KARNATAKA HIGH COURT

R.B. Thakur and Co.

Vs.

State, (Karnataka)

Civil Referred Cases Nos. 6 and 7 of 1970 and 4 of 1973

(D.M. Chandrashekhar, C.J. and K.S. Puttaswamy, J.)

11.08.1978

JUDGEMENT

D.M. Chandrashekhar, C.J.

1. These three cases have been referred to this Court under Section 113, Civil Procedure Code. As most of the questions referred in them are common, they have been heard together and will be disposed of by this common order.

2. Civil Referred Cases Nos. 6 and 7 of 1970 arise out of O.S. Nos. 98 and 99 of 1969 on the file of the Principal Civil Judge at Bangalore City, O.S. No. 98 of 1969 is for recovery of Rs. 40,25,884 together with interest. Under the Karnataka Court-Fees and Suits Valuation Act, 1958 (hereinafter referred to as 'the Act'), the ad valorem court-fee at the, rate of 7=% on the sum claimed in the suit, would amount to Rs. 3,01,941.30.

3. O.S. No. 99 of 1969 for recovery of Rs. 1,12,003.71. The ad valorem court-fee payable under the Act on this sum would amount to Rs. 8,400.30.

4. The above two suits are by the same plaintiff. He made an application, I.A. No. I, under Section 113, Civil Procedure Code in each of the suits, praying that the learned Civil Judge might state a case and refer it to the High Court for its opinion on the question whether the provisions contained in Article 1 of Schedule I to the Act requiring payment of ad valorem fee at a flat rate of Rs. 7= on the amount or the value of the subject-matter of the suit, without any upper limit as to the amount of court-fee, is legal and valid or *ultra vires* of the Constitution of India.

5. Civil Referred Case No. 4 of 1973 arises out of O.S. No. 1 of 1969 on the file of the Additional Civil Judge at Mysore. The suit is for recovery of a sum of Rs. 2,20,000. The plaintiff paid a court-fee of Rs. 6,507.50 under protest and challenged the validity of Article 1 of

Schedule I to the Act. On his application, I.A. No. I, under Section 113 C.P.C., the learned Civil Judge has stated a case and referred to this Court the question regarding the validity of Article 1 of Schedule I to the Act.

6. The questions referred in C.R.Cs. Nos. 6 and 7 of 1970 read :-

1. Whether the ad valorem court-fee at a flat rate of 7= per cent on the amount or value of the subject-matter of the suit and without prescribing any upper limit and without any slab system, prescribed by Article 1 of Schedule I of the Mysore Court-Fees and Suits Valuation Act, 1958 is a fee or a tax ?

2. Whether Article 1 of Schedule I of the Mysore Court-Fees and Suits Valuation Act, 1958, prescribing payment of ad valorem court-fee at a flat rate of 7=% on the amount or value of the subject-matter of the suit and without any upper limit and without any slab system, is illegal and invalid and *ultra vires* the powers of the State Legislature of Mysore and is beyond the Legislative competence of the Mysore State Legislature and is thus hit by the Constitution of India and whether it needs to be struck down as unconstitutional and as an invalid piece of legislation ?

3. Whether the prescription of court-fee (ad valorem) as laid down by Article 1 of Schedule I of the Mysore Court-Fees and Suits Valuation Act, 1958 without prescribing a maximum limit and without the slab system violates the fundamental rights guaranteed under Article 19(1)(f) and (g) and Article 31 of the Constitution of India ?

4. Whether the levy of court-fee at ad valorem rates by Article 1 of Schedule I of the Mysore Court-Fees and Suits Valuation Act, 1958 at a flat rate of 7= per cent and without prescribing the maximum and without the slab system, denies the right of equal protection of law and equality before law guaranteed under Article 14 of the Constitution of India and imposes unreasonable restriction on such a right and thus violates Article 14 of the Constitution of India ?

7. The question referred in C.R.C. No. 4 of 1973 reads :

Whether Article 1 of Schedule I of the Mysore Court-Fees and Suits Valuation Act, 1958 is invalid and *ultra vires* as an impost in excess of the powers conferred on the State Legislature ?

