

(1939) 11 MAD CK 0029
In the Madras High Court

Municipal Council

APPELLANT

Vs

G.V.C. Babu Naidu

RESPONDENT

Date of Decision : 28-11-1939

Acts Referred:

Citation : AIR 1940 Mad 731 : (1940) 51 LW 181 : (1940) 1 MLJ 437

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellant is entitled to succeed. The appeal arises out of a suit filed by the respondent in the Court of the District Munsif of Bellary for a declaration that the appellant council had acted illegally in requiring him to pay profession-tax in respect of the three half years ending with 31st March, 1931, 30th September, 1931 and 31st March, 1932, and" for an injunction restraining the appellant from levying the tax. The District Munsif held that the respondent was liable to the tax except in respect of the half year which ended with 31st March, 1931. He was of the opinion that the respondent was not liable in respect of that half year because the notice of demand had not been given within the required period. The respondent appealed to the District Judge of Bellary in respect of the reliefs which had been refused him and the appellant filed a memorandum of objections challenging the correctness of the District Munsif's decision that the respondent was not liable to pay the tax in respect of the first of the three half years. The respondent's appeal failed and the appellant's memorandum of objections was accepted. The result was that the District Judge dismissed the suit with costs. The respondent then filed a second appeal which was heard by Wadsworth, J., who allowed it. The learned Judge held that the respondent was not liable for the payment of the profession-tax because in his opinion the respondent was not carrying on business at Adoni.

2. The facts are these. The respondent is a licensed distiller and owns an arrack distillery at Bellary. Under the terms of his license he is required to maintain depots for the sale of arrack at various paces in the Bellary District. One of these

places is Adoni. The depot at Adoni is in charge of an agent of the respondent and he sells arrack to licensed retail dealers. The price is fixed by the Government and the sales are restricted to licensed retail vendors. The money received in respect of arrack sold at the Adoni depot is paid by the respondent's agent into the treasury the same evening. The question which arises is whether in these circumstances the respondent transacts business in Adoni within the meaning of Section 93(1) of the Madras District Municipalities Act, 1920. The section gives a Municipal Council the right to levy profession tax on a. person who transacts business within the Municipality for not less than sixty days in any half year. Section 94A says that if a person employs a servant or agent to represent him for the purpose of transacting business in a Municipality the person shall be deemed to transact business there and the servant or agent shall be liable for the profession-tax whether or not he has power to make binding contracts on behalf of his employer. Wadsworth, J., held that the respondent was not carrying on business within the Municipal area of Adoni, and his reasons may be gathered from the following passage in his judgment:

It is true that the depot keeper at Adoni has authority to deliver goods in return for cash and I suppose that on the narrowest view it might be said that every time he delivered liquor in return for cash there is an executed contract of sale. But his control over the trade is in fact purely mechanical. The price is fixed elsewhere; the vendee must be only certain licensed persons; the money is paid straight into an account in the treasury and all these accounts from which profits can be ascertained and with the help of which control can be exercised are maintained in Bellary.

3. The learned Judge here disregards the essential factor that the respondent's agent in charge of the Adoni depot enters into contracts for the sale of arrack on behalf of his master who makes profits on these transactions. A person who sells goods in a particular place must be deemed to be carrying on business in that place and the respondent sells arrack at Adoni. The fact that the prices which he charges are fixed by the Government does not make his transactions any the less sales; nor does the fact that the respondent's only customers at Adoni are licensed retail dealers alter the character of his transactions. The fact that the respondent's agent is required to pay into the treasury at the close of a day's business the moneys which he has received for the arrack sold that day has no bearing on the question and the same is to be said with regard to the keeping of accounts at Bellary. The respondent sells arrack at Adoni and therefore is carrying on business at Adoni within the meaning of Section 93 of the Act It would be a different matter if all contracts for the supply of arrack were made in Bellary and goods were merely delivered in Adoni through an agent, but that is not the position.

4. In the course of his judgment the learned Judge referred to *Grainger & Son v. Gough* (1896) A.C. 325, *The Municipal Council of Cocanada v. The "Clan Line" Steamers Ltd.* (1918) 36 M.L.J. 226 : ILR 42 Mad. 455, *Hajee Shaikh Meera*

Rowther v. The President of the Corporation of Madras ILR (1909) 33 Mad. 82 and Eastern Distilleries and Sugar Factories Ltd. v. The Municipal Council, Negapatam (1932) 38 L.W. 226. None of these cases lends support to the opinion which he has expressed. The case of Grainger & Son v. Gough (1896) A.C. 325 had reference to a French firm which sold wine through a commission agent in London. The agent obtained orders from persons in England for the firm's wine which was sold to the customers as it lay in the firm's cellar at Reims. The customer paid the cost of packing and carriage and took all the risk. Therefore the delivery to him took place in France. The question was whether the French firm was exercising a trade in the United Kingdom and it was held that it was not.

5. In *The Municipal Council of Cocanada v. The "Clan Line" Steaners Ltd.* (1918) 36 M.L.J. 226 : ILR 42 Mad. 455, the question was whether a shipping company which had an agent in Madras and a sub-agent at Cocanada was liable to be taxed at Cocanada as a firm transacting business there. The shipping company earned profits by carriage of goods by sea and in the course of its business loaded and unloaded goods at Cocanada. Its head office was at Glasgow, but its principal agent in the Madras Presidency had his office at Madras. The sub-agent at Cocanada had no power to enter into contracts with shippers. This could only be done by the agent at Madras. The company was assessed by the Municipality of 5 Cocanada to tax u/s 53 of the District Municipalities Act (IV of 1884) for exercising its trade and carrying on business in Cocanada. It was held that the company was not liable for the tax as it was not transacting business in Cocanada. The difference between that case and the present case is that the sub-agent at Cocanada had no authority to enter into contracts on behalf of the company's clients and no contracts were entered into there. All the contracts were entered into in Madras. In the present case, the contracts are entered into in Adoni and the goods are supplied there.

6. *Hajee Shaik Meera Rowther v. The President of the Corporation of Madras* I.L.R.(1909) 33 Mad. 82, was a similar case. A firm had its place of business in Tinnevely, but kept an agent in Madras for the purpose of purchasing piece goods for despatch to Tinnevely where they were sold. It was held that the firm was not liable to profession-tax in Madras. The case of *Eastern Distilleries and Sugar Factories Ltd. v. The Municipal Council of Negapatam* (1932) 38 L.W. 226, has no bearing at all on the question under discussion. The question there was whether the company had an office at Negapatam and the decision turned on the meaning to be attached to the word "office" in Rule 16 of Schedule IV of the Madras District Municipalities Act, 1920. That question does not arise here.

7. After we had intimated that we could not accept the decision of the learned Judge on the question whether the respondent was carrying on business in Adoni an attempt was made to support the judgment on the ground that there had been irregularities in the demands in respect of the three half years. The alleged irregularities formed no part of the case set forth in the plaint, and no issue was

framed on the question. The District Munsif did allow the question of the validity of the demand for the first half year to be raised, but the District Judge reversed his decision on the ground that this contention had not formed part of the respondent's case and the appellant had not had notice of it in time to meet it. It is said that if the council had had notice it would have been in a position to show that on the facts the contention could not be maintained. We consider that the District Judge adopted the right attitude in refusing to allow the matter to be raised. It follows that we are not prepared to allow it to be raised in this Letters Patent Appeal.

8. The appeal will be allowed and the respondent's suit" dismissed with costs here and in the Courts below.