The Secretary To Government Ofmadras & ... vs P.R. Sriramulu & Anr on 22 November, 1995

Equivalent citations: 1996 AIR 767, 1996 SCC (1) 345, AIR 1996 SUPREME COURT 676, 1996 (1) SCC 345, 1995 AIR SCW 4691, 1996 (1) UJ (SC) 612, (1995) 8 JT 305 (SC), (1996) 1 CTC 235 (SC), (1996) 1 APLJ 61.1, 1996 UJ(SC) 1 612, 1996 (1) CTC 235, 1995 (8) JT 305, (1996) 1 BANKCAS 286, (1996) 1 MAD LW 1

Bench: S.P Bharucha, S.B Majmudar

PETITIONER:
THE SECRETARY TO GOVERNMENT OFMADRAS & ANR.

Vs.

RESPONDENT:
P.R. SRIRAMULU & ANR.

DATE OF JUDGMENT22/11/1995

BENCH:
FAIZAN UDDIN (J)
BENCH:
FAIZAN UDDIN (J)
BHARUCHA S.P. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 AIR 767 1996 SCC (1) 345
JT 1995 (8) 305 1995 SCALE (6)589

ACT:

HEADNOTE:

JUDGMENT:

WITH WRIT PETITION NO. 1390 OF 1987

Central Bank of India V. The Secretary to Government of Tamilnadu & Ors.

J U D G M E N T Court has been directed against the judgment dated March 3, 1975 delivered by the High Court of Madras in Writ Petition No. 749/1966 P.R. Sriramulu & Anr. Vs. The Secretary to the Government of Madras. Home Department alongwith a group of other Writ Petitions and Civil Appeals, declaring Article (1) in Schedule (1) to the Tamilnadu Court Fees and Suits Valuation Act, 1955 and Sub-rule (1) of Rule (1) of Order II of the High Court Fees Rules, 1956 based on Article (1) of Schedule (1) of Madras Act No. XIV of 1955, to be invalid in so-far-as they relate to the levy of Court Fees on ad-valorem scale.

2. The facts in brief leading to the aforesaid appeal are that certain lands belonging to the respondents No. 1 and 2 herein situated in Tondiarpet were acquired at the instance of Public Works Department in respect of which award No. 6 and 8 both of 1962 were made on 5.3.1962 and 10.3.1962. On a reference made under Section 18 of the Land Requisition Act, at the instance of respondents No. 1 and 2, IVth Assistant City Civil Judge, Madras enhanced the compensation. The respondents being dis-satisfied preferred appeals to the High Court for further enhancement of the compensation. The Court Fee payable according to Madras Court Fees and Suits Valuation Act, 1955 on such appeals was an ad-valorem Court Fee at the rate of 7 1/2 per cent of the total claim without any upper limit for such levy irrespective of the amount. The respondents No. 1 and 2 challenged the validity of the aforesaid provisions of levy of Court Fees and Suits Valuation Act of 1955 with reference to levy of Court Fees ad-valorem working out at the rate of 7 1/2 per cent without upper limit by contending that the levy is not only exorbitant but wholly arbitrary, unreasonable and unjustified bearing no relationship to the cost of administration of justice and that in fact it was not a levy of Court Fee but really a levy of tax though purporting to be a levy of fee. The respondents took the stand that the Court Fees must be related to the cost of administration of justice and cannot be used as a means of taxation for the purpose of raising the revenue to the Government for its general administration. Respondents further took the stand that the pattern of levy of Court Fees prior to 1955 was only to levy an ad-valorem fee up to a certain limit and thereafter the fee was on a reduced scale and that the scale of fees in other States of the country are also on different basis and not on the basis of ad-valorem fee without limit. The said provisions therefore were sought to be declared invalid.

