

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 456 of 2026

Vivek Gaurav, S/o Late Rajendra Kumar, R/o Behind Allahabad Bank, adjacent East of Manorma Market, Guru Gobind Singh Road, P.O. & P.S.-Sadar, District-Hazaribagh, Jharkhand Petitioner
Versus

1. The State of Jharkhand, through the Chief Secretary, Ranchi
2. Principal Secretary-cum-Legal Advisor, Department of Law (Legislative), Government of Jharkhand, Ranchi
3. Rekha Prasad, W/o Late Surendra Prasad, R/o Flat No. 1B-306, Emmanuel Heights Apartment, Sy. No. 69, Hosa Road, Amrita Nagar, P.O. & P.S.-Chhodasandra, Bengaluru (Karnataka)
4. Jamuna Singh, H/o Late Anila Singh
5. Ayushman Singh, S/o Late Anila Singh
6. Kirtiman Singh, S/o Late Anila Singh
Res. Nos. 4 to 6 are R/o ED-76, Second Floor, near Water Tank, P.O. & P.S.-Tagore Garden, New Delhi
7. Bimla Verma, W/o Late Raghwendra Verma
8. Viraj Verma, S/o Late Raghwendra Verma
9. Yuvraj Verma, S/o Late Raghwendra Verma
Res. Nos. 7 to 9 are R/o Budhwa Mahadev Road, P.O. & P.S.-Sadar, District-Hazaribagh
10. Bindu Singh @ Bindu Verma, W/o Jamuna Singh, R/o B-804, Iscon Habitat, New Alkapuri, P.O. & P.S.-New Alkapuri, Sevasi Road, Vadodara (Gujarat)
11. Rajni Verma, W/o Shriram Kushwaha, R/o Beside Gyan Jyoti Complex, Guru Govind Singh Road, P.O. & P.S.-Sadar, District-Hazaribagh Respondents

CORAM

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR**

For the Petitioner:	Mr. Pratyush Kumar, Advocate
For the State:	Mr. Jai Prakash, A.A.G.-IA Mr. Yogesh Modi, A.C. to A.A.G.-IA

04/19.03.2026

1. Heard learned counsel for the parties.
2. Admit.
3. It was pointed out that the respondent Nos. 3 to 11 are proforma parties and they would not be affected, if the impugned provision relating to court fees is struck down.
4. With the consent of and at the request of learned counsel for the parties, we proceed to dispose of this writ petition finally.

5. The challenge in this writ petition is to the Constitutional validity of a portion of a Court Fees (Jharkhand Amendment) Act, 2022 to the extent that it provides for no upper ceiling or a maximum limit on the court fees payable on a suit seeking "*probate of a will or letters of administration with or without the will annexed*".
6. The primary argument is that singling out such proceedings by not providing an upper ceiling or maximum court fees, even though a ceiling or maximum of Rs. 3 Lakhs is provided for all other types of suits, amounts to practising hostile discrimination, which is abhorred by Article 14 of the Constitution of India.
7. Mr. Pratyush Kumar, learned counsel for the petitioner, clarifies that the challenge in this writ petition is restricted to the discrimination on account of non-providing an upper ceiling or a maximum limit for actions seeking a probate of a will or letters of administration with or without a will annexed and that no other point is being pressed in this writ petition, even though several other points may have been raised in the writ petition.
8. Mr Pratyush Kumar submits that there is no distinction between actions seeking probate of a will or letters of administration with or without a will annexed and the suits, even though a ceiling or maximum of Rs. 3 Lakhs in court fees is provided for suits and actions other than those seeking probate or letters of administration. He argues that this clearly results in equal being treated unequally, thus constituting a blatant violation of the principle of equality enshrined in Article 14 of the Constitution. He contends that on this simple ground, the impugned provision ought to be struck down and equality restored.
9. Mr Pratyush Kumar submits that the issue he now raises is no longer res integra. He relied on ***P.M. Ashwathanarayana Setty***

& Ors. v. State of Karnataka & Ors., reported in **1989 Supp (1) SCC 696**; **Jyoti Nikul Jariwala & Anr. v. State of Maharashtra & Anr.**, reported in **1988 Mh. L.J. 96**; **Prafulla Govinda Baruah v. The State of Assam & Anr.**, reported in **2024 Supreme (Gau) 708**; **Subrata Das v. The Collector of 24 Parganas (South) & Others**, reported in **1992 Supreme Court of India (Calcutta) 10**; and **Kishore Kumar Kataruka v. State of Bihar & Ors.**, reported in **1990 Supreme (Pat) 244 to support his contention**. In particular, he stressed the decision of the Bombay High Court in the case of **Jyoti Nikul Jariwala (supra)** and its explicit approval by the Hon'ble Supreme Court in the case of **P.M. Ashwathanarayana Setty (supra)**.

