

(1977) 10 MAD CK 0007

In the Madras High Court

Case No : Second Appeals No's. 944, 1023 to 1464 of 1975

P.M.M.R. Subbiah Nadar and Others

APPELLANT

Vs

The Puliangudi Municipality

RESPONDENT

Date of Decision : 05-10-1977

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 93(4)

Citation : (1977) 10 MAD CK 0007

Hon'ble Judges : N.S. Ramaswami, J

Bench : Single Bench

Advocate : T.R. Mani and R. Nandakumar, for the Appellant; T. Sathia Dev, M. Shakir Ali, K. Devarajan and P. Chandrasekhar, for the Respondent

Judgement

N.S. Ramaswami, J.—The question in all these six appeals is whether the appellants are liable to pay profession tax as claimed by the

Puliyankudi Municipality. The appellants are respectively the plaintiffs in six suits, all filed against the Puliangudi Municipality represented by its

Commissioner and tried together by the court of the District Munsif, Tenkasi. All the six plaintiffs are residents of Dalavaipuram in

Ramanathapuram Dt., and they are carrying on business there in piece goods. All of them have their employees at Puliangudi (Tirunelveli Dt.)

where they supply yarn to the weavers and get them woven as sarees by paying the weavers on the basis of work turned out by them. Puliangudi

Municipality levied profession tax on the plaintiffs on the ground that they were "transacting business" within Puliangudi Municipal limits. Exs. A.

1, A. 15, A.43, A. 54, A.69 and A. 85 are the demand notices calling upon the plaintiffs to pay profession tax for the half year ending 30th

September, 1971 at the highest rate of Rs. 125 each. The plaintiffs thereupon

challenged the above demand notices by instituting the suits for declaration that the assessment is illegal and arbitrary and for cancelling the same as well as for the consequential relief of injunction, restraining the defendant-Municipality from collecting the said profession tax. The Municipality resisted the suits But the learned District Munsif agreed with the contentions of the plaintiffs and decreed the suits. On appeal by the Municipality, the learned Subordinate Judge, Tirunelveli, differed from the trial court and held that the plaintiffs were transacting business within Puliangudi municipal limits and that, therefore, the profession tax levied by the Municipality was not illegal or arbitrary or liable to be cancelled. Hence, these second appeals by the plaintiffs.

2. The contention of Mr. T.R. Mani, learned counsel for the plaintiffs-appellants, is that from the facts and circumstances of the case, it is not right

to hold that the plaintiffs were "transacting business" as contemplated under the Tamil Nadu District Municipalities Act, 1920, hereinafter referred

to as the Act. The only other contention is that, in any event, under S.93(4) of the Act there should be apportionment of profession tax between

the Puliangudi Municipality and Delavoipuram Panchayat and that the plaintiffs cannot be called upon to pay one profession tax at Delavoipuram

and another at Puliangudi.

3. To appreciate the contents of Mr. Mani, the relevant provisions may be noted first. S. 93(1) of the Act is as follows--

If the Council by a resolution determines that a profession tax shall be levied-- every company which, after the date specified in the notification

published in under S.80, transacts business in the municipality for not less than sixty days in the aggregate in any half year, and every person, who

after the said date, in any half year--

(a) exercises a profession, art, or calling or transacts business or holds any appointment, public or private;--

(i) within the municipality for not less than sixty days in the aggregate, or (ii) without the municipality but who resides in the municipality for not less

than sixty days in the aggregate, or

(b) resides in the municipality for not less than sixty days in the aggregate and is in receipt of any pension or income from investments,

shall pay a half yearly tax assessed in accordance with the rules in Schedule IV.

Clause (b) above is admittedly not applicable to the present case. Clause (a) (ii) is also not applicable because the plaintiffs are not residing within

the Puliangudi Municipality. Under clause (a)(i), it is clear that if a company or person exercises a profession, art, or calling or transacts business or

holds any appointment, public or private, it or he is liable to pay half yearly tax assessed in accordance with the rules in Schedule IV. It is not

claimed on behalf of the Municipality that the plaintiffs in the six cases are exercising any profession or calling or holding any appointment, public or

private. The only basis of the assessment is that the plaintiffs are "transacting business" as contemplated in clause (a) (i)

4. Sub-Sec. (3) of S. 93 provides for relief where the Company or person changes its or his place of business, etc. in a particular half year.