3. One Mr. Kelu Eradi, Joint Secretary to the Government of Tamilnadu had filed the counter afidavit on behalf of the State supporting the levy of ad-valorem Court Fees and opposing the writ petitions However, at the arguments stage one Mr. J. Shiva Kumar, Deputy Secretary to the Government also filed a supplementary counter affidavit dated 11.10.1966 on behalf of the Government but the High Court did not take into account the said supplementary counter affidavit and decided writ petitions. Relying on the principles laid down in Corporation of Madras Vs. Spencer & Co. the High Court allowed the group of writ petitions and appeal and struck down the aforementioned provisions by taking the view that the levy of ad-valorem flat rate of 7 1/2 per cent without any upper limit would be unreasonable, because where the cost of service had to be distributed between several persons, it would not be equitable and reasonable if the fees were so fixed that the whole cost or a grossly disproportionate part of it was imposed on a particular section of litigants. The said judgment was challenged before this Court in appeal. This Court allowed the

appeal and set aside the judgment of the High Court and remitted the matter back to the High Court with the following observations :

> "It seems to us that we cannot dispose of this appeal without giving opportunity to the respondents to file and affidavit or affidavits in reply to the supplemental counter affidavit dated October 11, 1966 because if we take the figures as given and explained by the Advocate-General we cannot say that the State is making a profit out of the administration of civil justice. Various items both on the receipt side and the expenditure side have to be carefully analyzed to see what items or portion of items should be credited or debited to the administration of civil justice:
>
> It is true, as held by the High Court, that it is for the State to establish that what has been levied is court fee properly so called and if there is any enhancement the State must justify the enhancement:
>
> We are accordingly constrained to allow the appeal and set aside the judgment passed by the High Court and remit the case to it:
>
> We direct that the High Court should give an opportunity to the writ petitioners to file an affidavit or affidavits in reply to the affidavit dated October 11, 1966. The High Court shall then decide whether the impugned fees are the court fees or taxes on litigants or litigation."

4. After remand by this Court the respondents filed further affidavits traversing the supplemental counter affidavit dated October 11, 1966 filed by Mr. Shiv Kumar on behalf of the Government. After considering the affidavits filed on behalf of the parties and the material on record the High Court took the view in the impugned judgment that there is no idea of quid pro quo in the levy at the rate of 7 1/2 per cent flat rate without limit as there is no necessity to raise the Court fees as compensation for the cost of service rendered and to meet any increased cost in the administration of civil justice and that there was no principle of rationalization justifying demand at a flat rate. The High Court further held that considering the circumstances the impost inherently bears within more the concept of tax than fee and the levy imposing, as it does, on a particular section of litigants is grossly disproportionate part of the burden and the same is unreasonable and arbitrary. The expenditure incurred by the Government as shown in some of the items, in the opinion of the High Court could not be debited to the cost of administration of justice which the litigant can be required to compensate and that the expenditure in the administration of criminal justice is also not debitable to the cost of administration of civil justice in Courts. The High Court further held that the record indicated that for the year 1955-56 the State was making a profit varying between 9 to 21 lakhs. On the basis of these conclusions the High Court struck down Article 1 in Schedule 1 to the Tamilnadu Court Fees and Suits Valuation Act and sub-rule 1 of Rule 1 of the High Court Rules, 1956 based on Article 1 of Schedule 1 to the Madras Act No. 14 of 1955 as invalid against which the aforementioned appeal has been directed.

5. The petitioner in writ petition No. 139/1987 is a Bank. The said Bank had filed a civil suit for recovery of Rs. 6,50,40,605.12 against M/s. Mettur Textile Industries Ltd. and Others on which it had to pay Court Fee amounting to Rs. 48,78,054.25 on ad-valorem basis at the rate of 7 1/2 per cent under Article 1 of Schedule 1 of the said Madras Act No. XIV of 1955. Certain other money suits were also contemplated by the Bank and having learnt that the Civil Appeal No. 736/1975 has been filed in this Court against the Madras judgment, the Bank has also filed the aforesaid writ petition under Article 32 of the Constitution of India challenging the said levy of Court Fees on the flat rate of 7 1/2 percent ad-valorem, relying on the same grounds as are set out in the aforesaid appeal.

