ANDHRA PRADESH HIGH COURT

Satyanarayanamurti

Vs.

Income-tax Appellate Tribunal Madras

S.R. No. 5200 of 1957

(Subba Rao, C.J. and Jaganmohan Reddy, J.)

01.03.1957

JUDGMENT

Subba Rao, C.J.

1. This reference raises the question of the Court fee payable on a petition under Article 226 of the Constitution of India for issuing a Writ of mandamus directing the Income Tax Appellate Tribunal to entertain the application filed by the petitioner and to dispose of it according to law.

2. The Income Tax Appellate Tribunal is now situated in the City of Hyderabad. The taxing Officer expressed the opinion that the Court feel payable on the said application is Rs. 100/- under Article 11 (1) of Schedule II of the Andhra Court Fees and Suits Valuation Act, VII of 1956 (hereinafter referred to as the Act). Learned Counsel for the applicant contends that the Court fee payable is Rs. 2/- under serial No. 1 (d) of schedule II of the Hyderabad Court Fees Act. Before adverting to the argument we shall briefly notice the nature of writ proceedings so far as is material to the question raised before us.

3. It is settled law, though the learned Counsel for the petitioner does not accept it, that the High Court was issuing writs in the nature of mandamus, prohibition, quo warranto and certiorari in exercise of its extraordinary original jurisdiction. If authority is required for the said proposition, it is found in *Venkataratnam v. Secretary of State*[1], where the learned Judges held, on a consideration of the history of writs, that High Courts in India possess the same Jurisdiction to issue writs as Court of King's Bench in England. Venkata Subba Rao J., at page 999, (of ILR Mad) administered a caution against jurisdiction to issue writs being confused with that of the original jurisdiction of the High Court. The learned Judge says :

> "I must guard myself against being understood that the term 'original jurisdiction' 'in this context connotes that the writ cannot be issued outside the limits of the city. This is not the sense in which the expression is used. The jurisdiction in the exercise of which the writ is granted is original, as contrasted with appellate. This jurisdiction termed 'original' is not to be

[1] ILR 53 Mad 979

> confused with 'original civil jurisdiction', mentioned in Section 12 of the Letters Patent, The last mentioned jurisdiction can be exercised, by its very nature, within certain local limits. But the jurisdiction possessed by the High Court in the matter of certiorari is supervisory or corrective and on the English analogy, extends over all inferior tribunals amenable to its authority."

4. The judgment of Govinda Menon and Ramaswami Gounder, JJ. in *Ramayya v. State of Madras*[2] did not express a view different from that of the earlier division Bench. Therein, the learned Judges were only considering the question whether an appeal lay against an order of a single Judge dismissing an application for the issue of a Writ of Certiorari. In that context, they held that the matter involved in the appeal before them was an original civil proceeding and not a Criminal Proceeding. The learned Judges did not hold that it was an original proceeding in the sense that it was confined only to the limits of the ordinary original jurisdiction of the High Court. Article 226 of the Constitution conferred express power on the High Court to issue the writs mentioned therein throughout the territories in relation to which it exercises jurisdiction. The territorial limits of the jurisdiction of the High Court extends throughout the State of Andhra Pradesh and, therefore, the jurisdiction of the High Court under that Article may be conveniently described as extradinory original jurisdiction as distinguished from the ordinary original civil jurisdiction of a High Court. The High Court Andhra Pradesh, therefore, in the exercise of its jurisdiction under Article 226, can issue writs against tribunals situated or persons resident in any part of the state of Andhra Pradesh. We are in this case concerned only with a writ against a tribunal situated in the Teiangana area which, though now a part of the State of Andhra Pradesh, was till 1st November, 1956 part of the State of Hyderabad.

5. We shall now proceed to consider seriatim the various arguments advanced by the learned Counsel for the applicant. It is first contended that the State Legislature cannot make laws prescribing Court-fee in respect of proceedings taken in the High Court, or, at any rate, in regard to proceedings on its original side. To appreciate this contention, it will be useful to read the relevant statutory provisions. Article 225 :
Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of power conferred on that legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be as immediately before the commencement of this Constitution.

> Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction. Article 246 :
> (3) Subject to clauses 1 and 2, the Legislature of any State specified in Part A or part B of the First Schedule has exclusive power to make laws for such

[3] ILR (1952) Mad 698

State or any part thereof with respect to any of the matters enumerated in List II in Seventh Schedule (in this Constitution referred to as State List). Item 3 of List II of the Seventh Schedule :

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.