8. In Civil Referred Cases Nos. 6 and 7 of 1970 Sri S.G. Sundaraswamy addressed arguments on behalf of the petitioner-plaintiff. His arguments were adopted by Sri K. Shivashankara Bhat, learned counsel for the petitioner-plaintiff in C.R.C. No. 4 of 1973. The learned Advocate-General appeared for the State of Karnataka, the respondent-defendant in each of these three cases.

9. In the first two of these cases, the learned Advocate-General raised a preliminary objection as to the maintainability of the references. He submitted that the plaintiff in each of the two suits out

of which first two references have arisen, has not paid proper court-fee payable on the plaint, but has paid only a nominal court-fee, that until proper court-fee is paid on the plaint, it (the plaint) cannot be said to have been validly presented and the suit cannot be said to be instituted and that the learned Civil Judge could not make a reference when the suit itself had not been instituted in the eye of law.

10. We do not consider it necessary to deal with the above preliminary objection, since it will be seen presently that the questions referred in these cases, have to be answered in favor of the State and against the plaintiffs.

11. In the new State of Mysore (now Karnataka) immediately after November 1, 1956, different enactments governing court-fees continued to be in force in different areas of the new State by virtue of Section 119 of the States Reorganizations Act, 1956. In Coorg District and the Bombay area of the new State, the Court-Fees Act 1870 (Central Act VII of 1870), as amended by local amendments was in force. In the Hyderabad area, the old Mysore area and the Madras area of the new State, the Hyderabad Court-Fees Act, 1324 F, the Mysore Court-Fees Act, 1900, and the Madras Court-Fees Act, 1955, respectively were in force. In order to bring about a uniform law in regard to court-fees throughout the new State, the Act was enacted by the Legislature of the new State.

12. Under the Court-Fees Act as in force in Bombay area, the ad valorem court-fee on plaint pleading a set off or counter-claim or memorandum of appeal, was at the flat rate of 15 annas for every Rs. 10 or part thereof without any upper limit. Under the Madras Court-Fees Act, the corresponding flat rate was 75 naye paise for every Rs. 10 or part thereof without any upper limit. Under the Mysore Court-Fees Act, 1900, and under the Hyderabad Court-Fees Act, the corresponding rate started with one rupee one anna per Rs. 10 and one rupee two annas per Rs. 10 respectively, and went on tapering as the value increased, but there was no upper limit in both of them.

13. Article 1 of Schedule I to the Act provides that on plaint, written statement pleading a set off or counter-claim or memorandum of appeal presented to any court, ad valorem court-fee is payable at the rate of 75 paise for every Rs. 10 or part thereof, i.e., ad valorem court-fee at a flat rate of 7= per cent, is payable without any upper limit.

14. In these cases, the respondent, the State of Karnataka, had in the first instance, sought to justify levy of ad valorem court-fee as a tax. However, after the decision of the Supreme Court in *Government of Madras v. Zenith Lamps*[1] the State modified its stand and has sought to justify such levy of court-fee only as a fee and not as a tax.

15. Before dealing with the rival contentions of learned Counsel for the petitioners and the learned Advocate General, it is useful to set out the character of court-fee and its constitutional

position as elucidated by the Supreme Court in Zenith Lamp's case (supra). Such elucidation may be summarized as follows :-

> "(i) Though fee charged in Courts other than the Supreme Court, is separately mentioned in Entry 3 of List II of the Seventh Schedule to the Constitution the character of court-fee is not different from other fees mentioned in Entry 96 of List I and Entry 66 of List II of that Schedule.
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> (ii) Court-fee is not a tax. In order to uphold levy of court-fee, it must be shown to be a quid pro quo for the service rendered. In other words, it must be shown that there is a reasonable correlation between the fee collected and the cost of administration of Civil Justice. It is not competent for the Legislature to make the litigants contribute to the increase of general public revenue. In other words, the Legislature cannot tax litigation and make the litigants pay for the beneficial schemes that the State may have.
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> (iii) That the court-fee is credited to the consolidated fund and not to a separate fund, is not a material factor for determining whether it is a fee or a tax.

