

(1979) 01 MAD CK 0045

In the Madras High Court

Case No : Tax Case No. 162 of 1975 (Reference No. 145 of 1975)

Controller of Estate Duty

APPELLANT

Vs

V. Lalithamani

RESPONDENT

Date of Decision : 18-01-1979

Acts Referred:

Estate Duty Act, 1953 — Section 14

Citation : (1979) ILR (Mad) 60 : (1979) 118 ITR 721

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; N. Venkatarama Iyer, for the Respondent

Judgement

Sethuraman, J.—This reference has been made u/s 64(1) of the E.D. Act, 1953, at the instance of the Controller of Estate Duty, Madras, raising the following two questions :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the sum of Rs. 35,000 received from the Life Insurance Corporation is not includible in terms of Section 14 of the Estate Duty Act ? and

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the payment made by the Life Insurance Corporation was only ex gratia and not with reference to the insurance policy of the deceased ?"

2. The estate duty assessment came to be done on the-death of one L. Viswanathan, who was a planter and businessman. He had taken out a policy of life insurance for a sum of Rs. 50,000 on 4th October, 1954, with the Oriental Government Security Life Assurance Company. Subsequently, he submitted a proposal for life insurance on 11th September, 1959, for an endowment policy for Rs. 50,000 covering a period of fifteen years. The Life Insurance Corporation

agreed to accept the risk commencing from 18th November, 1959, and quoted also a higher premium for four years having regard, perhaps, to the state of his health. The insured passed away on 20th September, 1961, within two years of the policy becoming effective. With reference to the policy for Rs. 50,000 which had been taken from the Oriental Government Security Life Assurance Company on 4th October, 1954, there was no dispute and the amount was actually paid in accordance with the terms of the said policy. However, with reference to the policy which became effective from 18th November, 1959, as the death took place within a period of two years of the policy, the LIC disputed its liability to pay the amount. There was some correspondence between the LIC and the widow of the deceased-insured, in which the Corporation denied liability to pay the money under the policy on the ground that the policy was ab initio void as the deceased had not made certain disclosures about the state of his health at the time when he took the policy. There was a detailed letter on 10th August, 1965, addressed to the Chairman, Life Insurance Corporation of India, Bombay, by the advocate for the accountable person, placing all the facts relating to the disclosure of the state of health of the deceased at the time when he took the policy of insurance in 1959. Subsequent to the receipt of this letter, the LIC paid a sum of Rs. 35,000 and it is this amount which is the subject-matter of dispute between the accountable person and the estate duty authorities.

3. The accountable person, while admitting receipt of the sum of Rs. 35,000, put forward the pleas that the amount was received as a result of protracted discussions and correspondence with the Life Insurance Corporation, that the amount was paid on a compromise basis long after the death of the deceased-insured and that there was no enforceable right in respect of the policy because the Corporation had rejected her claim as void. The Asst. CED did not accept these pleas and he held that the moneys received under the insurance policy had to be included in the value of the estate and, applying Section 14 of the E.D. Act, brought the sum of Rs. 35,000 to tax. The appeal to the Appellate Controller on this point was not successful. There was an appeal to the Tribunal by the accountable person with reference to the taxation of this amount as property passing on the death of Viswanathan, and the Tribunal, by its order dated 25th February, 1974, held that the amount paid by the LIC was not a payment received by her under a policy of insurance effected by the deceased on his life and that the amount was not includible u/s 14 of the Act.

4. The revenue, feeling aggrieved by this finding of the Tribunal, has obtained this reference, raising the questions which have already been extracted.

5. In our opinion, the real question that arises in this reference is whether the Appellate Tribunal was right in holding that the sum of Rs. 35,000 received from the LIC described as ex gratia payment was not liable to be included in the principal value of the estate passing on the death of the deceased u/s 14 of the E.D. Act.

