Sona Chandi Oal Committee&Ors vs State Of Maharashtra on 16 December, 2004

Equivalent citations: AIR 2005 SUPREME COURT 635, 2005 (2) SCC 345, 2005 AIR SCW 256, 2004 (7) SLT 523, 2005 (1) SRJ 460, 2004 (10) SCALE 454, (2005) 2 ALLMR 277 (SC), 2005 (2) ALL CJ 1002, (2005) 1 SUPREME 533, (2004) 10 SCALE 454, (2005) 3 BOM CR 227, 2005 (2) BOM LR 574, 2005 BOM LR 2 574

Bench: Ashok Bhan, A.K.Mathur

CASE NO.:
Appeal (civil) 992 of 2003

PETITIONER:
Sona Chandi Oal Committee & Ors.

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 16/12/2004

BENCH:
ASHOK BHAN & A.K.Mathur

JUDGMENT:

J U D G M E N T BHAN, J.

This appeal by grant of leave is directed against the judgment and order of the High Court of Bombay, Bench at Nagpur, in Writ Petition No. 314 of 1993. The High Court in the impugned judgment has upheld the validity of provisions of Section 9-A of the Bombay Money Lenders Act, 1946 (hereinafter referred to as 'the Act') as amended by Maharashtra Act No. 7 of 1992 which, according to the appellants, who are licensed money lenders, is ultra vires the provisions of the Constitution of India insofar as it seeks to levy inspection fee for the renewal of money lender's licence. Appellants therefore seek striking down of Section 9-A of the Act and consequent thereto the quashing of the demand notice for payment of inspection fee.

Under Section 3 of the Act, the State Government has the power to appoint Registrar General, Registrars and Assistant Registrars for the purpose of exercising powers and performing duties under the Act. Under Section 6 every money lender has to submit an application in the prescribed form to the Assistant Registrar of the area, within the limits of which he carries on or intends to carry on his business, for the grant of licence to carry on business of money lending every year on or before such date as may be prescribed by the State Government. The money lender is required to deposit licence fee [which has been fixed at Rs. 200/-] as per the provisions of sub-section (4) of

Section 6 of the Act. The application so made is required to be processed under Section 8 of the Act. Section 9 prescribes the term of licence to be up to 31st July from the date on which the licence is granted. The licence is made valid until the application for renewal of licence, if made to the Registrar within the prescribed time, is disposed of.

Section 9-A, in respect of levy of inspection fee, was introduced by Bombay Act No. 50 of 1959 which came into force w.e.f. 26.9.1959. The first amendment to Section 9-A was made by the Maharashtra Act No. 76 of 1975 which came into force from 26.7.1976. Section 9-A was amended for the second time by Maharashtra Act No. 7 of 1992 which came into force w.e.f. 28.4.1992. The amended provisions of Section 9-A, with which we are concerned in this appeal, are as under :-

> "9-A. Levy of inspection fee :-
>
> (1) An inspection fee shall, in addition to the licence fee leviable under Section 6, be levied from a money lender applying for a renewal of a licence at the rate of one per cent of the maximum capital utilised by him during the period of the licence sought to be renewed or rupees five thousand, whichever is lesser.
>
> (2) In default of payment of an inspection fee leviable under sub-section (1), it shall be recoverable from the defaulter in the same manner as an arrears of land revenue.

Explanation - For the purposes of this section, "maximum capital" means the highest total amount of the capital sum which may remain invested in the money lending business on any day during the period of a licence."

Rule 11 of the Bombay Money Lenders Rules, 1959 (hereinafter referred to as 'the Rules') deals with the levy of inspection fees and the same reads as under :-

> "11. Levy of inspection fee :-
>
> (1) On receipt of an application for the renewal of a licence, the Assistant Registrar to whom the application has been made, shall call upon the applicant to produce his accounts for inspection. He shall then assess the inspection fee payable under Section 9-A in respect of inspection of books of accounts and call upon the applicant to pay the inspection fee in the manner prescribed in Rule 10. The inspection fee shall be paid within ten days of the receipt of the order in this behalf by the applicant or within such further period not exceeding thirty days in the aggregate of the receipt of the order as the Registrar may grant in that behalf.
>
> (2) The Registrar may suo motu or on an application made in that behalf revise the order of assessment made under sub-rule (1) if he thinks fit."