[1](AIR 1973 SC 724)

> (iv) While levying court-fee, the Legislature is competent to take into account all relevant factors, like the value of the subject-matter of the dispute, the various steps necessary in the prosecution of a suit or matter and the entire cost of the upkeep of courts and officers administering civil justice. The Legislature is free to levy a small fee in some cases and a large fee in others, subject of course to the provisions of Article 14 of the Constitution. The mere absence of uniformity or the fact that it has no direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service, or that some of the contributories do not obtain the same degree of service as others may, will not change the essential character of the levy.
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> (v) Whenever the State Legislature generally increases court-fees, it must establish that such increase is necessary order to meet the cost of administration of civil justice."

16. The first contention of Sri Sundara Swamy was that the court-fee, as levied in the State of Karnataka, is excessive and far beyond what is required to meet the cost of administration of civil justice and that hence, the imposition of court-fee is, in substance, a levy of tax on litigation which the State Legislature is not competent to do. On the other hand, the learned Advocate General contended that in this State, the total receipt from court-fees has never been sufficient to meet the cost of administration of civil justice and that the State has been spending on the administration of civil justice much more than what it received from court-fees.

17. Annexure-5 to the additional statement of objections filed on behalf of the State, contains a tabular statement showing the total receipt from court-fees and the total expenditure on the administration of civil justice from the year 1957-58 to the year 1972-73. It is seen that in every one of these 17 years, the total expenditure on the administration of civil justice in the State, exceeded the total receipt from court-fees by Rs. 38 lakhs to Rs. 1.34 lakhs and that in no year the receipt from court-fees exceeded the expenditure on the administration of civil justice. As the

statement of objections had been filed in the year 1974, we have ourselves looked into the figures of total receipts from court-fees and the total expenditure on the administration of civil justice in the State, in the copies of the State Budget for the years 1976-77, 1977-78 and 1978-79. Those figures are as under :

Year	Receipts from Court Fee.	Expenditure on the High Court	Civil and Sessions Courts and Courts of Small Causes.
1974-75 (Accounts)	Rs. 148 lakhs	Rs. 310 lakhs	
1975-76 (Accounts)	Rs. 160 lakhs	Rs. 345 lakhs	
1976-77 (Accounts)	Rs. 214 lakhs	Rs. 412 lakhs	
1977-78 (Revised Estimates)	Rs. 311 lakhs	Rs. 489 lakhs	
1978-99 (Budget Estimates)	Rs. 300 lakhs	Rs. 507 lakhs.	

18. Thus, during the last five years, the total expenditure on the High Court, Civil and Sessions Courts and Courts of Small Causes, has exceeded the receipts from court-fees by Rs. 150 to Rs. 200 lakhs per annum. No doubt, the entire expenditure on the High Court and Civil and Sessions Courts, cannot be attributed to the administration of civil justice and a part of such expenditure has to be attributed to the administration of criminal justice, since the High Court decides criminal cases also and the Sessions Courts deal with criminal cases. But, it is a matter of common knowledge that the volume of criminal work in the High Court of Karnataka is very small compared to that of civil work and that even in District and Sessions Courts the proportion of criminal work is only of the order of 40 to 50 of the total work. Even after deducting a part of the total expenditure on the High Court and District and Sessions Courts, which can be attributable to the administration of criminal justice in the State, the expenditure incurred on the administration of civil justice substantially exceeds the total receipt from court-fees.

19. However, Sri Sundara Swamy adverted to the fact that the State is exempt from payment of court-fees on plaints, pleadings of set off and counter-claims, memorandum of appeals, petitions and applications presented on its behalf. He contended that the court-fees which the State would have paid but for such exemption, should be added to the actual receipts from court-fees in order to ascertain whether such receipts exceed the expenditure incurred by the State on the administration of civil justice. There can be no doubt as to the correctness of this contention. But, even after the probable amount which the State would have paid as court-fees, but for such

exemption, the result is not likely to be materially different. Very rarely the State institutes suits. In those suits where the State figures as a party, it will be mostly as the defendant and not as the plaintiff. No doubt, many appeals are filed on behalf of the State both in the High Court and Civil Courts. But, the number of such appeals forms only a small proportion of the total number of appeals filed in these courts. In the High Court where writ petitions constitute a substantial part of the litigation, generally the State will be a respondent and very rarely it will be the petitioner.

