

CARDAMOM MARKETING CORPORATION AND ANR.

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v.

STATE OF KERALA & ORS.

(Civil Appeal No. 4453 of 2008)

SEPTEMBER 01, 2016

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[A.K. SIKRI, S.A. BOBDE AND ASHOK BHUSHAN, JJ.]

Kerala Court Fees and Suits Valuation Act, 1959 – s.76 – Notification under, levying additional court fee in respect of each appeal or revision filed under Kerala General Sales Tax Act, 1963/ Kerala Value Added Tax Act, 2003 and for the amount so collected to be credited to the Kerala Legal Benefit Fund – Appellants, dealers under the aforesaid Acts, challenged vires of notification, also contending that the levy was in nature of tax and the element of service/quid pro quo was absent as the additional court fee collected from assesseees like appellants is used for benefit of advocates and not for benefit of litigants – High Court upheld the validity of notification – On appeal, held: Impugned notification is intra vires the provision of s.76 – The levy of additional court fee is meant for Legal Benefit Fund which is utilised for providing an efficient legal service for the people of the State and to provide social security measures for legal profession – Providing efficient legal services for the people of the State amounts to quid pro quo – Therefore, appellants' argument that the levy in question is in nature of tax and there is no quid pro quo is devoid of any merit – Kerala Court Fees and Suits Valuation Act, 1959 – s.3(ii) – Kerala Legal Benefit Fund Rules, 1991 – rr. 3, 4 – Kerala Advocates' Welfare Fund Act, 1980 – s.3(2)(e) – Kerala Advocates' Welfare Fund Rules, 1981 – Kerala General Sales Tax Act, 1963 – Kerala Value Added Tax Act, 2003 – Constitution of India – 42nd Amendment, 1976 – Entry 11A, List III – Entry 3, List II – Art. 39-A, Part IV – Directive Principles of State Policy .

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Administration of justice – Role of advocates – Discussed.

Dismissing the appeal and the writ petitions, the Court

HELD: 1.1 In terms of clause (e) of sub-section (2) of Section 3 of Kerala Advocates' Welfare Fund Act, 1980 the amount

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A set apart from the Legal Benefit Fund constituted under Section 76 of the CF Act is to be credited to the Advocates' Welfare Fund, for providing efficient legal services for the people of the State and social security measures for the legal profession. In nutshell, the additional court fee is meant for the aforesaid Welfare Fund which is to be utilised in accordance with the provisions of the Welfare Fund Act. From the reading of said provisions it is clear that the impugned notification has been issued in exercise of powers contained under Section 76 of Kerala Court Fees and Suits Valuation Act, 1959 (CF Act). This power extends to levy additional court fee by tribunals and other appellate authorities constituted by or under any special law. The impugned notification, therefore, is *intra vires* the provision of Section 76 of the CF Act. [Paras 7, 8] [924-B-E]

Chackolas Spinning and Weaving Mills Ltd. v. State of Kerala (2006) 1 KLT 989 – referred to.

D 1.2 The main argument of the appellants that the additional court fee which is to be paid on the appeals etc. which are to be filed either under the Kerala General Sales Tax Act or the Kerala Value Added Tax Act by virtue of the aforesaid notification, have no nexus with the object and, therefore, it does not have any character of 'fee' as no services are provided to the litigants in return is devoid of any merit. It is submitted that since such additional court fee collected from the assesseees like the appellants is used for the benefit of advocates and no benefit thereof accrues to the litigants, charging of such additional court fee is impermissible as it amounts to compulsory exaction of money from the appellants. [Paras 9, 10] [924-E-G, H; 925-H]

G 1.3 First of all, the argument of the appellants ignores that as per Section 76(3) of the CF Act, one of the purposes for which the Fund is to be utilised is for providing efficient legal services for the people of the State. It clearly amounts to *quid pro quo*. Other purpose is also for the benefit of the public at large. Providing social security to the legal profession becomes an essential part of any legal system which has to be effective, efficient and robust to enable it to provide necessary service to the consumers of justice. In a sound and able system of administration of justice, all the stakeholders in the said legal

system need to be taken care of. Legal community and advocates are inseparable and important part of robust legal system and they not only aid in seeking justice but also promoted justice. Judges cannot perform their task without the able support of advocates. In that sense, advocates play an important role in the administration of justice. [Paras 11, 12][925-G-H; 926-A-B, D-E]

1.4 Section 76 of the CF Act and the impugned notification by which additional court fee is imposed have a direct nexus to the objective sought to be achieved in relation to the service available to the appellants or others who approached the courts/tribunals for redressal of their grievances. [Para 12] [926-E]

Case Law Reference

(2006) 1 KLT 969 referred to Para 1

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4453 of 2008.