Inspection fee is payable at the time of renewal of licence and the charge of inspection fee is @ 1% of the maximum capital utilized by the money lender during the period of licence sought to be renewed

or Rs. 5,000/- whichever is less. The term 'maximum capital' has been explained in explanation to Section 9-A to mean highest amount of capital sum which may remain invested in the money lending business on any day during the period of the licence. Therefore, according to the appellants, amount of inspection fee differs from money lender to money lender and depends upon the utilization of the maximum capital on any day during the period of licence.

Money lenders are required to maintain books of accounts under Section 18 of the Act read with Rule 16 and 17 of the Rules. Section 18 deals with the duty of the money lender to keep accounts and maintain cash books and the ledger in such form and in the manner as may be prescribed as also to furnish copies to debtors as well as Assistant Registrars. The section also provides that money lender upon repayment of loan in full shall make entries indicating payment or cancellation and discharge every mortgage, restore every pledge, return every note and cancel or reassign every assignment given by the debtor as security for loan. Rules 16 and 17 read as under :-

> "Rule 16 ? Forms of cash book, ledger and of statement and receipt under Section 18
> The cash book and ledger to be maintained by a money lender under sub-section (1) of Section 18 shall be either in Form Nos. 4 and 7 respectively or in Form Nos. 5 and 6 respectively. The statement under clause (a) of sub-section (2) of Section 18 shall be in Form No. 8. The receipts under sub-sections (3) and (4) of Section 18 shall be in Form Nos. 9 and 10 respectively.
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> Rule 17 ? Capital Account Every money lender shall open a capital account in Form No. 11 for the purpose of Section 9-A."

All these accounts are required to be verified before the grant of renewal of the licence.

The State Legislature is competent to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of Seventh Schedule of the Constitution of India. Under Entry 30 of List II the State Legislature can make laws on the subjects of money lending, money lenders and relief of agricultural indebtedness. The same reads:-

> "30. Money lending and money lenders; relief of agricultural indebtedness."

Entry 66 which reads:

> "66. Fees in respect of any of the matters in this List, but not including fees taken in any court."

authorises the State Legislature to levy fees in respect of any of the matters enumerated in List II excluding the fees taken in any court. Appellants' case is that under Article 265 of the Constitution there is a prohibition for imposition or levy or collection of tax by the State, except by authority of law, and that fee can be imposed only in respect of the subjects specified in List II of the Seventh Schedule to the Constitution. Under the List II, State Legislature is not competent to levy any tax in respect of subject matters of money lending or money lenders. Thus, according to them, the State

Legislature is competent to make laws laying down fees only in respect of items enumerated in Entry 30 of List II and not the tax. Though the provisions of Section 9- A are styled as inspection fee, it is in fact the collection of tax by the State without any authority of law. According to the appellants, there is a difference between tax and fee and fees are levied essentially for the services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. Quid pro quo is an essential element in a fee and since there is no quid pro quo, the levy is in the nature of tax which the State Government is not competent to impose.

Another submission made on behalf of the appellants is that the work of inspection is required to be done by the respondent authority to see that the terms of licence granted earlier are observed and the accounts required are properly maintained as per the provisions of the Rule. Therefore, there is no question of co-relation of the amount of levy with the inspection fee or licence fee to cost of any service. The inspection of books of accounts of money lenders can by no stretch of imagination be considered service rendered to the money lenders either for the grant of licence or for renewal of the same. Levy of licence fee or inspection fee is, in fact, a tax which the State Government is not empowered to impose. It is also alleged by the appellants that maximum levy of Rs. 5,000/- is arbitrary and violative of fundamental rights granted under Article 14 of the Constitution inasmuch as it has no reference whatsoever to any service and no inspection fee is liable to be imposed or recovered from money lenders when already Section 6 provides for levy of licence fee. Appellants cannot be made to licence fee as well as inspection fee as inspection of books is for renewal of the licence. Licence fee would cover the charges for inspection as well. Since the levy is credited in the General Public Funds Account and not appropriated towards any specific service rendered, goes to show that the levy is in fact in the nature of a tax. The levy is arbitrary and disproportionate to the so- called services rendered.

