

(1942) 07 MAD CK 0025
In the Madras High Court

R.S. Naidu

APPELLANT

Vs

Auditor and Examiner of Local Fund Accounts

RESPONDENT

Date of Decision : 15-07-1942

Acts Referred:

Stamp Act, 1899 — Section 44(3)

Citation : AIR 1943 Mad 97 : (1943) ILR (Mad) 282 : (1942) 55 LW 673 :
(1942) 2 MLJ 538

Hon'ble Judges : Kunhi Raman, J

Bench : Division Bench

Judgement

Kunhi Raman, J.—This is an appeal from the order of the learned District Judge of Madura in a petition presented under rule 61 of schedule

IV of the District Municipalities Act IV of 1920. The prayer in the petition before the lower Court was to set aside a surcharge order made by the

Auditor and Examiner of Local Fund Accounts against the appellant who was the chairman of the Madura Municipality from the 2nd July, 1923 to

the 10th December, 1930. The surcharge certificate mentions that the Municipality had sustained a loss as the result of negligence on the part of the

appellant in the following circumstances. For the years 1929-30 and 1930-31, the Municipal sewage farm in Madura was leased out for cultivation

to the highest bidders at an auction conducted by the petitioner. As required by the rules, the successful bidders signed unstamped muchilikas as

soon as their bids were accepted. According to Section 69 of the District Municipalities Act, it was necessary that subsequently formal written

contracts should have been drawn up and executed by the successful bidders and also signed by two Municipal Councillors. These contracts were

not executed in respect of the auctions which formed the subject-matter of the

surcharge certificate. The lessees committed default in paying the rent. Thereupon the Municipality filed suits against them based upon the contracts alleged to have been entered into by them or in the alternative on the basis of their liability to pay damages for use and occupation of the farm. It is stated that originally all the suits were dismissed by "the trial Court for the reason that the contracts could not be proved, the formal documents prescribed by the statute not having been executed by the parties concerned. The matter came up here in the form of civil revision petitions and it was held by the High Court in 1935 (C.R.Ps. 1356 to 1381 of 1933) that the suits ought not to have been dismissed in toto because of the absence of formal contracts but that the trial Court ought to have considered the alternative prayer for damages for use and occupation of the farm. The suits were accordingly remanded for retrial in the light of these observations and the retrial resulted in decrees being passed for a total sum of Rs. 1,298-1-6. According to the rental agreements relied on in the suits, the total amount payable by the tenants was Rs. 4,263-11-10. It was alleged that for the difference of Rs. 2,965-10-4, the appellant was liable because it represented the loss sustained by the Municipality as a result of his negligence in not having carried out the provisions of the District Municipalities Act and of the terms of the auction by making the successful bidders execute formal contracts on duly stamped paper. At the trial of these suits, a total sum of Rs. 792-8-0 had to be paid by the Madura Municipality towards stamp duty and penalty in respect of the unstamped muchilikas that were relied on for proving the case of tenancy. This is also described as a loss sustained by the Municipality as a result of the negligence of the appellant in not obtaining duly stamped contracts from the parties. These two items make up the total of Rs. 3758-2-4 for which the Local Fund Auditor granted a surcharge certificate. The certificate was issued on the 22nd July, 1938. As already stated, the term of the appellant's tenure of office as Chairman of the Madura Municipality extended from the 2nd July, 1923, to the 10th December, 1930. It will thus be seen that the certificate was issued nearly eight years after the appellant had vacated office as Chairman.

2. At the hearing of the petition for discharging this certificate, it was found by the learned District Judge that to the extent of Rs. 216-14-3 the

appellant has been wrongly surcharged, because that admittedly referred to a lease granted after the appellant had vacated the office of Chairman

of the Municipality. In respect of the balance the Court below has refused to interfere. It is from this decision that the present appeal is filed.

3. It would be convenient to refer first to the item of Rs. 792-8-0 mentioned in the surcharge certificate. As already stated, this represents the

stamp duty and penalty paid by the Municipality at the hearing of the 27 suits for damages for use and occupation filed against the lessees of the

sewage farm. It is argued by the learned advocate for the appellant that it was open to the Municipality to have requested the Court at the time that

the suits were disposed of to include these amounts in the decrees against the defendants u/s 44 (3) of the Indian Stamp Act. It is also argued that

it appears from the records that a petition for refund of this amount was presented by the Municipality to the Board of Revenue after the appellant

had vacated office and that this petition was dismissed on the ground that it was belated and the right had become barred by limitation. The

appellant's advocate argues with considerable force that since this application was made after the expiry of a year from the date of payment and it

was rejected for that reason on the ground of limitation, it is not open to the Municipality to claim the amount from the appellant. Even granting that

this item comes under the category of damages sustained by the Municipality as a result of the negligence of the appellant, it was incumbent upon

the Municipality to have done everything to mitigate the damages. That this was not done is clear from the conduct of the Municipality in not

applying in time for refund of this amount. The Court below seems to have proceeded on the basis that there was no guarantee that the Board

would have granted a remission of this amount even if the petition was filed in time. In our opinion this is not quite the right method of approaching

this question. There is nothing in the order made by the Board of Revenue to indicate that there were any reasons other than that of limitation which

induced the Board to reject the application. Again it does not appear from the record that there was any endeavour made at the time the suits were

disposed of to see that the amounts of the stamp duty and penalty were included in the decree and imposed as a liability upon the lessees

concerned. Even otherwise it seems to us that this item is too remote a consequence of the petitioner's conduct to warrant the view that he is

responsible for it. For these reasons we are of opinion that the appellant is in any event not liable for this part of the claim.