20. Though the State has not furnished separate figures of court-fees which would have been payable by it, had it not been so exempted, there is no difficulty in holding that such exemption has not much impact on the factual position that the cost of administration of civil justice in the State, substantially exceeds the total receipt from court-fees. Moreover, the above figures of expenditure on the administration of civil justice, do not include capital expenditure on construction of buildings for Courts and the recurring expenditure on maintenance of such buildings. The expenditure on maintenance and repairs in respect of public buildings, is shown in the State Budget under the head, "public works", and ranges from Rs. 150 lakhs to Rs. 250 lakhs per annum. Though no separate figures of such expenditure in respect of buildings for Courts are available, the amount of such expenditure will not be an insignificant part of the total annual expenditure in respect of all public buildings in the State.

21. About 5 years ago, a huge multistoried building was built in Bangalore at a cost of about Rs. 35 lakhs to accommodate Civil Courts. Very recently a portion of the building of the High Court was reconstructed at a cost of about Rs. 9 lakhs. Within the last 15 years District and Sessions Courts were newly established in 6 Districts, Courts of Civil Judges and Munsiffs were established in many places and quite a good number of new buildings were constructed for the Courts. Besides, additions and improvements have been made to many existing buildings for Courts. Though the total expenditure on such constructions, additions and improvements, has not been given in the statement of objections filed on behalf of the State, such expenditure is likely to be more than Rs. 500 lakhs during the last 15 years.

22. In the *State of Maharashtra v. Salvation Army*[2] the Supreme Court, while considering the question whether the contribution levied on public trusts under the Bombay Public Trusts Act, is a tax or a fee, held that the expenditure on construction of buildings for locating the head office and the regional offices of the organization administering the Bombay Public Trusts Act, should be included in the cost of the services rendered by that organization under the Bombay Public Trusts Act. In view of this ruling, the capital expenditure on construction of buildings for Courts administering civil justice, would legitimately form a part of the total expenditure on the administration of civil justice.

23. In the light of the foregoing, we have no hesitation in rejecting the contention of Sri Sundara Swamy that the State is deriving from court-fees much more than what it is spending on the administration of civil justice and that there is no correlation between court-fees levied and the

service rendered by the State in return for such fees.

24. Sri Sundara Swamy adverted to the dictum of the Supreme Court in Zenith Lamp's case (AIR 1973 Supreme Court 724) that when the State Legislature generally increases court-fees, it must establish that such increase is necessary in order to meet the cost of administration of civil justice. He submitted that the State had not established that there was any need to increase court-fees when the Act was enacted substituting a flat rate of ad valorem court-fee without any upper limit in place of the tapering rates of ad valorem court-fee under the Mysore Court-Fees Act, 1900.

25. Even under the Mysore Court-Fees Act, 1900, as it stood prior to the present Act coming into force, there was no upper limit for ad valorem court-fee though the rates (not the total amount) of ad valorem court-fee decreased with the increase in the value of the subject-matter of the suit or appeal. As seen earlier, prior to the present Act coming into force, such tapering rates of court-fee were prevalent only in the old Mysore area and the Hyderabad area of the new State and not in the Bombay area and the Madras area of the new State, where the rates were uniform and not tapering as the value of the subject-matter of the suit or appeal increased. In the Bombay area, the rate of ad valorem court-fee was higher than under the present Act. Under the Mysore Court-Fees Act and the Hyderabad Court-Fees Act, the rates of ad valorem court-fee were higher than under the present Act for suits and appeals of smaller values but lower for those of higher values. The present Act brought about uniformity by adopting the flat rate of 7= per cent ad valorem, as in the Madras Court-Fees Act of 1955.

