
(1966) 12 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 999 of 1962

Sri Ramadas Motor Transport Private Ltd.

APPELLANT

Vs

Vijayawada Municipality

RESPONDENT

Date of Decision : 30-12-1966

Acts Referred:

Andhra Pradesh District Municipalities Act, 1920 — Section 3(8), 80, 92, 93, 93(1)
Andhra Pradesh General Clauses Act, 1891 — Section 3(22)
General Clauses Act, 1897 — Section 3, 3(42)
Income Tax Act, 1922 — Section 10

Citation : AIR 1968 AP 160

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Basi Reddy, J.; Ananthanarayana Ayyar, J

Bench : Full Bench

Advocate : Sambasiva Rao, for the Appellant; P. Ramachandra Reddy, for the Respondent

Judgement

Ananthanarayana Ayyar, J.—The Writ Petitioner filed this petition praying this Court to call for the records and issue a Writ of Mandamus or any other direction or order directing the respondent-Vijayawada Municipality to forbear from collecting profession tax separately from the petitioner-company in pursuance of assessment No. 7689-A dated 19-7-1962.

2. The petitioner, Sri Ramdas Motor Transport Private Limited, is a Transport Company with its Head Office at Kakinada and various branches at in several towns. In particular, it has got one branch at Rajahmundry and two branches within the limits of Vijayawada Municipality.

3. The Writ Petition originally came up for hearing before Manohar Pershad, J. (as he then was) who referred it to a Bench. The case then came up before a Division Bench consisting of one of as (H. A. A. J.) and Narasimham J. That Division Bench considered an unreported decision of an earlier Division Bench of this Court in Mahalakshmi Butter Co. v. Nagayalanka Village Panchayat

unreported decision of this Court D/- 28-9-1962 in S. A. No. 989 of 1957 (Andh. Pra.) regarding Section 65 of the Madras Village Panchayats Act, 1950 (Madras Act 10 of 1950) which was substantially similar to the provisions of the Andhra Pradesh District Municipalities Act, (1920) (Act V of 1920) (hereafter referred to as the Act) concerned in the present Writ Petition and found itself unable to agree with the view expressed in that decision. So, the learned Judges felt it desirable that the matter be placed before the Honourable the Chief Justice for being posted before a Full Bench. Accordingly, this Writ Petition has been posted before this Full Bench.

4. The important question to be decided in this case is whether the petitioner company has to be assessed to profession tax at only one place as contended by it i.e., at Kakinada by the Municipality of that place on the entire business done by it including all the branches or whether it is liable to pay profession tax in the Vijayawada Municipality in respect of the business transacted therein, even after paying profession tax to the Kakinada Municipality.

5. In these proceedings, we are concerned with the District Municipality Act, 1920 as it stood amended and not with the District Municipalities Act, 1965.

6. Section 93 of the Act runs as follows:--

"Section 93(1). 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 u/s 80, transact 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 sixty days in the aggregate, or

(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 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 Sch. IV.

(2) A person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in Subsection (1) as being liable to the tax.

(3) If a company or person proves that it or he has paid the sum due on account of the profession tax levied under this Act, or under the Madras Local Boards Act, 1920, or any tax of the nature of a profession tax imposed under the Cantonments Act, 1924, for the same half-year to any municipal council or local board or cantonment authority in the Andhra area of the State of Andhra Pradesh such company shall not be liable, by reason merely of change of place of business, exercise of - profession, art or calling, appointment or residence to pay

to any other municipal council, local board or cantonment authority more than the difference between such sum and the amount to which it or he is otherwise liable for the profession tax for the half-year under this Act, or any of the aforesaid Acts.

(4) Nothing contained in this section shall be deemed to render a person who resides within the local limits of one local authority and exercise his profession, art or calling or transacts business or holds any appointment within the limits of any other 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:

XX XX XX"

Rules 17 and 18 in Schedule IV to the Act run as follows:--

"17. 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 held an appointment within a municipality if such company or person has an office or place of employment within such municipality.

