

(2007) 07 MP CK 0050
Madhya Pradesh High Court
Case No: None

Associated Cement Companies
Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision: July 9, 2007

Acts Referred:

- Constitution of India, 1950 - Article 265, 266, 301
- Registration Act, 1908 - Section 26, 30, 78, 9
- Stamp Act, 1899 - Section 26, 35

Citation: (2007) 3 MPHT 410

Hon'ble Judges: S.S. Jha, J; Ajit Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Petitioner has filed this petition challenging the provisions of Article II of the Madhya Pradesh Table on Registration Fees enacted in exercise of powers conferred by Section 78 of the Indian Registration Act, 1908.

2. Initially, petitioner had challenged the provisions of Section 26 read with Article 35(iv)(a) of the Indian Stamp Act fixing the stamp duty payable on the lease deed.

3. At the time of admission, this Court dismissed the prayer of the petitioner regarding challenge to validity of Article 35(iv)(a) of the Stamp Act as the law has been settled by the Division Bench judgment of this Court in the case of Steel Authority of India Limited, Bhilai v. Collector of Stamps, Bilaspur and Ors. 1986 MPLJ 200 and therefore petitioner has withdrawn the prayer for challenging the provisions of levy of stamp duty on lease under the provisions of Section 26 read with Section 35(iv)(a) of the Indian Stamp Act.

4. Counsel for the respondents submitted that now the question about the recovery of the registration fee is answered by the Apex Court in the case of [State of Himachal Pradesh and Others Vs. Shivalik Agro Poly Products and Others](#), .
5. Counsel for the petitioner submitted that in exercise of the powers conferred u/s 78 of the Indian Registration Act, the State has prepared a table of fee known as M.P. Table of Registration Fees and Article II of this table provides fee for the registration of leases. It provides that the registration fee shall be three fourth of the value of the stamp duly payable on the lease subject to minimum amount fixed in the table. It is contended that the word "fees" in Section 78 has a direct nexus with the services rendered by the State to the executant at the time of registration of the document. It has an element of quid pro quo and for this reason, State had fixed nominal registration fees in respect of all the documents which are tendered for registration. State is not required to tender different type of services for registration of documents only because of the nature of documents. The services rendered for registration of any document are the same and no extra or additional efforts are to be made by the State authorities in registering the documents. Only services rendered by the registering authorities is to put the seal on every page of the document and making entry in the register of the documents. In order to compensate the State for rendering these service, nominal table of fees is fixed which should be commensurate with the actual service rendered.
6. Counsel for the petitioner submitted that for the purpose of registration of mining lease, petitioner is forced to pay a sum of Rs. 27,51,681/-being three-fourths of value of the stamp duty by way of registration charges. He submitted that the registration fee should always be commensurate with the services rendered or in other words, the levy has its nexus, or co-relation with the purpose for which it is levied. While imposing heavy fee for registration, element of quid pro quo is missing. He submitted that fixation of fee is unreasonable and the table of fee provided in Article II of the Madhya Pradesh Table on Registration Fees is ultra vires and levy of fees is against the provisions of Article 265 of the Constitution of India. In support of his contention, Counsel for the petitioner placed reliance upon the judgment of the Apex Court in the case of [Jindal Stainless Ltd. and Another Vs. State of Haryana and Others](#), .
7. Section 78 of the Registration Act relates to preparation of table for the registration of documents; for searching the registers; for making or granting copies of reasons, entries or documents, before on or after registration; and of extra or additional fee payable -- for every registration u/s 30; for the issue of commissions; for filing translations; for attending at private residences; for the safe custody and return of document; and for such other matters as appear to the Government necessary to effect the purposes of this Act.
8. In the case of Shivalik Agro Poly Products (supra), after referring to the previous judgments of the Apex Court, it is held in Paragraph 17 of the judgment as under:

17. The fixation of registration fee under Sub-section (a) on a graduated scale depending upon the value or consideration for which the instrument has been executed may be on a higher side. However, the fee for various other items enumerated in Sub-sections (b) to (i) is very small, though the State has to incur a considerable amount of expenditure for the same. The high value transactions are generally in big cities where the value of the property is high and not in small towns or in rural areas. Nevertheless, the State Governments have to maintain offices of Sub-Registrars on small sub-divisional towns and post stall which has to be paid salaries. Rules have been framed by various State Governments which lay down elaborate procedure for maintenance of Books and Registers wherein copies of registered documents have to be kept. This necessarily requires trained manpower entailing expenditure in payment of their salary.

It is held in Paragraph 18 as under:

18. There is no material on record to show that the overall amount received by the Government by way of fee from the Registration department far exceeds the overall expenditure incurred in maintaining the said department. The High Court and also the District Court merely took into consideration the registration fee paid by the plaintiffs and did not at all examine whether there was any substantial discrepancy between the total amount of fee realized by the registration department and the total amount of expenditure incurred by the Government in the maintenance and functioning of the department. The notification issued by the State Government could not be struck down merely by taking into consideration the registration fee paid by the plaintiffs and the quantification of the value of services rendered to them.

