act 1951 was held to be a tax, even though it was for services rendered, on two main considerations: (1) the contribution was made to depend upon the capacity of the payer and not upon the quantum of benefit supposed to be conferred on any particular religious institution; and (2) there was total absence of any correlation between the expenses incurred by the Government and the amount raised by the contributions.

20. In the case of AIR 1954 SC 388, it is said at p. 395:

> "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 accepted 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."Similar observations are made in the case of AIR 1954 SC 400 at p. 403.

21. There can be no doubt that Court-fee is charged for services rendered. It is the litigant who goes to court for getting help in enforcing his rights. The court renders him service by giving him redress when he succeeds in establishing the wrong done to him. There can be no monetary measure of the service rendered. The first element essential to make a payment a fee is present. The second element of the fee not going to the general revenues but being credited to a separate fund does not exist in the case of Court-fee collected by the State. This, however, cannot make Court-fee a tax. The State Legislature has the power to legislate about the fees taken in all courts except the Supreme Court in view of item No. 3 of List II of the VII Schedule. The other general items in the three lists already referred do not include fees taken in courts. It should follow therefore that the expression 'fees' in those items, which was really interpreted by the Supreme Court in the aforesaid cases, does not refer to the fees taken in any court. The fees taken in all courts except the Supreme Court come within item No. 3 of List II and the fees taken in the Supreme Court come within item No. 77 of List I. The Supreme Court did not interpret the expression 'fees' in these two items. It did not refer to the items at all or to Articles 146 and 229 which refer to certain fees.

22. Clause (3) of Article 146 of the Constitution is:

> "The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the

Court shall form part of that Fund."

Clause (3) of Article 229 of the Constitution is:

"The administrative expenses of a High Court, including all salaries, allowances, and pensions payble to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund." It is clear therefore that the fees taken by the Supreme Court and by the High Court must form part of the Consolidated Fund of India or of the State respectively and cannot be credited to any separate fund. It is thus not possible for the fees, taken by these two Courts to be credited to a separate fund. The expression 'the fees taken therein' in item No. 77 of List I and "fees taken in all courts except the Supreme Court' in item No, 3 of List If need not be interpreted to' refer to such fees which must be credited to a separate fund and not to the general fund of India or the State. It follows therefore that the Constitution did not contemplate it to be an essential element of a fee that it be credited to a separate fund and not to the Consolidated Fund.

23. I am therefore of opinion that the State Legislature is competent to legislate about Court-fees and that the impugned provisions of the Act are valid.

Mukerji, J.

24. I have had the advantage of reading the opinions of my Lord the Chief Justice and our brother Raghubar Dayal. The two opinions referred to above have, if I may say so with respect, taken into account all the material on which the question referred to the Full Bench could properly be answered.

25. I agree with the answer proposed and the reasons given by my Lord the Chief Justice and our brother Raghubar Dayal.

By The Court

26. The Court is of opinion that the impugned provisions of the Court-fees (Uttar Pradesh Amendment) Act 1959 are valid and are within the competence of the State Legislature. The reference is answered accordingly.

Cases Referred.

11954 SCR 1005: (AIR 1954 SC 282)
2ILR 8 All 282 at p. 286
346 Jnd Apt) 24 at p. 32: (AIR 1918 PC 188 at p. 191)
41954 SCR 1046: (AIR 1954 SC 400)