6. Before we embark upon the points in controversy and respective contentions relating thereto we may briefly trace the history with regard to the levy of Courts Fee in this country on the litigating parties. Before the advent of British rule in India the administration of justice was considered to be the basic function of the State as guardian of the people without the levy of any charge on the party approaching the Court for redress of its grievance. As far as the memory goes during the Moghul rule and the period prior to that, there was no fee payable even on administration of civil justice and the administration of justice was totally free. It was only after the British rule that regulations imposing Court Fees were brought into existence. In the beginning the imposition of the fee was nominal but in the course of time it was enhanced gradually under the impression that it would prevent the institution of frivolous and groundless litigation and as an effective deterrent to the abuse of process of the Court without causing any impeciment in the institution of just claims. However insignificant this view may be that the levy of fees would have a tendency to put a restraint on frivolous litigation, that view at any rate had the merit of seeking to achieve a purpose which was believed to have some relevance to the administration of justice. Since about past two decades the levy of Court Fees on higher scales would seem to find its justification, not in any purpose related to the sound administration of justice, but in the need of the State Government for revenue as a means for recompense. It may be seen that the Central Court Fees Act of 1870 fixed, what may be described in view of subsequent happenings, a moderate scale of Court Fees. But the fact may not be lost sight of that after the enactment of the Court Fees Act. 1870 the financial needs of the State Governments have multiplied to a much larger extent. Consequently most of the States have enacted their own Court Fees Acts or have amended the original Acts themself beyond recognition and thereby have increased the scale of fees to a level which has given rise to the feeling that it is no longer a fee but a heavy tax on the litigants.

7. It cannot be disouted that the administration of justice is one of the main functions of the State. It is also a fact that the functions of the State in the modern times have become too extensive encompassing a large area of activity. Now the State has not only to maintain system of administration of justice for the maintenance of law and order, but it has also to provide a system to enable its citizens to convass their rights against wrongs done to them as well as to the State itself, statutory parties and Government Corporations, they deing now the largest litigants by reason of the growing tendency of all the States to project themselves into various social, economic and industrial spheres of the society, which during pre- independence days, was a rare phenomena. It is for all these reasons that the States came forward to levy fee by legislative amendments in order to cover up the expenses towards the pay, allowances and pensions of Judicial Officers and establishment staff, their residential accommodations. Court buildings repairs and maintenance thereof as well as

provision for transport, libraries and stationery, besides other expenses under various heads and machinery engaged and employed for the administration of justice.

8. In the present appeal and writ petition before us, it may be noted that the questions that arise out of the arguments adoressed to us by the learned counsel for the parties, may be formulated as under:-

> 1) What is the nature of the Fees taken in Court within the meaning of Entry 3, List II, in 7th Schedule of the Constitution. Whether the fee so charged is a tax or a fee?
>
> 2) Whether it is a colourable exercise of legislative power, in as much as the State in fact is raising tax under the guise of levying a fee because the levy is excessive to such an extent as to be a pretence of a fee but it is not a fee in reality ?
>
> 3) Whether the levy of Court Fees on ad-valorem basis, without an upper limit renders the impost a tax in as-much-

as, having regard to the very nature of services, which consist of adjudication of disputes, a stage is inevitably reached wherein after and above an ad-valorem levy, the proportionate increase in the value of the subject matter ceases to be a fee and becomes a tax ?

4) Whether the impugned impositions are fees - there being no correlation between the services and the levy and because State makes a profit out of the administration of civil justice as it does not spend the entire money an administration of civil justice but also in administration of criminal justice and a large surplus is left out even after meeting the expenses of the administration of justice ?

9. We may state here that the aforementioned questions raised before us are not new but were raised and agitated earlier also and decided by this Court. In this connection a reference to some of the decisions may be made. In I.M.& M Industries Vs. State of Bihar [AIR 1971 SC 1182] this Court expressed the view that before any levy can be upheld as a fee, it must be shown that the levy has reasonable correlation with the services rendered by the Government. In other words the levy must be proved to have a quid pro quo for the services rendered. But in such matters it will be impossible to have an exact correlationship and that the cor relationship expected to exist is one of a general character and not of arithmetical exactitude. It has been further observed that the correlationship between the services rendered and the levy of fee is essentially a question of fact.

