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(1975) 12 PAT CK 0007

In the Patna High Court

Case No : C.R. No. 1324 of 1970

Commissioners of Katihar Municipality — APPELLANT

Vs

Bibi Hamida Khatoon — RESPONDENT

Date of Decision : 01-12-1975

Acts Referred:
Presidency Small Cause Courts Act, 1882 — Section 25

Citation : (1976) 9 PLJR 121

Hon'ble Judges : Uday Sinha, J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : Parmanand Sharan Sinha, for the Appellant; S.S. Asghar Hussain, for the Respondent

Final Decision : Dismissed

Judgement

Uday Sinha, J.—This is an application by the plaintiff u/s 25 of the Small Cause Court Act against the Judgement and decrees passed by Mr. Dayanand Pradhan, Munsif, Katihar, rejecting the plaintiff''s claim to realise professional tax imposed by the Katihar Municipality from the defendant opposite party. The defendant opposite party is the owner of two houses bearing two holding numbers within the Katihar Municipality and lets out the houses to tenants on rent. A notice was, therefore, issued to the opposite party to pay Rs. 50/- half yearly for the years 1964-65, 1965-66 and 1966-67. This levy was imposed upon the opposite party on the basis that she was indulging in trade, and thus a trader, by virtue of the fact that she was realising rent from her tenants. The learned Munsif rejected the claim of the plaintiff and I am in agreement with him, as I shall set out hereinafter.

2. The Municipality contended before the Small Cause Court Judge that the defendant opposite party was liable to pay the professional tax because she was owner of landed property mentioned in Clause (b) in the Fourth Schedule of the Bihar and Orissa Municipal Act, 1922 (hereinafter called ''the Act''). The trial court could not see its way to accept the plaintiff''s contention and rightly

rejected the plaintiff''s claim to realise the tax in question on the footing that she was owner of landed property. Mr. Parmanand Sharan Sinha appearing for the petitioner has frankly conceded, and in my view, rightly, that the defendant opposite party was not covered by the expression ''landed property'' mentioned in Clause (b) in the Fourth Schedule of the Act. Mr. Parmanand Sharan Sinha has however contended that the defendant opposite party fell within the category of a trader, carrying on trade as mentioned in Section 82(1) (ff) and Clause (b) in the Fourth Schedule of the Act. Section 82 so far as is relevant reads thus--

82. Power to impose taxes. (1) The Commissioners may, from time to time at a meeting convened expressly for the purpose, of which due notice shall have been given, subject to the provisions of this Act and with the sanction of the State Government, impose within the limits of the municipality the following taxes and fees, or any of them :--

X X X

(ff) a taxes on the trades, professions, callings and employments specified in the Fourth Schedule at such rates not exceeding the rates specified therein as may from time to time be determined by the Commissioners at a meeting.

Provided that the rates determined by the Commissioners at a meeting shall be subject to the approval of the State Government and subject to such modification in the rates of taxes and exemption of classes of profession, trades and callings to be taxed as the State Government may direct.

Fourth Schedule of the Act reads as follows :--

Tax on trades, profession, callings and employment.

1. Every licence shall be granted under one or the other of the clauses mentioned in the second column of the following table and there shall be paid half yearly from 1st April to 30th September and 1st October to 31st March for the same a tax not exceeding the amount mentioned in that behalf in the third column of the table.

X X X

(b) Mill owner, merchant, banker, money-lender, trader, dealer, owner, occupier of market, bazar, theatre or place of public entertainment, proprietor of newspaper or press, printer, photographer, auctioner, warehouse-keeper (goladar) dyer and cleaner, goldsmith silversmith, copper-smith, weaver, artisan, furniture dealer, tobacco, cigarette and biri manufacturer, broker (dalal) in Jute, landed property grains, general merchandise, mica and coal....

It has been candidly stated by Learned Counsel for the petitioner that the activities of the defendant quo Municipality opposite party does not fall within the ambit of the expression "professions, callings and employments" mentioned in Section 82(ff), quoted above. The only point raised is that the opposite party is a trader, and thus liable to pay professional tax. I regret, I am unable to accept

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this submission. The expression ''trade'' or ''trader'' has been the subject of interpretation in various spheres. According to. The Shorter Oxford English Dictionary, Second Edition, Volume IV, a trader is one whose business is trade or commerce, or who is engaged in trading; a dealer or trafficker and ''trade'' as the practice of some occupation, business, or profession habitually carried on, especially when practised as a means of livelihood or gain; a calling; now usually applied to a mercantile occupation and to a skilled handicraft, as distinguished from a frofession. Aiyar''s Law Lexicon mentions trade as the craft or business which a person has learned and which he carries on as a means of livelihood; a purchase or sale; a bargain, the exchange of commodities for other commodities or for money; the business of buying and selling, or dealing by way of sale or exchange. According to Stroud''s Judicial Dictionary of Words and Phrases (Third Edition) at page 3057 ''trade'' has the technical meaning of buying and selling, but it may have a larger meaning so as to include manufactures. According to Stroud in the legal usage the expression ''trade'' is a term of the widest scope and cows the pursuit of a calling or handicraft. In regard to the meaning of ''trade'' Halsbury''s Laws of England (Third Edition, Volume 38) gives the meaning as follows :--

1. Meaning of trade. Trade in its primary meaning is the exchanging of goods for goods or goods for money; and in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile, as distinguished from the liberal arts or learned professions and from agriculture. The word, however, is one of very general application, and must always be considered in the context in which it is used.