Another point raised by them is that inspection fee could not be charged for the period 1.8.1991 to 31.7.1992 as the amendment came into force w.e.f. 28.4.1992 by which time more than half of the licence period had already expired. There was no justification whatsoever to recover the inspection fee retrospectively w.e.f. 1.8.1991. The notices which have been received by the appellants for recovery of inspection fee for the years 1992-1993 were also put to challenge.

The respondent-State in its response has pointed out that the Act was enacted to regulate and control money lending business so as to eradicate the mal practices in the money lending business and to protect the interest of debtors. Thus, according to the respondent, the purpose of the Act is not limited to providing services to the money lenders but it is also regulatory in nature for the protection of the interests of the debtors as well. The work under the Act is to regulate and control the money lending business and to protect the debtors from mal practices in the business by detecting illegal money lending etc. Since the fee was regulatory in nature, quid pro quo for the service rendered to the person on whom the fee was imposed was not required to be proved. Relying upon some judgments of this Court, it was averred that in case the fee was regulatory in nature there need be no direct advantage or service rendered to the person on whom the fee is imposed, a mere casual relation or indirect service may be sufficient. The special benefit or advantage to the payers of fees may even be secondary as compared with the primary object of public interest. That primary object of the Act is to regulate the money lending business in public interest to protect and improve

the economic conditions of bulk of rural population and poorer sections of population of towns and cities and to protect them from exploitation.

It is further submitted that though the upper limit of Rs. 500/- has been increased to Rs. 5,000/- by the impugned amendment, the rate of 1% of maximum capital utilised by the money lender has been kept the same. It is stated that there are about 5600 money lenders in the State of Maharashtra out of which about 2200 money lenders are from Bombay and Greater Bombay. Even in Bombay in case of more than 50% money lenders the maximum capital as defined in the Act is below Rs. 50,000/-. The same in case of 20% is between Rs. 1 lac to Rs. 3 lac and for 10% above Rs. 3.00 lac. In the remaining parts of Maharshtra about 70 to 75 per cent money lenders are having maximum capital below Rs. 50,000/-. Since the fees are to be collected at the rate of 1 per cent subject to the maximum of Rs. 5,000/- in majority of the cases there will be no difference in the inspection fee payable by them. In the case of money lenders who have invested capital of Rs. 50,000/- there will be no increase in the inspection fee payable by them. It is, therefore, submitted that the contention raised by the appellants that the increase was arbitrary or excessive are devoid of any substance.

The staff and the officers of the Department have to visit the places of money lending business, inspect accounts and other matters relating to business. According to them, the inspection fee is charged not for rendering services only but also for regulating and controlling money lending business. The increase in the levy is justified on the ground of heavy increase in the Pay and Allowance of the Government Servants after 1991 who are employed for regulating and controlling the activities under the Act. The respondent has also pointed out that the strength of the staff looking after the money lending business has been considerably and significantly increased in the recent past and receipts from the inspection fee and licence fee are very meagre in the range of Rs. 25 to 30 lakhs every year which are not sufficient to meet the expenses incurred for the staff looking after the money lending business.

The High Court came to the conclusion that there was no merit in the contentions raised by the appellants. It was held that there was nexus between the fee charged and the service rendered. The fee charged was regulatory in nature to further the objects of the Act so as to control and supervise the functioning of the money lenders in order to protect the debtors. Such an exercise was a must for fulfilling the purpose of the Act for which infrastructure was required. Taking note of the heavy increase in the Pay and Allowances of Establishment and the receipt from inspection and licence fee, it was observed that the same were meagre and not even sufficient to meet the expenses incurred for the staff looking after the money lending business.

The basic question which we are called upon to decide is whether the fee of the nature impugned before us is, as a matter of fact, a tax in the guise of fee and whether it is so excessive or unreasonable as to loose the character of fee.

