

Chandappa Vs. SadruddIn Ansari

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Court : Karnataka

Decided On : Dec-12-1957

Reported in : AIR1958Kant132; AIR1958Mys132; ILR1957KAR448; (1958)36MysLJ139

Judge : K.S. Hegde, J.

Acts : [Constitution of India](#) - Article 14; Hyderabad Court-fees Act, 1324F - Sections 39; Indian Court-fees Act, 1870 - Sections 35; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

Appeal No. : Civil Revn. Petn. Nos. 800 and 801 of 1957

Appellant : Chandappa

Respondent : SadruddIn Ansari

Advocate for Def. : Krishnamurthy and ;Mohammad Zakaullah, Adv.

Advocate for Pet/Ap. : M. Appa Rao, Adv.

Judgement :

ORDER

1. These two revision petitions are directed against the notification issued by the former Gov Government of Hyderabad under Section 39 of the Hyderabad Court-fees Act. The notification is No. 1 dated 20-1-1954 and published in Gazette

Ordinary, Part I-D at page 70, January 21st, 1954. The notification is issued in the name of the Rajpramukh. It is as follows :

'In exer exercise of the powers conferred by Section 39 of the Hyderabad Court-fees Act 1324F (4 of 132-(F). the Rajpramukh is pleased to exempt all displaced destitute persons in the whole of the Hyderabad State who during the period of 2 years commencing from 13th Sep. 1947 to 13th Sep. 1949 have been dispossessed of their immoveable property, from the payment of the court-fees payable under Schedule Nos. 1 and 2 of the said Act, m respect of all claims relating to the restoration of such property preferred by them in any civil Court in the Hyderabad Stale on production of a certificate issued by the Collector of the District in whose jurisdiction the property is situate or by the Special Officer Relief and Rehabilitation Department to the effect that the person named therein is a displaced destitute person.'

2. The validity of the notification is challenged on two grounds; (1) it is opposed to Article 14 of our Constitution and (2) that the Gov Government exceeded the power delegated to it by Section 39 of the Hyderabad Court-fees Act. Section 39 of the Hyderabad Court-fees Act reads as follows :

'The Gov Government may reduce or remit, in the whole or any part of His Highness the Nizam's Dominions, the fees chargeable under the first and second schedules to this Act.'

This section is more or less analogous to Section 35 of the Indian Court-fees Act.

3. It is contended for the petitioner that the benefit of this notification is confined to displaced destitute persons in the whole of the Hyderabad State (former State) who during the period of two years commencing from 13th September, 1947 to 13th September, 1949 had been dispossessed of their immoveable property. It is urged that a valuable right is conferred on a class of people and as such the Gov Government has contravened the constitutional direction contained in Article 14. This argument is totally void of merit. Article 14 of our Constitution does not guarantee a rigid and embodied equality. It merely guarantees equal laws for equal men. All that it inhibits is a hostile legislation directed against a particular

class of people, may be, on political, religious or other grounds. The said article in no way prohibits the legislature or the delegated authority from classifying the people and enacting measures on the basis of that classification so long as the classification is a real and bona benefit one. The equality clause is subject to the well known doctrine of classification.

The Constitution does not guarantee that the laws enacted by the State will have equal application to all the people. Conditions of people differ; requirements of the several sections of people also differ. There are geographical, social and economic inequalities. All these call for separate measures. Article 14 is not a straight jacket. It is not intended to preserve the existing inequalities. It is not a negative doctrine. It is positive in its contents. Take this particular case; there can be no doubt that the displaced destitute persons are a class of people who deserve the sympathy of the Nation and the assistance of the State. The measure is intended to help these unfortunate men and women. The classification in question is not open to challenge and the measure is intended to carry out the objective which compelled the Gov Government to adopt the classification in question.

4. A number of decisions on this point were cited to me from the Bar. I do not think that I need discuss them. This branch of law can now be considered as well settled. There are legislative measures which are on the border line. This is not one such measure. Viewed from any point this notification is not open to attack on the ground that it contravenes Article 14 of the Constitution.