"18 (1) Where a company or person transacts any business other than money-lending in any half-year exclusively in the area of a single municipality, the income of such company or person from the transaction of such business shall, for the purpose of levying profession-tax under this Act during the half-year deemed to be -

(a) Where Income Tax is assessed on such company or person under the Indian Income Tax Act, 1922, for the year comprising the half-year, one half of the amount at which the profits and gains of such business are computed u/s 10 of the Indian Income Tax Act, 1922, for the purpose of assessing the income tax: and

(b) Where the amount of the said profits and gains is not ascertainable or where such company or person is not assessed to Income Tax, such percentage or percentages as the State Government may subject to the approval of the Andhra Pradesh Legislative Assembly determine of the turnover of such business transacted in the area of the municipality during the half-year or where this is also unascertainable, during the corresponding half-year of the previous year.

(2) 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 Clause (b) of Sub-rule (1) of the turnover of such business transacted in such area during the half-year of the corresponding half-year of the previous year, as the case may be.

(3) For the purposes of Clause (b) of Sub-rule (1) and Sub-rule (2), 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 money-lending transacted in such municipality.

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

XX XX XX XX XX XX"

The word "person" is not defined in the Act.

7. "Company" is defined in Section 3(8) of the Act as follows :--

"Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament and included any firm or association carrying on business in the Andhra area of the Andhra Pradesh whether its principal place of business is situated in the said State or not."

Section 3 (22) of the Andhra Pradesh General Clauses Act, 1891 (Act No. 1 of 1891) defines "person" thus;--

"person" shall include any company or association of individuals whether incorporated or not"

8. The contention of Shri Sambasiva Rao, the learned Counsel for the Writ Petitioner, is that Section 93 (4) of the Act applies to this case and that, therefore, the petitioner company cannot be taxed by the Vijayawada Municipality after it is once taxed by the Kakinada Municipality except to the extent mentioned in Section 93 (4) of the Act. Section 93 (4) of the Act mentions "person" and not "company" Shri Sambasiva Rao relies on the definition of the word "person" in Section 3 (22) of the General Clauses Act referred to Supra. But Section 3 of the General Clauses Act states as follows:--

"In this Act and in every Act of the State of Andhra Pradesh, made after the commencement of this Act (i.e., the General Clauses Act, 1891) unless there be something repugnant in the subject or context."

Consequently, the word "person" in Section 93(4) of the Act would Include "company" unless there be something repugnant in the subject or context.

9. Shri P. Ramachandra Reddy, the learned Counsel appearing on behalf of the respondent Municipality, contends, that there are various features including the general scheme of the Act and several express and implied provisions in the Act which are repugnant to the view that "person" in Section 93(4) of the Act should be treated as including "company".

10. Shri Sambasiva Rao relies on the decision in The Municipal Council Vs. Parry and Co., a firm of merchants carrying on business in 1st Line Beach, There, a Division Bench of the Madras High Court was dealing with Section 93(3) of the Act as it stood at the time when the decision was rendered on 12-3-1926. The decision rested on the following grounds. Reading Section 93 by itself would

seem to include all places of business in which the firm carried on trade. But, a reading of Clause 3 of Section 95 showed that, if a tax was paid in one Municipality that amount might be deducted from the profession-tax (the word "income tax" found in the report is obviously a mistake for "profession tax") that may fall due in another. Further, there was the provision under Rule 18 of Schedule IV which stated what persons should be deemed to have exercised a profession or trade or calling and there it was distinctly laid down that he should be deemed to have exercised a profession art, trade or calling, if his principal office or place of employment was within the Municipality. The word "Principal" qualified both "office" and "place of employment"

11. In *Municipal Council Vs. Ralli Bros.*, the question arose whether Messrs. Ralli Bros., whose principal office was in Switzerland and who had a branch office at Tuticorin, was liable to pay profession tax in Tuticorin Municipality, Pandalai, J. followed the decision of the Madras High Court in 52 M LJ 360 : *The Municipal Council Vs. Parry and Co.*, a firm of merchants carrying on business in 1st Line Beach, reluctantly observing thus: (at p. 420).

"The question depends upon the construction of Section 93. District Municipalities Act, 1920, and the bearing of Rule 18, Sch. 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 52 Mad LJ 360 : *The Municipal Council Vs. Parry and Co.*, a firm of merchants carrying on business in 1st Line Beach, by which I am bound that it is."

