

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24059 of 2013

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1. Rishideo Rai, son of late Saryug Rai, Resident of Village- Kakarahat, P.O. Kakarahat, P.S. Dariyapur, District- Saran.
 2. Jamadar Rai, son of late Ram Asre Rai, Resident of Village & P.O. Parsa Jogni, P.S. Bheldi, District- Saran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Registration, Govt. of Bihar, Patna.
3. The Inspector General of Registration, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Rai, Advocate
Mr. Navin Nikunj, Advocate

For the Respondent/s : Mr. Ajay, GA- V
Mr. Pratiq Kr. Sinha, AC to GA-V

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-04-2017

Challenging the Notification issued by the State Government under Section 78 of the Registration Act, 1908 as is contained in Annexure-2, dated 26.07.2013, fixing registration fees for various acts pertaining to registration of documents and *inter alia* contending that the rate fixed is arbitrary and unreasonable, this writ petition has been filed for quashing the rate fixed by the aforesaid Notification, Annexure-2 dated 26.07.2013.

By bringing on record, the previous Notification issued vide Annexure-1 on 18.09.1997, i.e. 16 years back and by contending



that the increase in the registration fee in certain cases is 4-6 times and in the case of power of attorney and registration of other documents it is about 40 times, the prayer is made in the writ petition.

Learned counsel for the petitioners invites our attention to para-15 of the writ petition to argue that in the year 1997, the fee for registration of a Will was Rs.400/- and now, it has been increased to Rs.2000/- and therefore, the increase is 5 times. Similarly, for registration of a deed of partnership, the fee was Rs.250/- in the year 1997 and now it is increased to Rs.1000/- which is four times, for registration of power of attorney, it was Rs.250/- in the year 1997 and now it has been increased to Rs.10,000/- which is said to be 40 times. Similarly, for visit by Registration Department's employee to accept presentation at residence of the executant, the fee was Rs.150/- in the year 1997 which has been increased to Rs.5000/- which is said to be more than six times and surcharge for registration in District Registration Office instead of Sub-Registration Office, which was fixed at Rs.150 in the year 1997 has been increased to Rs.5,000/- which is said to be 33 times.

Based on the aforesaid and the law laid down by the Hon'ble Supreme Court in the case of **State of Himachal Pradesh & Ors. v. M/s Shivalik Agro Poly Products & Ors.** [2004 (4) PLJR 177 (SC)], an argument is advanced to say that there is no material to show



that the overall expenditure incurred for maintaining the Department and the rates fixed do not tally with each other. It is unreasonable and on higher side, therefore, interference should be made.

Learned counsel appearing for the State also relies on the same judgment and in return it is pointed out that now, with the change in the value of money during the last 16 years and taking note of various factors, the Notification has been issued and as there is no arbitrariness or illegalities in the same and the rate has been prescribed according to requirement of law, no interference should be made.

In the case of **State of Himachal Pradesh** (supra), this question has been considered and the legal principle, after analyzing various judgments, is crystallized in paragraph-18 which reads 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 quantification of the value of services rendered to them.”

Prior to that, in para- 16, the provision of Section 78 of the Registration Act is taken note of and the principle for fixation of registration fee is discussed in para-17 in the following manner:-

“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 the 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 in small sub-divisional towns and post staff 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.”

If we analyze the registration fee fixed in the present case in the backdrop of the expenditure that may be incurred by the State for maintaining the offices in question and viewing in the backdrop of the principles enumerated in paragraph 18, as is detailed hereinabove, we find no reason to make any indulgence into the matter. The



contention of the petitioner primarily based on some information under the Rights to Information Act, which is filed along with supplementary affidavit as Annexure-4 pertains to some information given to them by the Departmental authorities and there is no exact figure or material adduced by the petitioners to show that the rate fixed is exorbitant or contrary to the expenditure for maintaining the department. On comparison of the rate fixed, as is detailed hereinabove, we find that reasonable rate has been fixed after taking note of the fact that increase has been effected after a period of 16 years.

Accordingly, finding no ground to hold that the fixation is arbitrary and without any justifiable reason, we dismiss the writ petition.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	N.A. F. R.
CAV DATE	N. A.
Uploading Date	02.05.2017
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