6. Section 14 of the E.D. Act, in so far as it is material, runs as follows:

"Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee,.....shall be deemed to pass on the death of the assured."
"

7. The section requires attention being paid to the aspect whether any money was received under a policy of insurance kept up by the deceased. In the present case, there is no dispute about the fact that the deceased had taken out a policy from the LIC with effect from 18th November, 1959, and also paid the premium during the period of his lifetime. The policy had thus been kept up by the deceased. There was no other relationship either between the deceased and the LIC or between the accountable person who claimed the benefit of the policy and the LIC, except under a contract of insurance. Originally, the LIC sent a letter dated 7th May, 1963, stating that, based on the information given by Viswanathan in his proposal dated 11th September, 1959, and the proposal statement given before the directors, V. Rajagopal and Sudarsan Lal, on the same day, and in accordance with the special questionnaire form dated 22nd September, 1959, it was decided to accept the risk on his life with an extra premium payable for four years. The deceased had also given his consent to take the policy at the altered rates of premium. The complaint of the Corporation was that it had reliable evidence to show that the insured was not well and that he underwent treatment for heart disease and other ailments in 1957 and that he was an in-patient in a hospital for about eight months from 8th November, 1957. It was also known to the Corporation that the assured was involved in a fire accident and underwent treatment therefore in a hospital in Mysore. It was, therefore, pointed out that the above were material facts which would be helpful in the assessment of risk on the proposer's life and that these facts had not been revealed by Viswanthan when he submitted the proposal on 11th September, 1959, and that, on the other hand, in answer to certain searching questions, he had wilfully omitted to mention the aforesaid particulars. It was, therefore, alleged by the Corporation that the contract was ab initio void and the premia stood forfeited to the Corporation. The accountable person addressed another letter on 5th June, 1963, and in response to this letter, it was stated that the Corporation had nothing to add to what had been stated in the letter dated 7th May, 1963, and that its decision in repudiating the liability remained unaltered. It is only thereafter, Mr. N. Venkatarama Iyer, learned counsel, who appears for the accountable person before us, acted for her by writing a letter dated 19th August, 1965, to the Chairman of the LIC. He took up these two objections, namely, as to the existence of a heart ailment and the existence of a burn, and placed exhaustive facts to show that the assured did not suffer from any heart ailment and that he had not sustained any burns in any fire accident. It is only after this detailed letter that the LIC paid the sum of Rs. 35,000. Though the covering letter addressed to the accountable person enclosing the cheque for Rs. 35,000 by the LIC is not before us, it is, however, evident from a letter dated 26th September, 1967, addressed by the LIC to the Asst. CED that

the sum of Rs. 35,000 had been paid to the accountable person ex gratia in December, 1965. The question is whether such a payment comes within the scope of Section 14 of the E.D. Act.

8. As mentioned already, there was no other relationship between either the deceased and the LIC or between the accountable person and the Corporation, so as to warrant any payment being made ex gratia. The payment of Rs. 35,000 is traceable only to the policy of insurance which was taken in 1959. But for that policy there would have been no payment to the accountable person. The description "ex gratia" has been the subject of consideration by the Queen's Bench Division in *Edwards v. Skyways Ltd.* [1964] 1 WLR 349. That was a case of an airlines company which, by a resolution, empowered its secretary, in his discussions with the British Airline Pilots Association, to agree, should circumstances require, to the payment to redundant aircrew members, of an ex gratia amount approximating to the company's contributions for each member of the pension and superannuation fund. There was a meeting between the representatives of the pilots' association and of the company and at that meeting the principle was accepted that pilots declared redundant and leaving the company would be given an ex gratia payment equivalent to the company's contribution to the pension fund, and that they would be entitled also to a refund of their own contributions to the fund. The plaintiff in that case was a pilot employed by the company and he was declared redundant and had, therefore, to leave the company's service. Having been informed by the assistant secretary of the company of the approximate amount of what his pension would be, if he chose to draw it, and what he would receive on a refund of his contributions and the ex gratia payment, he informed the company that he had decided to have the ex gratia payment and also the refund of his own payments. The company, however, paid only his own contributions and resolved not to make the ex gratia payment to the redundant aircrew. This attitude of the company led to a suit for recovery of the amount of the ex gratia payment. The contention of the airline was that the use of the phrase "ex gratia" by itself as part of the promise to pay, showed that the parties contemplated that the promise would have no binding force in law, and that, therefore, there was no legal relationship requiring the company to pay the amount. In dealing with this submission, Megaw J. at page 356 observed :