12. In *A.L.V.R.P. Veerappa Chettiar* represented by his authorised agent *M.V. Somanatha Aiyar Vs. Municipal Council*, the relevant facts were as follows. The plaintiff was a Nattukottai Chetti whose profession was money-lending which he exercised at Devakottah. He had purchased a Zamindari in the Palni Taluq. The Zamin was situated wholly outside the limits of the Palni Municipality. The plaintiff maintained in Palni Town a resident agent who collected his Zamin's rent for him. The plaintiff did not reside within the Municipality for sixty days in the half-year in question. The trial Court held that the plaintiff had, through his agent, been in receipt of income within the Municipality and was, therefore, liable for profession-tax. On revision, the Madras High Court reversed the decree of the trial Court and held that the plaintiff did not reside within the Municipality and was, therefore, not liable to pay the profession tax. The learned Judges observed thus: (at p. 430 of Mad LJ) = (at p. 608 of AIR):

"The respondent has tried to argue that "residence" will include "the maintenance an office" although the principal never appears there. No doubt the word when it has been necessary to interpret its meaning in Income Tax and other statutes, but we think that its meaning in this Act may be decided by a consideration of the reported rulings under the old District Municipalities Act of 1884, and the consequent alteration of the provisions in the new Act."

At page 431 (of Mad LJ) = (at p. 608 of AIR) the learned Judges laid down the test in the following terms:

"We think, therefore, that the test in such a case is personal presence within the Municipality, and that "residence" in Section 95 has to be interpreted in the sense of a personal residence and that one who neither himself or his family within the Municipality but merely maintains an office for the collection of his rent cannot be said to reside within the Municipality".

Before amendment in 1930. Section 92 and Section 93 of the Act ran thus:

"Section 92. If the Chairman publishes a notification u/s 80 that a companies" tax shall be levied, every company transacting business within the municipality for profit or as a benefit society shall after the date specified in the said notification pay a half-yearly tax on its paid-up capital on the scale shown in Schedule IV, if and as soon as it has transacted business in the municipality for the period laid down in Section 95.

Explanation: Whenever a company employs a servant or agent to represent it for the purpose of transacting business in a municipality such company shall be deemed to transact business within the municipality and such servant or agent shall be liable for the tax in respect of the company"s business whether or not he has power to make binding contracts on behalf of the company."

"Section 93(1). If the Chairman publishes a notification u/s 80 that a profession tax shall be levied, every person not liable to the companies" tax who within the municipality and for the period laid down in Section 95 exercises after the date specified in the said notification a profession, art, trade or calling or holds any appointment, public or private, or is in receipt of any pension or income from investments or money-lending or any source other than houses and lands inside the municipal limits bringing him within one or more of the classes of person specified in schedule IV, shall pay a half-yearly tax on his professional Income, salary and pension on the scale shown in the said schedule.

(2) A person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in Sub-section (1).

(3) No person who shall prove that he has paid the sum due on account of the profession tax levied under this Act, or under the Madras City Municipal Act, 1919, or to any tax of the nature of a profession tax imposed under the Indian Cantonments Act, 1910, for the same half year in any other municipality or cantonment in the Madras Presidency shall be liable by reason merely of change of business, appointment, residence, or place of business, to pay to any municipal council more than the difference between such sum and the amount to which he is otherwise liable for the profession tax for the half year under this Act."

By the Amending Act X of 1930, Section 92 was omitted and Section 93 was recast. The new Section 93 has already been extracted earlier in this judgment.

