

(1946) 02 CAL CK 0004

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 329 of 1945

The Commissioners of The Burdwan Municipality

APPELLANT

Vs

Messrs. Bata Shoe Co., Ltd.

RESPONDENT

Date of Decision : 01-02-1946

Acts Referred:

Citation : (1946) 02 CAL CK 0004

Final Decision : Allowed

Judgement

Mitter, J.—The Bata Shoe Company, Ltd (hereafter called the Company) is a Company registered under the Indian Companies Act. Its paid-up capital is Rs. 10,00,000. It manufactures shoes and other foot wear at Batanagore in Twenty-four Parganas. It has two retail shops within the limits of Burdwan Municipality from which it sells a part--maybe was very small part--of the goods manufactured at Batanagore. The Commissioners of the Burdwan Municipality exercised the powers given by sec. 123 (1), cl. (f) of the Bengal Municipal Act of 1932 (hereafter called the Act) by passing a resolution at a meeting held on the 27th February, 1941, for the imposition of a tax on trades, professions and callings. The resolution mentioned all the different items of Schedule of the Act as worded before the amendment of 1940 and fixed the tax at the maximum mentioned in the said Schedule. Item No. 1 of that Schedule had been amended in a material manner by Notification No. 1662 M dated the 16th December, 1940, issued by the Provincial Government under the powers given by sec. 557 of the Act, but the parties before us have waived all points of technical nature and have asked us to proceed on the footing as if the resolution had embodied Item No. 1 of that Schedule as amended on the 16th December, 1940. After the said resolution had be passed the Municipality made a demand on the Company requiring it to pay half-yearly the sum of Rs. 100. The Company paid Rs. 200 for the two half years of 1941-1942 under protest and then filed the suit in which the appeal arises for refund, contending (1) that the Municipality had acted illegally, and (2) that in any event it was only liable to pay the amount mentioned not in Item No. 1 but in Item No. 4 of Schedule IV of the Act, as its

shops within the Burdwan Municipality were only retail shops. Besides controverting those points the Commissioners of the Municipality contended that the suit was barred by limitation. The Munsif decided all the points so raised against the Company and dismissed the suit. On appeal the learned District Judge held that (1) that the suit was not barred by time, and

(2) the Commissioners had acted illegally, inasmuch as they had not dealt with the application for review made by the Company under sec. 148 of the Act in accordance with law.

The learned District judge on that view of the matter did not decide the other points. After the hearing had proceeded for some time, the learned Advocates appearing for both the parties stated before us that it is the desire of the parties that we should give our decisions on two points, namely: (i) whether the Commissioners of any Municipality governed by the Bengal Municipal Act of 1932 could at all impose on any Company, association or body of individuals a tax of the description mentioned in Item No. 1 of Schedule IV, and (ii) that assuming it could, whether the Respondent Company is liable to pay what is mentioned in Item No. 1 or in Item No. 4 of that Schedule, seeing that the Commissioners of this Municipality had included both those items (as also the other items) of Schedule IV in their resolution of the 27th February, 1941. To enable us to decide those two questions Mr. Gupta appearing for the Commissioners concedes that the question of limitation had been rightly decided by the learned District Judge and Dr. Basak appearing for the Company concedes that the learned District Judge is wrong in holding that his client's application for review had been illegally rejected.

2. The first question depends upon the effect of secs. 123 (1) (f) and 182 and Item No. 1 of Schedule IV of the Act.

3. Item No. 1 of the Schedule as amended on the 16th December, 1940, is as follows:

Company or association or body of individuals, which exercise any trade, profession or calling whatsoever for profit or as a benefit society of which the paid-up capital is equivalent to

4. Then follow the different maximum rates of half-yearly tax.

5. Before the said amendment it ran thus:

Company transacting business within the municipality for profit or as a benefit society of which the paid-up capital is equivalent to Rs. . . .

6. Then followed the different maximum rates of tax which were not altered by the amendment of the 16th December, 1940. The omission of the phrase "within the Municipality" in the item as amended in 1940 is not material. In view of the provisions of sec. 182 it was a mere repetition.

7. The contention of the Advocate appearing for the Company is that secs. 123

(1) (f) and 182 require that trades, professions and callings must be specified, that is to say, described in detail, in the Schedule and as that has not been done in Item No. 1 thereof, no tax can be levied by any Municipality in terms of that item. The contention of the Advocate appearing for the Commissioners is: (a) that the phrase "trades, professions and callings specified in Schedule IV" occurring in those two sections is to be read as "trades, professions and callings as specified in Schedule IV." and (b) alternatively, if the Company's contention be accepted, Item No. 1 as it stands after the amendment of the 16th December, 1940, has satisfied the requirements of secs. 123 (1) (f) and 182.

8. Sec. 123 (1) (f) empowers the Commissioners of a Municipality to impose "a tax on trades, professions and callings specified in Schedule IV," and sec. 182, which is the charging section, requires every person who exercises in the Municipality any of "the professions, trades or callings specified in Schedule IV" to take out a license and to pay the tax imposed under sec. 123 (1) (f) by the Commissioners. The said Schedule can be altered or added to by notifications issued by the Provincial Government, (sec. 557) and the Schedule so altered by the Provincial Government, is as much a part of the Act as the original Schedule which had been enacted by the legislature itself. This fact is, in our judgment, very material. The different items of that Schedule stand on the same footing as the sections of the Act itself. As the tax is to be a tax on persons who exercise trades, professions or callings, the Provincial Government cannot, by an amendment, either by addition to or by way of alteration of that Schedule as enacted by the legislature itself, include an item which has no connection with "trade, profession or calling." That is the manifest limitation on the powers of the Provincial Government and is the only limitation. The amendment of Item No. 1 made by the Notification issued by the Provincial Government on the 16th December, 1940, satisfies the test, for it refers not to a Company, association or body of individuals simpliciter, but to a Company, association or body of individuals exercising trade, profession or calling. One of the reasons given in case of Corporation of Calcutta v. Standard Marine Insurance Co. I. L. R. 22 Cal. 581 (1895) on which the Company relies, does not therefore apply to the case before us. The other reason given therein does not also apply. Moreover, there are some observations therein to which we will refer hereafter, which, in our opinion, supports to a considerable extent the alternative contention of the Municipality.