10. A Constitution Bench of this Court while enterpreting Entry 3, List II in Schedule 7 of the Constitution of India, in the case of Government of Madras Vs. Zenith Lamos [AIR 1973 SC 724] took the view that the fees taken in Courts cannot be equated with taxes and in paragraph 31 of the report held as under:

> `"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. While levying fees the

appropriate legislature is competent to take into account all relevant factors, the value of the subject matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost of the upkeep of courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Art, 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. In other words, it cannot tax litigation, and make litigations pay, say for road building or education or other beneficial schemes that a State may have. There must be a broad correlationship with the fees collected and the cost of administration of civil justice."

Further in the said report this Court also agreed with the following observations made in [ILR (1968) (1) Madras 247 at pp. 340-341:

"When a levy is impugned as a colourable exercise of legislative power, the State being charged with raising a tax under the guise of levying a fee, courts have to scrutinize the scheme of the levy carefully, and determine whether, in fact there is correlation between the services and the levy, or whether the levy is excessive to such an extent as to be a pretence of a fee and not a fee in reality. If, in substance, the levy is not to raise revenues also for the general purposes of the State the mere absence of uniformity or the fact that it has no direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service, or that some of the contributories do not obtain the same degree of service as others may, will not change the essential character of the levy."

11. Again in Om Prakash Vs. Giri Raj Kishori [AIR 1986 SC 726] this Court observed in para 10 of the report that in determining a levy as fee the true test must be whether its primary and essential purpose is the rendering of specific services to a specified area or class, it being of no consequence that the State may ultimately and indirectly be benefited by it.

12. Apart from the aforementioned decisions the points in controversy and questions raised before us, as referred to above, are squarely covered by a decision of this Court in P.M. Ashwanatha Narayana Setty Vs. State of Karnataka [1989 Supple. (1) SCC 696. While dealing with the distinction between a "fee" and a "tax" and after reviewing all the earlier pronouncements of this Court on the conceptual distinction between a fee and a tax, it has been observed in para 35 (page 712) of the report as under :

"What emerges from these pronouncements is that if the essential character of the impost is that some special service is intended or envisaged as a quid pro quo to the class of citizens which is intended to be benefited by the service and there is a broad and general correlation between the amount so raised and the expenses involved in providing the services, the impost would partake the character of a "fee" notwithstanding the circumstance that the identity of the amount so raised is not

> always kept distinguished but is merged in the general revenues of the State and notwithstanding the fact that such special services, for which the amount is raised, are, as they very often do, incidentally or indirectly benefit the general public also. The test is the primary object of the levy and the essential purpose it is intended to achieve. 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."

In para 66 of the said report while repelling the arguments with regard to the alleged arbitrariness and inequities in the imposition of the ad-valorem impost without an upper limit this Court in paragraph 67 (page 720) of the report observed as follows :

> "The anomalies that the policy behind the impugned provisions can produce in onceivable cases could, indeed, be inquitable or even quite startling. But the argument in the last analysis becomes indistinguishable from the contention that the correlation of the services to the fee would have to be decided on the basis of how the correlation operate in each individual case. It would be an insistence on testing the conceptual nature of the fee on the basis of the degree of the quid pro quo in the case of each individual payer of the fee. That is the peccant part of the argument. Once a broad correlation between the totality of the expenses on the services, conceived as a whole, on the one hand and the totality of the funds raised by way of the fee, on the other, is established, it would be no part of the legitimate exercise in the examination of the constitutionality of the concept of the impost to embark upon its effect in individual cases.
>
> Such a grievance would be one of disproportionate nature of the distribution of the fees amongst those liable to contribute and not one touching the conceptual nature of the fee."
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> It has been further observed in para 72 (page 721) of the said report as under:
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> "What emerges from the foregoing discussion is that when a broad and general correlation between the totality of the fee on the one hand and the totality of the expenses of the services on the other is established, the levy will not fail in its essential character of a fee on the ground alone that the measure of its distribution on the persons or incidence is disproportionate to the actual services obtainable by them. The argument that where the levy, in an individual case, far exceeds the maximum value, in terms of money, of the services that could at all be possible, then, qua, that contributor, the correlation breaks down is a subtle and attractive argument. However, on a proper comprehension of the true concept of a fee the argument seems to us to be more subtle than accurate. The test of the correlation is not in the context of individual contributors. The test is on the comprehensive level of the value of the totality of the services, set off against the totality of the receipts. If the

> character of the 'fee' is thus established, the vagaries in its distribution amongst the class, do not detract from the concept of a 'fee' as such, though a wholly arbitrary distribution of the burden might violate other constitutional limitation."