In *S. Subramania Ayyar Vs. Madras Drug Stores, Venkata Subba Rao, J.* referred to the effect of the amendments by Madras Act 10 of 1930 as follows (at page 299):

"First. Section 92 of Act 5 of 1920 which provided for the levy of a company's tax, was by the Amendment Act (Madras Act 10 of 1930) deleted and Section 93 is by the same new Act so amended as to take in companies also. The result is that companies as well as individuals are now liable to pay profession tax the distinction between companies' tax and profession tax having been abolished. But what is important to note is, that when companies were, before the present amendment, liable, for what was then termed "companies' tax." Section 93 expressly exempted individual members from taxation in respect of their interest in the company. That result was achieved by the qualifying phrase "not liable to the companies' tax" being inserted after the words every person "

The learned Judge observed with respect of the amendment of the definition of "company" by Madras Act 10 of 1930 as follows (at page 299):

".....the definition of "company" has been by the Amendment Act (Madras Act 10 of 1930) so altered to make it comprise or include a firm, i.e., a partnership. u/s 93 a firm (the word "company" including thus a firm also) has to pay profession tax in respect of its profits, and the scheme of the Act shows that, when profession tax is levied on a firm, the individual members thereof are not in respect of those same profits again liable. Section 94 enacts inter alia that the profession tax leviable from firm may be levied from any adult member thereof."

It will be observed that prior to amendment in 1930 Section 92 dealt with liability of a company for profession tax and Section 93 dealt with liability of a person to profession tax. Section 93 even mentions "every person not liable to the companies' tax". In 1930, the Madras Legislature passed Act 10 of 1930 amending the two Sections by which Section 92 was omitted altogether and Section 93 was reframed so as to provide for taxation of person as well as company under the same Section 93. The new Rules 17 and 18 also had some difference as compared to the original rules which were in force before the amendment.

13. In *Emperor v. Mahamed Kassam* AIR 1942 Bom 39, Beaumont C. J. explained the duty of Judge in interpreting an Act of the Legislature thus (at p. 41):

"The learned Magistrate, I think, fell into an error not uncommon in construing Acts of the Legislature. He made up his mind, apart from the Act what was the intention of the Legislature in passing the Act, and construed the Act so as to give effect to his preconceived idea as to the Legislature's intention. He made up his mind that the object of the Legislature was to protect employees and nothing else and construed the Act so as to make every part of it fit in with that object. With all respect to the learned Magistrate, that is not the way to construe the Act. One has to take the language as one finds it although, of course, one has to look at the Act as a whole and construe it so as to give effect to what appears

from the language of the whole Act to be the intention of the Legislature."

14. In *Pithapuram Taluk Tobacco, Cigars and Soda Merchants' Union Vs. State of Andhra Pradesh*, a Division Bench of this Court consisting of Subba Rao, C. J. (as he then was) and one of us (P. J. R. J.) (as he then was) laid down the following principles deducible from the various authorities for interpreting a taxing statute (at p. 112) (of Andh WR) = (at p. 567 of AIR):

".....There are no special rules for construing a taxing statute or of applying to it too narrow or fanciful a construction for holding against the State or in favour of a citizen. The ordinary rules of construction as are applicable generally in construing a Statute for ascertaining the intention of the legislature are applicable to taxing statutes, also and if in so construing it, two equally opposite constructions are possible, the one in favour of the tax-payer should be adopted and that in so construing the provisions, the context as well as the other provisions of the statute must be taken into consideration."

The learned Judges also referred to the passage in *Cape Brandy Syndicate v. Inland Revenue, Commrs.* 1921 1 KB 64 in respect of the construction of taxing Acts besides several other decisions in the matter.

15. It has to be noted that, in the District Municipalities Act, the schedules which contained rules form an integral part of the main Act itself and the rules in the Schedule are not like ordinary statutory rules framed separately under other Acts. In various parts of the Act and the Rules, a clear distinction, is maintaining between "company" and "person" by referring to company as "it" and person as "he" "who" "his" etc.. The word "person" is used in Section 94(4) of the Act and in the body of Section 93(1), the word "company" is used as different from "person". In some portions of the Section, the words "person" and "company" are together used, for example, Section 93(3) of the Act wherein it is mentioned "if a company or a person" proves that it or he has paid the sum due on account of the profession tax levied under this Act" If the word "person" included "company" it would have been sufficient to use the word "person" alone and if necessary, as a measure of abundant caution, the expression "person" including a "company" could have been used.

