
(1937) 02 CAL CK 0042
In the Calcutta High Court

Municipal Commissioners

APPELLANT

Vs

Baranagore Jute Factory Co. Ltd.

RESPONDENT

Date of Decision : 03-02-1937

Acts Referred:

Bengal Municipal Act, 1932 — Section 123(1)(f), 182

Citation : AIR 1937 Cal 324 : 173 Ind. Cas. 900

Hon'ble Judges : Patterson, J; Jack, J

Bench : Full Bench

Judgement

Jack, J.—This appeal is against a decision by the lower Courts that the respondent company is not liable to be taxed u/s 182, Bengal Municipal Act of 1932. It is claimed that the decision is based on an erroneous interpretation of the terms of Sch. 4 of the Act and therefore the appeal cannot be said to be concluded by the findings of fact. u/s 182 every person who exercises in the Municipality, either by himself or by an agent or representative, any of the professions, trades or callings specified in Sch. 4 (of the Act) shall take out a half yearly license and pay the tax imposed under Clause (f), Sub-section (1), Section 123. In this case the tax is demanded under Class 1, Sch. 4 of the Act. Class 1 is "Company transacting business within the Municipality for profit or as a benefit society". It is claimed that the Jute Factory Company is such a company, for one of the objects of the company according to the memorandum of association is to carry on the business of manufacturing jute within the Baranagore Municipality and business (as defined in Stroud's Judicial Dictionary) being anything which occupies labour for the purpose of making a profit, it is quite clear that the company, inasmuch as it admittedly manufactures jute within the Municipality carries on business there for profit and thus comes within the terms of Class 1 of the Schedule. Therefore at first sight, it would appear that the company must be liable to the license tax u/s 182 read with Section 123 and Sch. 4 of the Act, unless we can differentiate transacting business from carrying on business. It is said that for the transaction of business there must be two negotiating parties engaged, but "transacting business" is often used in the

sense of" carrying on business". The ordinary meaning of transact is (as given by the trial Court) "to do, to perform, to manage, to conduct matters or to manage affairs", and this does not at all necessarily connote two parties; infact, many people prefer to manage their own affairs. Nor does the word "transact" in the Act mean anything different. For example, Section 82 states that

no business shall be transacted at any meeting of the Commissioners unless such meeting has been called by the Chairman or Vice-Chairman.

2. This does not however settle the matter for we must not lose sight of the very important point that the tax is to be imposed u/s 182 on professions, trades and callings. Moreover the heading of Sch. 4 is "Tax on trades, professions and callings". So that a company transacting business within the Municipality is only liable if it can be said to be exercising a trade, profession or calling within the Municipality. The question is therefore, can a company in the manufacture of jute be said to be exercising a trade, profession or calling? It is not exercising a profession or calling in the ordinary sense of those terms. We come then to trade. Can it be said to be exercising trade within the Municipality? The definition of trade given in Wharton's Law Lexicon is traffic, commerce, exchange of goods for other goods for money. Though in Halsbury Vol. 27, Article 989 one definition of trade is "business carried on with a view to profit", in its ordinary meaning trade includes the idea of exchange of the articles produced or stored for money; and a company can hardly be said to be carrying on trade within a municipality unless the exchange of goods for money takes place there. Now it has been found by the appellate Court that the company carries on no such exchange within the municipality and that its business there is confined to the manufacture of jute. I hold therefore that in carrying on the business of the manufacture of jute within the municipality the company does not come under Class 1, Sch. 4 of the Act, for it cannot be said to be carrying on trade within the municipality even though it carries on business for profit there. The schedule would have been more correctly worded: "company carrying on trade" instead of "company transacting business".

3. There is no need therefore to discuss the other points argued before us such as whether the Act is ambiguous because the tax is only to be on the trades specified in the schedule whereas there is no specification of trades in Class 1 of the schedule. There is no real ambiguity in this part of the Act. It is perfectly obvious, when Class 1, Sch. 4 is read along with Section 182, that the Legislature intended to impose tax on all trades carried on by companies. Section 182 should therefore have read "where it has been determined that a tax shall be imposed on professions, trades and callings every person who exercises in the municipality either by himself or by an agent or representative a trade, profession or calling as specified in Sch. 4 shall take out a license or pay the tax imposed under Clause (f) of Sub-section (1) of Section 123", and Clause (f), Sub-section (1) of Section 123 should have read: "a tax imposed on trades, professions and callings as specified in Sch. 4" introducing the word "as" before

