

(1967) 10 MAD CK 0021
In the Madras High Court

The Chairman, Madras State Electricity Board	APPELLANT
Vs	
Gobichettipalayam Municipality and Another	RESPONDENT

Date of Decision : 27-10-1967

Acts Referred:

Constitution of India, 1950 — Article 246, 276, 276(1), 276(2)

Citation : (1968) ILR (Mad) 718 : (1968) 81 LW 552 : (1968) 2 MLJ 214

Hon'ble Judges : M. Anantanarayanan, C.J

Bench : Single Bench

Judgement

M. Anantanarayanan, C.J.—This revision proceeding involves a question of some interest and importance. That question may be tersely expressed in the form whether the Madras State Electricity Board, a statutory body, transacting the business of the supply of electricity to consumers in many Municipalities and Panchayats of the State, is liable to pay profession tax for the concerned half year in all those places, or can claim that a single payment of profession tax at the maximum rate of Rs. 125 for the half year at one centre of business, or at its headquarters will suffice, and that the amount of this tax must be proportionately divided among all the Municipalities and Panchayats, where the Board maintains Branch establishments supplying electricity to the concerned consumers. The point really arose with reference to Gobichettipalayam Municipality in a suit to recover several assessments of half-yearly profession tax amounts from the petitioner Board.

2. The point argued by Sri C. Ramakrishna for the Board can be placed, at its highest level, in the following form. There are certain dicta of Muttuswami Ayyar, J., in an early case Tuticorin Municipality v. South Indian Railway ILR (1890) Mad. 78, on the nature of this tax and the liability of a vast organisation like the South Indian Railway in that case "to pay as many profession taxes as there are Municipal Towns through which their Railway passes", in the words of the learned Judge. Sri Ramakrishna relies on this decision, for his view that profession tax is really of the character of "a licence or registration fee", to quote Muttuswami

Ayyar, J., and that, it need be paid only once, particularly at the maximum rate, though there may be several centres where the concerned company, which is a legal person, is conducting its business.

3. This argument, unfortunately, is unsustainable because of the broad fact that Muttuswami Ayyar, J., was really laying down the law with regard to the District Municipalities Act (IV of 1884) as it then stood, since then, there have been several very significant developments, and the Act incorporating the latest amendments, as it stands today, exhibits a very significant dichotomy as between a " person " and a " company", the two entities being treated differently in the several relevant sections. As far as Act IV of 1884 is concerned, certain features of it are vital for elucidating the dicta of Muttuswami Ayyar, J., in Tuticorin Municipality v. South Indian Railway ILR (1890) Mad. 78. First of all, " person " was defined in Section 3(xxii) of that Act, to include any company or association, of body of individuals, whether incorporated or not. Secondly, u/s 53 of that Act, the liability was fixed upon a person as defined, and u/s 59, a person who carries on more professions or trades than one, or holds more offices or appointments than one, was to be charged only under any one of such designations or classes, on his aggregate income. Even more significantly, u/s 60, no person shall be Fable to the payment of tax u/s 53, who shall prove that he has paid the tax for the same half year in any other Municipality. It is for this reason that Muttuswami Ayyar, J., held that the South Indian Railway need to pay tax once at the highest rate, though it may be conducting business in all the Municipal Towns through which the Railway passes. Another early decision of this Court, namely, Municipal Council of Tellicherry v. Bank of Madras ILR (1892) Mad. 153, may also be referred to, for the view that even if the Bank carried on more than one class of business, it would not be liable to pay more than one tax, though the relevant class might have to be determined by the aggregate income.

4. The learned Advocate-General for the State has taken me through all the subsequent vicissitudes of the Madras District Municipalities Act, particularly the sections of Act V of 1920 and the rules for assessment of profession tax then prevailing, Rules 17, 18 and 19. He has also referred me to Section 95 as it originally stood under the 1920 Act. I do not propose to proceed into these details, for the simple reason that the broad contention of the State can easily be sustained on an analysis of the provisions of the Act as it stands today, incorporating the amendments in 1930. Apparently, in the Rules framed under the earlier Act, certain examples were given to show that a "person", viz., an officer like a Sub-Collector, at any rate, who paid profession tax in one Municipality, and was transferred in the course of the half year and faced with a demand by another Municipality, could claim the benefit of the first payment itself, if it had related to the entire income for the half year. The real point is not this, but whether Section 93, as it stands, can sustain the interpretation of Sri Ramakrishna that the Board need pay only one tax at the highest level once in the half year, and that this tax should be proportionately divided between the Municipalities, in all of which the Board conducts its business.

5. The matter can be put in this form. Under the Act, as it stands, the scheme of dichotomy is throughout observed between "person" and "company". The latest definition of " company" is that it means "a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament (of the United Kingdom) of Royal Charter, or Letters Patent and includes any firm of association carrying on business in the Presidency of Madras whether incorporated or not...." "Person" is not defined. But the scheme of Section 93 leaves us in no possible doubt about the dichotomy. "Person" and "company" are kept distinct, and treated differently by separate provisions of the law. Before proceeding further with an analysis of Section 93, I may refer to the Full Bench decision of the Andhra Pradesh high Court in Ramdas Motor Transport (P.) Ltd. v. Vijayawada Municipality (1567) 2 An.W.R. 174, where the very point was considered in an exhaustive manner, with reference to all prior precedents. The learned Judges point out that the provisions of Section 93(4), on which reliance was sought to be placed, applied only to an individual like a human person, and not to a company. Section 93(4) contains the word " person " and the provision utilises pronouns like "he", "who " and "his", which are applicable only to the individual, and not to a company.

