2023:PHHC:138063

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

210 **CWP-12337-2017 (O&M)**
Date of Decision: 17.10.2023

VALUERS ASSOCIATION AND OTHERS
... Petitioners

VERSUS

STATE BANK OF INDIA AND ANOTHER
... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. H.C. Arora, Advocate
for the petitioner.

Ms. Madhu Dayal, Advocate
for the respondent.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the letter dated 26.06.2016 (Annexure P-6/1) issued by respondent No.2 and also to the communication dated 18.03.2017 (Annexure P-13), whereby the respondents declined to pay the fee to the registered Valuers in terms of Rule 8-C of the Wealth Tax Rules, 1957 and whereby the respondents have expressed their inability to prescribe uniform professional fee structure for Valuers across the country *inter alia* on the following grounds:

(i) The prescription of different rates for different regions/circles in the country for payment of professional fees to the approved Valuers is patently arbitrary and also violative of the provisions contained in Article 14 of the Constitution of India.

(ii) It violates the letter and spirit of the various provisions of the Wealth Tax Act/Rules, 1957;

(iii) State Bank of India is already paying the fee as per the Wealth Tax Act/Rules, 1957 in Mumbai, Bihar, Chhattisgarh regions as well as to the Valuers of Punjab, Haryana, Himachal and J&K.

The petitioner association and the members thereof are before this Court and claim that they are entitled to be paid fee at par with the fee as is being paid by the respondent-bank to the Valuers in other parts of the country and as per the principles of Wealth Tax Rules, 1957 and the Rules framed thereunder. It is contended that Rule 8-C of the Wealth Tax Rules, 1957 specifies that the fee to be charged by the registered Valuer for valuation of any asset would not exceed the amount calculated at the rates prescribed therein. The relevant provision of the Wealth Tax Rules, 1957 is extracted as under:

> *"8-C (1) Subject to the provisions of sub-rules (2) and (3), the fees to be charged by a registered valuer for valuation of any asset shall not exceed the amount calculated at the following rates, namely:*

(a)	*On the first Rs.5,00,000/- of the asset as valued*	*1/2 per cent of the value;*
(b)	*On the next Rs.10 lakhs of the asset as valued*	*1/5 per cent of the value;*
(c)	*On the next Rs.40 lakhs of the asset as valued*	*1/10 per cent of the value;*
(d)	*On the balance of the asset as valued*	*1/20 per cent of the value.*

(2) Where two or more assets are required to be valued by a registered valuer at the instance of an assessee, all such assets shall be deemed to constitute a single asset for the purposes of calculating the fees payable to such registered values (sic.).

(3) Where the amount of fees calculated in accordance with sub-rules (1) and (2) is less than Rs.500, the registered valuer may charge Rs.500 as his fees."

It is thus contended that the valuation of the property has been adopted as an objective criteria for determination of fee and that the respondent-Bank ought to abide by the same. A representation was submitted by the petitioner to the Chairman and Managing Director of the State Bank of India on 30.05.2016 requesting for the valuation fee to be approved as per the Wealth Tax Act, 1957 and the Rules framed thereunder, however, the respondent-Bank denied the same. Hence, the present petition.

Reply on behalf of the respondents has been filed, wherein it has been averred that a panel of approved Valuers is prepared by the respondent Bank to assess the true value of an immovable property sought to be mortgaged by a borrower. At the time of empanelment of any Valuer in the list of panel, an agreement is entered into between the Bank and the approved Valuer mentioning different terms and conditions of engagement including the payment of the valuation fee. The petitioner thus cannot dispute the terms and conditions of the payment of the valuation fee after having agreed in the contract with the respondent Bank. The terms and conditions of engagement are governed by the agreement executed between the parties and that the provisions of the Wealth Tax Act, 1957 and the Rules framed thereunder are not applicable to the banks. A further averment has been made that so far as the provisions of Wealth Tax Act, 1957 are concerned, the same have been discontinued w.e.f. 01.04.2016 and that the reliance placed upon the statute notified under the Wealth Tax Act, 1957 is unsustainable as the substantive statute seizes to exist.

It has also been averred that the language of Rule 8-C of the Wealth Tax Rules, 1957 suggest that the fee to be charged by a registered Valuer for valuation of any asset would not exceed the amount calculated at the rates mentioned thereunder and the same does not prescribe the minimum fee to be paid. Hence, the cap is on the upper limit and the bank would be at liberty to enter into an agreement whereby a lesser fee is prescribed for a registered Valuer. It is also submitted that the provisions of Wealth Tax Act, 1957 and the Rules framed thereunder are even otherwise not applicable to the bank which an independent statutory body created under the State Bank of India Act, 1955 and that the Rules and Regulations as notified and prepared under the applicable statute and approved by the Reserve Bank of India are applicable towards the functions of the respondent bank.