10. Mr Jai Prakash, learned A.A.G-IA, who appears along with Mr Yogesh Modi on behalf of the State, defended the impugned provision on the basis of the reasoning reflected in the State's counter-affidavit. In addition, he submitted that "will" constitutes an exception to the general law of succession and therefore any proceedings to obtain probate of a will or letters of administration can never be compared with ordinary suits seeking to enforce the general law of succession. He submits that on account of this fundamental distinction, the State is justified in treating actions for probating wills or obtaining letters of administration differently. He submits that these are all matters of policy where the scope of judicial review is minimal. For these reasons, he submits that this writ petition may be dismissed.
11. The rival contentions now fall for our determination.
12. The Court Fees (Jharkhand Amendment) Act, 2022 substitutes Schedule I and II appended to the Court Fees Act, 1870 by the following Schedule:

**Schedule-I
Ad Valorem Fees**

Table of rate of Ad-valorem Fees leviable on institution of suits:

Sl. No.	Subject	Description	Rates
1	Plaint, written statement pleading a set-off or counter claim or memorandum of appeal or of cross objection not otherwise provided for in this Act presented to any Civil or Revenue Court except those mentioned in Section-3.	When the amount or value of the subject matter in dispute-	
(i) up to Rs. 30,000/- (Rupees thirty thousand)		15% of the amount or value	
(ii) exceed Rs. 30,000/- (Rupees thirty thousand) but does not exceed Rs.50,000/- (Rupees fifty thousand)		Rs. 4,500/- (Rupees four thousand five hundred) + 10% of amount or value exceeding Rs.30,000/- (Rupees thirty thousand).	
(iii) exceed Rs. 50,000/- (Rupees fifty thousand) but does not exceed Rs.20,00,000/- (Rupees Twenty lakhs)		Rs.6,500/- (Rupees six thousand five hundred) +3% of amount or value exceeding Rs.50,000/- (Rupees fifty thousand)	
(iv) exceeds Rs.20,00,000/- (Rupees twenty lac) but doesn't exceed Rs. 1 (one) crore		Rs. 65,500 (Rupees sixty five thousand five hundred) + 0.5% of the amount or value exceeding Rs. 20,00,000/- (Rupees Twenty lakhs)	
	(v) exceeds Rs. 1(one) crore	Rs.1,05,000/- (Rupees one lac five thousand) + 0.3% of the amount or value exceeding Rs.1(one) crore. [maximum of Rs.3,00,000/- (three lac only)]	
2	Plaint in a suit for possession under Section 6 of Specific Relief Act, 1963.		According to rates as prescribed in item no.1.
3	Probate of a will or letters of administration with or without will annexed.		10% of the amount or value [minimum Rs.500/- (Rupees five hundred)]
4	Certified under the Succession Certificate Act, 1889.		As prescribed in item no. 3 on amount or value indicated on certificate.

13. From the above, it is apparent that in the case of almost all types of suits referred to in Article 1 of Schedule-I, court fee is payable on an ad-valorem basis. However, where the valuation of such suits exceeds Rs. 1 Crore, the court fee payable is Rs. 1,05,000/- (Rupees one lakh five thousand) + 0.3% of the amount or value exceeding Rs. 1 Crore (maximum of Rs. 3 Lakhs only). Thus, in the case of almost all types of suits referred to in Article 1 of Schedule-I, court fee is payable, is subject to a ceiling of Rs three lakhs only.