From the above, it is obvious that the word ''trade'' and the expression ''trader'' implies a sale and purchase or exchange of goods for goods or goods for money or services for money with the idea of earning profit. The object of making profit or gain is an essential part of trade. It is true that in olden times sale and purchase of merchandise was the generally accepted notion of trade, but with behavioural transformation in civic and commercial activities the word ''trade'' has assumed a wider meaning.

3. The meaning of the word ''trade'' was considered by Jack, J. in (1) Burmah Shell Oil Storage and Distributing Co. of India, Ltd. Vs. Sudhansu Bhusan Chatterjee, where Burmah Shell Oil Storage and Distributing Company of India Ltd. was prosecuted and convicted u/s 492 of Calcutta Municipal Act (3 of 1923 as extended to Howrah) for not taking licence as the Company was carrying on a trade. Jack, J. observed as follows :--

In the absence of evidence to the contrary we must take it that the word ''trade'' is used in its ordinary sense in the section, that is to say exchange of goods for money or goods for goods with the object of making a profit.

Reference may also be made to the case of Fry--Appellant and Salisbury House Estate, Limited--Respondents (1930 AC 432) wherein circumstances almost

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similar to the instant case Lord Tomlin observed that the perception of rents as landowner was not an operation trade within the meaning of the income tax Act. In the same case Lord Macmillan observed at pages 467 and 170 as follows :--

Landowning, however profitable, is not a trade within the meaning of the income tax code............The income of the company being derived from the location of land, or in other words in the normal manner in which property in land yields revenue, it is in my opinion inadmissible to characterize this income as the income of a trade.

4. The dicta of the Supreme Court in regard to the meaning of the word ''trade'' while interpreting trade allowance is also relevant. In the case of (2) M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others,) it was observed in paragraph 16 as follows :--

What is a trade allowance ? Trade involves exchange of commodities for money, the business of buying and selling and the transaction involves the seller, the buyer, the commodity sold and the price paid for the gale.

A review of the authorities mentioned above, show that sale and purchase of goods for goods or goods for money for profit or gain are essential adjuncts of trade or a trader.

5. Learned Counsel for the petitioner in support of his thesis that the opposite party was a trader, indulging in trade, relied upon (3) Mulshankar Maganlal Vyas and Another Vs. Government of Bombay, . That was a case where a public servant had been convicted u/s 168 of the Indian Penal Code and the Prevention of Corruption Act for having engaged in a trade without previous sanction of the State Government. The appellant in that case was alleged to have obtained pecuniary advantage through a firm ''Vinod & Co.'' which was a creature of the appellant. The main business of the company was to prepare plans and estimate for water works and drainage of Nadiad Municipality. The pecuniary advantages were obtained by the appellant while he was serving the Bombay State government. In those circumstances, while interpreting the ambit of the expression ''trade'' used in Section 168 of the Indian Penal Code Gajendragadkar, J (as he then was) observed as follows : The learned Government pleader has also referred to Art. 487 of Halsbury''s Laws of England (vol. xxxII), in which it is said that the secondary meaning of the term ''trade'' is any business carried on with a view to profit''. It is also pointed out that ''the word is one of very general application, and must always be considered with the context with which it is used''. In its wide sense the word is used ''to cover every kind of trade, business, profession, or occupation''.

Learned Counsel for the petitioner also placed relaince upon the case of (4) The Municipality of Chopda Vs. Motilal Manekchand and Another, where the meaning of the word'' ''trade'' was considered by a Bench of the Bombay High Court. That was a case, where the Municipality of Chopda sought to levy a tax designated as ''cotton manufacturing tax'' at the rate of one rupee per bale of cotton full

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pressed within the municipal limits of Chopda While considering whether pressing of cotton in a factory amounted to carrying on a trade within the meaning of Article 276 of the Constitution Shah, J. (as he then was) observed as follows :

It is evident that the connotation of ''trade'' is not limited to an occupation which primarily concerns itself with sale and purchase of goods. Pursuit of a skilled employment with a view to earn profit, such employment not being in the nature of a learned profession or agriculture, must be regarded as engating in ''trade'' within the meaning of Art. 276 of the Constitution. A skilled occupation which involves the application of manufacturing processes to a commodity submitted to the person carrying on the occupation must, therefore, be regarded as trade. Evidently for remuneraration, the plaintiffs undertake by mechanical process to press cotton into bales, and the tax is levied from them is in respect of the pursuit of that Activity.

I must respectfully accept that the word ''trade'' in its narrow connotation means the sale and purchase of goods, but there is also wider meaning of the word ''trade'' and in its wider context it must include pursuit of a skilled employment not being in the nature of a learned profession or agriculture. Under taking of mechanical processes for remuneration must undoubtedly fall within the ambit of the expression ''trade''. But I regret, I am unable to extend the spheres of ''trade'' any further. Landowning and profits therefrom, which includes profit from real property, like buildings in the instant case is beyond the scope of the primary or secondary, the narrow or the wider, meaning of the word ''trade''.

In the view that I have taken, the opposite party (defendant) cannot fall within the category of trader mentioned in the Fourth Schedule of the Act nor of the expression ''trade'' in Section 82 (1) (ff). The levy not being a legal one, no case has been made out for realisation of the professional tax from the defendant opposite party. In the result, there being no merit, the application is dismissed with costs. Peering fee Rs. 32/. Lalit Mohan Sharma, J.

I agree.

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