Shri G.L. Sanghi, learned Senior Counsel, placing heavy reliance on the Constitution Bench judgment of this Court in Corporation of Calcutta & Anr. v. Liberty Cinema [(1965) 2 SCR 477] in support of his submission contended that quid pro quo is a must in the case of fee and in the absence of the same, the levy would be deemed to be a tax. Since in the present case there is no quid

pro quo and no benefit is being rendered to the person paying the fee, the levy imposed is in the nature of tax though described as fee. Facts of the case were, under the Calcutta Municipal Act, 1951, a person was required to take a licence from the Corporation to run a cinema house for public amusement. Under Section 548(2), for every licence under the Act, a licence fee could be charged at such rate as fixed from time to time by the Corporation. In 1948 the Corporation fixed fees on the basis of the annual valuation of the cinema halls. The assessee who was the owner and licensee of the cinema theatre had been paying licence fee @ Rs. 400/- per year. In 1958 the Corporation by a resolution changed the basis of assessment of the fee. Under the new method the fee was to be assessed at rates prescribed per show according to the sanctioned seating capacity of the cinema houses and the assessee had to pay a fee of Rs. 6,000/- per year. The assessee filed a petition in the High Court for the issuance of a writ for quashing the resolution. The writ petition was allowed. The Corporation came up in appeal to this Court, which was accepted. The case of the Corporation was that the levy was a tax and not a fee. Accepting the plea of the Corporation, it was observed that in order to make a levy a fee for services rendered, the levy must confer special benefits to the person on whom it is imposed. The levy under Section 548(2) was not a "fee in return for services" as the Act did not provide for any services of a special kind being rendered, resulting in benefits to the person on whom it was imposed. The levy was held to be a tax.

In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) SCR 1005] this Court enumerated the different characteristics of tax and fee. It was held that the tax was levied as a part of common burden while a fee was a payment for special benefits or privilege to the person paying the same. Though it was not possible to formulate a definition of fee that could apply to all cases as there were different kinds of fee, but a fee may generally be defined as a charge for special service rendered to individuals by some governmental agency. It was observed that amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service. Pointing out the distinction between a tax and fee, it was observed that tax is a compulsory exaction of money by a public authority for public purposes enforceable by law and is not payment for services rendered.

In Chief Commissioner, Delhi v. Delhi Cloth & General Mills Co. Ltd. [(1978) 2 SCC 367], it was held by this Court that levy of fee should be in consideration of certain services which the individuals accept either willingly or unwillingly and that the collection from such levy should not be set apart or merged with the general revenue of the State to be spent for general public purpose but should be appropriated for the specific purpose for which the levy is being made.

In Om Parkash Agarwal v. Giri Raj Kishori [(1986) 1 SCC 722] it was held that levy imposed could not be treated as a fee and was tax primarily because the collection so made was being utilised not for fulfilling the objects of the Act under which the collection is authorised, but for the general requirement of the State's functions.

Shri Sanghi also placed reliance on a recent judgment of this Court in Commissioner of Central Excise, Lucknow, U.P. v. Chhata Sugar Co. Ltd. [(2004) 3 SCC 466] wherein the question was whether administrative charges collected by the sugar factory for molasses sold from the buyers/allottees on behalf of the State Government in terms of Section 8(5) of the U.P. Sheera

Niyantran Adhiniyam, 1964 constituted a duty or impost in the nature of a tax and consequently, not includible in the value as defined in terms of Section 4(4)(d)(ii) of the Central Excise Act, 1944. The Court, after analysing the provisions of the Act, held that sugar factory was merely a collecting agent of administrative charges for the State Government. The administrative charges were not a component of a consideration received by the sugar factory and did not form part of the revenue of the sugar factory. The administrative charges could not be appropriated to the revenue account of the sugar factory and, therefore, there was no element of quid pro quo as far as the administrative charges in the hands of the sugar factory are concerned. The administrative charges were thus held to be a tax and not a fee.