9. That case was under the Calcutta Municipal Act (II of 1888). The charging section--sec. 87--required "every person who shall exercise in Calcutta any of the professions, trades or callings prescribed in the second Schedule shall annually take out a license and shall pay for the same such sum as in the second Schedule mentioned." Its language is *pari materia* with sec. 182 read with 123 (1) (f) of the Act we are considering, except that in the latter the word "specified" occurs in the place of the "prescribed," and we take it that one is a synonym for the other. The second Schedule placed licenses in seven classes. Class I and Item No. (a) of class II mentioned "Stock Companies" simpliciter,

that is, without giving any indication as to whether they are to be trading Companies or not or whether they are to be Companies which can be regarded "exercising" professions or callings. Generally speaking, the other items of class II and the items of the other classes indicate more or less precisely the nature of the trade, calling or profession. Merchants and wholesale and retail traders, however, are mentioned without any reference to the nature of their trade and item of Class VI is "Every keeper of a shop or place of business not included in any other class" Patheram, C. J. and Beverley, J., held that a Joint Stock Company cannot be taxed simply because it is a Company and that the tax can only be imposed on a Joint Stock Company which carries on one of the taxable businesses. They also held as a matter of construction that the businesses "prescribed" are those mentioned in other parts of the second Schedule and a Joint Stock Company, which is included in the term "person," would only be liable to be taxed if it carried on one of those businesses. In the course of the judgment they observed that there were "no general words to be found in it (class I), which would be wide enough to include such business" (e.g., insurance business). It was possible to put the construction on the words occurring in Class I, which they put upon it only because there were no general words; that say, words which would include every trade or business, used in qualifying Class I as it In the case before us there are general words namely--"which exercise any trade, profession or calling whatsoever for profit"--in Item No. 1 of Schedule IV of the Act. It seems to us those general words were introduced in of the observations of Patterson, J., in the case of *The Municipal Commissioners of Baranagore v. The Baranagore Jute Factory, Limited* 41 C. W. N. 662 (1937). There would not have been any scope for argument on behalf of the Respondent Company, if Item No. 1 had contained an exhaustive list of trades, professions and callings, and in our judgment those general words have the same effect as if there had been such an exhaustive list. In our judgment even if the word "specified" in the phrase in question occurring in secs. 123 (1) (f) and 182 has the effect as attributed to it by the Company's Advocate, Item No. 1 of the Schedule as it stands after amendment of the 16th December, 1940, is in accordance with those sections. In this view it is not necessary to consider the question in reference to Item No. 1 as it stood before the said amendment, on which there was difference of opinion. We may, however, say that we prefer to follow the decision in *Landale & Clark, Ltd. v. The Chairman of the Jalpaiguri Municipality* 41 C. W. N. 1022 (1937). We are also inclined to uphold the alternative contention of the Advocate appearing for the Commissioners and to hold that "specified" means "as specified." That is the view expressed by Jack, J., in the case of *The Commissioners of the Baranagore Municipality v. The Baranagore Jute Factory, Limited* 41 C. W. N. 662 (1937) for otherwise, seeing that Item No. 1 of Schedule IV, even as it originally stood, which was an enactment of the same legislation which had enacted sec. 123 (1) (f) and sec. 182, would have been of no purpose. Merchants, wholesale and retail traders mentioned in Items Nos. 2 and 4, could also not have been taxed if the word "specified" be given the effect contended for by the Company's Advocate, for in

those cases the nature of the trade--the line of business--has not been detailed in those items of the Schedule. We accordingly overrule the first point urged by the Company.

10. The remaining question is whether the Respondent Company can be only assessed under item No. 4 of the Schedule, because its shops within the Burdwan Municipality are retail shops. In *Tenant v. Smith* L. R. [1892] A. C. 150 at p. 154, Lord Halsbury observed thus:-- "Cases, therefore, under the Taxing Acts always resolve themselves into a question as to whether or not the words of the Act have reached the alleged subject of taxation." There cannot be any doubt that the Respondent Company is "exercising trade" within the Burdwan Municipality by selling its goods through its retail shops. The words used in Item No. 1 have reached it. It is so far as Burdwan is concerned a retail trader and so comes within the language of Item No. 4 also. The question, therefore, is, whether Item No. 4 excludes a Company, association or body of individuals with v. "paid-up capital." So far as words are concerned many of the classes mentioned in Items Nos. 2, 3, 4 would cover natural as well as artificial persons, but as Companies, associations and bodies of individuals "with paid-up capital" are treated as a class by themselves and the maximum rate of tax is fixed with reference to the paid-up capital, the nature of their trading activities or the volume of their business within a particular Municipality is immaterial. Items Nos. 2 to 4 must, in our judgment, have been intended to cover those persons whether natural or artificial, who do not fall within the description mentioned in Item No. 1, namely, those having a paid-up capital. We accordingly hold that the Respondent Company has been rightly assessed under Item No. 1.

The result is that this appeal is allowed and the suit of the Company dismissed. The parties to bear their respective costs throughout.

Nasim Ali, J.

I agree.