6. On the basis of the aforesaid provisions, it is contended that the High Court's power to prescribe Court fee in respect of proceedings taken before it is preserved from State Legislative interference by excluding the Constitution and organization of the High Court from item 3 of list II of the Seventh Schedule to the Constitution. To put it differently, it is said that the organization of a Court involves by necessary implication the power, inter alia to prescribe fees on the proceedings taken before it and the constitution, by excluding that power from the State list, rested it exclusively with the High Court. This argument, if we may say so, is inconsistent with the express provisions of the Constitution. The scope of the provisions of Article 225 vis-a-vis the right of the High Court to frame rules prescribing court fees was considered by a Division Bench of the Madras High Court, of which one of us was a member, in *Seshadri v. Province of Madras*[4] There, the Division Bench held that Article 225 of the Constitution of India preserved the pre-existing power of the High Court to make rules of court and prescribe court fees but that the rules made by the High Court would not have any legal authority if the appropriate legislature made law on the same subject. We entirely agree with the reasoning and the conclusion of the Division Bench.

7. Rule 3(1) of the Rules framed by the High Court of Madras under Article 225 of the Constitution prescribed a Court fee of Rs. 20/- on a writ petition under Article 226 of the Constitution. By reason of the aforesaid decision, that rule would cease to govern proceedings under Article 226 of the Constitution if the provisions of the Andhra Court Fees and Suits Valuation Act, 1956, prescribing Rs. 100/- for such a proceedings were validly made. Article 225 of the Constitution is subject to the provisions of any law of the appropriate legislature made by virtue of the powers conferred on that legislature by the Constitution. The Andhra Legislature has power to make laws in respect of item 3 of the State List which includes fees taken in all courts except the Supreme Court. The contention that the fees taken in all Courts should exclude the fees taken in the High Court as part of the organization of the High Court does not appeal to us. If that was the intention of the Constitution makers, they would have expressly excepted fees taken not only in the Supreme Court but also in the High Court from the jurisdiction of the State Legislatures. Though the prescription and collection of Court-fees in regard to proceedings taken in a court, if a liberal construction is adopted, may be a step in the organization of a Court, the specific mention of the words 'fees taken in all courts' in the same item prevents any such construction being put upon those words. Item 3 of the State List, in our view, confers specific power on the legislature to make laws prescribing the fees in the High Court. If so, it follows that the provision in the Court Fees Act should prevail over the rule

[4] 1954-1 Mad LJ 206

made by the High Court.

8. The next contention of the learned Counsel is that no legal liability to pay court fee on a writ Petition is created by the Act and, in support of this contention, reliance is placed upon Section 19 which reads :-

> "The fee payable under this Act shall be computed in accordance with the provisions of this chapter, Chanter VI, Chapter VIII and Schedules I and II".

9. Basing his argument on the express provisions of the Section, it is stated that court fee in respect of a writ Petition is not made payable under the Act and, therefore, the mention of it in the schedule will not create legal liability. This argument is more ingenious than sound. The words 'this Act' in the Section include not only the Sections of the Act but also the schedules to the Act. The schedules are as much a part of the Act as the Sections. Section 4 of the Act says :

> "No document which is chargeable with fee under this Act shall be filed.....in ...any Court including the High Court."

Art. 11(S) of Schedule II of the Act prescribes a fee of Rs. 100/- on a petition to the High Court under Article 226 of the Constitution other than a writ of habeas corpus. The petition, therefore, is chargeable under the provisions of the Act with a court fee of Rs. 100/- and the fee payable under the Act will be computed in the manner prescribed by the schedule. We cannot, therefore, accept this argument.

10. There is greater plausibility in the argument based upon Section 2 (2) of the Act, which reads :

> "The Provisions of this Act relating to the levy of fee shall be subject to the provisions of any other law relating to the levy of fee in respect of proceedings under such law."

The provisions of this Act, so the argument proceeds, is subject to the law relating to the levy of fee made by the High Court, and therefore, the latter overrides the former. But the necessary condition for the applicability of Sub-section 2 is that the same law should have prescribed the proceedings and also the Court fee payable thereon. This objection is met by the contention that an application for the issue of writ is under Article 226 of the Constitution, that the fee is fixed by the rule made in exercise of the power conferred under Article 225 of the Constitution, and that, therefore, both the proceeding and the law relating to court fee are prescribed by the same law. Under Sub-section 2 the law relating to the levy of fee should be in respect of proceedings under such law. i. e. the same law under which the fee is levied. This provision is obviously intended to save the proceedings under a statute which itself prescribes the court fee on the said proceedings. To illustrate: The Religious Endowments Act prescribes the court fee payable on the proceedings taken under that Act. In the instant case, though the power to make rules prescribing the court fees is derived by the High Court from Article 225 of the Constitution, the Court fee is not payable under the Constitution. Assuming for a moment that the word "law" in Sub-Section 2 includes the Constitution, which is the Supreme law of the land, that law, namely, the Constitution does not provide both for a proceeding. Sub-Section 2 does not, therefore, save the rule made by the High Court.

11. The learned Counsel then raised an important question which, if accepted would invalidate the Act. He says that the Act, under the cloak of collecting fees, provides for taxation and, therefore, is void. Reliance is placed upon the obvious difference between a fee and a tax and the contention is advanced that fees payable on an application under Article 226 of the Constitution is unreasonable and commensurate with the services rendered by the State and, therefore, the enhancement of the rate of court fee is void. It is not possible to consider this question, in this case for it should be necessary to ascertain whether the court fee levied is far in excess of the expenses incurred by the State of Judicial Administration. The Petitioner has not filed any affidavit giving details to sustain his arguments. We would prefer not to express our view on this important question in this case.

