

# BOMBAY HIGH COURT

Chatusshakhiya Brahmavrinda Gayaran Trust

Vs.

Union of India

F.A. No. 15 of 1966 (with F.A. Nos. 114 to 119 and 301 to 307 of 1965)

(Patel and Chitale, JJ.)

06.09.1967

## JUDGMENT

### **Chitale, J.**

1. This is a group of appeals preferred against the award passed by the learned Arbitrator, who was the Civil Judge, Senior Division, Nasik, under Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Central Act No. XXX of 1952), hereinafter referred to as the Act of 1952. Some appeals are preferred by the claimants and some are by the Union of India disputing the correctness of the amount of compensation awarded by the learned Arbitrator.

2. These appeals are preferred on a fixed Court-fee of ₹ 5 each, although the claim in these appeals runs into thousands of rupees. We felt doubtful about the correctness of the amount of Court-fee paid and on inquiry we were told that fixed Court-fee of ₹ 5 was accepted by the office of this Court in view of the decision of this Court in *Hirji Virji v. Government of Bombay*<sup>1</sup> which was followed in a subsequent unreported decision of this Court in *The Government of Maharashtra v. Laxman Luma Bhingardive*<sup>2</sup> Since the question regarding the Court-fee payable on such appeals is a question of general importance, we have heard the parties at considerable length on this question. In the case of *Hirji Virji v. Government of Bombay*, the question arose in an appeal preferred against the award made by the Arbitrator under Section 19(1) (b) of the Defence of India Act, 1939, In that case, the Arbitrator determined the amount of compensation at ₹ 45,855-0-0. The claimant was dissatisfied with the amount of compensation awarded by the Arbitrator and in an appeal preferred to this Court he claimed ₹ 47,896-8-0 in addition to the compensation awarded to him by the Arbitrator. In that case, the provisions of the Court-fees Act, 1870 (VII of 1870), which was then in force, were considered. Section 8 of that Act

corresponds to Section 7(1) of the Bombay Court-fees Act, 1959 (hereinafter referred to as the Act of 1959). It was urged on behalf of the claimant in that case that the Court-fee chargeable on the memo, of appeal was according to Clause 11 of Schedule II of the Court-fees Act of 1870. As against that, the learned Assistant Government Pleader

<sup>1</sup>[1944] 47 Bom. L.R. 327

<sup>2</sup>(1964) Civil Revision Application No. 309 of 1963, decided by Naik J., on June 15, 1964 (Unrep)

contended that ad valorem Court-fee would be payable in view of Section 8 of the said Act. The learned Judge held that the order of the Arbitrator could not be deemed to be a decree of a Court, nor was it an order having the force of a decree, there being no provision to that effect in the Defense of India Act, 1939, nor in the Rules made there under, corresponding to Section 26 of the Land Acquisition Act. The learned Judge further points out that the award cannot be executed as a decree or order of a Civil Court and the only way in which it can be enforced is by way of a suit. The learned Judge held that the award in that case could not be regarded as an "order" within the meaning of Section 8 of the Court-fees Act of 1870, pointing out that the Court-fees Act itself did not define the word "order" and in the absence of such a definition, the word "order" must be taken to mean an order as defined by Section 2(14) of the Code of Civil Procedure. The following observations are material (p. 330) :

"Section 8 of the Court-fees Act is not itself a charging section. It merely provides a rule for computing ad valorem fee payable under the Act in certain classes of cases on the assumption that under some other provision of the Act an ad valorem fee and not a fixed fee is chargeable. Whether the memorandum of appeal in the case before me is liable to ad valorem fee or fixed court-fee has to be determined with reference to the provisions of Schedules I and II of the Act. The appeal in this case not being from a decree or an order having the force of a decree is liable only to fixed court-fee under Clause 11 of Schedule II of the Court-fees Act."

3. The question for our consideration is whether the reasoning adopted in the above decision, viz. Hirji Virji's ease, can be said to be correct. Mr. Rane, who appears for the State, contends that the reasoning adopted in the said ease is not correct inasmuch as, in effect, it adds to the relevant section the words "having the force of a decree" after the word "order". He contends that Section 1(1) of the Bombay Court-fees Act, 1959, which corresponds to Section 8 of the Court-fees Act, 1870, lays down the mode by which the claim in an appeal against an order relating to compensation under any Act is to be computed. Mr. Rane lays emphasis on the words "an order relating to compensation under any Act" in Sub-section (1) of Section 7 of the Bombay Court-fees Act of 1959. Mr. Rane refers to Sections 8(1) (c) and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter called the 'Act of 1952') and points out that the award made by the learned Arbitrator against which these appeals are preferred is not merely an expression of opinion, but it is an order which the competent authority is bound to obey under Section 9 of the said Act of 1952. Mr. Rane contends that there is no justification for holding that the expression "order" in Section 8 of the Court-fees Act of 1870 and in Section 7(1) of the 'Court-fees' Act of 1959 must be an order having the force of a decree, as denned by