The provisions of the statute that has no bearing on the *inter se* contractual relationship cannot be imported in order to cast financial obligation and liabilities against the respondent Bank. In the event the petitioners are not satisfied or are aggrieved of the fee structure offered to be provided by the respondent Bank, there is no binding obligation upon the petitioners to continue to discharge functions and/or work for the bank. They are under no compulsion or have been made bound by the statute to perform such functions and hence do not suffer any prejudice on account of the determination of the fee to be paid by the respondent Bank. It is further averred that the Indian Banks Association has issued guidelines/ instructions to all banks and it settles wage revision of all the employees and takes policy decision across the banking sector. The circulars issued by the Indian Banks Association are followed by the member banks. There being no employer-employee relationship between the petitioner as well as respondent Bank and the relationship being that of a service user and a service provider, the element of coercion and pressure is entirely absent and the relationship is voluntary and is on account of free will between the parties. It has further been averred that insofar as the question of fee to be paid to a Valuer is concerned, the same is determined by the Bank keeping in view various factors including how much business the bank has in a specified area, the paying capacity of a customer/borrower and the prevalent fee charged in the said area by the Valuers. There cannot be any uniformity in the same since the challenge is in different areas and circles for determination of fee valuation may vary. There being no violation of any fundamental right or accrued statutory right, writ jurisdiction would not be maintainable as engagement of any person on contractual service being offered cannot be deemed as discharge of any public function or public duty by the respondent bank.

Even though the aforesaid written statement had been filed on behalf of respondents No.1 and 2 on 18.08.2018, however, no replication/rejoinder controverting the non-applicability of the provisions of the Wealth Tax Act, 1957 and the Rules framed thereunder has been filed by the petitioner.

The emphasis of the counsel for the petitioner has been that the respondent Bank has been offering different valuation fee for different circles and that the registered Valuers in the regions of Punjab and Haryana are being arbitrarily discriminated. Despite the same responsibility and obligations being discharged, there could be no discrimination in the payment of the valuation fee.

Per contra, learned counsel for the respondent Bank has emphasized that there is a valid factoring done by the respondent-Bank and within its competence to determine the fee of the registered Valuer for different circles taking into consideration the challenges and the paying capacity as well as the business being generated in a defined area. She further contends that the claim being raised by the petitioners does not have the callings of a public duty or a public function and as such, a writ petition would not be maintainable for seeking the said relief. Further, the arrangement being purely contractual and the petitioners having agreed to the same, they would not be justified in raising a challenge to the agreed fee especially when the contractual arrangement is purely voluntary and the terms and conditions of the contract executed between the parties are not subject matter of challenge. A reference is also made to the Rule 8-C to contend that the abovesaid provision also did not prescribe the minimum fee to be equated at a percentage of the valuation of the property and rather capped the maximum fee payable thereunder. Hence, the respondent Bank was entirely within its capacity to engage services of a service provider/ Valuer at any mutually agreed fee which may be less than the maximum fee prescribed thereunder.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The following aspects have emerged from the perusal of record as well as arguments led by the respective parties:

(i) That the payment of a valuation fee under a contract executed between the respondent Bank and the petitioner is not a part of a public function or public duty being discharged by the respondent Bank.

(ii) There is no allegation that the contracts executed between the petitioners as well as the respondent Bank, whereby they were empanelled as Valuers by the respondent Bank, were either executed under some coercion, pressure or undue influence or that the said agreements were not out of their free volition.

(iii) The entire case has been founded upon Rule 8-C of the Wealth Tax Act, 1957 and the Rules framed thereunder, whereas the said Act stands repealed w.e.f. 01.04.2016. Hence, the entire foundation of the case filed by the petitioner stands removed. There is thus no justification for consideration of the claim of the petitioners on the basis of the statutory provisions that do not hold the fields and stand repealed.

(iv) That the agreements executed between the parties are not subject matter of challenge and further, the competence of the respondent Bank to enter into any such agreement is also not denied or disputed.

(v) That bank has given specific reasons for prescribing a differential fee schedule in different circles, which is determined on the basis of business efficacy, quantum of business generated in a particular area, the general availability and fee structure of Valuers in particular region as well as the cost bearing ability of a customer/borrower since the valuation charges are eventually to be recovered from the borrower itself.

(vi) The arbitrariness of an action can only be tested for absence of reasons. The High Court in exercise of power under Section 226 of the Constitution does not look into the sufficiency of reasons. Once, the reasons cited by the respondent Bank are tenable and do not run contrary to any Statute, the High Court would not substitute its opinion for that of the Competent Authority.

(vii) That the decisions having fiscal implications on running and managing the affairs of a public sector bank have to be best left to the experts and it would not be appropriate for the Court to substitute a financial decision of a Banking Institution.

For the abovesaid reasons and the questions that have remained unanswered, I find that the present petition is misconceived. The same is accordingly dismissed at this stage.

Any other misc. application(s) also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

17.10.2023.
rajender

Whether speaking/reasoned *: Yes/No*
Whether reportable *: Yes/No*

RAJENDER KUMAR
2023.11.20 18:39
I attest to the accuracy and
authenticity of this document