

(1933) 11 MAD CK 0013
In the Madras High Court

Municipal Council

APPELLANT

Vs

Ralli Bros.

RESPONDENT

Date of Decision : 13-11-1933

Acts Referred:

Citation : AIR 1934 Mad 420 : 150 Ind. Cas. 890 : (1934) 39 LW 660

Hon'ble Judges : Pandalai, J

Bench : Division Bench

Judgement

Pandalai, J.—The defendant, the Municipal Council of Tuticorin, is the appellant. The respondent, the firm of Messrs. Ralli Bros., brought

this suit for the recovery of six payments of Rs. 110 each made to the appellant on account of half yearly profession tax for the six half years ending

31st March 1936, as demanded by the appellant, on the ground that according to the District Municipalities Act, the respondent firm was not liable

to the demand. The appellant's defences were that the respondent is liable to the demand and that at any rate the first five out of the six payments

were voluntary and could not be recovered back. On the liability of the respondent to the profession tax the District Munsif held that the

respondent was liable u/s 93, District Municipalities Act, 1920, read with Rule 18, Schedule 4 thereto.

2. On the second, as to the character of the payments he held that they were not voluntary. Therefore he dismissed the suit. The respondent

appealed to the learned Subordinate Judge of Tuticorin who held on the first point that the respondent is not liable to the profession tax sued for

but did not deal with the second point at all, that is, the nature of the payment. He gave a decree therefore for the sum sued for with costs. On this

appeal both the points have been argued.

3. On the first point, that is, the liability to pay profession tax, if the question were res integra I should have had no difficulty in supporting the

appeal. The question depends upon the construction of Section 93, District Municipalities Act, 1920, and the bearing of Rule 18, Schedule 4, that

is, the financial rules, on that section. The question is whether Section 93 is controlled by the rule. My own view is that it is not. But this opinion is

of no value because it has been held by a decision of a Bench of this Court by which I am bound that it is. That decision is reported in The

Municipal Council, Mangalore v. Parry & Co. AIR 1926 Mad. 1187. That was an appeal from a decision of Waller, J., on the original side. In

C.S. No. 551 of 1924, which unfortunately has not been reported as far as I have been told, the question raised was exactly the same. Messrs.

Parry & Co., who carry on business throughout the Presidency had business within the Municipality of Mangalore, who assessed them to

profession tax. Parry & Co., brought a suite on the original side for a declaration that they were not liable to profession tax in the mofussil

municipalities like Mangalore by reason only of the fact that they were carrying on business there because by E. 18 of the Financial Rules it was

also requisite that their principal office should be within the limits of the Municipality which proposed to assess them.

4. The learned Judge pointed out that the plaintiff's contention would have had to be rejected under the law as it stood before the Act of 1920,

and that the effect of re-arranging and remodelling the sections in 1920 was probably the opposite of what was intended, viz., to make it

impossible for Municipalities to levy profession tax from persons carrying on business except when the principal office or place of employment was

within their own jurisdiction. This view was upheld on appeal by a Bench and that being so, it is clear that the appeal must fail unless the appellant

can show that the principal place of business or office of the respondent is within the Tuticorin Municipality. In my opinion the evidence does not

show that Tuticorin is the principal office of the respondent. The respondent is a firm of which the head quarters is alleged to be in Switzerland. Its

business in India is chiefly of exporting produce from India to foreign countries, importing yarn from Manchester into India and of buying and selling

produce within India. So far as Tuticorin is concerned it deals with cotton and groundnuts which it buys, and sugar, gunnies yarn and twine which it sells. It has 20 sub-agencies in the southern districts under it. Cotton and groundnuts are bought chiefly for export, cotton being ginned locally by a ginning factory which the firm owns. Sugar is imported from Java and sold locally; yarn is brought from Bombay where it is imported from Manchester and the gunnies and twine are brought from Calcutta. The local assistant in buying and selling, acts under the orders of three offices, Madras, Bombay and Calcutta. He has no doubt got a certain amount of discretion, that is, he may buy within a certain maximum price fixed and also he may sell above a certain minimum price fixed.