A three Judge Bench of this Court in B.S.E. Brokers' Forum, Bombay and Others v. Securities and Exchange Board of India and Others [(2001) 3 SCC 482], after considering a large number of authorities, has held that much ice has melted in Himalayas after the rendering of the earlier judgments as there was a sea change in the judicial thinking as to the difference between a tax and a fee since then. Placing reliance on the following judgments of this Court in the last 20 years, namely, Sreenivasa General Traders Vs. State of Andhra Pradesh, (supra); City Corporation of Calicut Vs. Thachambalath Sadasivan, (1985) 2 SCC 112; Sirsilk Ltd. Vs. Textiles Committee, (1989) Supp. 1 SCC 168; Commissioner & Secretary to Government Commercial Taxes & Religious Endowments Department Vs. Sree Murugan Financing Corporation Coimbatore, (1992) 3 SCC 488; Secretary to Government of Madras Vs. P.R.Sriramulu, (1996) 1 SCC 345; Vam Organic Chemicals Ltd. Vs. State of U.P., (1997) 2 SCC 715; Research Foundation for Science, Technology & Ecology Vs. Ministry of Agriculture, (1999) 1 SCC 655 and Secunderabad Hyderabad Hotel Owners' Association Vs. Hyderabad Municipal Corporation, Hyderabad, (1999) 2 SCC 274, it was held that the traditional concept of quid pro quo in a fee has undergone considerable transformation. So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not loose the character of a fee provided the fee so charged is not excessive. It was not necessary that service to be rendered by the collecting authority should be confined to the contributories alone. The levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. The quid pro quo in the strict sence was not always a sine qua non for a fee. All that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. It was observed that it was not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee was being paid. It was held that if one who is liable to pay, receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied.

We need not refer to the law laid down by this Court in each of the judgments which have been cited as the same have been analysed and discussed at length by this Court in B.S.E. Brokers' Forum, Bombay and Others case (supra).

The Bombay Money-Lenders Act, 1946 was enacted during pre- independence period by the elected Government to control and regulate money lending. Money lenders were fleecing the poor peasants, tenants, agricultural labourers and salaried workers who were unable to repay loans. The

agricultural debtors were loosing their lands, crops or other securities to the money lenders. To arrest this exploitation, the Money-Lenders Act was enacted to improve the economic conditions of the bulk of the rural population and the poorer sections of the population in towns and cities. Under the Act it was made mandatory first to take a licence to do the business of money lending on payment of a licence fee of Rs. 200/-. Inspection fee is levied for renewal of licence and for that purpose it is necessary that the records maintained by the money lenders should be thoroughly examined in order to satisfy whether all the registers are maintained properly in accordance with the rules and it is only after the satisfying that no irregularities are committed, the money lender becomes entitled to get the renewal of his licence. 'Inspection fee' has been defined in Section 2(5-A) of the Bombay Money-Lenders Act, 1946 to mean the fee leviable under Section 9A in respect of inspection of books of account of a money-lender. Section 2(7) defines the 'licence' to mean licence granted under this Act and according to Section 2(8) 'licence fee' means fee payable in respect of a licence. Renewal of licence is not automatic and can be refused on the grounds specified in Section 8. In order to ensure that the money lenders comply with the provisions of the Act and the Rules on which renewal of the licence can be refused under clauses (b) and (c) of Section 8, inspection of the records maintained by the money lenders is absolutely necessary and must. Rule 11 provides that on receipt of any application for renewal of a licence, the Assistant Registrar, to whom the application has been made, shall call upon the applicant to produce his accounts for inspection. He shall then assess the inspection fee payable under Section 9A in respect of inspection of books of accounts and call upon the applicant to pay the inspection fee in the manner prescribed in Rule 10. Under Section 18, every money lender is required to keep and maintain a cash book and a ledger in such form and in such manner as may be prescribed. Under sub-section (2) every money lender has to deliver or cause to be delivered to the debtor within 30 days from the date on which a loan is made, a statement in any recognised language saying in clear and distinct terms the amount and date of loan and its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and of the money lender and the rate of interest charged. Clause (b) of this sub-section provides that upon repayment of loan in full, the money lender is required to mark indelibly every paper signed by the debtor with words indicating payment or cancellation and discharge every mortgage, restore every pledge, return every note and cancel or reassign every assignment given by the debtor as security for the loan. Sub-section (3) provides that no money lender shall receive any payment from a debtor on account of any loan without giving him a plain and complete receipt for the payment. Money lender under sub-section (4) is debarred from accepting from a debtor any article as a pawn, pledge or security for a loan without giving him a plain signed receipt for the same with its description, estimated value, the amount of loan advanced against it and such other particulars as may be prescribed. Under Section 19, every money lender is required to deliver or cause to be delivered in every year to each of his debtors a legible statement of such debtor's accounts signed by the money lender or his agent of any amount that may be outstanding against such debtor. Rule 16 provides for the forms of cash book, ledger and of statement and receipt under Section 18. Rule 17 provides for opening of a capital account in Form 11 for the purposes of Section 9A. The inspection of records, thus by itself, provides for service rendered by the State to the money lenders which is done in connection with their request to renew the licences. It is necessary to find out before granting renewal of the licence that the applicant has complied with the provisions of the Act and the Rules and that he has not made any wilful default in complying with or knowingly acted in contravention of any requirements of the Act.