From the Judgment and Order dated 13.07.2007 of the High Court of Kerala at Ernakulam in Writ Appeal No. 1702 of 2007.

WITH

W. P. (C) No. 514 OF 2009

W. P. (C) No. 490 OF 2011

V. K. Sidharthan, Shabu Sreedharan, Parijat Sinha, Ms. Reshmi Rea Sinha, Joydeep Majumdar, Hrishikesh Baruah, Advs. for the Appellant.

Manu Krishnan, C. K. Sasi, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. The two appellants before us in Civil Appeal No. 4453 of 2008, who are the registered dealers under the Kerala General Sales Tax Act, 1963 and/or the Kerala Value Added Tax Act, 2003 in the State of Kerala. They challenged the vires of S.R.O. No. 226 of 2002 dated April 05, 2002 issued by the Government of Kerala in exercise of powers under Section 76(1) of the Kerala Court Fees and Suits Valuation Act, 1959 (hereinafter referred to as the 'CF Act') whereby the Government authorised the tribunals and appellate authorities constituted by or under special or local law, other than civil and criminal courts, to

A levy additional court fee in respect of each appeal or revision at the rate of 0.5% of the amount involved in the dispute in cases where it is capable of valuation, and at the rate of ' 50 in other cases. This notification further provides that the amount so collected shall be credited to the Kerala Legal Benefit Fund constituted under sub-section (2) of Section 76 of the CF Act. The main contention of the appellants was that the aforesaid levy is in the nature of compulsory exaction/tax and the element of service/*quid pro quo* was absent and, therefore, such a fee cannot be charged. The High Court has repelled the challenge thereby upholding the validity of the said notification following its earlier judgment in *Chackolas Spinning & Weaving Mills Ltd. v. State of Kerala*, 2006 (1) KLT 989, vide its judgment dated July 13, 2007. This judgment of the High Court is challenged in this appeal on the same grounds. Subject matter of the two writ petitions is also identical.

2. Before coming to the detailed submissions in this behalf, it would be apposite to take note of the relevant provisions of the CF Act as well as terms of the notification dated April 05, 2002.

3. The CF Act relates to court fees and valuation of suits in the State of Kerala. The court fee calculated as per the provision of the said Act has to be paid in respect of various kinds of proceedings initiated in a court of law in the State. Clause (ii) of Section 3 defines 'court' and reads as under:

““Court” means any Civil, Revenue, or Criminal Court and includes a Tribunal or other authority having jurisdiction under any special or local law to decide questions affecting the rights of parties;”

It is clear from the aforesaid definition that within the ambit of the CF Act, it is not only civil or criminal courts but also revenue authorities, including the tribunal or other authority having jurisdiction under any special or local laws, to decide questions affecting the rights of the parties. Thus, revenue courts as well as tribunals, when such bodies are deciding questions affecting the rights of the parties, are treated as 'court' for the purpose of CF Act. Fee prescribed under the said Act becomes payable in respect of proceedings before these authorities as well.

4. Section 76 of the CF Act, under which the impugned notification is issued, deals with 'Legal Benefit Fund' and makes the following reading:

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“76. Legal Benefit Fund. –

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, it shall be competent for Government to levy an additional court fee, by notification in the Gazette, in respect of appeals or revisions to tribunals or appellate authorities, other than Civil and Criminal Courts, at a rate not exceeding one per cent of the amount involved in the dispute in cases where it is capable of valuation and in other cases at a rate not exceeding one hundred rupees for each appeal or revision.

(2) There shall be constituted a legal benefit fund to which shall be credited –

(i) the proceeds of the additional court-fee levied and collected under sub-section (1);

(ii) fifty per cent of the court fees levied and collected on mukhtarnama or vakalathnama under Article 16 of Schedule II of this Act.

(3) The fund constituted under sub-section (2) shall be applied and utilised for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession.

(4) The mode and manner in which legal service to the people may be made more efficient and social security measures for legal profession may be provided, shall be as prescribed by rules made by Government.”

