PETITIONER:
CHIEF COMMISSIONER, DELHI & ANR.

Vs.

RESPONDENT:
DELHI CLOTH AND GENERAL MILLS CO. LTD. & ORS.

DATE OF JUDGMENT07/04/1978

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
SINGH, JASWANT

CITATION:
1978 AIR 1181 1978 SCR (3) 657
1978 SCC (2) 367
CITATOR INFO :
C 1980 SC1008 (21)

ACT:
Fee-Conditions to be satisfied to be a legal fee, within the meaning of the Constitution.

HEADNOTE:
The Respondent Company floated debenture loan of Rs. 2.50 crores and to -secure the repayment of the said loan executed debenture trust deed dated 10th April, 1962 mortgaging certain properties of the Company for a consideration of Rs. 2.50 crores in favour of the trustees who were petitioners before the High Court. Stamps to the extent of Rs. 2,50,00/- were paid under the Indian Stamp Act and apart from that when the document was presented for registration, a registration fee of Rs. 1,25,157.50 np. were demanded as registration fee by the Sub-Registrar under a notification issued by the appellant, the Chief ,Commissioner of Delhi on 15th December, 1952. The registration fee was paid by the Respondents under compulsion, but the trustees filed a petition in the High Court challenging the validity of the notification and the exorbitant amount realised as registration fee as illegal levy not fulfilling the essential conditions of a fee within the meaning of the Constitution. The plea of the trustees found favour with the High Court which held that the fee charged by the Registration Department under the notification was an illegal impost and could not be levied. The High Court accordingly quashed the notification.
Dismissing the appeal by certificate, the Court
HELD : A fee in order to be a legal fee must satisfy two conditions (a) There must be an element of quid pro quo, i.e. the authority levying the fee must render some service for the fee levied however remote the service may be; and (b) That the fee realised must be spent for the purpose of the imposition and should not form part of the general revenues of the State. [658 F-G]
In the instant case, in view of the fact that it was not disputed that the fee realised by the Registration Department under the impugned notification dated 15-2-1952 was to form part of the general revenues of the State, the second element of a fee was wholly wanting and the High

Court was, therefore, right in striking down this notification. [658 G-H]
Mahant Sri Jagannath Ramanuj Das and Anr. v. The State of Orissa and Anr. [1954] SCR 1046, Ratilal Panachand Gandhi v. The State of Bombay and Ors. [1954] SCR at D. 1055 and State of Maharashtra & Ors. v. The Salvation Army, Western India Territory [1975] 3 SCR 475 applied.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1959 of 1968.
From the Judgment and Order dated the 7th May, 1964 of the, Punjab High Court, Circuit Bench at Delhi, in Civil Writ No. 227-D ,of 1962.
R.P. Bhatt and Girish Chandra for the Appellant.
Hardaval Hardv, D.R. Thadani and A.N. Goyal for Respondents.
Sobhagmal Jain for the Intervener (The State of Rajasthan).
O. P. Rana for the Intervener (State of U.P.).
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The Judgment of the Court was delivered by
FAZAL, J. This appeal by certificate is directed against the judgment and order of the Circuit Bench of the Punjab High Court at Delhi dated the 7th May, 1964 and arises in the following circumstances
The respondent Company floated debenture loan of Rs. 2.50 crores and to secure the repayment of the said loan, executed debenture trust deed dated 10th April, 1962 mortgaging certain properties of the Company for a consideration of Rs. 2.50 crores in favour of the trustees, who were petitioners before the High Court. Further details have been given in the judgment of the High Court and it is not necessary to repeat them here. It appears that stamps to the extent of Rs. 2,50,300/were paid under the Indian Stamp Act and apart from that when the document was presented for registration, a registration fee of Rs. 1,25, 157.50 np were demanded as registration fee by the Sub-Registrar under a notification issued by the Chief Commissioner of Delhi, which is the impugned notification in this case. The registration fee was paid by the respondents under compulsion but the trustees filed a petition in the High Court challenging the validity of the notification and the exorbitant amount realised as registration fee.
The short point taken before the High Court by the Respondents, was that the, registration fee levied under the notification dated 15th December, 1952 was an illegal levy as, it did not fulfil the essential conditions of a fee within the meaning of the Constitution. The plea of the trustees found favour with the High Court which held that the fee charged by the Registration Department under the notification was an illegal impost and could not be levied. The High Court accordingly quashed the notification and directed refund of the fee.
The main point which arises for consideration in this case is as to whether or not the fee charged under the notification issued by the, Chief Commissioner was a legal impost justified by the provisions of the Constitution. It is well settled that a fee in order to be a legal fee,. must satisfy two conditions :-

(i) there must be an element of quid pro quo that is to say, the authority levying the fee must render some service for the fee levied however remote the service may be;
(ii) that the fee realised must be spent for

> the purposes of the imposition and should not form part of the general revenues of the State.

In the instant case, it was not disputed before the High Court that the fee realised by the Registration Department under the notification above-mentioned was to form part of the general revenues of the State. It is, therefore, manifest that the second element of a fee was wholly wanting in this case and the High Court was, therefore, right in striking down the notification., Mr. Bhatt appearing in support of the appeal, submitted that by virtue of the fact that the document was registered, the respondents obtained initial advantage in using the document as an
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authentic piece of evidence as proof of title and this was, therefore. a sufficient service rendered for the imposition of the fee. Even assuming that this was so, the second essential ingredient of a valid fee, viz. that the fee realised must be correlated with expenditure incurred on registration so as to be spent on maintenance of registration Organisation, was not satisfied in this case and on this ground alone the fee could not be imposed. In Mahant Sri Jagannath Ramanuj Das and Anr. v. The State of Orissa and Anr.(1), this Court observed as follows :-

> "Two elements are thus essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly. But this by itself is not enough to make, the imposition a fee, if the payments demanded for rendering of such services are not set apart or specifically appropriated for that purpose but are merged in the general revenue of the State to be spent for general public purposes".

The same view was reiterated in Ratilal Panachand Gandhi v. The State of Bombay and Ors. (2)
in a recent decision of this Court in the case of State of Maharashtra and Ors. v. The Salvation Army, Western India Territory(3), this Court observed as follows :-

> "Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accept either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purpose".

In view of the long course of decisions of this Court, the view taken by the High Court was absolutely correct and we are unable to, find any error of law. We understand that the notification has not been amended and a maximum fee of Rs. 100/- has been fixed. Thus the point becomes more or less academic except for cases arising during a particular period.

For these reasons, therefore, we find no merit in this, appeal which fails and is accordingly, dismissed without any order as to costs.

S. R. Appeal dismissed.

(1) [1954] S.C.R. P. 1046.
(2) [1954] S.C.R.P. 1055.
(3) [1975] 3 S.C. R. 475.

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