5. I am not referring to Sub-Secs. (2) and (4) of S.93 at present, for, they would be relevant only regarding the second point, namely, whether the

plaintiffs should be entitled to apportionment of tax even if Puliayangudi Municipality is entitled to claim it. The other sections of the Act are also not

relevant for the present purpose, except to note that S. 124 says that the rules and tables embodied in Schedule IV shall be read as part of

Chapter IV of Part III relating to taxation and finance.

6. Now, turning to Schedule IV referred above, R. 16 provides for the rate of profession tax leviable on half yearly income fixing the maximum at

Rs. 125.

7. R.17 says that a company or person shall be deemed to have transacted business and a person shall be deemed to have exercised a profession,

art or calling or hold an appointment within a Municipality if such company or person has an office or place of employment within such

Municipality.

8. R.18 speaks of how, for the purpose of levying profession tax, the "income" of a person or company is to be determined. I would refer to the

details of this rule presently.

9. The contention of Mr. Mani is that the scheme of the Act shows that only if a person or company derives income within the Municipality

concerned, the person or company can be assessed to profession tax on the ground of "transacting business", and in the present case there is

nothing to show that the plaintiffs are getting any income within Puliayangudi

Municipality. In other words, the contention is that a person or company can be said to "transact business" only if he or it derives an income from what he or it does within the Municipal limits. It is pointed out that admittedly the plaintiffs are not deriving any income as such, because, at best or at worst, they can only be said to produce sarees within Puliyangudi Municipal limits. It is stated that production of sarees involves only expenditure and not income and that therefore, even assuming that the plaintiffs are producing sarees or manufacturing the same in Puliyangudi they cannot be said to be "transacting business" there.

10. First of all, I would clear the point as to whether the plaintiffs are producing the sarees in Puliyangudi. The admitted facts are that each of the plaintiffs has an employee at Puliyangudi and maintains an account for supplying yarn to the weavers and getting back the finished goods from them and for payment of the amount due to the weavers. In the account book maintained, each weaver to whom yarn is supplied by the plaintiff has a ledger page under the heading, so and so account in the respective plaintiff's cloth shop at Puliyangudi. That is in five out of the six cases. In the sixth case, there is a slight variation in the heading, but it is not very material. Emphasis was laid on the fact that the weavers are not paid either daily wages or monthly salary, in support of the faint contention that the plaintiffs were not producing sarees at Puliyangudi. But, the mere fact that fixed wage or salary is not paid to the weaver concerned but payment is made on the work turned out by him, would not mean that the respective plaintiff who supplies yarn and gets back the finished goods is not producing sarees. It is to be noted that the ownership of the goods never passes from the plaintiffs concerned. The plaintiffs retain control over their goods and are bound to return the goods though not in the same form in which they receive. Under such circumstances, on the ground that it is the weaver who actually weaves the yarn into sarees, it cannot be contended that the plaintiffs are not producing sarees in Puliyangudi. Mr. Mani in fact did not stress this aspect in the course of his arguments. The contention proceeded on the basis that the plaintiffs are producing sarees at Puliyangudi, but still, they cannot be said to be "transacting business" there in as much as production of sarees involves only expenditure and there is no income in Puliyangudi.

11. Rule 18 of Schedule IV, as already seen, speaks about how the "income" of a company or a person is to be determined for the purpose of

levying profession tax. Rule 16 also speaks of profession tax leviable on half-yearly "income". Rule 19 contemplates the municipality requiring the

company or person to furnish a return in the prescribed form showing the income on the basis of which such company or person is liable to be

assessed to profession tax. Sub-rule (2) thereof speaks of the executive authority levying profession tax on the basis of income as per the return,

and sub-rule (3) provides for levying such tax on estimate in the absence of a return. Sub-rule (4) is as to how the estimate is to be made.