12. It is then contended that the State Legislature by imposing a heavy court fee of Rs. 100/-in effect and substance, deprive the proper (poor?) sections of the public from invoking the jurisdiction of the High Court under that article in suitable cases and that, therefore, it must be held that the amendment is void on the ground of fraud on power. Even here, except the general argument advanced, no relevant material has been placed before us. We are, therefore, not justified in expressing our view on this question either.

13. Lastly, the learned Counsel advanced an acceptable argument, which should have been presented in the forefront. To appreciate this argument, some relevant facts may be stated. The Telangana area, in which Hyderabad City is situated, formed part of the State of Hyderabad till 1st November, 1956. Section 3 of the States Reorganization Act, 1956, added the territories comprised in the area popularly called Telangana to the Andhra State. The writ is now sought to be issued against the Income-tax Appellate Tribunal situated in the city of Hyderabad. Learned Counsel contends that, though Telangana area was integrated with the Andhra State from 1st November 1956, the laws of that territory were preserved under the States Reorganization Act till the competent Legislature made the necessary adaptations and modifications of the laws within one year from the appointed day and as no such adaptations haver yet been made, the provisions of the Hyderabad Court Fees Act would apply to proceedings taken in the erstwhile Telangana area. To appreciate this contention, the relevant provisions of the States Reorganization Act, 1956, may be read.

> SECTION 119 :
> "The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories with that State immediately before the appointed day."
> SECTION 120 :
> "For the purpose of facilitating the application of any law in relation to any of the States formed or territorially altered by the provisions of Part II, the appropriate Government may, before the expiration of one year from the appointed day, by order made such adaptations and modifications of law, whether by way of repeal or amendment, as may be necessary or expedient and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent

Legislature or other competent authority."
SECTION 121 : "Power to construe laws :

Notwithstanding that no provision or insufficient provision has been made under section 120 for the adaptation of a law made before the appointed day, any Court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to any State formed or territorially altered by the provisions of Part II, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the Court, tribunal or authority."

14. Section 119 enacts that, for the purpose of the application of the laws, there must be deemed to have been no change in the territories. i. e. though Telangana is now a part of the State of Andhra Pradesh, the laws of the State of Hyderabad will be in force in that area as if there was no disintegration of that area of the State of Hyderabad and integration of the same with the State of Andhra Pradesh. The laws in that area would continue to prevail and govern the rights of parties till the competent Legislature or other competent authority otherwise provides. Section 120 confers a power on the appropriate governments before the expiration of one year from the appointed day to make such adaptations and modifications in law and the law with such adaptations and modifications will prevail till the competent Legislature or authority amends the law. So too, if the appropriate Government exercises its powers and makes suitable orders under Section 120, and if a lacuna is found in such orders, the Courts, for the purpose of facilitating the application of the law without affecting the substance may, under Section 121, construe the law in such manner as is necessary to facilitate the application of the laws in relation to the territory altered by the Act. In the instant case, no order making the necessary adaptations and modifications was made under Section 120 and, therefore, there is no scope for the Courts to construe the provisions of the Act in the manner provided by Section 121.
The result is that the law obtaining in the State of Hyderabad before the appointed day would still govern the rights of parties in the Telangana area. The law of Court-fees obtaining before that date in the State of Hyderabad is the Hyderabad Court-fees Act and, therefore, the Hyderabad Court-fees Act governs the proceedings arising out of that area. In that present case, the petitioner seeks the aid of the High Court to issue a writ of mandamus against a Tribunal situated in the Hyderabad city. The Hyderabad Court-Fees act which was the law obtaining in the State of Hyderabad before the appointed day, would apply to such a proceeding. If so, the Court-fee payable under Schedule II, Serial No. 1 (d) is Rs. 2/- on a writ petition.

15. But, it is said that "High Court" mentioned in the schedules is the Hyderabad High Court and not the Andhra Pradesh High Court. Though there is some force in this argument, when under Section 119 of the States Reorganization Act, the Hyderabad Court Fees Act, prevails in the Telangana area of the State of Andhra Pradesh, we think the reference therein to High Court can reasonably be construed to be a reference to the present High Court. If it is not so construed, it would lead to the anomalous position of no Court-fee being payable at all on such an application, for there would be no law governing the Court fee payable on such application in that area. This result can be avoided without doing violence to the language of the Act, The Hyderabad Court Fees Act only uses the words "High Court" and not "Hyderabad High Court" and, therefore, those words would equally apply to the present High Court.

16. In the result, we hold that Court-fee of only Rs. 2/- is payable on any application under Article 226 of the Constitution where the relief asked for is against a Tribunal situated within that part of the State of Andhra Pradesh, which before the States Reorganization Act was passed, was part of the State of Hyderabad.

Order accordingly