
(1937) 08 MAD CK 0033
In the Madras High Court

C.S. Mahadeva Iyer

APPELLANT

Vs

Municipal Council

RESPONDENT

Date of Decision : 06-08-1937

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 93

Citation : AIR 1937 Mad 894 : 175 Ind. Cas. 625

Hon'ble Judges : Leach, C.J

Bench : Single Bench

Judgement

Leach, C.J.—This petition raises the question whether the petitioner who in 1931 was the District Judge of Kistna with headquarters at Masulipatam is liable to the Municipal Council of Masulipatam in the sum of Rs. 93-10-0 by way of profession tax. The petitioner was appointed the District Judge of Kistna on April 1, 1931. The Court closed for the vacation on May 4, 1931, and the petitioner left Masulipatam never to return, although he remained the District Judge, of Kistna, until July 31, 1931, when he retired. The Court reopened after the vacation on July 6, 1931. On April 22, 1931, that is before the Court closed for the vacation, the Government of Madras granted to the petitioner leave on average pay from July 6, to July 30, with permission to prefix the period of the vacation. By the same order the Government appointed an Additional Sessions, Judge with headquarters at Blore in order that criminal cases could be dealt with in the meantime. The petitioner was actually in Masulipatam from April 1, 1931, to May 4, 1931, and therefore was not there for, a period of 60 days. Section 93, Madras District Municipalities Act, 1920, as amended by the Act of 1930, states that if the Council by a resolution determines that a profession tax shall be levied (and this resolution has been passed), every person who in any half-year (a) exercises a profession, art, or calling or transacts business or holds any appointment, public or private (i) within the Municipality for not less than 60, days in the aggregate, or (ii) without the Municipality but who resides in the Municipality for not less than 60 days in the aggregate, or (b) resides in the Municipality for not less than 60 days in the aggregate and is in receipt of any pension or income

from investments, shall pay a half-yearly tax assessed in accordance with the rules in Schedule 4 of the Act.

2. The question to be decided is whether the petitioner held his appointment within the meaning of the section for the period requisite to make him chargeable. The District Munsif has held that the petitioner does come within the section and relies for this decision on Rule 17 of the Rules to be found in Schedule 4 to the Act. Rule 17 says that a person shall be deemed to have exercised a profession, art or calling or held an appointment within a Municipality if he has an office" or place of business within such Municipality. The learned District Munsif was of the opinion that the petitioner had an office within the Municipal area notwithstanding that he was on leave. Before discussing the correctness of this decision, I would refer to three decisions, two of which refer to the Madras District Municipalities Act of 1884 and the other to the City of Madras Municipal Act of the same year. Section 53 of the former Act provided that:

If the Municipal Council notify u/s 50 that a tax on arts, professions, trades and callings, and on offices or appointments shall be levied, every person who, within the Municipality exercise, after the date specified in the said notification, any one or more of the arts, professions, trades, or callings, or holds any one or more of the offices or appointments, specified in rich. A, shall be subject to the provisions of Section 59, pay in respect thereof the sum specified in the said schedule as payable by persons of the class in which such person is placed.

3. The City of Madras Municipal Act, 1884, was to the same effect. In *Chairman, Ongole Municipality v. Mounsey* 17 M. 453, it was held that an officer, whose headquarters are within a Municipality, does not ipso facto exercise his profession or hold such office or appointment within the Municipality so as to render himself liable for the payment of profession tax. Accordingly, an officer who was not personally present at his head-quarters in the course of duty for a period of sixty days in the half-year was not liable for the tax. The reason for the decision was that it was an essential condition of liability that the profession should be exercised within Municipal limits. In *Henry Moberly v. Municipal Council of Cuddalore* 38 M. 879 : 23 Ind. Cas. 398 : AIR 1915 Mad. 583, it was found that a District Judge whose usual place of business was within the Municipality of Cuddalore had resided for sixty days within another Municipality during the annual recess, and during that period, had done some administrative but no judicial work, and it was held that he was not liable to payment of profession tax to the Cuddalore Municipality. It was said that he must be deemed to have hold his office of District Judge within the Kodaikanal Municipality, where he spent his vacation and not at Cuddalore. The case in *Hammick v. President, Madras Municipal Commission* 22 M. 145, was under the City of Madras Municipal Act. The Inspector-General of Police, whose official place of business was in Madras went on tour, and during his absence, the Assistant Inspector-General of Police in Madras signed letters for him. It was decided that in these circumstances be was

not liable to the profession tax under the City Act, as he was not holding the office in Madras within the meaning of the statute.

4. Section 93, Madras District Municipalities Act of 1920, as amended by the Act of 1930, has been differently arranged, but the re arrangement in my opinion does not alter the section and the authorities to which I have just referred, would have application if the matter rested there. Rule 17 of the Statutory Rules does, however, make a difference. Under that rule a person is to be deemed to hold an office within a Municipality if he has an office within the Municipality and it matters not whether he goes outside or remains inside the Municipal limits. Therefore what I have to decide in this case is whether the petitioner must be deemed to have had an office in Masulipatam from May 4, 1931 to the end of July of that year. It is quite clear that he was holding the office of the District Judge during this period, but it does not necessarily follow that he had still get an office. The Court room was still there and so was the office room attached to it, but can that room be regarded as a place of business or an office of the petitioner? I consider that it cannot. The petitioner left Masulipatam on May 4, 1931, never to return again. He knew that he was retiring at the end of July, and before he left, he had arranged for leave to be granted to him for the period between the end of the vacation and the date on which he was leaving the service. Under Rule 72 of the Fundamental Rules, he could not return to Masulipatam to act as District Judge even if he wanted to, before the expiration of the period of the leave, without the express sanction of the Government. His work had finished and he was allowed to spend the remaining days of his service elsewhere. I am asked to hold that he had an office because he passed an order appointing a record-keeper and other junior officials after he had left Masulipatam. These were administrative acts which he was bound to perform and which required no office so far as he was concerned. The Madras District Municipalities Act in this respect is a taxing statute, and must be construed strictly. Before the petitioner can be made liable to the tax imposed upon him, it must be clearly shown that he comes within the four corners of the section. I am of opinion that on a true construction of the section, he is not within its purview. For these reasons, the petitioners succeed and his petition must be allowed with costs throughout.