5. As is clear from the plain language of the aforesaid Section, this provision empowers the State Government to levy an additional court fee in respect of appeals or revisions to tribunals or appellate authorities, other than civil and criminal courts. This can be done by notification in the Gazette. The upper limit of such an additional court fee is one per cent of the amount involved in the dispute in cases where it is capable of valuation, and in other cases the additional court fee which can be levied is not to exceed rupees hundred for each appeal or revision. This levy of additional court fee is meant for Legal Benefit Fund. This Fund is to be applied and utilised for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession. The mode and manner in which legal services are

A to be made more efficient and social security measures for legal
 profession need to be provided can be prescribed by rules made by the
 Government. For this purpose, the State Government has framed the
 Kerala Legal Benefit Fund Rules, 1991, These Rules prescribed the
 manner in which the Fund is to be operated. Rule 3 thereof enumerates
 the sources of monies to the said Fund and reads as under:

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“3. Depositing of certain monies to the Fund. –

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(1) The amount to be credited to the Legal Benefit Fund shall be
 drawn from the head of account 2014-800-06 Legal Benefit Fund
 – Contributions by the Secretary, Board of Revenue (L/R) and
 may be made available to the Secretary to Government, Law
 Department for depositing it in the Fund. Government may make
 available in the first instance for deposit in the Fund such amount
 as it may deem necessary for the initial working of the Fund.
 This amount shall be adjusted against the actual amount payable
 to the Fund on consolidation of Statements regarding court fees
 actually levied from the year from which this (*sic* – these) rules
 shall be brought into force.

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(2) The amount of additional court fees levied and collected under
 sub-section (1) of S.76 of the Act shall be added to the Fund as
 and when such additional court fees are levied and collections are
 made. This amount will also be made available to the Law
 Secretary during the beginning of every financial year based on
 consolidated accounts of collection made in the previous year.

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(3) The fund shall be deposited in the Public Deposit account as
 ‘Fund’ in the District Treasury, Thiruvananthapuram in the name
 of the Legal Benefit Fund Trustee Committee constituted under
 rule 4.”

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Under Rule 4, a Fund Trustee Committee is constituted and detailed
 provisions are made thereof for operating the Fund by the said Trustee
 Committee as well as the functions which the said Trustee Committee is
 supposed to discharge.

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6. We may point out at this stage that the Legislature of the
 Kerala State has also enacted a law known as the Kerala Advocates’
 Welfare Fund Act, 1980. Rules are also framed under the said Act
 which are called as the Kerala Advocates’ Welfare Fund Rules, 1981.
 The Welfare Fund Act is aimed at providing of a Welfare Fund for the

payment of retirement benefits to advocates in the State of Kerala and for the matters connected therewith or incidental thereto. Section 3 thereof deals with constitution of the Advocates' Welfare Fund and reads as under: A

"3. Advocates' Welfare Fund. – (1) The Government shall constitute a fund called the Advocates' Welfare Fund. B

(2) There shall be credited to the Fund –

(a) all amounts paid by the Bar Council under section 12;

(b) any other contribution made by the Bar Council;

(c) any voluntary donation or contribution made to the Fund by the Bar Council of India, any Bar Association, any other association or institution, any advocate or any other person; C

(d) any grant made by the State Government to the Fund;

(e) the amount set apart from the Legal Benefit Fund constituted under sub-section (2) of Section 76 of the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960), for providing social security measures for the legal profession; D

(f) any sum borrowed under section 10; E

(g) all sums received from the Life Insurance Corporation of India on the death of an advocate under the Group Insurance Policy;

(h) any profit or dividend received from the Life Insurance Corporation of India in respect of policies of Group Insurance of the members of the Fund; F

(i) any interest or dividend or other return on any investment made of any part of the Fund;

(j) all sums collected by way of sale of stamps under section 22; G

(k) all sums collected under section 15 by way of application fees and annual subscriptions and interest thereon.

(3) The sums specified in sub section (2) shall be paid or collected by such agencies at such intervals and in such manner, and the H

A accounts of the Fund shall be maintained in such manner as may be prescribed.”

7. It becomes clear from clause (e) of sub-section (2) of Section 3 that the amount set apart from the Legal Benefit Fund constituted under Section 76 of the CF Act is to be credited to the Advocates’ Welfare Fund, for providing efficient legal services for the people of the State and social security measures for the legal profession.