[2](AIR 1975 SC 846)

26. Hence, it is not correct to say that the present Act brought about a general increase in court-fees. The figures of total receipt from court-fees and the total cost of administration of civil justice during the years subsequent to the coming into force of the present Act, have shown that such increase of court-fees was justified to meet the ever rising cost of administration of civil justice.

27. The more important contention of Sri Sundara Swamy was that the levy of a flat rate of ad valorem court-fee without any upper limit, denudes court-fee of the quid pro quo element especially where the value of the subject-matter of the suit or appeal is very large because the service rendered by the State in such suit or appeal is wholly disproportionate to the court-fee demanded and that it loses its character of fee and assumes the character of tax. Elaborating his contention, Sri Sundara Swamy referred to the instance of the suit, O.S. No. 98 of 1969 (out of which C.R.C. No. 6 of 1970 has arisen). There, an ad valorem court-fee of Rs. 3,01,94130 P. is payable on the plaint in which the relief sought is recovery of Rs. 40.25 lakhs. Sri Sundara Swamy submitted that though the value of the amount claimed in the suit may be very high, the time and labour of the Court required for trying and deciding that suit are not likely to be substantially more than those required in a suit, the value of the subject-matter of which is much smaller and that hence there is no justifiable reason for demanding such high court-fee from the

plaintiff in that suit. It was also submitted by him that a very small or nominal court-fee is levied on election petitions and several other categories of petitions though the time and labour of the court required in such types of cases are no less than those in suits and appeals in which much larger court-fees are levied. Sri Sundara Swamy contended that as the value of the subject-matter of a suit or an and peal increases, the ad valorem rates of court-fee should be tapering, that a ceiling should be fixed for the ad valorem court-fee and that otherwise the levy of a flat rate of ad valorem court-fee without any upper limit, will amount to taxing of suits and appeals the values of subject-matters of which are higher, to subsidise suits and appeals the values of the subject-matters of which are smaller and cases like election petitions and that such taxing of one category of cases to subsidise another category of cases, is not permissible in the case of a fee. In other words, the contention of Sri Sundara Swamy was that there should be some contention between the fee levied on each individual and the cost of rendering service to him even if such correlation cannot be exact but must remain approximate.

28. On the other hand, the learned Advocate-General maintained that according to the enunciation by the Supreme Court as to the constitutional requirements of a fee, all that is needed is that the total receipts from levy of it should not far exceed the total expenditure incurred by the State for rendering service in return for such fee and that if there is such correlation between the total expenditure and total receipt there is no further requirement that there should also be correlation between the service rendered to each individual and the fee levied on him. The learned Advocate General said that in most cases it may not be possible to measure even approximately the expenditure incurred by the State for rendering service to each individual on whom the court-fee is levied. In support of his contention, the learned Advocate-General relied on the following observations of the Supreme Court in *Sudhindra Thirtha Swamiar v. Commr. for Hindu Religious and Charitable Endowments' Mysore*[3]

[3](AIR 1963 SC 966 at p. 975)

> "A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service. If with a view to provide specific services, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A fee being a levy in consideration of rendering service of a particular type, correlation between the expenditure incurred by the Government and the levy must undoubtedly exist, but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories

do not obtain the same degree of service as others may."

29. In Zenith Lamp's case (AIR 1973 Supreme Court 724), the Supreme Court quoted with approval the following observations of the Madras High "Court in (ILR (1968) 1 Mad 247 at pp. 340-341) (at p. 733 of AIR 1973 SC) :

> "If, in substance the levy is not to raise revenues also for the general purposes of the State, the mere absence of uniformity or the fact that it has no direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service, or that some of the contributories do not obtain the same degree of service as others may, will not change the essential character of the levy."

30. The aforesaid pronouncements of the Supreme Court and of the Madras High Court approved by the Supreme Court, undoubtedly, support the contention of the learned Advocate General that in the case of a fee it is not necessary that there should be correlation between the amount of fee levied on an individual and the expenditure incurred for rendering service to him or the value of the service rendered to him. It is sufficient if there is reasonable correlation between the total court-fee received by the State from all litigants in civil cases and the total expenditure incurred by the State for administration of civil justice.

