

(1994) 07 KL CK 0005
In the High Court Of Kerala
Case No : Q. P. No. 14114 of 1992

Mrs. Narayani R Prasad

APPELLANT

Vs

Mavelikkara Municipality and Another

RESPONDENT

Date of Decision : 19-07-1994

Acts Referred:

Kerala Municipalities Act, 1961 — Section 110

Citation : (1994) 2 KLJ 927

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : Arikkatt Vijayan Menon and R. Krishna Raj, for the Appellant; B. Raman Pillai, for the Respondent

Final Decision : Dismissed

Judgement

T.L. Viswanatha Iyer, J.—The case relates to the levy of profession tax on the petitioner, who is running a dispensary in Mavelikkara Municipal Town, and is an assessee to Income Tax. Petitioner's case is that profession tax should be levied on her u/s 110 of the Kerala Municipalities Act, 1961 (the Act) and the Rules framed thereunder on the basis of the income tax assessment as provided in rule 21 of Schedule II (Taxation and Finance Rules) to the Act. Briefly the facts are these. Petitioner alleges that her annual income has never exceeded Rs. 36000/-, in support of which she has produced the income tax assessment Ext. P14 for the year 1991-92 as also her return Ext. P15 for the year 1992-93. A bill was issued to her by the first respondent Commissioner of the Municipality proposing to assess the petitioner on a huge half yearly income of Rs. 50000/- for the second half year of 1990-91. On the petitioner's revision against the same, the first respondent passed the order Ext. P1 on 12-8-1991 fixing her half yearly income at Rs. 31000/- and the tax at Rs. 125/-. Petitioner would submit that the income fixed is inflated having regard to the total income for the year of Rs. 29130/- as evident from the Chartered Accountant's certificate Ext. P2. The same pattern was followed for the first half year of 1991-92, in which the

revision petition filed by the petitioner without remitting the tax was dismissed as time barred by the proceedings Ext. P4 dated 20-9-1991.

2. The second half of 1991-92 was a repeat performance of what had happened in the prior years, with the first respondent proposing to assess the petitioner to a tax of Rs. 500/-, which was reduced to Rs. 43000/- with a tax liability of Rs. 250/- on revision by the petitioner, by the proceedings Ext. P7 dated 24-2-1992 of the first respondent. Petitioner appealed to the second respondent Municipal Council as per Ext. P8 appeal memorandum in which she contended that her annual income had never exceeded Rs. 36000/-. But the Municipal Council disposed of the appeal by the order Ext. P9 dated 27-3-1992 by which they fixed the Petitioner's half yearly income at Rs. 36000/- with a tax liability of Rs. 125/-. No reasons are given and apparently the petitioner's appeal memorandum has been misread as containing an admission that her half yearly income is Rs. 36000/-, while as a matter of fact her contention was that her annual income did never exceed Rs. 36000/-. Ext. P9 is one of the orders challenged in this writ petition.

3. A notice Ext. P10 was sent to the petitioner proposing to impose tax on her at Rs. 250/- on an estimated income of Rs. 43000/- to which the petitioner objected by her revision petition Ext. P11 dated 17-10-1992. Apprehending repetition of what had happened earlier petitioner filed this writ petition seeking to quash Exts. P1, P4, P9 and P10 and also for directions to the respondents to assess the petitioner to profession tax based on the income determined in the income tax assessment.

4. Respondents have filed counter affidavit sustaining the orders issued and seeking dismissal of the writ petition.

5. Petitioner contends that she had been submitting returns of her income for the purpose of assessment to profession tax, but that they are being ignored by the first respondent. Whatever that be the question for decision is whether the petitioner is entitled to be assessed to profession tax on the basis of income determined under the Income Tax Act, under Rule 21 of the Rules aforesaid. The said rule states that where a person transacts business in any half year exclusively within the area of a single Municipality his income from the transaction of business, for purposes of levying profession tax under the Act during the half year shall be deemed to be one half of the amount at which his profits and gains of such business have been computed under the Income Tax Act, where his income has been assessed to tax under that Act. Petitioner's case is that a fiction has been created by rule 21 that the income for purposes of assessment to profession tax has to be deemed to be the income determined under the Income Tax Act if he is an assessee to Income Tax. The respondents are bound to accept that as the income and cannot deviate therefrom.