5. In these circumstances it is very difficult to say that Tuticorin is the principal office of the respondent whatever it may mean. If I had only to decide whether the respondent was carrying on business at Tuticorin, there will be no difficulty but as I have to say whether Tuticorin is the principal office of the respondent I can only say that it is not the principal office in India, if that is what is intended, because Calcutta, Madras and Bombay are with respect to the goods concerned with each place the principal office which is set in authority over Tuticorin. The section does not say, "principal office within the Presidency" or even "within India." I am therefore not in a position to say that the Subordinate Judge is wrong when he says, although I do not agree with all the grounds for his opinion, that in the nature of the evidence the respondent firm has not got its principal office at Tuticorin, The consequence of this is that the appellant was not entitled to levy profession, tax in the half years during which the firm paid it.

6. The second point remains and it is whether the payments now sought to be returned were voluntary or involuntary. The District Munsif found that they were involuntary but according to his view on the other point it was unnecessary for him to express any opinion and the Subordinate Judge has expressed no opinion. It has now become necessary for me to decide the point because on it the appeal depends. The facts are not in dispute. The first five payments were payments in pursuance of the usual notice by the Municipality demanding payment and warning that if the tax be not paid within 15 days

and if you do not show sufficient cause why the same should not be paid a warrant will issue for the distraint of your property.

7. It is also intimated that the assessee has a right of appeal to the Council if dissatisfied with the assessment imposed. Ex. 2 is a sample of the

notice. During this period the respondent made payments without any objection either in word or in deed. But apparently soon after the decision of

Waller, J., above referred to, which was pronounced on 20th April 1925 the respondent discovered that he was also entitled to make the same

claim as Parry & Co., and when the next demand was made that payment, viz., the sixth now in question was made under protest (Exs. B and A-

5). The Munsif does not say on these facts on what grounds he took the view that the payment for the first five half years was involuntary. He

seems to have been of the opinion that because the notice of demand mentioned that unless the payment was made or cause shown a distraint will

issue that was sufficient to cause apprehension and that therefore the payments were in pursuance of that apprehension. A number of cases on this

question have been cited to me. There is no case which goes to the length of saying that where a statutory body conceiving itself justified under the

circumstances in making a demand makes a demand in the form prescribed for such demand, the demand containing the warning that if it is not

satisfied, legal process for realisation will be put into force; the payment in pursuance of such notice is sufficient to take it out of the category of

voluntary payments.

8. The cases only go so far as to show that to make the payment involuntary or one under duress it must in fact be so. It is not necessary that the

protest should be express nor on the other hand does the fact of verbal protest always mean that the payment ceases thereby to be voluntary but

the character of the payment is to be judged from the real nature of the circumstances in which it was made which are not to be assumed by the

extension of any theoretical assumption of what the man paying might have thought; the question always being what he did think. A reference to

cases on either side of the line will make this clear. In *Rajah of Ramnad v. Secy, of State* AIR 1929 Mad. 179, the Rajah of Ramnad had

submitted returns in pursuance of the Income Tax Act, showing certain items of income therein on which he wrongly thought he was bound to pay

Income Tax which was assessed accordingly and paid. Later on he learnt from a decision in respect of another zamindar that he was not bound to

pay the tax on these heads of income and brought a suit for recovery of those taxes attributable to those amounts. It was held on the merits that he

had made a wrong return and that the levy was also wrong and then the question arose whether he was entitled to recover. In that connexion a

large number of decisions was referred to and it was finally held that the payments were voluntary in the legal sense and could not be recovered

back. One of the cases has a bearing to the present facts and it is *Slater v. Mayor, etc. of Burnley* (1888) 59 L.T. 636, at p. 775, Cave, J., is cited

where he says,

that there is no case which lays down that a payment under these circumstances is a compulsory payment. If it were so the consequence would be

far reaching. If that were so no payment of rent to a landlord would be a voluntary payment.