This is the direct service rendered to the money lenders as the renewal of licence depends upon the inspection of their accounts which is required to be carried out under the Act.

This apart the fee charged is regulatory in nature to control and supervise the functioning of the money lending business to protect the debtors the vast majority of which are poor peasants, tenants, agricultural labourers and salaried workers who are unable to repay their loans. The object of the Act is to control the money lending business and protect the debtors from the malpractices in the business by detecting illegal money lending. This exercise is a must to carry out the object of the Act for which lot of infrastructure is required. The duty of the staff and the officers of the Department is to visit the places of money lending business, inspect the accounts and other matters relating to the business, to find out illegal money lending, carry out raids in suspicious cases and do regular inspection as provided in the Act. The Act serves a larger public interest.

Respondent State in its counter affidavit has stated that the strength of the staff looking after money lending work has been considerably and significantly increased in the recent past. The total receipts from inspection fees and licence fees under the Act are very meagre in the range of 25 to 30 lakhs every year. Receipts from inspection fees and licence fees under the Act form a very small part of the total receipts of the Co-operative Department which are to the tune of Rs. 21 crores. The licence fees and inspection fee under the Act are not even sufficient to meet out the expenses incurred on the staff looking after the money lending business. Since the Act is a social legislation with the intention to protect the debtors from the malpractices in the business the State is performing its duties even though the revenue under the Act is not even sufficient to meet the expenditure on the staff performing duties under the Act. In view of these submissions it cannot be held that the fees are either arbitrary or excessive.

Contention raised by Shri G.L. Sanghi, senior counsel for the appellants that the fees have to be uniform has no merit in view of the judgment of this Court in Secunderabad Hyderabad Hotel Owners' Association Vs. Hyderabad Municipal Corporation, Hyderabad,(supra) and State of Maharashtra Vs. The Salvation Army, Western India Territory, 1975 (1) SCC 509. It has been held in these judgments that fees are ordinarily uniform but absence of uniformity is not the sole criterion on which it can be said that the levy is in the nature of tax.

Mr. Sanghi has also urged that the impugned fee has been imposed on the basis of the annual turnover of the money lenders. It is contended that assuming that the respondent had the authority in law to levy the fee under challenge, the same could not be levied on the basis of the annual turnover of the money lenders because such levy would amount to a tax on turnover. We do not find any force in this submission as well. This Court in B.S.E. Brokers' Forum, Bombay and Others v. Securities and Exchange Board of India and Others, (supra) held that annual turnover of a broker was not the subject- matter of the levy but was only a measure of the levy. In this case as well the annual turnover is not the subject matter of fee but only a measure of levy.

Relying upon the judgment of this Court in Sreenivasa General Traders Vs. State of Andhra Pradesh, 1983 (4) SCC 353, it was held that merely because the fees were taken to the Consolidated Fund of the State and not separately appropriated towards the expenditure for rendering the service by itself

was not decisive to determine as to whether it was a fee or a tax. It was also held that fees are ordinarily uniform but absence of uniformity by itself was not a criterion on which alone it could be said that the levy was in the nature of tax.

For the reasons stated above, we do not find any merit in this appeal and the same is dismissed with no order as to costs.