In this connection it will also be appropriate to have a look at the observations made in para 79 (at page 723) of the said report which are as follows:

> "The problem is, indeed, a complex one not free from its own peculiar difficulties. Though other legislative measures dealing with economic regulation are not outside Article 14, it is well recognised that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic and social policies and affectuate the chosen system in all possible and neasonable ways. If two or more methods of adjustments of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there were better ways of adjusting the competing interests and claims. The legislasture possesses the greatest freedom in such areas. The analogy of principles of the burden of tax may not also be inapposite in dealing with the validity of the distribution of the burden of a 'fee' as well."

13. Now adverting to the facts of the present case it may be stated that the High Court after comparing the scale of Court Fees and noticing the difference in the incidence of Court Fees between 1922 Act and 1955 Act recorded the findings that the levy at 7 1/2 per cent under Article 1 of Schedule 1 of the Madras Act of 1955 on an ad-valorem flat rate basis without any limit does not satisfy the pre- requisites of a valid levy of Court Fees as according to the High Court it has in itself more the element of tax rather than the idea of quid pro quo. In other words there is no correlation between the levy of the Court Fees and the services rendered to the litigants in administration of civil justice. The High Court also took the view that the levy at the aforesaid rate imposing on a particular section of litigants is grossly disproportionate part of the burden and, therefore, deserves to be struck down being unreasonable and arbitrary. Further, the High Court, after considering the affidavit filed by Mr. Kelu Eradi on behalf of the Government and also the statements appended to the supplemental counter affidavit for the years 1955 to 1965 found that except for the year 1954-55 the State was making yearly profit varying between 9 to 21 lacs. With regard to the year 1954-55 the High Court found that the total actual receipts for 1954-55 were Rs. 122.12 lacs as against the expenditure of Rs. 124.94 lacs for the said period. According to the High Court the aforementioned figures of expenditure included Rs. 36.70 lacs relating to the criminal courts, Rs. 3.57 lacs to Presidency Magistrate Courts, Rs. 6.26 lacs to Law Officers to the Government and Rs. 58.31 lacs pertaining to the Civil & Sessions Courts and took the view that the expenditure incurred by the

Government in payment to their Law Officers cannot be debited to the cost of administration of justice which the litigant can be required to compensate for. The High Court also took the view that the criminal Courts do not render any service to the litigants and the expenditure in the administration of criminal justice is not debitable to the cost of administration of civil justice in Courts. On these reasonings the High Court in support of its aforementioned conclusions took the view that if the aforementioned total sum of Rs. 46.53 lacs and part of Rs. 58.31 lacs under the head "Civil and Sessions Courts" are deducted the total net balance would be less than Rs. 78.41 lacs and the State thus had earned a profit of Rs. 43.71 lacs over the expenditure of about Rs. 78.41 lacs in the year 1954-55.

