GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Need to fix Maximum Chargeable Court-fees in Subordinate Civil Courts

Report No. 220

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LAW COMMISSION OF INDIA
(REPORT NO. 220)

Need to fix Maximum Chargeable Court-fees in Subordinate Civil Courts

Forwarded to the Union Minister for Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on the 30th day of March, 2009.

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D.O. No. 6(3)/154/2007-LC (LS) 30th March, 2009

Dear Dr. Bhardwaj Ji,

Subject: Need to fix Maximum Chargeable Court-fees in Subordinate Civil Courts

I am forwarding herewith the 220th Report of the Law Commission of India on the above subject.

Justice Krishna Iyer Committee on Legal Aid stated that "something must be done, we venture to state, to arrest the escalating vice of burdensome scales of court fee. That the State should not sell justice is an obvious proposition, but the high rate of court fee now levied leaves no valid alibi is also obvious".

The Supreme Court in *Secretary to Government of Madras v. P. R. Sriramulu* [(1996) 1 SCC 345] observed that there should also be some measures of uniformity in the scales of court-fees throughout the country as there appears to be a vast difference in the scales of court-fees in various States of the country. The feasibility of a fixed maximum chargeable fee also deserves serious consideration.

The Law Commission had also as far back as 1958 in its 14th Report on "Reform of Judicial Administration" recommended that there should be a broad measure of equality in the scales of court-fees all over the country, and that there should also be a fixed maximum to the fee chargeable.

In its 189th Report titled "Revision of Court Fees Structure" (2004), the Commission did not find any reason to take a different view than the one expressed by the Supreme Court and the Commission in its 14th and 128th Reports that the underlying real reason for enhancement of court fees appears to be the collection of more revenue by the States which is not sound public policy. On the other hand, higher court fee will discourage the honest and genuine poor litigant. The Commission emphasized that any enhancement of

court fee should not adversely affect the right of access to justice. Further, the amount collected by way of court fee should not be more than the expenditure incurred in administration of civil justice. Subject to these limitations only, the amount of fixed court fee prescribed under Schedule 2 of the Court-fees Act, 1870 may be enhanced in proportion to the extent of devaluation of the rupee.

In view of the above, the Law Commission of India took up the study *suo motu* and is of the considered opinion that there is a need to fix maximum chargeable court fees.

With warm regards,

Yours sincerely,

(Dr. AR. Lakshmanan)

Dr. H. R. Bhardwaj,
Union Minister for Law and Justice,
Government of India,
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New Delhi – 110 001

Need to fix Maximum Chargeable Court-fees in Subordinate Civil Courts

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I. INTRODUCTION

1.1 Court-fees in civil courts appear to have been first levied in the 18th century by Madras Regulation III of 1782, Bengal Regulation XXXVIII of 1795 and a Bombay Regulation of 1802.[1] Paradoxically, the preamble to the Bengal Regulation justified the imposition of court-fees on the ground that it would prevent the institution of frivolous litigation.[2]

1.2 Justice Krishna Iyer Committee on Legal Aid stated that "something must be done, we venture to state, to arrest the escalating vice of burdensome scales of court fee. That the State should not sell justice is an obvious proposition, but the high rate of court fee now levied leaves no valid alibi is also obvious".[3]

1.3 Notwithstanding the above, the court-fees have come to stay. It is settled law that a fee should broadly commensurate with the services and bear a reasonable correlation to the cost of services and that court-fee legislation is intended almost purely as a source of additional revenue to the State, either necessitated or even to some extent justified by the present day economic conditions, and hoped that with all-round improvement of economic condition, the State would be in a position to afford relief to the litigants by gradual reduction and ultimate abolition of court-fee. Now the question is whether the State is inclined to follow such a course and the periodical revision of court-fee is justified either on facts or in law.

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[1] Law Commission of India, 14th Report on "Reform of Judicial Administration" (1958)
[2] Ibid.
[3] Referred to in *P. M. Ashwathanarayana Setty v. State of Karnataka*, 1989 Supp (1) SCC 696

1.4 Setting out in the Statement of Objects and Reasons that it was expedient to make a general reduction in the rates of court-fee charged on civil suits and to revert to the principle of maximum fee which obtained under the former law, Court-fees Act, 1870 (Act 7 of 1870) was enacted by the Central Government. This Act was amended in its application to the Madras State in 1922, setting out the reason as to meet the increased cost of administration through additional revenue in the Objects and Reasons of the amending Act. The rates were though revised, the slab system was retained.[4]

1.5 The Supreme Court in *Secretary to Government of Madras v. P. R. Sriramulu*[5] observed that there should also be some measures of uniformity in the scales of court-fees throughout the country as there appears to be a vast difference in the scales of court-fees in various States of the country. The feasibility of a fixed maximum chargeable fee also deserves serious consideration.