14. However, when it comes to a suit seeking a probate of a will or letters of administration with or without will annexed, the court fee payable is 10% of the amount or value (minimum Rs. 500/-). However, unlike in the case of other suits referred to in Article 1 of Schedule I, Article 3 of Schedule I, which deals with suits for probate or letters of administration, does not provide for any ceiling or maximum limit of the court fees payable. The differential treatment is, therefore, apparent. The issue, therefore, is whether there exists any rational basis for such discrimination or differential treatment.
15. In response to the petitioner's specific challenge that non-providing of any ceiling or maximum limit for the court fees payable in a suit seeking probate of a will or letters of administration with or without a will annexed amounting to patent and hostile discrimination, the State has filed a counter affidavit wherein it is pleaded that the probate proceedings invoke the special testamentary jurisdiction of a civil court and entail a comprehensive judicial process including scrutiny of the genuineness of the will, examination of testamentary capacity of the testator, determination of valuation of the estate, issuance of public citations and adjudication of objections, if any. It is pleaded that the grant of a probate is not a routine ministerial act, but a solemn judicial determination, which culminates in a final and conclusive certification or testamentary succession conferring legal authority upon the executor and imparting marketability and legal sanctity to the estate. Counter affidavit further pleads that probate proceedings require "*enhanced judicial time, administrative supervision, maintenance of permanent records and continuing legal responsibility, thereby clearly*

distinguishing them from ordinary civil filings or procedural applications”.

16. The pleadings also echo Mr Jai Prakash’s contention that the levy of probate fee is attached to the voluntary invocation of a statutory privilege, namely, the conferment of legal conclusiveness and enforceability upon a testamentary instrument, and it is different from inheritance or succession.
17. The counter affidavit, therefore, primarily for the reasons mentioned above, states that suits or actions seeking a probate of a will or letters of administration, with or without a will annexed, constitute a distinct class. Consequently, this is not a case of equal classes of proceedings being treated unequally or plaintiffs similarly placed being treated dissimilarly to conclude some hostile discrimination.
18. As a matter of principle, we cannot agree with the contentions raised in the counter affidavit and articulated by Mr Jai Prakash, learned A.A.G.-IA, appearing on behalf of the State. Firstly, the statements regarding probate proceedings requiring increased judicial time and administrative oversight, etc., are not supported by any empirical data to justify their validity. Secondly, the counter-affidavit sworn by the Under Secretary of the Law Department has verified such statements as “true to his own knowledge,” which alone does not inspire much confidence. Thirdly, the statements in the counter affidavit incorrectly suggest that the factors relevant to Court fees, which arise in suits for probate of a will or letters of administration with or without a will annexed, do not occur in suits referred to in Article I or that the Courts, when disposing of the suits under Article I, perform “*routine or ministerial acts,*” in contrast to the Courts handling the suits under Article III.

19. Therefore, based on the statements in the counter affidavit, we are unable to accept that a case has been made out to distinguish suits described in Article III seeking probate of a will or letters of administration with or without will annexed from the suits described in Article I, which do not meet this description. If, in the case of such other suits, a ceiling or maximum of Rs. 3 Lakhs for court fees has been provided, the State is obliged to explain why no such ceiling is imposed on suits seeking probate or letters of administration, even though no significant distinction can be made between the two classes of suits or the Plaintiffs instituting such suits.
20. The additional contention that a will, by its very nature, constitutes an exception to the general law of succession may be correct in one sense. However, we fail to understand how such a contention is relevant to the treatment of a suit or action seeking probate of a will or letters of administration with or without a will annexed, differently, when it comes to the payment of court fees. To dispel the charge of discrimination prohibited by Article 14, it is not sufficient for the State to merely demonstrate that the classification it makes is based on some reasonable differentia. The State must further establish that such a differentia has a rational nexus with the object that the law seeks to achieve. Unless such a twin test is satisfied, the discrimination practised will not pass the Constitutional muster.
21. In ***State of West Bengal v. Anwar Ali, AIR 1952 SC 75***, the Hon'ble Supreme Court explained that while Article 14 does not take away from the State the power to classify persons for the purposes of the legislation, but the classification must be rational, and in order to satisfy this test, (i) the classification must be

founded on an intelligible differentia which distinguishes those that are grouped together from others, and (ii) that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia, which is the basis of classification and the object of the Act, are distinct matters, and what is necessary is that there must be a nexus between them. But the mere fact that inequality has not been made with the special intention of prejudicing a certain person or persons, but in the general interest of administration, will not validate a law if, in fact, it results in inequality of treatment. Nor can the constitutionality of a statute depend on the degree of inequality brought about by the law.