12. Therefore, Mr. Mani contends that the assessee should have earned an income within the Municipality and only such income can be the basis

of the levy of profession tax. But, the argument is bereft of any merit. An examination of rule 18, which, as already seen speaks of the method of

computation of "income", makes it clear that the assessee need not derive an income as such, to make him liable for profession tax on the basis of

"transacting business". Rule 18(1)(a) says that where incometax is assessed on a company or person for the years comprising the half years

concerned, one half of the amount at which the profits and gains of such business are computed under the Indian Incometax Act, 1922, shall be

deemed to be the income for the profession tax. This undoubtedly refers to the actual income derived by the assessee. But rule 18 (1) (b) which I

think is the relevant clause in the present case undoubtedly contemplates a situation where an assessee does not actually derive income as such,

for, the said clause says that where the amount of the said profits and gains is not ascertainable, such percentage or percentages as the State

Government may, subject to the approval of both Houses of the State Legislature, determine, of the turnover of such business transacted in the

area of the municipality during the half year. The contention of Mr. Mani is that there might be cases where the assessee derives actual income but

the same is not ascertainable and clause (b) of rule 18 (1) provides only for such a situation and not a case where no income is derived.

13. That this contention is not tenable would be evident if one reads sub-rule (3) of rule 10. It is as follows :--

(3). For the purpose of Cl. (b) of sub-rule (1) and sub-rule (sic) the turnover of business in any municipality means the aggregate money value of

the goods produced, manufactured, purchased or sold or of any other business except moneylending transacted in such municipality.

Explanation--In determining the turnover of business under this sub-rule--

(a) where the delivery of any goods on account of any purchase made by any company or person and the delivery on account of the sale thereof

by the same company or person are both effected in the State of Tamil Nadu only the latter transaction shall be taken into account ;

(b) where the delivery of any goods on account of any purchase made by any company or person is effected in any place outside the said State

and the delivery on account of the sale thereof by the same company or person is effected in any place in the State the latter transaction shall be

taken into account ; and

(c) where the delivery of any goods on account of any purchase made by any company or person is effected in any place in the sale State and the

delivery on account of the sale thereof by the same company on person is effected in any place outside the said State the former transaction shall

be taken into account.

It is clear from the above sub-rule (3) that the turnover of business referred to in rule 18 (b) is not confined to purchase or sale turnover, for, the

rule specifically says that the turnover of business means the aggregate money value of the goods produced, manufactured, purchased or sold or of

any other business except moneylending." Therefore, if the plaintiffs have produced sarees within Puliyangudi municipal limits, surely there is

turnover of business by them within that municipality. Such a turnover is also taken in by Cl. 18(1) (b). If that be so, there is no basis for the

contention that there should be actual receipt of income, to tax the plaintiffs on the basis of "transacting business" within the municipality.

Production of goods or manufacture of the same would involve naturally expenditure, and no income as such is derived in such a process. But it is

made abundantly clear by sub-rule(3) that in a case of production of goods or manufacture of the same, the aggregate money value of the goods so

produced or manufactured shall be, for the purpose of Cl. 18 (1)(b), the turnover of business.

14. At one stage of the arguments, Mr. Mani contended by referring to the explanation to rule (3) (already quoted) that turnover of business would

refer only to purchase or sale of goods and income derived therefrom. However, at a later stage he did not press such a contention, quite rightly.

The body of the rule, as I said earlier, makes it quite clear that turnover of business is not only purchase or sale of goods, but also production or

manufacture of the same. The explanation is confined to turnover of business by purchase or sale. But that does not mean that if there is no

purchase or sale there is no turnover of business.

15. As already seen, rule 17 says that a company or person shall be deemed to have transacted business if it or he had an office within the

municipal limits. Here the plaintiffs are said to be having their respective "office" in Puliyangudi. It is stated that an employee of the respective

plaintiff is working at Puliyangudi for supplying yarn to the weavers and taking back the finished sarees and paying the amount due to them. The

dictionary meaning of the word "office" is "'a place where business is transacted.'" Therefore, rule 17 may not be of help in deciding the question

whether in the present cases the plaintiffs are transacting business within the Puliyangudi municipality. But, for the reasons already stated, I am quite

clear that they are transacting such business and they are liable to pay profession tax at Puliyangudi.