6. On the other hand the contention of counsel for the respondents is made with reference to rule 22 which entitles the Commissioner of the Municipality to assign

to the person the class in the scale appropriate to his half yearly income as estimated by him. Sub rule (2) is very much stressed and it lays down the considerations on the basis of which the Commissioner may classify a person under sub rule (1). It states that the Commissioner shall classify the person on general considerations with reference to the various factors mentioned which include the income tax or agricultural income tax paid by the person, as also the return furnished under sub rule (6). Counsel for the respondents submits that sub rule (2) indicates that income tax paid is only a relevant consideration and that it is not conclusive and the Commissioner is entitled to adopt his own method for classifying the person for purposes of assessment to profession tax.

7. Rule 21 creates a fiction that for the purpose of levying profession tax under the Act, the income assessed under the Income Tax Act shall be deemed so be the income of the person from the transaction of his business within the Municipality. This is a conclusive legal fiction prescribed by rule 21 (1). At the same time rule 22. entitles the Commissioner to fix the slot in which the person is to be classified by making the income as for the income tax assessment and the income tax paid a relevant consideration. Apparently there is a conflict between the two rules. But I feel that the conflict can be resolved, so far as this case is concerned, by a harmonious construction of the rules. Rule 21 relates to persons transacting business in the Municipality while rule 22 relates to all categories of assesses including those who carry on a profession or occupation and derive any income by way of transacting business or otherwise Rule 22 is a general provision for all assesses, but rule 21 has to be taken as an exception to rule 22 as relating to persons who transact business within the Municipality and are assessed to income tax. In relation to such persons who transact business and are income tax payers rule 21 which is the special provision, is the one applicable in preference to the general provisions of rule 22. If so read the two rules fall in line and do not conflict with each other. In *Kesavan Vydian v. Commissioner of Municipal Council*, 1977 KLT 90. Narendran, J. held that when the matter is governed by rule 21 and the person has been assessed to income tax, the Municipal Council has no other go but to assess him to profession tax on the basis of the income returned and accepted for the purpose of assessment to income tax.

8. That is the position so far as the petitioner is concerned. Petitioner is carrying on a business of running a dispensary. I cannot accept the respondents contention that the activity carried on by her is a profession and not a business. If so her case squarely comes under rule 21. She is an assesses to income tax and therefore assessment to profession tax has to be made on the basis of the income assessable under the Income Tax Act. The respondents (have to be directed accordingly to assess her to profession tax on the basis of her income under rule 21.

9. I shall consider the validity or otherwise of the various orders impugned with reference to the aforesaid decision. The order Ext. P1 was passed on 12-8-1991

and the order Ext. P4 on 20-9-1991. No doubt they may not stand scrutiny in the light of my aforesaid decision that rule 21 should govern the matter. But then these orders have been passed more than one year prior to the filing of the writ petition. I do not therefore think that I should entertain a challenge to the same at this distance of time. I decline the prayers so far as Exts. P1 and P4 are concerned. But the Petitioner is entitled to succeed so far as Ext. P9 is concerned for two reasons. Firstly there is a clear misapprehension in Ext. P9 about the annual income of the petitioner. She was categorical that her income had never exceeded Rs. 36000/-per year. But the Municipal Council misread the appeal memorandum Ext P8 and proceeded to treat her as having a half yearly income of Rs. 36000/- This is clearly a misapprehension which vitiates Ext. P9. Secondly the assessment to profession tax is not based on rule 21 but on an estimate made of the income. For both these reasons Ext. P9 is liable to be quashed.

10. So far as Ext. P10 is concerned, that is pending in revision Ext. P11 before the first respondent. It is for the first respondent to deal with the revision petition in accordance with law and in the light of the observations contained in this judgment. Petitioner has subsequently produced the bills issued to her for the second half year of 1992-93, namely Ext. P12 and for the two half years of 1993-94, namely Exts P16 and P17. Petitioner has objected to bills before the first respondent and it will be for the first respondent to deal with those objections in accordance with law.

The original petition is therefore disposed of with direction to the first respondent to complete the assessment on the petitioner to profession tax under rule 21 of the Taxation and Finance Rules contained in Schedule II to the Kerala Municipalities Act, 1961 in respect of the income derived by her from the business of running a dispensary. The writ petition is dismissed so far as Exts. P1 and P4 are concerned. Ext. P9 is quashed and the second respondent is directed to dispose of the petitioner's appeal Ext. P8 afresh in accordance with law in the light of the observations contained in this judgment. The first respondent shall deal with the petitioner's objections to the demand for profession tax under Exts. P10, P12, P16 and P17 in accordance with law and in the light of the observations contained in this judgment. There will be no order as to costs.