22. In the present case, the State has scarcely produced any credible material to establish a rational basis or distinction for classifying the suits described and grouped in Article I separately from those in Article III. Even if one extends a very broad interpretation, and assuming that the State has done so, it has still failed to demonstrate that the distinction has a rational relation to the objective intended to be achieved by the Act. The twin test prescribed has not been fulfilled in this case.
23. The petitioner has provided sufficient materials on record to rebut the presumption of constitutionality and shift the burden onto the State. However, the State has failed to meet this burden. Suggesting that the suits referred to in Article I never involve complex issues of fact and law, or that the suits in Article III always do, is neither accurate nor supported by even any modicum of empirical data. The suggestion that the Courts dealing with the suits referred to in Article I perform "routine or ministerial acts" in contrast to the Courts that deal with the suits in Article III is also difficult to commend acceptance.

24. Moreover, factors such as verifying the authenticity of a will may not even be relevant in a suit for letters of administration without a will attached. The fact that the legal effect of a will may differ from the usual laws of succession does not always mean that probate proceedings are fundamentally different from other procedures mentioned in Article I, particularly in the context of payment of court fees.
25. Accordingly, the petitioner has succeeded in making out a case of equal processes being treated unequally, and consequently, the impugned provision does practice hostile discrimination against the class of suits involving seeking probate of a will or letters of administration with or without a will annexed. The impugned provision, consequently, practices hostile discrimination against plaintiffs instituting suits seeking probate of a will or letters of administration (with or without a will annexed) by providing no ceiling on the Court fees payable when the benefit of such a ceiling is provided to persons instituting practically all other types of suits.
26. Mr Pratyush Kumar is justified in submitting that the issue he now raises is no longer *res integra*. This precise issue arose before the learned Single Judge of the Bombay High Court in ***Jyoti Nikul Jariwala (supra)***. Even there, with regard to all other types of suits, except suits seeking probates and letters of administration, the plaintiffs were not required to pay court fees in excess of Rs. 15,000/-. However, no such upper limit was prescribed for plaintiffs seeking probate and letters of administration.
27. The learned Single Judge of the Bombay High Court accepted the challenge based upon hostile discrimination and struck down the offending provision as unconstitutional, ultra vires, null and void. The learned Single Judge has held that until the said Article is duly

amended, the petitioners i.e., seekers of probate and/or letters of administration shall not be required to pay more than the maximum payable by the persons seeking decrees in civil suits i.e., Rs.15,000/-.

28. The discussion on the above aspects is in paragraph Nos. 5 & 6 of the case of ***Jyoti Nikul Jariwala (supra)***, and the same is transcribed below for the convenience of reference:-

"5. Petitioners next contend that the impugned clause discriminates as between different types of suitors and that there is no justification for this discrimination. Plaintiffs who go to civil courts claiming decrees are not required to pay court fee in excess of Rs. 15,000/-. This is irrespective of the amounts claimed over and above Rs. 15/- lakhs. As against this, persons claiming probates have no such relief in the form of an upper limit to fee payable. **There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Article 14 of the Constitution. On this ground also item 10 cannot be sustained.**

6. To sum up, item 10 suffers from the vice of violation of Article 14 of the Constitution and also in that the fee chargeable thereunder, is out of all proportion to the value of the service rendered to the seekers of probates and letters of administration. **I now come to the nature of relief to be granted to the petitioners. Item 10 of Schedule I, to the extent it does not have an upper limit corresponding to that payable by the plaintiffs seeking decrees from the civil courts, will have to be declared void. Until the said Article is duly amended, petitioners shall not be required to pay more than the maximum payable by persons seeking decrees in civil suits i.e. Rs. 15,000/-.** The office shall revise the fee payable by the petitioners in the light of what has been stated earlier. Rule in these terms made absolute, with parties being left to bear their own costs."

29. The State of Maharashtra vide Civil Appeal Nos. 1511-12 of 1988 carried the matter before the Hon'ble Supreme Court, and the decision in this appeal, together with other connected appeals, is reflected in the case of ***P.M. Ashwathanarayana Setty (supra)***.
30. In paragraph No. 31(d), the Hon'ble Supreme Court framed the following points for determination:

"31(d). Whether, insofar as the provisions of Section 29(i) read with entry 20 Schedule I of the 'Bombay Act' are concerned, singling out of a class of litigation viz., applications for grant of probate and letters of administration for levy of ad-valorem court fee without the benefit of the upper limit of Rs.15,000 prescribed in respect of all other suits and proceedings, as declared by the High Court, exposes that class of litigants to a hostile discrimination and is violative of Article 14 of the Constitution."