6. Proceeding to the scheme of Section 93, Section 93(1)(a) contains Sub-clauses (a) and (ii) with regard to the person exercising a profession, art, or calling, or transacting business, or holding an appointment. u/s 93(2), such a person is chargeable under the appropriate clause with regard to the aggregate income from all the sources specified in Sub-section (1). Section 93(3.) applies both to a " company" and " person", with the distinction maintained. Neither such company nor person, is liable "by reason merely of change of place of business, exercise of profession, art or calling, appointment of residence " to pay any other Municipality during the concerned half year, having earlier paid profession tax to any one Municipal Council or local body, " more than the difference between such sum and the amount to which it or he is otherwise liable for profession tax for the half year."

7. This section is not invoked in the present case, and it does not help the argument of the Madras State Electricity Board. There has been no change of place of business, exercise of profession, art or calling, and it is not by virtue of such change that any relief is claimed. On the contrary, the argument is that Section 93(4) applies, and that only one tax at the highest rate has to be proportionately divided between the relevant local authorities by the State Government, the decision of which Government has to be final. Section 93(4) runs as follows:

Nothing contained in this section shall be deemed to fender a person who resides within the local limits of one local authority and exercises his profession, art or calling of transacts business or holds any appointment within the limits of any other local authority of 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.

8. It appears to me to be very clear that, with respect, the learned Judges of the Full Bench, earlier referred to were justified in the view that they took, that upon the language and the interpretation of the provision, Section 93(4) could not possibly apply to a company. It is claimed by the learned Advocate-General that the contention of the State on the question of interpretation receives implicit support from the following authorities of this Court : *Madurai Municipality v. Indian Textile Paper Tube Co.* (1965) 2 M.L.J. 510, *Commissioner of Corporation, Madras v. Arooran Sugars Limited, Madras* (1965) 78 L.W. 52, *Commissioner of Corporation, Madras v. Godrej Soaps (P.) Ltd* (1963) 2 M.L.J. 338. and *Indian Leaf Tobacco Development Co., Ltd. v. Corporation of Madras* ILR (1954) Mad. 417 : (1954) 1 M.L.J. 176. Under Rule 16 of Schedule IV, the classes for both companies and persons as specified, and the maximum half-yearly tax is determined as Rs. 125. Under Rule 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. Again, reference may be made to Article 276 of the Constitution, with regard to the nature of this levy. Under Article 276(1) of the Constitution, this levy, though in form or semblance a tax on income, is saved from any invalidity because of Article 246, and under Article 276 (2), the total amount payable in respect of any one person to any one municipality, is not to exceed Rs. 250 per annum.

9. The interpretation of the scheme of Section 93 now becomes very clear. In view of the sustained dichotomy and the effect of Rule 17 that I have earlier set forth, a company is liable to pay profession tax in every municipality where it transacts business, and where such transaction of business is evidenced by the maintenance of an office for the half-year. In this connection my attention has been drawn to an interesting judgment of Rajamannar, C.J., and Venkatarama Ayyar, J., in *Indian Leaf Tobacco Development Co., Ltd. v. Corporation of Madras* (1954) 1 M.L.J. 176 : ILR (1954) Mad. 417. That related to the expression "transacting business" in section 113(1) of the City Municipal Act, and the Division Bench held that a company must be held to be transacting business, even though it did not earn any income as such in the city, during the period in question. It becomes clear that the Madras State Electricity Board is liable to pay profession tax as assessee in every one of its centres or branches situated in Municipalities or Panchayats, where it transacts business for the concerned half year. It is not entitled to invoke the benefit of Section 93(4), and to argue that it is liable to pay only one tax, which must be proportionately divided by the State Government. As the Full Bench pointed out, Section 93(4) relates only to a person who resides within the local limits of one local authority and exercises his profession, art or calling within the limits of any other local authority. The basis

for the taxation of a company is not residence at all, as stressed by the Full Bench. I have no hesitation, therefore, in coming to the conclusion that the Madras State Electricity Board was rightly assessed to profession tax at all the centres where it transacted business during the half-year in question.

10. It is needless to add, and this is not disputed by the learned Advocate-General, that in each such centre, the liability of the Board must be determined only on its income under Rule 18 (1) (a) and (6) and Rule 18 (2) of the Schedule; relevant to that centre, either on the basis of the Income Tax assessment, or otherwise as specified under the rules. I am leaving entirely open the question whether, on the relevant basis, the Madras State Electricity Board would not be entitled to claim a refund, if it can prove that, at any one branch in respect of payment of profession tax at the maximum rate of Rs. 125 it had transacted business for less than the amount specified in the Schedule, namely, Rs. 15,000, and so should have been assessed at a lower figure. As far as the relevant half-years of this Municipality (Gobichettipalayam) are concerned, it is a finding of fact of the Courts that the business transacted by the Board justified imposition of the maximum tax.

11. The revision petition is accordingly dismissed. As it has really turned upon the interpretation of a legal question, the parties will bear their own costs.