16. The decision reported in Babu Naidu v. Municipal Council, Adoni 1938-2-M.L.J. 1035 would have no application, because it is a case

where, on facts, it was held that the assessee was not transacting business in the place concerned. The assessee was a licensed owner of an arrack

distillery at Bellary. He was keeping a distribution depot at Adoni, where arrack was distributed only to licensed vendors. The depot keeper had

no authority to supply on credit. Under such circumstances, it was held that the business of selling liquor was really being transacted at Bellary,

where the contracts were made and where control was exercised and not at Adoni where the contracts were merely executed. It was pointed out

that the Adoni depot keeper's control over the trade was purely mechanical. The Municipal Council Vs. The Bombay Company, Ltd., relied on

by Mr. Mani is also a similar case.

17. Mr. Mani referred to Municipal Commissioners Vs. Baranagore Jute Factory Co. Ltd., in an attempt to show that manufacture or production

of goods would not amount to transacting business. But that decision does not

help him at all. That is under the Bengal Municipal Act. The question was whether a particular company engaged in the business of manufacturing jute was liable to license tax under S. 182 read with S. 123 and Sch. 4 of the said Act. Under S. 182 of that Act, 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 shall take out a half-yearly licence and pay the tax imposed under Cl. (f) of Sub-sec. (1) of S. 123. On a consideration of the relevant provisions of that Act, the Calcutta High Court pointed out that a company or person transacting business within the municipality is liable to licence tax only if it can be said to be exercising a trade, profession or calling within the municipality and not otherwise. It has further held that carrying on the business of manufacturing jute, though amounted to transacting business for profit, does not amount to carrying on trade under the relevant provisions in that Act. The decision nowhere says that manufacture of jute is not transacting business, in fact, the decision indicates that such manufacture is not only transacting business, but it is transacting business for profit.

18. I may refer to *Indian Leaf Tobacco Development Co. Ltd v. Corporation of Madras* 1954-1-M.L.J. 176=67 L.W. 51 (D.B.) though it may not be directly to the point. It is a case under the Madras City Municipal Act. S. 110 in the Act provided for the levy of a law for transacting business within the city in any half year for not less than sixty days in the aggregate. Under S. 113(1) of that Act, it is provided that the expression "transacts business" in S. 110 shall be deemed to include the doing of acts of business of whatever nature whether isolated or not, such as soliciting, obtaining or transmitting orders, or buying, making, manufacturing, exporting, importing, receiving, transmitting or otherwise dealing with goods. A Division Bench of this court held that having regard to the expression "transacting business" in S. 113 (1) of the City Municipal Act, a company must be held to be transacting business in the city within the meaning of S. 110 of the said Act even though it does not earn any income as such in the city and that even acts of receiving and transmitting goods would fall within the expression "transacting business". This decision may not squarely apply because under the District Municipalities Act, with which I am concerned in these appeals, the expression "transacting business"

is not, made to include the doing of acts of business of whatever nature whether isolated or not, such as soliciting, obtaining or transmitting orders,

etc., as in S.113(1) of the Madras City Municipal Act. Here, however, as already seen, the plaintiffs must be held to have transacted business

within Puliangudi municipality, because they carry on business of manufacture or producing sarees as contemplated in R.18(3) of schedule IV of

the Act.

19. Under the above circumstances. I have no hesitation to hold that plaintiffs are bound to pay profession tax to Puliyangudi Municipality as

undoubtedly they are transacting business within that municipality.

20. The only other question is whether the plaintiffs are entitled to apportionment of the profession tax. Earlier I had omitted to refer to S.93(2).

That section says that a person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in sub-S.(1)

as being liable to tax. This would obviously refer to the aggregate income in one particular municipality A person cannot be charged separately for

the income from each source such as profession or calling or holding any appointment or transacting business, specified in sub-S.(1). The tax could

be charged under the appropriate class on the aggregate income from all the sources. That has nothing to do with the question of apportionment

claimed in the present case.

