

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(PIL) No.3764 of 2022

Jharkhand State Bar Council through its Secretary, Rajesh Pandey

... .. **Petitioner**

Versus

State of Jharkhand & Ors. **Respondents**

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**

For the Petitioner : Mr. Rajendra Krishna, Advocate
Mr. V.P.Singh, Sr. Advocate
[Amicus Curiae]

For the State : Ms. Rashmi Kumar, Advocate
Mr. Rajiv Ranjan, Advocate General
Mr. Jai Prakash, A.A.G. - IA
Mr. Piyush Chitresh, A.C. to A.G.

ORAL ORDER

06/Dated 7th September, 2022

The instant writ petition is under Article 226 of the Constitution of India filed *pro bono publico* by the Jharkhand State Bar Council, *inter alia* praying for following relief(s): -

(i) For issuance of an appropriate writ(s)/order(s) / direction(s) declaring the Court Fee (Jharkhand Amendment) Act, 2020-21 issued vide Notification dated 22.02.2022 in the Jharkhand Gazette, as ultra vires the Constitution of India.

(ii) The petitioner further has challenged the constitutionality and validity of the Court Fees (Jharkhand Amendment) Act, 2021 (Jharkhand Act) 03/2022 issued vide Gazette Notification dated 22.02.2022 whereby the Legislative Assembly of the State of Jharkhand has amended the Court Fees Act, 1870 for its' application in the State of Jharkhand, and the petitioner further prays for declaring the Court Fees (Jharkhand Amendment) Act, 2021 as ultra vires the

Constitution of India since it is violative of Article 14 & 21 of the Constitution of India.

(iii) For issuance of an appropriate writ(s)/order(s) / direction(s) or a writ in the nature of mandamus commanding upon the respondents to restrain them from implementing the Court Fees (Jharkhand Amendment) Act, 2021 till the issue is decided by this Hon'ble Court.

(iv) For issuance of an appropriate writ(s)/order(s) / direction(s) or a writ in the nature of mandamus commanding upon the respondents to reduce the exorbitant court fee as well as to delete the court fee on the written statement as well as for those applications which are filed for calling of records from other courts and other fees on different items, since the enhancement has gone up manifold putting unbearable financial burden upon a great of majority of litigants which would restrict them from approaching to the court for getting justice.

(v) For issuance of an appropriate writ(s)/order(s) / direction(s) or a writ in the nature of mandamus commanding upon the respondents to allow them to continue the court fee which was applicable prior to the implementation of the Court Fees (Jharkhand Amendment) Act, 2021.

2. It has been contended that the impugned amendment notified on 22.02.2022 being Court Fees (Jharkhand Amendment) Act, 2021 by which the court fee has been exorbitantly enhanced, the *ad valorem* court fee has also been imposed on the written statement even though the written statement is being filed by the respondent/opposite party in a suit and opposite party does not claim anything to be decided by the concerned court and, as such, any court fee if imposed in the written

statement filed by the opposite party, it would be against the object of the court fee.

It has been contended that such enhancement is unreasonable and not in consonance with the Court Fees Act, 1870 (Central Act).

The ground has also been taken that one of the amendments in the impugned notification is by way of carving out discrimination in filing writ petition under Article 226 of the Constitution of India for which court fee of Rs.500/- has been inserted to be paid in place of Rs.250/- as per the pre-amended Act. However, for filing the Public Interest Litigation, the court fee has been enhanced to Rs.1000/-, therefore, contention has been raised that when the writ petition either it is filed by way of adversarial litigation under Article 226 of the Constitution of India or it is filed by way of Public Interest Litigation, there cannot be any discrimination since the Constitution of India does not envisage any discrimination in invoking such jurisdiction upon the nature of case.

Apart from that, the court fee has also been enhanced in filing the suit which is exorbitant to the extent that under the Court Fees Act, 2010, the maximum court fee in a suit where the valuation exceeds Rs.1 crore, as per the impugned amendment, the maximum court fee in suit has been fixed Rs. 3 lakhs which is six times of the

maximum court fee, i.e., being deposited under the old Court Fees (Amendment) Act.

Further, according to the writ petitioner, such enhancement made in the court fee is not only discriminatory but without any application of mind.

3. This Court, while hearing the matter on 18.08.2022, had adjourned the matter on the ground of non-availability of learned Advocate General but noting down several issues which require consideration. For ready reference, the aforesaid order is being referred hereunder :-

“04/Dated: 18.08.2022

Mr. Jai Prakash, learned A.A.G.IA is present along with Mr. Piyush Chitresh, learned A.C. to learned Advocate General.

It is informed on behalf of the State that the learned Advocate General is still not available today and there is every likelihood that he will be returning back today itself and then he would be going to hold meeting with the concerned department and then on Tuesday (23.08.2022) he will address the Court on the issue.

As prayed, put up this case on Tuesday next (23.08.2022) at the top of the list.

Before parting with the matter for today, let it be noted that several issues have been raised by Mr. Rajendra Krishna, learned counsel appearing for the writ petitioner. Apart from others, which are as follows:-

- (i) Enhancement of Court Fees with respect to certain items is sometimes thousand times at one go, which is highly unreasonable,
- (ii) Court Fee is being charged, now on the written statement to be filed after issuance of summons in a suit, which is in teeth of Section 16 of the Court Fees Act,
- (iii) So far the filing of writ petitions in High Court is concerned, they are discriminating a

petition filed under Article 226 of the Constitution of India from another petition, which is also filed under Article 226 but in the Public Interest Litigation,

It is urged that though they have the new provision of charging Rs.500/- on any petition filed under Article 226 but at the same time when a petition is filed under Article 226 in the form of Public Interest Litigation then it is double i.e. Rs.1000/- which is highly unreasonable and discriminatory.