"As to the first proposition, the words "ex gratia", in my judgment, do not carry a necessary, or even a probable, implication that the agreement is to be without legal effect. It is, I think, common experience amongst practitioners of the law that litigation or threatened litigation is frequently compromised on the terms that one party shall make to the other a payment described in express terms as "ex gratia" or "without admission of liability". The two phrases are, I think, synonymous. No one would imagine that a settlement, so made, is unenforceable at law. The words " ex gratia " or " without admission of liability " are used simply to indicate--it may be as a matter of amour propre, or it may be to avoid a precedent in subsequent cases--that the party agreeing to pay does not admit

any pre-existing liability on his part; but he is certainly not seeking to preclude the legal enforceability of the settlement itself by describing the contemplated payment as "ex gratia". "

9. The unilateral use of the word "ex gratia" by the LIC in this case cannot thus invest the payment with any quality other than that of a payment under the policy of insurance. Further, but for the fact that the LIC characterised the payment as ex gratia, in the light of the undisputed averments in the letter of Mr. Venkatarama Iyer dated 10th August, 1965, the LIC would have no answer but to pay the entire amount of Rs. 50,000. It is, in these circumstances, that the LIC chose to describe the payment as ex gratia as, if it described the payment as under the policy, it would have to pay more. The description, by itself, does not take the payment outside the policy or scope of Section 14 of the E.D. Act.

10. Even assuming that the contract of insurance was void because of nondisclosure of material facts, the position may be examined. Learned standing counsel for the Commissioner drew our attention to a decision in *Attorney-General v. Murray* [1904] 1 KB 165 ; (1904) 1 EDC 428. In that case, a policy of insurance had been effected by the father on the life of the son. This policy was not valid under the provisions of the Life Assurance Act, 1774. However, the amount had been received on the death of the son and the question arose in the estate duty proceedings as to whether the said sum was liable to be taxed under the corresponding provisions of the estate duty law in the United Kingdom. The Court of Appeal, speaking through Cozens-Hardy L.J. observed at pages 171-172 (1 EDC 428, 435):

"The statute made the contract of insurance void as between the office and Sir Henry, but no further. If the office, though not bound so to do, in fact paid the money, the payment must be treated as made in respect of the policy, and all the same consequences must follow as if the statute had not been passed. The judgment of the Court of Appeal in *Worthington v. Curtis* [1875] 1 Ch D 419 really concludes this point. The words of Mellish L.J. are clear and direct [1875] 1 Ch D 419: "The statute is a defence for the insurance company only, if they choose to avail themselves of it. If they do not, the question who is entitled to the money must be determined as if the statute did not exist. The contract is only made void as between the company and the insurer." The court could not have arrived at the decision in that case on any other view of the law."

11. This case is a complete answer to the contention of Mr. Venkatarama Iyer that the contract of insurance being void in the present case, the amount cannot be brought to tax u/s 14. Although the case there arose u/s 2(1)(d) of the Finance Act, 1894, which corresponds to Section 2(1)(c) of the U.K. Act, the principle to be applied is the same. In this view, the Tribunal was clearly in error in holding that the sum of Rs. 35,000 was not liable to be brought to tax. If the Tribunal's view were to be accepted as correct, then the result will be that with reference to any policy of life insurance it can be maneuvered so that the insurer pays the amount only as ex gratia, so as to take the amount outside the scope of

Section 14. A construction leading to such a position cannot be accepted. We consider it is enough to answer the first question which covers the entire dispute between the parties and it is answered in the negative and in favour of the revenue. The point raised in the second question is only an argument that would require consideration in answering the first question. That argument has already been dealt with. It is unnecessary, in this view, to answer the second question. There will be no order as to costs.