1.6 The Law Commission had also as far back as 1958 recommended that there should be a broad measure of equality in the scales of court-fees all over the country, and that there should also be a fixed maximum to the fee chargeable.[6]

1.7 In view of the above, the Law Commission of India *suo* motu took up the study of the subject.

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[4] Meenakshisundaram Panchapakesan, *Court Fees At Ad Valorem Scale Collected in Subordinate Civil Courts*, (2008) 6 MLJ 131

[5] (1996) 1 SCC 345

[6] Supra note 1

II. JUDICIAL VIEW AND EARLIER REPORTS OF LAW COMMISSION OF INDIA

2.1 The State of Madras enacted the Madras Court-fees and Suits Valuation Act, 1955 (Act 14 of 1955) which provides for a uniform *ad valorem* fee at seven-and-a-half per cent without limit. The High Court of Madras, accordingly, revised its rules on the Original Side and by rule 1 of Order 2 of the High Court Fees Rules, fixed the court-fees in all suits instituted on or after 19.05.1955 to be levied according to the Act 14 of 1955 and the rules framed thereunder. Series of litigations before the High Court and the Supreme Court questioning the validity and *vires* of the Act 14 of 1955 were filed on the ground that there was no justification at all for the increase of court-fees in 1955 and also questioned the levy of court-fee on a flat rate of seven-and-a-half per cent on all claims without limit giving up the slab system on tapering basis which was in vogue till 1955.[7]

2.2 The Madras High Court in the case of *Zenith Lamps and Electricals Ltd. v. The Registrar, High Court, Madras*[8] rejected the contentions of the State and held that the levy in question was excessive, unreasonable and grossly disproportionate to the services rendered and struck down the same as unconstitutional.

2.3 The State filed an appeal in the Supreme Court and the five-Judge Bench of the Court remanded the matter to consider the additional counter-affidavit filed by the State.[9] On remand, the High

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[7] Supra note 4

[8] 1968 (1) MLJ 37

[9] *Secretary, Government of Madras v. Zenith Lamp and Electrical Ltd.,* 1974 (I) MLJ 43

Court in 1975[10] held that Article 1 in Schedule I of the Court-fees Act and sub-rule (1) of rule 1 of Order 2 of the High Court Fees Rules as invalid, holding that there is no correlation between the receipts and the expenditure on the cost of administration of civil justice in courts. The Division Bench of the High Court also denounced the levy of seven-and-a-half per cent *ad valorem* flat rate without limit, stating that even Sathyamurthy's Report did not recommend such a heavy *ad valorem* fee at a flat rate without limit, but in fact suggested lower rates of court-fee.

2.4 The above judgment came up in appeal before the Supreme Court and the three-Judge Bench of the Court by its judgment dated 22.11.1995 in the case of *Secretary To Government of Madras v. P. R. Sriramulu*[11] upheld the validity of levy of *ad valorem* court-fee, holding that the amounts collected by way of court-fee on *ad valorem* scale need not tally or correspond to expenditure incurred in administration of civil justice and the State enjoys the widest latitude in the matters of economic regulations and the increase in the court-fees has to be appreciated having regard to the increased need of revenue by reason of the increased cost of the administration justice. However, the Court did not consider the plea of justifiability for the increase in the levy by the Act 14 of 1955, on which the case had been earlier remanded by the Court.

2.5 On the other hand, in *P. M. Ashwathanarayana Setty v. State of Karnataka*[12] a three-Judge Bench of the Supreme Court had held

[10] *P. R. Sriramulu v. Registrar, High Court, Madras,* 1975 (I) MLJ 390
[11] (1996) 1 SCC 345
[12] Supra note 3

that there should be a broad and general correlation between the fee and expenses, not accurate or arithmetical equivalence.

2.6 The Madras High Court in the case of *Zenith Lamps and Electricals Ltd. Vs The Registrar, High Court, Madras*[13] held that for a fee there has to be a correlation between the income and the expenditure, that the levy should be reasonable and that any levy on a suitor in the civil court whereby revenues are realized generally and unrelated to his cause will to that extent, be an impost in the nature of a tax.

2.7 The holding of the Supreme Court in *Secretary, Government of Madras v. Zenith Lamp & Electrical Ltd*[14] is as follows:

> "In this case we are concerned with the administration of civil justice in a State. The fees must have relation to the administration of civil justice…. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Article 14. But one thing the Legislature is not competent to do, and that is to make litigants contribute to the increase of general public revenue…. There must be a broad correlationship with the fees collected and the cost of administration of civil justice…. We agree with the Madras High Court in the present case that the fees taken in Courts are not a category by themselves and must contain the essential elements of the fees as laid down by this Court."

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[13] Supra note 8
[14] Supra note 9

2.8 The holding of the Madras High Court in *P. R. Sriramulu v. The Registrar, High Court, Madras*[15] is as follows:

> "What is, however, necessary to see in testing the validity of the levy is, its essential character, as to whether it satisfies the concept of fee. … A litigant pays court-fee on the theory that he is bound to compensate for the cost of services rendered to him in the administration of civil justice by the Court, and he is not called upon to pay towards pension charges which relate to past services rendered by retired judicial officers to other litigants previously. … On an analysis of the foregoing statements and figures, we are clearly of the opinion that even as in 1954-55 and the subsequent years mentioned in the Statements I to III appended to the supplementary counter-affidavit of Mr. Shivakumar, the State had been making profits running to several lakhs and in some years nearly half a crore of rupees over the actual cost of administration of civil justice in Courts."