31. Lastly, it was contended by Sri Sundaraswamy that levy of ad valorem court-fee is violative of Article 14 of the Constitution, as there is hostile discrimination against litigants whose suits and appeals are of higher values.

32. Viewed from the point of the expenditure incurred by the State for rendering the service to an individual litigant, if the value of the subject-matter of his suit or appeal is very large, ad valorem court-fee levied on his plaint or memorandum of appeal, may result in his paying an amount which may be out of all proportion to the expenditure attributable to hearing and deciding his suit or appeal, and the court-fee levied on him may go to subsidise plaintiffs or appellants whose suits and appeals are of smaller values and the court-fees paid by them may be much less than the expenditure that may reasonably be attributed for hearing and deciding their suits and appeals. But, viewed from the point of the value of the service which a plaintiff or an appellant seeks from a Civil Court, the value of such service is higher in a suit or appeal, the subject-matter of which is of higher value than in a suit or appeal, the subject-matter of which is of a lower value. Why should not a plaintiff or an appellant who seeks the service of a Civil Court to recover Rs. 10 lakhs, pay ten times the court-fee payable by a plaintiff or an appellant who seeks the service of a Civil Court to recover Rs. 1 lakh only ? From the point of the value of the service which a litigant seeks from the Civil Court, court-fee levied under Article 1 of Schedule I to the Act, is proportionate to the value of the service he seeks. Hence, there is nothing arbitrary or unreasonable in asking a litigant to pay court-fee proportionate to the value of relief he seeks from the Court.

33. As court-fee is a quid pro quo for the service rendered by the administration of civil justice, ad valorem court-fee which is proportionate to the value of the relief sought for from the Courts, makes a reasonable classification of litigants according to the value of the service they seek and hence does not offend Article 14 of the Constitution.

34. Once court-fee levied under Article 1 of Schedule I to the Act, is held to be a fee and not a tax and is constitutionally valid, it follows that levy of such fee cannot be regarded as infringing the provisions of clause (f) or (g) of Article 19 or Article 31 of the Constitution.

35. As a result of the foregoing discussion, our answers to the questions referred in C.R.Cs. Nos. 6 and 7 of 1970, are as follows :-

1. Ad valorem court-fee at a flat rate of 7= per cent on the amount or value of the subject-matter of the suit and without prescribing any upper limit and without any slab system, prescribed by Article 1 of Schedule I to the Karnataka Court-Fees and Suits Valuation Act, 1958, is a fee and not a tax.
2. Article 1 of Schedule I to the Karnataka Court-Fees and Suits Valuation Act, 1958, prescribing payment of ad valorem court-fee at a flat rate of 7= per cent on the amount or value of the subject-matter of the suit and without any upper limit and without any slab system, is not illegal, invalid or *ultra vires* of the powers of the State Legislature and is not beyond the competence of the State Legislature nor otherwise unconstitutional.
3. The prescription of ad valorem court -fee as laid down in Article 1 of Schedule I to the Karnataka Court-Fees and Suits Valuation Act, 1958, without prescribing a maximum limit and without the slab system, does not violate the fundamental rights guaranteed by Article 19(1)(f) and (g) and Article 31 of the Constitution of India.
4. The levy of court-fee at ad valorem rates under Article 1 of Schedule I to the Karnataka Court-Fees and Suits Valuation Act, 1958, at a flat rate of 7= per cent and without prescribing the maximum and without the slab system, does not deny the right to equal protection of law and equality before law, guaranteed by Article 14 of the Constitution of India and does not impose unreasonable restriction on such a right and does not violate Article 14 of the Constitution of India.

36. Our answer to the question referred in C.R.C. No. 4 of 1973, is as follows :
Article 1 of Schedule I to the Karnataka Court-Fees and Suits Valuation Act, 1958, is neither invalid nor *ultra vires* as an impost in excess of the powers conferred on the State Legislature.

37. In these references, parties will bear their own costs.
Order accordingly.