"specified" in each case. Class 1, Sch. 4 specifies in one class all trades carried on by companies just as Class 2 of the Schedule specifies in one class all wholesale trades. In this connexion the case in *Corporation of Calcutta v. Standard Marine Insurance Co.* (1895) 22 Cal 581 was relied on by the respondents. That decision was based on the fact that the company had no place of business in Calcutta, and its business was carried on there by its agents at their own offices. The learned counsel for the respondents also relied on the case in *Municipal Council, Coconada v. Standard Life Insurance Co.* (1901) 24 Mad 205 but there again it was held that because the company had no office or establishment within the municipality, and their agent merely procured business for the companies within the municipality, he could not be said to transact business there. This is certainly a very fine distinction and one on which I would not like to rely, but it is a convenient one, for it would be difficult to assess the tax in many cases where business is carried on by agents without separate premises. He also relied on *Municipal Council of Coconada v. Clan Line Steamers Ltd.* AIR 1919 Mad 209. There it was held that a Shipping Company which earned its profits by the carriage of goods by sea could not be said to be carrying on trade at Coconada where the company loaded and unloaded goods, but had only a sub-agent, whereas all the contracts were entered into at Madras. This decision was based on the decisions of income tax cases and cannot, I think, be safely relied on for the decision of a case under the Bengal Municipal Act. The learned Judge in the Court of appeal below has also supported his decision by reference to certain reports of income tax cases, viz. *Grainger and Son v. Gough* (1896) A C 325 : *Sully v. Attorney-General* (1860) 5 H & N 711 : *Lovell and Christmas, Ltd. v. Commissioner of Taxes, Municipal Council, Dindigul v. Bombay Co. Ltd., Madras* AIR 1929 Mad 409. But these cases can be distinguished because under the income tax Acts the important point to consider was where the profits were realised, and it has been held that (for the purposes of the income tax Act) the business of a company must be held to be conducted where its profits are realised. Under the Municipal Act however, the object is not necessarily to tax profit, but to tax the carrying on of the trades, professions and callings as specified in Sch. 4 of the Act, and a trade may be carried on in one place though the contracts are negotiated or profits realized in another. For example in the case in *Burmah Shell Oil Storage and Distributing Co. of India, Ltd. Vs. Sudhansu Bhusan Chatterjee*, , referred to by the learned counsel for the appellants it was held that the company was carrying on a trade in Howrah though all their contracts and sales were made in Calcutta. There however the Oil Distributing Company delivered oil to customers from their storage godowns in Howrah, and therefore it could be said that part of their trade (i.e. exchange of goods for money) was conducted there. In conclusion, though I do not agree with all reasoning of the learned Judges in the Courts below, I think their conclusion is right and that the respondent company is not liable to tax under the provisions of Section 182, Bengal Municipal Act. This appeal is therefore dismissed with costs.

Patterson, J.

4. The question raised by this appeal is whether the Baranagore Jute Factory Ltd. is liable to pay the tax on trades, professions and callings imposed by the Municipal Commissioners of Baranagore under the provisions of Section 123(1)(f), Bengal Municipal Act, 1932. That section empowers the Commissioners to impose, within the limits of the Municipality, a tax on the trades, professions and callings specified in Sch. 4, and Section 182 declares that when such a tax has been imposed, every person who exercises in the municipality any of the trades, professions or callings specified in Sch. 4 shall take out a license and pay the tax. Sch. 4 purports to give a list of taxable trades, professions and callings (or rather of persons carrying on such trades, etc.), and is divided into four classes. Classes 2, 3 and 4 appear to fulfil the requirements of Sections 123 and 182, but in the present case the tax has been demanded and paid not in respect of any trade, profession or calling specified under any of these three classes, but on the footing that the company is required to take out a license under Class 1 of the schedule, namely as a "company transacting business within the Municipality for profit." The company says that it does not come under this description, and that even if it does, the description is not sufficiently precise to saddle it with liability, inasmuch as it does not specify any particular trade, profession or calling, as contemplated by Section 123(1)(f) and Section 182 of the Act. In my opinion both these contentions are well founded and must prevail.