In nutshell, the additional court fee at the rate of 0.5% of the amount involved or ₹ 50 in each case by the tribunals and appellate authorities constituted by or under any special or local laws, other than civil and criminal courts, is meant for the aforesaid Welfare Fund which is to be utilised in accordance with the provisions of the Welfare Fund Act.

8. From the reading of the aforesaid provisions it becomes clear that Section 76 authorises the State Government to issue such a notification and notification has been issued in exercise of powers contained therein. This power extends to levy additional court fee by tribunals and other appellate authorities constituted by or under any special law. The impugned notification, therefore, is *intra vires* the provision of Section 76 of the CF Act. Even the rate which is prescribed in the notification is within the outer limit prescribed under Section 76(2) of the Act. To this extent, therefore, there cannot be any quarrel.

9. However, the main argument of the appellants is that the additional court fee which is to be paid on the appeals etc. which are to be filed either under the Kerala General Sales Tax Act or the Kerala Value Added Tax Act by virtue of the aforesaid notification, have no nexus with the object and, therefore, it does not have any character of ‘fee’ as no services are provided to the litigants in return. To put it otherwise, it is submitted that since such additional court fee collected from the assesseees like the appellants is used for the benefit of the advocates and no benefit thereof accrues to the litigants, charging of such additional court fee is clearly impermissible as it amounts to compulsory exaction of the money from the appellants in the name of court fee, without giving any corresponding benefit to the appellants. It is more so when such an additional fee has to be paid at each and every subsequent level of statutory appeal and revision as well.

10. The aforesaid arguments of the appellants is devoid of any

merit. Insofar as the argument predicated on fee vis-a-vis tax is concerned, i.e. the submission that the imposition in question is in the nature of tax inasmuch as this imposition has no nexus to any object sought to be achieved in relation to the service available to the appellants and there is no *quid pro quo*, the same is dealt with by the High Court elaborately. The High Court has referred to Entry 3 in List II (State List) of the Seventh Schedule of the Constitution as it stood in the year 1960 when the CF Act was enacted on receiving the assent of the President of India. This Entry reads as under:

“3. 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 to the Supreme Court.”

By the Forty-Second Amendment to the Constitution in the year 1976, administration of justice became a Concurrent Subject, having been included as Entry 11A in List III which resulted in requisite modification to Entry 3 in List II as well. At the same time, by the very same amendment, Article 39-A was also inserted in Part IV of the Constitution which relates to the Directive Principles of State Policy. This Article exhorts the State to provide equal justice and free legal aid and reads as under:

“39A. **Equal justice and free legal aid.** The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

As per the High Court, the administration of justice, thus, becomes a distinct topic and Article 39A calls upon the State to ensure establishment of such legal system which promotes justice and provides free legal aid.

11. We agree with the aforesaid approach of the High Court. First of all, the argument of the appellants ignores that as per Section 76(3) of the CF Act, one of the purposes for which the Fund is to be utilised is for providing efficient legal services for the people of the State. It clearly amounts to *quid pro quo*. Other purpose is also for the benefit of the public at large. When we talk of sound and stable system of administration of justice, all the stakeholders in the said legal system

A need to be taken care of. Legal community and advocates are inseparable and important part of robust legal system and they not only aid in seeking access to justice but also promote justice. Judges cannot perform their task of dispensing justice effectively without the able support of advocates. In that sense, advocates play an important role in the administration of justice. It is wisely said that for any society governed by Rule of Law, effective judicial system is a necessary concomitant. The Rule of Law reflects man's sense of order and justice. There can be no Government without order; there can be no order without law; and there can be no administration of law without lawyers. It is no small service to be called upon to prosecute and enforce the rights of a litigant through the court of law and in that sense the legal profession is treated as service to the justice seekers. It is, therefore, by contributing an essential aid to the process of the administration of justice that the advocate discharges a public duty of the highest utility.

12. When the subject matter of the instant cases is examined in the aforesaid hue, it becomes apparent that providing social security to the legal profession becomes an essential part of any legal system which has to be effective, efficient and robust to enable it to provide necessary service to the consumers of justice. Section 76 of the CF Act and the impugned notification vide which additional court fee is imposed have a direct nexus to the objective sought to be achieved in relation to the service available to the appellants or others who approached the courts/tribunals for redressal of their grievances.

13. We, thus, do not find any merit in the appeal and the writ petitions, which are accordingly dismissed.

F Divya Pandey

Appeal and writ petitions dismissed.