It is further held in Paragraph 19 of the judgment that the view taken in [The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.](#), (hereinafter referred to as "Shirur Mutt" case) has undergone a sea change. In Shirur Mutt case (supra), it is held that there must be an element of quid pro quo and that the fee realized must be correlated and must be spent for the purposes of imposition. It is held by the Apex Court that the view taken in Shirur Mutt case (supra), has undergone a considerable change by subsequent decisions of the Apex Court. Moreover, having regard to the express language used in Article 266 of the Constitution, it is not possible for the State Government to keep the fee realised in a separate fund other than the Consolidated Fund of the State.

9. The judgment of M/s. Shivalik Agro Poly Products (supra), and Jindal Stainless Ltd. (supra), is interpreted by the Apex Court in the case of [Vijayalashmi Rice Mill and Others Vs. The Commercial Tax Officers, Palakol and Others.](#) While referring to various earlier judgments of the Apex Court, it is held in this case that earlier view of the Supreme Court was that to sustain the validity of a fee, some specific service must be rendered to the particular individual from whom fee is said to be realised. This question was considered by the Apex Court in the case of [Sreenivasa General](#)

[Traders and Others Vs. State of Andhra Pradesh and Others](#), wherein it is held that the traditional view that there must be an actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that the tax is levied as a part of common burden while fee is for payment of a specific benefit or privilege, although the special advantage is secondary to the primary motive of the regulation in the public interest. If the element of revenue for the general purpose of State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In Paragraph 19 of the judgment in the case of Vijayalashmi Rice Mill (supra), it is held as under:

19. In the present case, there is no averment by the petitioner in the writ petition that there is no broad correlation between the amount realised as a cess and the amounts spent for the purposes mentioned in Section 9 of the Act, namely, to provide and accelerate rural development including the construction of rural roads and bridges and storage facilities for storing agricultural produce and for maintaining and strengthening of the public distribution system. All that has been alleged by the petitioner in Para 5 of the affidavit to the writ petition is that no specific benefit is given to the dealer from whom the cess is collected.

10. In the case of Vijayalashmi Rice Mill (supra), Apex Court has referred and interpreted the judgment in the case of Jindal Stainless Limited (supra). After referring to the judgment in the case of [Sona Chandi Oal Committee and Others Vs. State of Maharashtra](#), it is held that the judgment in the case of Jindal Stainless Ltd. (supra), cannot be interpreted to mean that the sea change, which has taken place in the concept of fees has vanished, and that by this decision the old concept of fee has been restored, and that now it has to be established that the particular individual from whom the fee is being realised must be rendered some specific services. Apex Court while referring to the judgment in the case of Jindal Stainless Ltd. (supra), held that the decision of the Apex Court in the cases of [City Corporation of Calicut Vs. Thachambalath Sadasivan and Others](#), and Shivalik Agro Poly Products (supra), still hold the field regarding nature of fee. In Paragraph 26 of the judgment, while interpreting the judgment in the case of Jindal Stainless Limited (supra), it is held as under:

26. It may be noted that the decision in Jindal Stainless (supra), was given in connection with Article 301 of the Constitution, and it was not regarding the nature of a fee. Hence, it cannot be regarded as an authority explaining the nature of a fee. In our opinion the decisions of this Court in Sreenivasa General Traders v. State of A.P. (supra), City Corporation of Calicut v. Thachambalath (supra), State of H.P. v. Shivalik Agro Poly Products (supra), etc. still hold the field regarding nature of fee.

and the validity of A.P. Rural Development Act, 1996 which levies cess at a certain rate of purchase of goods in addition to purchase tax and sales tax was upheld. It is held in Paragraph 27 of the judgment that the cess in question is in substance a fee

as it is being levied for rendering to the rural public the service of rural development for the purposes stated in Para 9 of the Act. Apex Court after referring its earlier judgments in the cases of [Amar Nath Om Prakash and Others Vs. State of Punjab and Others](#), held in Paragraph 18 as under:

18. Subsequently also, the same view has been reiterated that there has been a sea change in the concept of a fee and now it is not longer regarded necessary that (i) some specific service must be rendered to the particular individual or individuals from whom the fee is being realised, and what has to be seen is whether there is a broad and general correlation ship between the totality of the fee on the one hand, and the totality of the expenses of the services on the other side, State of H.P. v. Shivalik Agro Poly Products (supra); (ii) there need not be an exact or mathematical correlation between the amount realised as a fee and the value of the services rendered. A broad correlation between the two is sufficient to sustain the levy.

11. Since in Vijaylashmi Rice Mill (supra), it is held while interpreting the judgment of Jindal Stainless Ltd. (supra), that the judgment in the case of M/s. Shivalik Agro Poly Products (supra), still holds the field, this petition is decided in the light of the judgment of the Apex Court in the case of Shivalik Agro Poly Products (supra). Since the petitioner has pleaded that the levying fee should be on the principles of quid pro quo, the pleadings are based upon the principles laid down in Shirur Mutt case (supra). In view of the development of the new concept and law determined by the Apex Court in the case of M/s Shivalik Agro Poly Products (supra), this petition stands without merit and deserves to be dismissed. In the absence of any grounds in the petition, the validity of the Madhya Pradesh Table on Registration Fees fixed in exercise of powers conferred u/s 78 of the Registration Act is upheld.

12. Petition fails and is dismissed without any orders as to costs.