2.9 The holding of the Supreme Court in *Secretary To Government of Madras v. P. R. Sriramulu*[16] is as follows:

> "In any case it is also not the requirement of law that the collection raised through the levy should exactly tally or correspond to the expenditure in the administration of civil justice. It has already been ruled by this Court

[15] Supra note 10
[16] Supra note 11

that the correlation between the amount raised through the fee and the expenses incurred in providing the services should not be examined with exactitude with a view to ascertain any accurate and arithmetical equivalence but the test would be satisfied if a broad and general correlation is found to exist. … Once it is established that the primary and essential purpose is the rendering of specific services to a specified class, it becomes immaterial that the State has earned certain benefits out of it indirectly. … Before parting with these matters, we may point out that it could not be disputed that the administration of justice is a service which the State is under an obligation to render to its subject. There can be no two opinions that the amount raised from the suitors by way of fee should not normally exceed the cost of the administration of justice because, possibly there could be no justification with the State to enrich itself from high court fees or to secure revenue for general administration. The total receipts from the court fees should be such as by and large can cover the cost of administration of justice. There should also be some measure of uniformity in the scales of court fees throughout the country as there appears to be a vast difference in the scales of court fee in various States of the country. The feasibility of a fixed maximum chargeable fee also deserves serious consideration."

2.10 The holding of the Supreme Court in *P. M. Ashwathanarayana Setty v. State of Karnataka*[17] is as follows:

> "The correlationship between the amount raised through the 'fee' and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate, arithmetical equivalence or precision in the correlation; but it would be sufficient that there is a broad and general correlation. … Now at the end of the day, what remains is the suggestion necessary in regard to the rationalisation of the court-fees under the 'Rajasthan Act' and the 'Karnataka Act. The arguments in the case highlight an important aspect. The levy of court-fee at rates reaching 10 per cent *ad valorem* operates harshly and almost tends to price justice out of the reach of many distressed litigants. The Directive Principles of State Policy, though not strictly enforceable in courts of law, are yet fundamental in the governance in the country. They constitute fons juris in a Welfare State. The prescription of such high rates of court fees even in small claims as also without an upper limit in larger claims is perilously close to arbitrariness, an unconstitutionality. The ideal is, of course, a state of affairs where the State is enabled to do away with the pricing of justice in its courts of justice. In this reach for the ideal it serves to recall the words of Robert Kennedy: "Some men see things as they are and say why, I dream things that never were and say why

[17] Supra note 3

not? " …The governments concerned should bestow attention on these matters and bring out a rationalization of the levies."

2.11 The Law Commission of India has examined the issue of levy of court fees in its following Reports:

(a) 14th Report titled "Reform of Judicial Administration" (1958) -

The Commission observed that the argument that it is necessary to impose high court-fees to prevent frivolous litigation has no substance; these increases have been generally justified on the ground of the need of increased revenue by reason of the increased cost of the administration of justice, and recommended as under:

(1) It is one of the primary duties of the State to provide the machinery for the administration of justice and on principle it is not proper for the State to charge fees from suitors in courts.

(2) Even if court fees are charged, the revenue derived from them should not exceed the cost of the administration of civil justice.

(3) The making of a profit by the State from the administration of justice is not justified.

(4) Steps should be taken to reduce court fees so that the revenue from it is sufficient to cover the cost of the civil judicial establishment.

Principles analogous to those applied in England should be applied to measure the cost of such establishment. The salaries of judicial officers should be a charge on the general tax-payer.

(5) There should be a broad measure of equality in the scales of court fees all over the country. There should also be a fixed maximum to the fee chargeable.[18]

(b) 128th Report titled "Cost of Litigation" (1988) – The Commission affirmed the views expressed in its 14th Report.

(c) 189th Report titled "Revision of Court Fees Structure" (2004) -The Commission did not find any reason to take a different view than the one expressed by the Supreme Court and the Commission in its 14th and 128th Reports that the underlying real reason for enhancement of court fees appears to be the collection of more revenue by the States which is not sound public policy. On the other hand, higher court fee will discourage the honest and genuine poor litigant. The Commission emphasized that any enhancement of court fee should not adversely affect the right of access to justice. Further, the amount collected by way of court fee should not be more than the expenditure incurred in administration of civil justice.

[18] Supra note 1, Vol. I, pages 505, 509, 510

Subject to these limitations, the amount of fixed court fee prescribed under Schedule 2 of the Court-fees Act, 1870 may be enhanced in proportion to the extent of devaluation of the rupee.[19]

III. **RECOMMENDATION**

3 As observed by the Supreme Court, there should be some measure of uniformity in the scales of court-fees. There is no justification for any differential treatment of different suitors. The Government should, therefore, seriously consider the feasibility of a fixed maximum chargeable court-fee. We recommend accordingly.

(Dr. Justice AR. Lakshmanan)
Chairman

(Prof. Dr. Tahir Mahmood) (Dr. Brahm A. Agrawal)
Member

[19] Law Commission of India, 189th Report on "Revision of Court Fees Structure" (2004), pages 96, 112-113