31. The above point was answered by the Hon'ble Supreme Court in paragraphs 90 to 94 and the contents thereof are transcribed below for the convenience of reference:-

"90. In the appeal of the State of Maharashtra arising out of the Bombay Court Fees Act, 1959, the High Court has struck down the impugned provisions on the ground that the levy of court fee on proceedings for grant of probate and letters of administration ad valorem without the upper limit prescribed for all other litigants—the court fee in the present case amounts to Rs 6,14,814 —is discriminatory. The High Court has also held that, there is no intelligible or rational differentia between the two classes of litigation and that having regard to the fact that what is recovered is a fee, the purported classification has no rational nexus to the object. The argument was noticed by the learned Single Judge thus:

Petitioners next contend that the impugned clause discriminates as between different types of suitors and that there is no justification for this discrimination. Plaintiffs who go to civil courts claiming decrees are not required to pay court fees in excess of Rs 15,000. This is irrespective of the amounts claimed over and above Rs 15 lakhs. As against this, persons claiming probates have no such relief in the form of an upper limit to fee payable.

91. This contention was accepted by the learned Single Judge who has upheld the appeal. **Indeed, where a proceeding for grant of probate and letters of administration becomes a contentious matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs 15,000 on the court fee is fixed, there is no logical justification for singling out this proceeding for an ad valorem impost without the benefit of some upper limit prescribed by the same statute respecting all other litigants. Neither before the High Court — nor before us here — was the impost sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate "fee" from another distinct source. It is purported to be collected and sought to be justified only as court fee and nothing else.**

92. **The discrimination brought about by the statute, in our opinion, fails to pass the constitutional muster as rightly pointed out by the High Court.**

The High Court, in our opinion rightly, held:

“There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Article 14 of the Constitution. On this ground also item 10 cannot be sustained.”

93. We approve this reasoning of the High Court and the decision of the High Court is sustained on this ground alone. In view of this any other ground urged against the constitutionality of the levy is unnecessary to be examined.

94. Contention (d) is accordingly held an answer against the appellant and the appeals preferred by the State of Maharashtra are liable to be and are hereby dismissed.”

32. From the above, it is apparent that the Bombay High Court, in identical circumstances, struck down an identical provision in the Court Fees Act in Maharashtra and the Hon'ble Supreme Court expressly approved the decision of the Bombay High Court and the reasoning therein. The Courts held that the discrimination brought about by the statute in not providing an upper limit of Rs. 15,000/- on the court fee payable for suits seeking probate and letter of administration fails to pass the Constitutional muster. The Courts further held that there was no logical justification for singling out such proceedings for an ad valorem impost without the benefits of some upper limit prescribed by the same statute respecting all other litigants if in respect of all other suits of whatever nature and complexity, an upper limit of Rs.15,000/- on the court fees was fixed.
33. While we do not wish to multiply the authorities on the point, we note that the Guwahati High Court in the case of ***Prafulla Govinda Baruah (supra)***, Calcutta High Court in the case of ***Subrata Das (supra)*** and the Patna High Court in the case of

Kishore Kumar Kataruka (supra) have in quite similar circumstances, struck down the provisions of the Court Fees Act having no ceiling or a prescribed maximum on the Court fees payable on suits for probate or letters of administration with or without will annexed. Even in the above States, the provisions of the Court Fees Act did not provide for any upper ceiling for suits seeking probate or letters of administration, though an upper ceiling was provided for all other types of suits, whatever their complexity. In all these decisions, the High Courts relied on the ruling of the Hon'ble Supreme Court in the case of ***P.M. Ashwathanarayana Setty (supra)***.

34. For all the above reasons, we allow this writ petition and declare that the impugned provisions to the extent they do not provide for a ceiling or a maximum on the court fees payable for suits seeking probate of a will or letters of administration with or without a will annexed are ultra vires, illegal , null and void. We accordingly forbear/restrain all concerned from insisting or demanding court fees exceeding Rs. 3 Lakhs, as provided in the case of other suits referred to in Article 1, on suits seeking probate of a will or letters of administration with or without a will as referred to in Article III of Schedule-I to the Court Fees (Jharkhand Amendment) Act, 2022 until a suitable legislation is brought into force by the Competent Legislature.

35. Accordingly, the present writ petition is allowed to the above extent without any order for costs.

(M. S. Sonak, C.J.)

(RAJESH SHANKAR, J.)