14. Having regard to the decisions and various pronouncements cited above it is difficult to accept the reasoning and the view taken by the High Court in the impugned judgment. As discussed above if the essential character of the levy is that some special service is intended as quid pro quo to the class of citizens which is intended to be benefited by the service and a broad and general correlation between the amount so collected and the expenses incurred in providing the services is found to exist, then such levy would partake the character of a "fee", irrespective of the fact that such special services for which the amount by levy of fee is collected incidentally and indirectly benefit the general public also. In order to establish the correlation between the amount recovered by way of "fee" and the excenses incurred in providing the services they should not be examined so minutely or be whipped in golden scale to discern any difference between the two. It is not necessary to ascertain the same with any mathematical exactitude for finding the correlation out the test would be satisfied if a broad and general correlation is found to exist and once such a broad correlation between the totality of the expenses on the services rendered as a whole, on the one hand and the totality of the amount so raised by way of the fee, on the other is established, it would be no part of the legitimate exercise in the examination of the constitutionality of the concept of the amongst to embark upon its effect in the individual cases. If the aforesaid relation is found to exist in the levy of the fee, the levy cannot be said to be wanting in its essential character of a fee on the ground that the measure of its distribution on the persons or incidence is disproportionate to the actual services made available to them. In view of this position of law the view expressed by the High Court that ad-valorem levy of Court Fee in an individual case far exceeds the maximum value, in terms of money, dua that contributor and hence the concept of correlation fails and renders the levy invalid and illegal cannot be acceded for the simple reason that the correlation is not in the context of individual contributors, the test being its ascertainment on a comprehensive basis keeping in view the value of the totality of the service, qua, the totality of receipts. According to D.O. Marco, the author of the "First Principles of Public Finance" page 33, "the fee must be equal in the aggregate to the cost of production of the services. That is the aggregate amount of the fees which the State collects from individual customers must equal the aggregate expenses of production." Thus the test of the correlation is to be reckoned at the aggregate level and not at the individual level as is also the view taken in Asnwanatha Narayana Setty s case (supra).

15. As pointed out earlier with reference to the decisions of this Court the State enjoys the widest latitude where measure of economic regulations are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria, adjustment and balancing of various conflicting special and economic values and interests. It is for

the State to decide what economic and social policy it should pursue. It is settled law that in view of the inherent complexity of the fiscal adjustments, the Courts give a large discretion to the legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustment of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or there are better ways of adjusting the competing interests and the claims as the legislature possesses the greatest freedom in such areas. It is also well settled that lack of perfection in a legislative measure does not necessarily imply its constitutionality as no economic measure has so far been discovered which is free from all discriminatory impact and that in such a complex area in which no fool proof device exists, the Court should be slow in imposing strict and rigorous standard of scrutiny by reason of which all local fiscal schemes may be subjected to criticism under the Equal Protection clause. Having regard to these settled principals the impugned Judgment of the High Court could not be sustained.

16. It may be noticed that the observation of the High Court that the State Government had earned a profit of Rs. 43.71 lacs out of the total receipts for the year 1954-55 and that the State had made yearly profit varying between 9 to 21 lacs during the period from 1955 to 1965, cannot be accepted to be correct as the said observations have been made ignoring the facts stated in the supplementary affidavit filed by Mr. J. Shiva Kumar, Deputy Secretary to the Government and other material on record. It may be noted that factually it is neither possible nor practicable to give the exact break up of figures in regard to the expenses incurred under different heads and other departments of the Government in relation to the administration of civil justice, Shri Shiva Kumar in his supplementary affidavit has also stated in para 6 that it is difficult to estimate accurately to the last rupee the expenditure incurred on a number of items relating to the administration of civil justice. He has, however, given various heads under which the levy of fees is made as also various heads of expenditure relating to the administration of justice of which details were not given by Shri Kelu Eradi in his affidavit which alone has been taken into account by the High Court while recording its conclusions which resulted into the error. Apart from the facts stated above it may also be taken note of that there could not be any scientific method by which the levy of fee may be made exactly corresponding to the expenditure in a particular year relating to the administration of civil justice. Some fluctuations are bound to occur in respect of the recoveries by levy of fee and the expenditure on administration of civil justice. 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 that the co-relation 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. That being so, even if it is accepted that the recoveries during the period from 1955-65 were in excess to the tune of about Rs. 9 to 21 lacs per year, the levy would not fail on that account because 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.