Section 2(14) of the Code of Civil Procedure. In our opinion, there is considerable force in this contention of Mr. Rane. It is true that Section 7(1) of the Bombay Court-fees Act of 1959 is not itself a charging section, it merely indicates the mode of valuation of the subject-matter of an appeal mentioned in that section and on the amount of such valuation Court-fee shall be payable. What Court-fee is to be paid must be determined with reference to the appropriate provision in one of the two Schedules to the Court-fees Act of 1959. Section 5 of the Bombay Court-fees Act of 1959 lays down that no document on which Court-fee less than that indicated by either of the two Schedules to that Act is paid shall be filed in any Court of Justice. It is, therefore, clear that Section 7(1) of the Act of 1959 must be read with an appropriate provision in one of the two Schedules to that Act. Schedule I prescribes ad valorem fee, while Schedule II prescribes fixed fee. The Court-fee payable on such appeals as are before us has to be determined after considering the question whether the Court-fee payable would be ad valorem fee or fixed fee according to the nature of the claim in such an appeal as indicated by Section 7(1) of the Act of 1959.

4. On behalf of the claimants, reference was made to Sections 12 and 19 of the Act of 1952 and it is urged that in view of these provisions, the Arbitrator determining the amount of compensation under Section 8 of that Act is not a Civil Court, nor does he enjoy all the powers of a Civil Court, hence the award made by the Arbitrator would not be an order as contemplated by Section 7(1) of the Bombay Court-fees Act, 1959, in any case, it would not have the force of a decree, it would not be an executable order and in order to enforce such an award a suit will have to be filed. It may be that the Arbitrator acting under Section 8 of the Act of 1952, when he determines the amount of compensation, does not enjoy all the powers of a Civil Court. It may be that the award is not executable like a decree or order of a Civil Court and a writ petition or a suit may become necessary if the competent authority fails or neglects to pay the amount of compensation mentioned in the award. All the same, while considering the nature of the award what we are required to find out is whether the award is a mere expression of opinion or it is an order as contemplated by Section 7(1) of the Act of 1959. As pointed out above, in view of the provisions of Sections 8(1) (c) and 9 of the Act of 1952, it is clear that an award made under Section 8 of that Act is not merely an expression of opinion, but it is an order directing payment of a particular amount as compensation. Section 8(1)(c) of the Act of 1952 provides not merely for determination of the amount of compensation, but further requires the Arbitrator to specify the person or persons to whom such compensation shall be payable and to formulate his decision in the form of an award. Section 9 of the said Act casts a statutory obligation on the competent authority to pay the amount of compensation payable under an award to the person or persons entitled thereto in such manner and within, such time as specified in the award. Thus it is clear that an award under Section 8(1) (c) of the Act of 1952 is not merely an expression of opinion, but it is an order which the competent authority is bound to carry out under Section 9 of that Act. Thus an award under Section 8(1) (c) of the Act of 1952 gives rise to a statutory obligation by determining the right to compensation as between a claimant and the State and is expressed in a formal manner in the form of an award. Such an award is, in our opinion, an "order" as

contemplated by Section 7(1) of the Bombay Court-fees Act of 1959.

5. Reliance is placed, on behalf of the claimants, on the above-mentioned un-reported decision of this Court in *The Government of Maharashtra v. Laxman Luma Bhingardive*. This was a revision application against the decision of the Taxing Officer. The Taxing Officer followed the decision in *Satya Charan v. State of West Bengal*<sup>3</sup> Naik J., who decided the said revision application, pointed out that Calcutta High Court expressly dissented from the view taken by this Court in Hirji Virji's case and followed the latter decision. For reasons mentioned above, we are unable to agree with the reasoning in Hirji Virji's case.

6. On behalf of the claimants, reliance is also placed on the decision in *Kanwar Jagat v. The Punjab State*<sup>4</sup> In that case, the question that arose was similar

<sup>3</sup>1959 Air. Cal. 609

<sup>4</sup>1957 AIR. Pun 32

to the one before us. After referring to the relevant provisions of the Court-fees Act of 1870 and some decisions, the learned Judge observed (p. 34) :

"The only way that the various sections and schedules of the Court-fees Act can be reconciled is that Section 8 should be confined to orders as understood in the Civil Procedure Code and that where any matter does not fall within a decree or an order having the force of a decree, the matter should be held to be covered by Article 11, Schedule II, and once we hold that, Article 1 of Schedule I is excluded."