(iv) This enhancement is contrary to the several constitutional provisions.

A question was put up by the Court to the State as to whether before tabling the amendment or any bill to be passed by the legislature, whether they seek assistance of the Law Commission or not, then the Court is informed that there is no Law Commission working in the State of Jharkhand for last several years.

In view of the aforesaid issues, we are also of the opinion that the Court will have to go through the records, regarding the discussions and preparations made by the State Government before tabling the bill to be passed by the legislature.

We would direct the State authorities to produce such original records before us so that we could understand the rationale in such sort of enhancement of the Court Fees which is under challenge before this Court in this Public Interest Litigation.

In view of the nature of litigation, affecting the litigants of the entire State in view of the amendment, we have requested Mr. V. P. Singh, learned Senior counsel to assist this Court as Amicus Curiae and he agrees to that.

Let copies of the pleadings be provided by the writ petitioner to the learned senior advocate and henceforth all the affidavits which is being filed by the writ petitioner or the State or other respondents, a copy of the same should be given in advance to the learned Amicus Curiae also.

Mr. V. P. Singh, learned senior counsel has submitted that he will be appearing through Mrs. Rashmi Kumar, learned Advocate.

Let the name of the Advocate, Mrs. Rashmi Kumar appear in the daily cause list henceforth in this matter.”

4. The matter has been heard again on 23.08.2022 and on that day learned Advocate General has informed this Court that since he was outside the State, he could not consult the stakeholders of the State Government, therefore, more time will be required and on his prayer the matter was posted for hearing today.

5. Learned Advocate General, on instruction, has conceded on the following issues :-

(i) It has been found to be typographical error, for inclusion of written statement for payment of court fee reason being that there cannot be any court fee in the written statement to be filed by way of set off on behalf of the opposite party excluding the written statement which is to be filed by way of a counter claim etc.

Learned Advocate General, therefore, has conceded that the said part of the requirement of deposit of court fee by virtue of the Amendment Act, 2021 will now be amended by asking the litigants to pay court fee as per Schedule – I of the Court Fees Act, 1870.

(ii) Learned Advocate General has further conceded on instruction that there should be uniform court fee so far as it relates to filing of writ petition under Article 226 of the

Constitution of India, either by way of adversarial litigation or Public Interest Litigation.

Further, it has been submitted that on the basis of the concession for requirement of depositing the court fee in the writ petition filed under Article 226 of the Constitution of India irrespective of its nomenclature, i.e., whether it is being filed by way of adversarial litigation or Public Interest Litigation, there will be uniform court fee of Rs.500/-.

6. Since aforesaid concession has been given by the learned Advocate General:-

(i) Henceforth, the court fee for filing written statement without pleading of adjustment or counter claim will be covered as per the reference of the amount given in Schedule-I of the unamended Court Fees Act, 1870 till the necessary amendment is incorporated in the concerned provision.

(ii) In view of the concession so far as it relates to deposit of court fee for filing writ petition under Article 226 of the Constitution of India either by way of adversarial litigation or Public Interest Litigation, now there will be requirement of filing of court fee of Rs.500/- irrespective of nomenclature of the writ petition either it is being filed by way of adversarial litigation or Public Interest Litigation till the necessary amendment is incorporated in the concerned provision by way of further amendment.

7. Learned Advocate General has further submitted that so far as the requirement to deposit *ad valorem* court fee with respect to other litigations is concerned, since there is no instruction to that effect, he sought for two weeks' further time.

8. Learned counsel appearing for the petitioner has raised serious objection on the ground that the requirement to deposit *ad valorem* court fee in different litigations, as provided under the impugned Act, 2021, is also required to be kept in abeyance taking into consideration the predicament of the litigants, since there is exorbitant enhancement of the court fee, which has been enhanced from Rs.50,000/- to Rs.3 lakhs.

It has been contended that if no order will be passed by way of interim measure, the consequence would be that no litigant would come to the court for filing the suit since it will require to deposit Rs.3 lakhs *ad valorem* court fee and, as such, the exorbitant enhancement in the court fee will come in the way of justice dispensation system.

It has further been contended that if learned Advocate General is opposing for passing the interim order, it would be just and proper to decide the issue finally since this Court has already called for the records.

9. Mr. V.P. Singh, learned senior counsel (*amicus curiae*), has submitted that the matter may be heard at an

early date taking into consideration the predicament of the litigants.

He has further submitted that learned Advocate General, in the meanwhile, may be requested to seek instruction from the State Government about the requirement of deposit of court fee in the criminal matters since therein State is the stakeholder to maintain law and order situation and, as such, there should not be any requirement to deposit the court fee.

10. Learned Advocate General has submitted that the matter may be posted after two weeks for its final hearing and by that time he will come with appropriate instruction on the issue as also regarding requirement of deposit court fee in a criminal matter and if required, will also file counter affidavit.

11. Considering the aforesaid submission advanced on behalf of the rival parties and with their consent, let this matter be posted on 26.09.2022 at the top of the list so that the matter may be heard finally.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)