4. Coming now to the main item which forms the subject-matter of this appeal, it must be stated at the outset that no case of misconduct has been

made out against the appellant. The question is whether he has been guilty of negligence. The attitude of the appellant in the Court below was that

he had discharged the duty that was directly imposed on him with regard to the leases of the sewage farm which were granted by him after the

auctions. According to the rules, as soon as the highest bid at the auction was accepted by the appellant who was the proper officer to hold the

auctions, he had to take muchilikas from the successful bidders and sign those documents himself. This he had done. It is specifically alleged in the

verified petition filed by him in the Court below and also in his evidence that according to the routine or rule of precedence prevailing in the office of

the Municipality the manager is responsible for the next step in the progress of events which was to obtain the value of the proper stamp to be

affixed to a formal contract from each of the successful bidders and get that formal contract signed by each of the bidders and also by two

Municipal councillors on behalf of the Municipality. It is significant that at this stage the Chairman has no direct duty to discharge except perhaps

the general duty imposed upon him to be responsible for the management of the Municipal Office. Out of a number of contracts that were entered

into as a result of auctions conducted by the appellant, the total amount of the value of which exceeded Rs. 20,000 only the contracts which

formed the subject-matter of the surcharge certificate the total value of which is Rs. 4,263-11-10 were not formally entered into as required by the

rules. As already stated the appellant had made a specific point that he was relying on office routine and that he was relying on the manager

carrying out the office routine in respect of the subsequent stages relating to the contracts involved in the present appeal. There was no evidence

contra and there was not even a denial of the statement made by him. Considering the small amount involved in the present litigation as compared

with the total amount of income derived by the Municipality at the time the appellant was doing duty as chairman it is, in our opinion, not

unreasonable to accept the explanation given by the appellant that he was relying upon the due discharge of duty by the manager and his

subordinates in accordance with established official routine, in respect of the contracts which are referred to in the surcharge certificate. Such

confidence in the due discharge of the duties reposed bona fide in the manager and his establishment cannot, in our view, be regarded in the

circumstances of the present case as amounting to negligence which would warrant the issue of a surcharge certificate. The position of a chairman

like the appellant is, in our opinion, not entirely dissimilar to that of a paid director of a bank who is sought to be made personally liable for loss

caused to the bank by alleged misconduct or negligence. In dealing with such a case the Court of Appeal said in *In re National Bank of Wales*,

Limited L.R. (1899) 2 Ch. 629. , as follows:

.... Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them as well as by those

below them until there is reason to distrust them. We agree that care and prudence do not involve distrust; but for a director acting honestly himself

to be held legally liable for negligence, in trusting the officers under "him not to conceal from him what they ought to report to him, appears to us to

be laying too heavy a burden on honest businessmen.

The view was affirmed by the House of Lords in *Dovey v. Cory*, L.R. (1901) A.O. 477. The Earl of Halsbury, then L.C., in his speech says as

follows:

The charge of neglect appears to rest on the assertion that Mr. Cory like the other Directors did not attend to any details of business not brought

before them by the General Manager or the Chairman and the argument raises a serious question as to the responsibility of all persons" holding

positions like that of Directors, how far they are called upon to distrust and be on their guard against the possibility of fraud being committed, by

their subordinates of every degree. It is obvious, if there is such a duty, it must render anything like an intelligent devolution of labour impossible.

Was Mr. Cory to turn himself into an auditor, Managing Director, a Chairman and find out whether auditors, Managing Directors and Chairmen

were all alike deceiving him.

In the present case it will be seen that there was no fraud practised by the office Manager. At the most it was only a case of negligence on the part

of the office Manager which escaped undetected by the appellant. Omission to

detect it in the present case in which the evidence shows that the appellant trusted the manager of the office to do his duty, does not amount to culpable negligence on the appellant's part seeing that he had no reason to doubt that the manager would fail to do his duty. It is significant that in the present case even the amounts that were decreed against the lessees have been written off by the Municipal Council for reasons best known to themselves. Can it then be said that had the lessees been compelled to execute formal leases on duly stamped paper, the Municipality would not have sustained any loss? It may be that on the strength of such formal documents decrees for higher amounts might have been obtained. But when the judgment debtors were not in a position to pay even the lesser amounts decreed against them and even those amounts were written off by the Municipal Council, it will, to say the least, be highly technical to say that the Municipality had sustained a loss to the extent of the difference between the amount decreed and the extent to which they might have obtained decrees had formal contracts been taken from the lessees. For all these reasons we are of the view that there was no warrant for the issue of a surcharge certificate in the present case. The order of the Court below must therefore be reversed and the surcharge certificate ordered to be set aside. We do not however consider that this is a proper case in which the appellant should be given his costs of this appeal. The parties shall bear their own costs.