17. The High Court also took the view that the criminal courts do not render any service to the litigants and, therefore, the expenditure made in administration of criminal justice cannot be

debited to the cost of administration of civil justice in Courts. While so observing the High Court lost sight of the fact that a Munsif who deals with the civil administration of justice is also invested with the magisterial powers and deals with criminal matters also. So is the case with the members of the higher judicial service. In such circumstances it is difficult to find any proper basis or formula to separate the charges of civil and criminal administration of justice when civil and criminal courts are generally not distinct but both functions are discharged by the same Judicial Officer. It appears to be not only difficult rather impossible to ascertain as to how much public time was spent by a Judicial Officer while dealing with criminal matters and how much time was spent while dealing with civil matters so as to come to a definite conclusion that any surplus much less sizeable surplus is left out of the receipts derived from Court Fees after meeting the actual expenditure in administration of civil justice. It is for these reasons that the Deputy Secretary, Shiv Kumar in his affidavit also stated that it is difficult to estimate accurately to the last rupee the expenditure incurred on a number of items mentioned by him in his affidavit. It is expressed by this Court also, "that it is difficult to estimate accurately the expenditure actually made by the Courts in administration of civil justice but it does not men that there does not exist a broad correlation between the expenses and the amount raised by way of levy."

18. While considering the reasonableness of the levy the High Court also took into account the vast difference in the rites of fee between the years 1922 to 1955. In this connection it may be pointed out that having regard to the changing social and economic conditions of the country and the threats of frequent inflationary trends hovering around, the levy of court fees cannot remain static and has to be amended according to the requirements of the times. The increase in the Court Fees has to be appreciated having regard to the increased need of the revenue by reason of the increased cost of the administration of justice. That being so, it would be a futile exercise to compare the rates of Court fee under the Court Fee Act, 1922 with those of 1955. There is bound to be a world of difference in the rates due to large span of time having elapsed between 1922 and 1955.

19. The High Court also took the view that the expenditure incurred by the Government in payment to their Law Officers cannot be debited to the cost of administration of justice which the litigant can be required to compensate for. In our opinion this view of the High Court also can not be accepted for the simple reason that these Law Officers are also part of the machinery of the administration of justice. Apart from what has been stated above in the aforegoing paragraphs it may be noticed that the view expressed by the High Court cannot be sustained in view of the subsequent judgment of this Court in the case of All India Judges association Vs. Union of India [1992 (1) SCC 119] whereby this Court had given various directions to the Government involving considerable amount of funds most of which will fall under the head of administration of civil justice. The Government is, therefore, bound to raise funds through the medium of fee.

20. Learned counsel for the respondents, however, submitted that this Court in the case of Asnwanatha Narayana Setty (supra) ultimately did not approve the scheme of ad-valorem levy of Court Fees without upper limit and urged that the said decision cannot be taken as an aid in support of the contention of the appellant that the ad-valorem of Court Fee without upper limit is justified and legal. It is true that in the last sentence of para 88 in the said report this Court observed as under:

"though the scheme cannot be upheld. at the same time. it cannot be struck down either."

While laying emphasis on the aforesaid observation. learned counsel for the respondents ignored the view expressed in paras just preceding the said observation, wherein it has been emphatically stated that it is difficult to say that the ad-valorem principle which may not be an ideal basis for distribution of a fee can be said to incur any unconstitutional infirmity. Formity. From the entire discussion of the said decision it is clear that this Court did not strike down the ad-valorem levy of Court Fees without upper limit and at the same time has expressed displeasure with regard to the scheme and it is for this reason that certain successions were in para 95 of the said report in record to the rationalization of the Court Fees under the "Rajasthan Act and the Karnataka Act" where the rate of Court Fees was 10 per cent ad-valorem which is not the case here before us.

21. It may be appropriate here to mention that ultimately the the State of Madras amended its Court Fees rules with effect form 11.9.1968 whereby the uniform levy of 7 1/2 der cent ad-valorem Court Fees has been given up and the slab system with a tapering scale has been adopted. This fact is clear from the affidavit dated 1.11.1973 filed before the high Court by one S.P.Ambrose, Special Secretary to the Government of Tamilnadu, Home Department.

22. Before parting with these matters, we me may point out that it could not be disouted 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 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 of 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 through out 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.

23. In the facts and circumstances discussed above the impugned judgment of the High Court con not be sustained and has to be set aside.

24. In the result the appeal succeeds and is hereby allowed. The impugned judgment of the High Court is set aside. The writ petition No.1390/1987 is dismissed. The parties are left to bear their respective costs in both the matters.