21. The relevant section is S.93(4). It reads--

Nothing contained in this section shall be deemed to render a person who resides within the local limits of one local authority, and exercises his

profession, art or calling or transacts business or holds any appointment within the limits of any local authority or authorities liable to profession tax

for more than the higher of the amounts of the tax leviable by any of the local authorities. In such a case the State Government shall apportion the

tax between the local authorities in such manner as they may deem fit and the decision of the State Government shall be final:

Provided that where one of the local authorities concerned is a cantonment authority or the port authority of a major port, the decision of the State

Government shall be subject to the concurrence of the Central Government.

The contention on behalf of the plaintiffs is that they are residing in Dalavoipuram, Ramanathapuram Dt., that they have been levied profession tax

there and that therefore, S.93(4) applied in their cases. A plain reading of the section goes to show that it would be applicable only to a case

where a person is assessed to profession tax on the ground of residence within the limits of one local authority. As seen earlier, under S.93(1) (a)

(ii), if a person exercises a profession or calling or transacts business or holds any appointments outside the limits of a particular Municipality, but

he resides in the said Municipality for not less than sixty days in the aggregate, he would be liable to profession tax, even though he does not

exercise a profession or calling or transacts business or holds any appointment within the said Municipality. S.93(4) says that if a person resides

within the local limits of one local authority and exercises his profession, etc., within the limits of any other local authority or authorities, he shall not

be liable to profession tax for more than the higher of the amount of the tax leviable by any of the local authorities. But in the present cases, it is not

the case that the plaintiffs are being assessed to profession tax by Dalavoipuram local authority on the ground of residence. It is an admitted case

that the plaintiffs are actually doing business in piece goods in Dalavoipuram, apart from residing there. Therefore, if they are assessed to

profession tax at Dalavoipuram, it is not under S.93(1)(a)(ii) on the ground that they reside there but transact business outside the limits of that

local authority. They are being taxed only under S.93(1)(a)(i) on the ground of transacting business within the limits of Dalavoipuram local

authority. S.93(4) would not apply to such a case.

22. No direct precedent on the interpretation of S.93(4) has been placed before me. The decision reported in Madras State Electricity Board v.

Gobichettipalayam Municipality 1968-2-M.L.J. 214=81 L.W. 352, referred to by the learned counsel for the Municipality has no relevance,

because there the question was whether S.93(4) can be invoked by a company. It is pointed out that the scheme of dichotomy is throughout

observed between "person" and "company" under the Act and that S.93(4) relates only to a "person" residing within the local limits of a particular

local authority and it has no application to a company.

23. Ramadas Transports Pte. Ltd. v. Vijayawada Municipality 1967 Andh. W.R. 174 (F.B.), is also a similar case where it is pointed out that

S.93(4) does not apply to a company. There, the contention was that a company

is also a "person" because of the definition contained in the General Clauses Act which says that "person" shall include any company or association of individuals, whether incorporated or not, and that therefore, when S. 93(4) refers to a person, it must be deemed to include a company. But the Full Bench pointed out that the definition of the word "person" in the General Clauses Act would not apply if there is something repugnant in the subject or context, that an examination of the provision of the District Municipalities Act goes to show that the distinction between "person" and "company" is maintained and that therefore, the word "person" occurring in S.23(4) cannot be said to include a company.

24. They further pointed out that under S.93(1) "company" is not liable to tax on the basis of residence and therefore, there is no scope, room or need for company to get relief contemplated in sub-sec. (4) of S.93 and that the said provision can apply only to an individual like a human person and not to a "company". At page 179, the Full Bench observed--

Thus, if a person was residing in one Municipality as contemplated in S.93(1)(a)(ii) and also transacted business within another Municipality as envisaged in S.93(1)(a)(i) he would ordinarily be liable to be taxed by each of those Municipalities in the absence of any provision to the contrary.

S. 93(4) provides for relief to such a person from being taxed in full by each of those two (or more) Municipalities.

This is in the nature of obiter dicta as the only question there was whether S.93(4) applies to a company. Even so, if I may say so with respect, the observations bring out the scope of S.93(4) in its application to a person. The question whether a person who is assessed to profession tax by a

local authority where he resides, not on the ground of residence but on the ground that he transacts business or exercises a profession or a calling

or holds any appointment under S.93(1)(a)(i), and levied tax by another local authority also under S.93(1)(a)(i) he is entitled to relief under

S.93(4), did not fall for consideration by the Full Bench and it has not been considered.

