

(1960) 05 KL CK 0001
In the High Court Of Kerala
Case No : O. P. No. 588 of 1959

Natesan Achari

APPELLANT

Vs

Municipal Council, Changanacherry and Another

RESPONDENT

Date of Decision : 23-05-1960

Acts Referred:

Travancore District Municipalities Act, 1116 — Section 261

Citation : (1960) KLJ 994

Hon'ble Judges : M. A. Ansari, C.J;T. C. Raghavan, J

Bench : Division Bench

Advocate : T. K. Narayana Pillai N, for the Appellant; V. Rama Shenoi and R. Raya Shenoi, for the Respondent

Final Decision : Dismissed

Judgement

Raghavan, J.—The Writ Petitioner is a goldsmith plying his trade of making ornaments in gold and silver for wages within the Changanacherry Municipality. The 1st Respondent is the Municipal Council, Changanacherry and the 2nd Respondent the Commissioner thereof and the Writ Petition seeks to quash, by a writ of mandamus or other appropriate writ, the bye-laws of the Municipality dated 26th December, 1958, to the extent to which they permit the respondents to levy licence fee on gold and silver workshops, that is to say, item 86(2) thereof. The Municipality has been collecting a licence fee of Rs. 6/- per year for every shop from the goldsmiths for the last several years. By item 86(2) of the bye-laws, Ext. P. 1, the licence fee has been fixed at Rs. 6/- for a workshop where one smith is working, at Rs. 25/- where 2 to 5 smiths are working and at Rs. 50/- for a shop where there are more than 5 smiths working. The petitioner had been paying the licence fee of Rs. 6/- during the previous years, but after Ext. P. 1, he refused to pay the licence fee and has filed this Writ Petition seeking to quash that portion of Ext. P. 1 which empowers the Municipality to levy licence fee on gold and silver workshops, that is, item 86(2) thereof. His main contention is that the bye-laws, to the extent to which they permit levy of licence fee on

gold and silver workshops, are ultra vires of the powers of the Municipality under the Travancore District Municipalities Act. According to him section 261 of the Act provides for the purposes for which places within the Municipality may not be used without licence and these purposes are enumerated in Schedule III to the Act, which schedule does not include the making of gold and silver ornaments as one of such purposes. The alternate contention of the Writ Petitioner is that the licence fee sought to be levied on him is really a tax, as it is excessive and unreasonably high and as no service is being rendered by the Municipality in connection with gold and silver workshops.

2. The 2nd respondent has filed a counter-affidavit for himself and on behalf of the 1st respondent. He has alleged in the counter-affidavit that the bye-law sought to be quashed are well within the powers of the Municipality under Schedule III to the Travancore District Municipalities Act. He has more specifically alleged that the impugned item 86(2) in the bye-laws is covered by the entry "Metals - beating, breaking, hammering, casting, etc." in Schedule III of the Act and has also alleged in the alternative that, at any rate, item 86(2) will be covered by the last residuary entry in Schedule III which reads:

In general, any purpose or the doing in the course of any industrial process anything which in the opinion of the executive authority is likely to be dangerous to human life or health or property or is likely to create or cause a nuisance.

The counter-affidavit further alleged that the licence fee is not excessive and unreasonable and hence it does not operate as a tax. It goes on to state that the fees collected in the previous years have been spent on the staff of the Sanitation Section of the Municipality, that the expenditure incurred in connection with sanitary control and supervision has been debited under a separate head, that the fee of Rs. 6/- was fixed in 1121 as an experimental measure when the menials in the Sanitation Section were paid at the rate of Rs. 10/- per month without any leave allowance, that the remuneration of the menials was increased from time to time and that since the middle of 1957 a menial in the Sanitation Section is being paid Rs. 62/- per month with benefits of leave on full pay for 20 days and on half pay for 45 days in the year with lesser number of working hours per day. In view of the above, the 2nd respondent has contended, the increase in the licence fee is only reasonable and hence it is not a tax.

3. For the first contention of the petitioner, his learned counsel seeks support from a decision of the Travancore-Cochin High Court, Aiyaperumal Achari v State, reported in 1951 KLT at page 306. In that case the petitioner was prosecuted and convicted by the lower courts u/s 375 of the Trivandrum City Municipal Act read with section 295, Schedule IV and section 384 thereof. The provisions of the Trivandrum City Municipal Act are similar to the provisions of the Travancore District Municipalities Act. The petitioner was convicted by the lower courts of the offence of "plying" his trade of making gold and silver ornaments within the Trivandrum City without a licence. His contention was that no licence was necessary under the Trivandrum City Municipal Act for plying his trade. The lower

courts rejected this contention but their Lordships of the Travancore-Cochin High Court upheld the contention and acquitted him. Their Lordships held that "metals" occurring in Schedule IV under the head "Metals-- beating, breaking, hammering, casting, etc." did not include "precious metals". The learned Judges relied on a decision, *Casher v Holmes*, 2 B & AD 592, and held that the word "metals in the expression "beating of metals" for doing which a licence was necessary under the Trivandrum City Municipal Act would not include gold and silver.