A reading of the whole Sub-section (3) shows clearly that the word "it" refers only to "company" and the word "he" refers only to "person". Similarly, in Section 93(2), it has been put "A person shall be chargeable under the class appropriate to his aggregate income". This provision obviously does not apply to a "company" and can only refer to a "person" like human individual. Likewise, in Section 93 (1), the provision regarding the company being made liable to tax is put in the early part of the Section as every company which transacts business in the municipality for not less than sixty days". But, as regards the "person" the requisites are put differently and separately as follows:

"Every person, who after the said date, in any half year-

(a) exercises a professionor transacts business.....

(i) within the municipality for not less than sixty days.....

(ii) without the municipality but who resides in the municipality for not less than sixty days....."

Thus, if a person was residing in one Municipality as contemplated in Section 93(1)(a)(ii) and also transacted business within another Municipality as envisaged in Section 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. Section 93(4) provides for relief to such a person from being taxed in full by each of those two (or more) municipalities. The wording in that Section used in relation to a person so as to make him ordinarily liable to tax on the basis of residence and independently of residents on the basis of transacting business etc. is substantially in agreement with the wording as given in Section 93(1)(a)(i) and (ii). The purport of Sub-section (4) to Section 93 is to give relief in such cases to the "person" concerned. u/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-section (4) of Section 93. The provisions of Sub-section (4) to Section 93 can apply to an individual like a human person and not to a "company". In Section 93(4), there is no mention of the word "company". There is no reference to the entity assessable to profession tax as "it" Section 93(4) contains the word "person" and pronouns like "he", "who" and "his" which are applicable to a human individual and certainly not to a "company".

From all this, it is clear that Section 93(4) does not apply to a company and, in particular, to the petitioner-company.

16. It follows that the relief asked for by the petitioner company is not allowable under the District Municipalities Act and cannot be granted.

17. In S. A. No. 989 of 1957 D/- 28-9-1962 (Andh. Pra.) (supra), the question arose as to whether a company, which had its Head Office at Tenali and branches at Repalle and Nagayalanka, was liable to pay profession tax to the Panchayat Board of Nagayalanka in addition to paying profession tax to the Panchayat Board, Repalle. A Division Bench of this Court answered the question in the negative. That decision rested on the interpretation of Section 65 of the Madras Village Panchayats Act, 1950 (Madras Act 10 of 1950) which is substantially similar to Section 93 of the District Municipalities Act in material particulars, Section 65(5) of the Panchayats Act is identical in material respects to the provisions of Section 93(4) of the Municipalities Act. Section 65(8) runs thus:

"Nothing contained in this section shall be deemed to render a person who resides within the local limits of one local authority and exercise his profession, art or calling or transacts business or holds any appointment within the limits of any other 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 this provision, only the word "person" is used and that person is referred to by pronouns like "who" and "his" neither the word "company" nor the pronoun "it" is used to refer to the entity liable to profession-tax.

18. The definition of the word "company" is contained in Section 2(4) of the Madras Village Panchayats Act (10 of 1950) and is substantially similar to the definition of the word "company" in Section 3(8) of the District Municipalities Act. The definition of "Company" includes firm and, therefore, took within its ambit the firm who was the plaintiff in the unreported case in S. A. No. 989 of 1957 (Andh. Pra.) and was referred to in that Second Appeal as the plaintiff-firm. The learned Judges proceeded on the assumption that the word "person" concerned in Section 65(5) of the Madras Village Panchayats Act covered and included "firm". This is very clear from the following passage in the judgment;

"The words "for more than the higher of the amounts of the tax leviable by any of the local authorities," are unambiguous. They can only mean that when a person or firm is assessed to profession tax the assessee is entitled to claim the benefit of the aforesaid provision."

The distinction between "person" and "company" or "firm" for the purpose of Section 65(5) of the Madras Village Panchayats Act was not sought to be made or urged as a contention before the learned Judges. In the above decision, the various features and aspect, which we have mentioned above, regarding Section 93 (4) of the Act were not considered. We find that the above case was wrongly decided and that the principles of that decision cannot be accepted in interpretation of Section 93(4) of the District Municipalities Act as it stood after the amendment, by the Madras Act (10 of 1930).

19. We, therefore, hold that the petitioner is not entitled to the relief prayed for by it in this Writ Petition by invoking Section 93(4) of the District Municipalities Act.

20. In the result we dismiss the Writ Petition with costs of the respondent. Advocates fee Rs. 100