25. The only other provision which requires to be referred regarding the present point is R. 18(2) of schedule IV. As already seen, while

considering the first point, R.18(1) deals with how the income of a person or company for the purpose of levying profession tax is to be computed.

Sub-R.(2) is in the following terms--

Where a company or person transacts any business other than money lending partly in the area of a municipality and partly outside such area, the

income of such company or person from the transaction of such business in the area of the municipality shall for the purpose of levying profession

tax under this Act be deemed to be the percentage referred to in Cl.(b) of sub-R. (1) of the turnover of such business transacted in such area during

the half year or the corresponding half year of the previous year, as the case may be.

I am of the view that this sub-rule has nothing to do with the question of apportionment. It provides only for the method of computation of the

income. If a person or company transacts any business partly in the area of a municipality and partly outside, such area (other than money lending),

the income from the transaction of such business in the area of the municipality shall be deemed to the percentage referred to in clause (b) of sub-

R.(1). I have referred to the abovesaid Cl.(b) of sub-R.(1) in detail while considering the earlier point. I fail to see how sub-R.(2) can be invoked

regarding the question of apportionment of tax. It is also to be noted that even regarding the computation of the income on the percentage referred

to in Cl.(b) of Sub-R (1) of the turnover relates to a particular business. It is to be noted that this sub-rule (sub-R.2) does not cover different

businesses carried on by a person or company, some within the municipal limits and some outside the same. It only deals with a single business

(other than money lending) partly carried on in the area of the municipality and partly outside such area. The reference to "any business" in the first

part of the sub-rule and the reference to the same as such business in the later part of the Sub-Rule makes it clear that even computation of income

on the percentage referred to in Cl.(b) of sub-R. (1) is confined to a particular business. Even assuming it to be otherwise, as the rule deals with

only computation of the income derived within the municipality regarding the business carried on partly there and partly outside, the assessee would

be liable according to the half yearly income within the municipality so computed. The fact that the assessee has to pay profession tax to some

other local authority would have nothing to do with the tax liable to be paid to the municipality concerned.

26. It is also to be noted that it is not the case of the plaintiffs that the business of producing sarees which is carried on within Puliyangudi

municipality which levied the tax is also being carried on within the local authority of Dalavoipuram. No doubt the plaintiffs are carrying on business

in piece goods at Dalavoipuram. But it is not their case that they are manufacturing and producing sarees at Dalavoipuram. Therefore, in any event,

the profession tax sought to be collected by Dalavoipuram local authority is not for the business of manufacturing or producing sarees. The

business of buying and selling sarees is not the same as manufacturing or producing sarees. Mr. Mani contended that producing sarees is closely

connected with the purchase and sale of sarees, and therefore, it must be held that they are part of one and the same business. I am unable to

agree with him. Trading in sarees need not necessarily involve manufacture and producing the same or vice versa. The fact that the plaintiffs are not

only trading in sarees but also are producing the same would not mean that production of sarees and sale of sarees are parts of the same business.

27. Even assuming it is part of the same business, R. 18(2) would in no way help the plaintiffs as indicated earlier. The evidence in the case

discloses that the plaintiff in each case is producing sarees in Puliyangudi municipality, valued at several thousand rupees. From the evidence the

lower appellate court observes that the value of the sarees produced by the plaintiff in each case comes to Rs. 4500 per day. It is pointed out on

behalf of the plaintiffs that such computation by the lower appellate court is incorrect. Even so it cannot be disputed that the value of the goods

produced every day by the plaintiffs in each case is in the range of thousands of rupees. R.18(3) (as extracted earlier) says that for the purpose of

clause(b) of sub-R.(1) and sub-R.(2) of R.18, the turnover of business in any Municipality means the aggregate money value of the goods

produced, etc. That being so, I fail to see how the plaintiffs can question the Puliyangudi Municipality levying the tax, on the basis that the half

yearly income is more than Rs. 15,009. The result is all the six appeals fail and they are accordingly dismissed. But in the circumstances of the case

there will be no order as to costs.