5. The Company buys raw jute in Calcutta and elsewhere; has it made into hessians etc., at its mill at Baranagore, and sells the finished products in Calcutta. These being the outstanding facts to which the law has to be applied, can it be said that the company transacts business for profit in Baranagore, so as to bring it within the mischief of Section 182 read with Class 1 of the Schedule? The work of manufacture carried on at Baranagore is of course an essential part of the business of the Company, but on the other hand, even that part of the work is controlled from Calcutta, and (what is more important) the profit-earning contracts of the Company are entered into Calcutta, and it is there that the profits accrue. In these circumstances, it must, I think, be held that the Company "transacts business for profits," not at Baranagore, but in Calcutta. I am fortified in this view by the opinions expressed and the principles laid down in certain English cases and especially in *The Municipal Council Vs. The Bombay Company, Ltd.*, and in *Lovell and Christmas, Ltd. v. Commissioner of Taxes* (1908) A C 46. Those cases were under the income tax Acts, but it seems to me that the observations made therein apply with almost equal force to the present case, especially in view of the facts that the amount of the license-tax sought to be imposed on the Company has no relation to the value of that portion of the Company's business which is carried on in Baranagore, but is, under the provisions of Class 1, Sch. 4, based on the total paid-up capital of the Company. I am, therefore, constrained to hold that the Company in question is not a Company "transacting business within the Municipality for profit," and that it cannot be required to take out a license under Class 1 of the Schedule.

6. Coming now to the second point raised on behalf of the Company, it is clear

from the provisions of Section 182 that a Company, like a private individual, can only be required to take out a license if it exercises in the Municipality one or more of the trades, professions or callings specified in Sch. 4. The trade, profession or calling in respect of which the Company is sought to be made liable in the present case, is that described under Class 1 of the Schedule, viz. that of a "Company transacting business for profit".

7. Now it seems to me that "transacting business for profit" is an expression which might be applied to almost any kinds of trade, profession or calling, and I find it quite impossible to hold that it amounts to a specification of a trade, profession or calling. The fact that Class 1 relates only to companies makes no difference, for neither Section 123 nor Section 182 makes any distinction between companies and private individuals, and the schedule (which is intended only for the purpose of specifying the trades, professions and callings that are taxable, and the maximum rates at which the tax can be imposed), cannot, in my opinion, be utilised for the purpose of making companies liable in cases where private individuals would not be liable.

8. This view of the matter is in accordance with the view taken in *Corporation of Calcutta v. Standard Marine Insurance Co.* (1895) 22 Cal 581 and in *Municipal Council, Coconada v. Standard Life Insurance Co.* (1901) 24 Mad 205. Those were cases under the old Calcutta Municipal Act (Bengal Act 2 of 1888), and the old Madras Municipalities Act (Madras Act 4 of 1884), respectively, but having regard to the similarity in all material respects between the relevant provisions of those Acts and of the Bengal Municipal Act of 1932, it seems to me that the observations made in the two cases referred to above on the point now under consideration, apply with equal force to the present case.

9. If then the Legislature intended by means of the description given under Class 1, Sch. 4, to make a Company liable qua Company, that attempt was doomed to failure, and has failed for the reasons already indicated. If, on the other hand, the Legislature intended to make a Company liable to pay the tax, whatever was the nature of the trade, profession or calling it carried on within the Municipality, it should have said so in so many words: it has not said so, and the Company cannot therefore be held to be liable in that way. Lastly, the Legislature may have intended to make a Company liable, if the trade, profession or Calling it exercised within the Municipality was one of those specified in Classes 2, 3 or 4 of the Schedule. Here again the Legislature has not said so, and in any case the manufacture of hessians, etc., is not one of the specified trades, professions or callings. Besides, in the present case, the Company has been sought to be made liable under Class 1 alone without any reference to the other three classes.

10. Apart, however, from the difficulty of ascertaining and giving effect to the intention of the Legislature with regard to Class 1 of the Schedule, I find it quite impossible to hold that, so far as that class is concerned, the Schedule does what Section 123 requires it to do, viz. specify any trade, profession or calling as being taxable under that class. That being so, the Company cannot be made liable for

the tax as coming under Clause 1, whether it be a Company transacting business within the Municipality for profit, or not. The result is that the appeal must, in my opinion, be dismissed with costs.

11. It is to be hoped that the observations I have made in the course of this judgment will be of some assistance to the Local Government in framing appropriate amendments with a view to their incorporation in Sch. 4. The Local Government have power u/s 557 to amend the Schedule at any time, and the circumstances that have given rise to the present litigation make it clear that some amendment is called for.