We have already pointed out that if such a construction of the relevant section of the Court-fees Act is adopted, in effect it involves addition of some words to the section for which there seems to be no justification whatever. The relevant portion of Section 7(1) of the Act of 1959 "an order relating to compensation under any Act" is clear and explicit. There is no ambiguity about it. Particularly the words "under any Act" indicate the wide scope of that section. In the abovementioned Punjab case, on behalf of the State reliance was placed on two decisions viz., *Anandalal Chakarbarti v. Karnani Industrial Bank, Ltd*<sup>5</sup>. and *Debi Chand v. Secretary of State for India*<sup>6</sup> After referring to some observations in those decisions, the learned Judge observed (p. 34) :

"In my opinion, this section makes it clear that a document is to be charged with fees in accordance with Schedules I and II of the Act. In other words, the charging provisions are Schedule [s] I and II. .

No doubt Section 11 and Ss. 7 and 8 are similarly worded, but Section 7 is only a computing section and what has to be paid in cases which fall under Section 7 has to be looked for in Schedules I and II. If there were no Schedule [s], Ss. 7 and 8 by themselves would be of no assistance to the State. It is under the provisions of the various Articles of Schedule[s] that the amount is to be determined."

After referring to the decision of this Court in Hirji Virji's case, the learned Judge further observed (p. 34) :

"... In my opinion, therefore, for a matter to be brought within Section 8 there must be an order as defined in Section 2 (14) of the Act, and as the present case is not such an order as I have held above, Section 8 is inapplicable."

With respect, we prefer to follow the reasoning of Rankin C. J. in Anandalal Chakarbarti's case. The following observations are material (pp. 532 & 534) :

"... Section 8, while not itself imposing any fee upon any one, provides a rule for computation of the fee payable under the Act in a certain class of cases. What it says is that, in the class of cases which it deals with, the amount of fee payable under the Act on a memorandum of appeal, it is to be computed according to the difference between the two sums. Now, that section standing in the text of the Act proceeds clearly upon the assumption that otherwise in the Act there is a charge

<sup>5</sup>(1931) I.L.R. 59 Cal. 528

<sup>6</sup>[1939] All. 142

which is an ad valorem charge and is not a fixed charge :

...The provisions of Section 8, involving as they do that the fee in the class of cases dealt with is an ad valorem fee, are themselves sufficient to exclude any question of Article IX of Schedule II being made applicable to such cases. It is not necessary to consider whether the Tribunal's award, which is an order and not a decree, is an order having the force of a decree. Whatever the effect of that phrase may be, Section 8 shows one perfectly clearly that an appeal regarding compensation in a Land Acquisition case is not under Article 11 of Schedule II, because it is not a fixed fee at all...."

7. On behalf of the claimants before us, reference was also made to *Crown v. Chandrabhanlal*<sup>7</sup>In this case, the decision in Sirji Virji's case was followed and the reasoning adopted is the same.

8. Reference was also made to *In re Assistant Commissioner of Labour*<sup>8</sup> In this case, the decision proceeded on a concession made by the learned Advocate General.

9. We may mention here that even under the Land Acquisition Act there was formerly a controversy as to whether an award made on a reference under & Section 18 of the Land Acquisition Act was a decree or not. By Act XIX of 1921, Section 26 of the Land Acquisition Act was amended and Sub-section (2) was inserted which gave an award under the said Act the force of a decree. Although there was conflict of opinion prior to the said amendment, this Court did hold in *Mangaldas v. Assistant Collector, Ahmedabad*<sup>9</sup> that a memorandum of appeal preferred against an award made on reference under the Land Acquisition Act should bear ad valorem Court-fee payable on the additional amount claimed in the appeal. Section 8 of the



memorandum of appeal" cannot be confined only to memorandum of appeals arising out of a plaint or an application or a petition to set aside or modify an award. By the present appeals, it is obvious, the claimants as well as the Union of India seek to modify the award made by the Arbitrator under Section 8 of the Act of 1952. It is clear from the wording of Article 3 of Schedule I to the Bombay Court-fees Act of 1959 that the only awards that are excluded from the operation of this article are the awards under the Arbitration Act, 1940. The awards against which the present appeals are preferred do, in our opinion, come within the scope of Article 3 of Schedule I to the Bombay Court-fees Act, 1959.

12. For the reasons indicated above, we are of the opinion that the reasoning adopted in Hirji Virji's case, which is followed in the subsequent unreported decision in *The Government of Maharashtra v. Laxman Luma Bhingardive* is not correct. In our view the Court-fee payable on memorandum of an appeal preferred against an award made under Section 8 of the Act of 1952 would be as prescribed by Article 3 of Schedule I read with Section 7(1) of the Bombay Court-fees Act of 1950.

13. In view of this decision, the claimants, as well as the Union of India request for an opportunity to amend the claim in their respective appeals, if they think it necessary to do so. So also they request for some time to pay the necessary additional Court-fee. Accordingly we grant time for two weeks within which the claim in the appeals should, if necessary, be amended and the necessary additional Court-fee should be paid.

14. Mr. Rane, who appears for the State, will be entitled to taxable costs for the hearing on the question of 'Court-fees in each of these appeals.

.