4. The learned counsel for the respondents, on the other hand, contends before us that the case, *Aiyaperumal Achari v State* (1951 KLT 306), was not rightly decided and that it requires reconsideration. He invited our attention to the meaning of the word "metal" in the New English Dictionary by Sir James Murray and also to other dictionaries like the Chamber's 20th Century Dictionary and the Oxford English Dictionary. These dictionaries, of course, do not make any distinction between the precious metals and the other metals in giving the meaning of the word "metal". At the same time dictionaries like Bouvier's Law Dictionary and Roland Burrow's Judicial Dictionary (Words and Phrases Judicially Defined) explain that the word "metal" does not include precious metals. We have also perused the decision, *Casher v Holmes*, 2 B & AD 592, wherein Lord Tentorden C. J. and Littledale and Parke JJ. expressed the view that though gold and silver were, strictly speaking metals, they were never spoken of in popular language as metals, but only as precious metals. In view of this pronouncement and also the meaning of the word "metal" given in the Law Dictionaries, we are not inclined to hold that the view expressed by Their Lordships of the Travancore-Cochin High Court in *Aiyaperumal Achari v State* (1951 K. L. T. 306) is altogether incorrect. At any rate, it is clear that "metals" in the entry "Metals-beating, breaking, hammering, casting, etc." is also capable of the interpretation that was put upon it by, Their Lordships of the Travancore-Cochin High Court. In such a case, where two interpretations are possible to a statute imposing a charge on the subject, it is well-established that the interpretation that is favourable to the subject should be adopted, Parke J. in *Casher v Holmes*, 2 B & AD 592, observes:

Besides it is a good rule of construction that where a charge is to be imposed on the subject, it ought to be done in clear unambiguous language and as, at all events, it is not clear that gold and silver are included in the word "metals".....I should be of opinion that the plaintiff was not bound to pay this sum claimed by the Commissioner.

In *Best & Co. v The Corporation of Madras* (I.L.R. 47 Mad 262(FB)) Their Lordships of the Madras High Court held that where the words of a taxing Statute were capable of two constructions, the construction to be adopted should be the one in favour of the tax-payer. This decision has been followed in a recent decision of the High Court of Andhra Pradesh in *Mootha Manikyam v Kakinada Municipal Council*, by Commissioner 1959-11 Andhra Weekly Reporter 492. Their Lordships held that in a taxing statute there was no room for any intendment,

that a person could be taxed only if he came within the letter of the law and in case of doubt the provision of law would be construed against the Government and in favour of the tax-payer. This principle applies with equal force to the instant case. Hence we are inclined to hold that the entry in Schedule III viz., "Metals-beating, breaking, hammering, casting, etc." of the Travancore District Municipalities Act does not cover beating, breaking, etc. of the precious metals, gold and silver, for the purpose of imposing a licence fee.

5. But this does not entitle the Writ Petitioner to get an order in his favour in the present case. The question yet remains as to whether item 86(2) of the bye-laws is ultra vires the scope of the "Purposes" enumerated in Schedule III of the District Municipalities Act. Though our decision is that item 86(2) falls beyond the scope of the entry "Metals-beating, breaking, hammering, casting, etc.", in Schedule III, we are of the opinion that it falls within the last and residuary entry in the Schedule. We have already extracted this entry earlier in our judgment and item 86(2) of the bye-laws will be saved by this residuary entry. Therefore we hold that item 86(2) of the bye-laws is not bad or ultra vires the powers of the Municipality under Schedule III.

6. The next contention that has been raised before us on behalf of the Writ Petitioner is that the licence fee is really a tax and not a fee. The contention of the petitioner's learned counsel is two-fold. Firstly, he urges that the licence fee collected in the previous years had been included in the general revenues of the Municipality and had not been ear-marked for the purpose of goldsmiths' shops. But the allegations in the counter-affidavit of the 2nd respondent, which we have already referred to, show that the licence fee collected in the previous years in respect of all offensive and dangerous trades, including gold and silver workshops, had been credited under a separate head and the expenditure incurred in connection with sanitary control and supervision of these trades had been debited to this account. In view of this uncontradicted allegation in the counter-affidavit, the first contention of the Writ Petitioner cannot stand.

7. The second argument of the Writ Petitioner's learned advocate is that the present licence fee of Rs. 50/- per year is unreasonably high and arbitrary and hence it is really a tax. He urges that in such cases this Court should intervene and strike down the licence fee as illegal. In a case where the licence fee is so unreasonably and arbitrarily high that it is quite unrelated and out of all proportion to the services rendered, so that it cannot be said to form a quid pro quo for the services, then this Court will certainly intervene and strike it down, but in this case, in view of the allegations in the counter-affidavit of the 2nd respondent that the salary of the menials has increased from Rs. 10/- to more than Rs. 62/- per month and also in view of the depreciation in the value of money and the consequent rise in price of all commodities, it cannot be said that a licence fee of Rs. 50/- per year for a shop with more than five smiths workings therein is either unreasonably high or arbitrary. Therefore this objection has also to be rejected. In view of the above considerations we conclude that the Writ

Petitioner is not entitled to an order in his favour. Therefore we dismiss the Writ Petition, but in view of the decision of the Travancore-Cochin High Court in the petitioner's favour, we do not pass any orders regarding costs.