
(1940) 02 CAL CK 0002
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

Bengal Dooars Railway Co. Ltd.

RESPONDENT

Date of Decision : 26-02-1940

Acts Referred:

Calcutta Municipal Act, 1923 — Section 175, 492

Citation : AIR 1940 Cal 531

Hon'ble Judges : Mohamad Akram, J;Henderson, J

Bench : Full Bench

Judgement

Henderson, J.—This is a Rule calling upon the opposite party to show cause why an order of the Municipal Magistrate of Calcutta acquitting them on a prosecution u/s 492, Calcutta Municipal Act, should not be set aside. The opposite party are the Bengal Dooars Railway Co. Ltd., and the real dispute between the parties is whether they are liable to take out a license u/s 175, Calcutta Municipal Act. License fees were paid for some time without dispute but it appears that the opposite party have now been legally advised that they are not liable to pay. We shall always be reluctant to interfere with an order of acquittal, specially when, as in the present case, the real dispute between the parties can be properly decided in a civil action.

2. The Rule was pressed on the ground that the learned Magistrate in arriving at his decision committed two errors of law. u/s 135, Railways Act, the opposite party could not be made liable in spite of the taxing statute without a notification by the Governor-General in Council. Such a notification was made in the year 1911. The contention made by Mr. Basu in support of the Rule was that a liability to pay is imposed by the notification itself even though the Act under which the tax was imposed may be repealed. In our judgment, the learned Magistrate took the right view. The tax was imposed not by the Railways Act, but by the Calcutta Municipal Act. If the opposite party are not liable to pay, a mere notification by the Governor-General cannot possibly impose any such liability. The object of the notification is really exactly the opposite. In the absence of such a notification,

the opposite party will be relieved from paying a tax which is imposed by the taxing statute. It is to be noted that the notification was made in the year 1911 with respect to a tax imposed under the old Act. In the view we take, it is not necessary to consider whether that notification has any effect on the new tax imposed by the new Act.

3. The second error which, it is alleged, was committed by the learned Magistrate is that he did not apply the presumption laid down in Rule 10 of Schedule VI although he was bound to do so under the Act itself. The opposite party are not liable to pay unless their trade is carried on in Calcutta. Prima facie, it certainly seems improbable that the Bengal Dooars Railway Co. Ltd., carried on trade in Calcutta. Be that as it may, there is no evidence on the record at all. The corporation attempted to prove that such trade was carried on but miserably failed. The opposite party did not give any evidence at all. Hence, the importance in this case of the presumption referred to in Rule 10. The corporation proved that the tax was paid in the preceding year and it, therefore, cannot be disputed that the presumption, whatever its nature may be, applied to this case. The view which the learned Magistrate took was that the presumption only refers to the liability to be taxed in a particular class. Altogether there are 9 classes in the Schedule. On the interpretation given by the Magistrate, there would be a presumption that the opposite party are liable to pay a fee imposed under class (I) but that this presumption will only arise when it is proved that they were liable under the terms of Section 175. The contention of the corporation is that this is a most strange and unnatural interpretation to place upon the rule and that the plain meaning is that there is a presumption that the opposite party are liable to pay under class (I) in the present year.

4. It is always very difficult to interfere with an order of acquittal merely because the Magistrate has wrongly drawn or wrongly refused to draw a presumption. That is nothing more than a matter of evidence. If the view contended for by the corporation is the correct view, the opposite party would have been able to rebut the presumption by calling evidence. We asked Mr. Chaudhury to explain why this was not done. The answer is plain. The only evidence which would have been of use was the evidence obtainable in the office of Messrs. James Finlay & Co., the agents. That evidence was called for by the petitioner but was not produced at the hearing. The Magistrate said that he would infer from that that this evidence would not support the corporation's case. There is very little difference between his saying that, and saying that the presumption had been rebutted. "We should certainly not allow this matter to be reheard without allowing the opposite party to produce evidence. When we find that evidence had already been called by the petitioner, we are certainly not prepared to have the matter investigated again. The rule is accordingly discharged.

Mohamad Akram, J.

5. I agree.