9. The circumstances were that a water rate had been levied which was in excess by $\frac{1}{2}$ 1-11-6. Although the local authority had no power of

distress they had the power to cut off water supply on non-payment of the rent and the argument was that although the payment was made without

any protest yet it must be deemed to have been made under protest or under duress because of the fear that water might be cut off. This was

repelled. The case is different where goods have been illegally seized and a person has to make the payment to get them released or where a

person is entitled to certain services or to get a particular thing done and cannot get these services or the particular thing done except upon

payment which he is not bound to make or when payment is made in actual apprehension that unless it is made the goods will be illegally seized. In

all these cases the payment is held to be under duress though no express protest is made. *Maskell v. Horner* (1915) 3 K.B. 106 was a case of a

payment called "tolls" made by the plaintiff to the defendant, the owner of Spitalfields Markets, which were found to be illegal. They had been

made during a period of nearly 12 years and the question was whether in the circumstances they were voluntary or made under duress. The

circumstances as narrated in the head note were : that on the first occasion when the demand was made and the plaintiff objected, his goods were

actually seized. The plaintiff then consulted a solicitor and according to his advice made subsequent payments under protest. Later on, the amount

being disputed there was seizure or threat of seizure of goods followed by payment under protest. On these facts Rowlatt, J., decided that although

there were numerous so called protests they had been so frequent and so inconsequent that they had degenerated into a grumbling acquiescence or

a standing joke and not effective to show want of consent. He dismissed the suit. On appeal his decision was reversed by the Court of Appeal,

who stated that the principle of law is so well settled that it cannot be challenged. Its application to the facts alone was in dispute. Two Judges of

the Court of Appeal without any doubt and the third with some hesitation concurred in the opinion that "the plaintiff never intended to depart and

never did depart from the course taken by him at the commencement of the dispute.

10. In other words his persistence during so long a period rather shows that the plaintiff did not acquiesce in the defendant's demands.

Brooklebank v. The King (1925) 1 K.B. 52 was a case where the Shipping Controller acting under the defence of the Realm Regulations required

the suppliants to pay as a condition of allowing them to sell one of their ships to a foreign firm a sum of money which he had no right to demand.

On this imposition being held to be illegal, the question arose whether it was a voluntary payment. On that, Bankes, L.J., said that the payment is

best described as one of those which are made grudgingly and of necessity to avoid open protest because protest is felt to be useless, the meaning

being that the absence of open protest is not a hindrance to the right to recover. The petition however of the suppliants failed on another ground

not now material. Such being the principle to be applied I have to see whether the first five payments can be held to have been made under protest

simply because they were made in pursuance of notices issued by the Municipality in the common form requiring the assessee to either pay or

show cause for not paying the same and in default informing him that steps will be taken by distraint to enforce and that he has a right of appeal. I

do not think that payments made, without any expression of objection or unwillingness, and continued for a period of five years can be said to be

anything else than payments in the ordinary course by tax payers who have no cause to show and who do not intend to object to the assessment

and therefore pay. It was indeed unobjected, because according to the belief of the Municipality and the respondent at that time it was an

unobjectionable payment. It has not been contended and very properly that the right to recover can be put upon any ground of mistake because if

mistake there was it was a mistake of law and that is not sufficient. Therefore the only available ground being the involuntary character of the

payments, I am clearly of opinion that the first five payments were not involuntary and therefore are not liable to be returned. This however does

not apply to the last half year's payment which was made expressly under protest.

11. The decree of the lower Court is therefore modified by giving a decree to the plaintiff for Rs. 110 and the suit is dismissed with respect to the

remainder. The parties will have and pay proportionate costs in the three Courts.