5. The next argument that was advanced was that the Gov Government had no power to issue the notification in question. According to the petitioner Section 39 of the Hyderabad Court-fees Act merely authorises the Gov Government to remit or reduce the court-fees but that reduction or remission should equally apply to the whole State or to any particular area. It is contended that its application should be area-wise and not class-wise. The notification in question being one which is intended to benefit a particular class of people was beyond the power of the Government. I am unable to accept this contention as well. The legislature delegated its power of reducing or remitting the court-fee either in respect of the

Slate as a whole or any part thereof to the Government. This is on the lines of well-known constitutional practice followed in this country as well in other countries which are governed by Parliamentary democracies.

The power to exempt from the operation of fiscal statutes is usually left to the Governments of the day. It has to be decided upon the consideration of unforeseen factors. The Gov Government will have to weigh the requirements of the situation and its financial implications. All these cannot be foreseen and provided for, at the time of the legislation. Similar provisions are found in other fiscal statutes. The basic conception behind such delegation is that the Gov Government is the watch-dog of the State's finances and it could be trusted to watch its interests.

6. It is a well-accepted principle of interpretation that when a larger power is conferred it means and includes the exercise of lesser power included therein. The whole includes the part. If the Gov Government could have remitted or reduced the fees for all persons living within any given area, they can undoubtedly do so to a section of the people thereof, unless their action contravenes Article 14 of the Constitution. It is not a question of either the whole or none.

7. The aforesaid Section 39 is not a provision to regulate the powers of the Government. It is a power conferring section. It must be given its full amplitude. The section merely lays down the outer limits of the power of the Government. It is for the Gov Government to choose both the area and the class of people to be benefited by the remission or reduction in question. Read this way the power of the Gov Government to reduce or remit the court-fees, is co-extensive with that of the legislature. It must be remembered that it is a power to reduce or remit the court-fee and not to impose.

8. If the Government's power is limited in the manner the petitioner wants me to do, the consequence might be to tempt the Gov Government to use its power sparingly. It might compel the Gov Government to withhold the exercise of its power even in proper cases, because of its financial implications. Such an interpretation is not in the interest of the public and should be avoided if possible.

9. The prevailing legislative practice also supports the view that I have taken. I have examined several notifications issued by different State Governments, under Section 35 of the Indian Court-fees Act. In most of these notifications the fees have been reduced or remitted with reference to a class of persons, who, according to the concerned Governments deserve remission or reduction. The State Government of East Punjab have conferred the benefit under this section to the displaced persons.

The Government of Madras by its Order No: 5791 dated 17-5-1943 has reduced the fees chargeable in any suit for possession or joint possession between the trustee or between a plaintiff who claims to be a trustee and a defendant who is alleged to have ceased to be a trustee. The same is the practice adapted by the other State Governments. A well accepted legislative practice is itself a good guide in interpreting statutes and notifications.

10. In my judgment the notification in question is not hit by Article 14 nor is it ultra vires of the powers of the Government.

11. Sri V. Krishnamurthy, appearing for the respondent contended that the revision petition is not maintainable. According to him court-fee is a matter between the State and the plaintiff and the defendant cannot complain against the order of the trial Court. This is stating the proposition too broadly- In the instant case the question for consideration is, did the Court correctly exercise its jurisdiction in accepting a suit which according to the plaintiff is not legally instituted? Every paper thrown into a Court cannot be considered as a plaint.

It must comply with certain legal requirements and one such requirement is the payment of court-fees as required by law. It is one thing to challenge the decision of a Court as to the correct amount of court-fees payable. It is totally a different thing when the petitioner complains that a suit has been accepted without any court-fees. In the former case what is being challenged is the correctness of the decision of the Court.

In the latter case the challenge is directed against the power of the Court to receive a plaint without court-fees. The defendant can question the jurisdiction of

the Court or the illegal exercise of that jurisdiction in taking on file a plaint which is no better than an ordinary sheet of paper. In such case a revision lies, under Section 115 of the Code of Civil Procedure.

12. In the result these revision petitions fail and are hereby dismissed. The petitioners shall pay the costs of the respondent. The two petitions are heard together. Advocate fees will be one set. Each of the petitioners to pay one half of the Advocate's fee.

13. Revisions dismissed.

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