

(1942) 08 MAD CK 0009
In the Madras High Court

The India Sugars and Refineries, Ltd., a limited liability company

APPELLANT

Vs

The Municipal Council

RESPONDENT

Date of Decision : 10-08-1942

Acts Referred:

Citation : AIR 1943 Mad 191 : (1943) ILR (Mad) 521 : (1942) 55 LW 783 : (1942) 2 MLJ 663

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellant was the plaintiff in a suit to recover licence-fees and profession tax alleged to have been wrongfully levied by

the defendant, the Municipal Council, Hospet, during the period from October, 1933 to September, 1937. The plaintiff company started to build a

sugar factory in Hospet in October, 1933. Profession tax was levied on the Company from the half year ending 31st March, 1934, onwards. It

seems to be clear that the plaintiff company did not actually start manufacture until the beginning of 1935 and with reference to the first year's

profession tax the question is really one of limitation. The learned District Judge has found on the authority of the decisions in the Municipal

Council, Dindigul v. The Bombay Company, Limited (1928) 56 M.L.J. 525 : ILR 52 Mad. 207. and The Rajputana Malwa Railway Co-operative

Stores, Ltd. v. The Ajmere Municipal Board ILR (1910) All. 491. , that Article 62 of the Limitation Act applies and that the suit with reference to

the first year's assessment is barred by limitation. An attempt has been made to argue that Article 62 applies only to an action for money had and

received in the strictest sense of the term as understood in the Courts of

Common Law in England and that when the action is based not on any implied contract, but on the principle of *ex aequo et bono* Article 62 would have no application and the residuary Article 120 would apply. We have been referred to no authority in support of this argument and it seems to us that Article 62 is intended to apply to all actions for money had and received to the use of the plaintiff whether they be actions which may be deemed strictly to be based on implied contracts or whether they be merely to enforce an equitable claim to the return of the money had and received. We therefore agree with the learned District Judge that the claim in so far as it relates to the first year's profession tax is barred by limitation. We may add that a similar view has been taken in *Taluk Board of Devakottah v. Chockaltngam Chettiar* 1932 M.W.N. 1089. , following the reasoning in *Municipal Council, Dindigul v. The Bombay Company, Limited*, Madras (1928) 56 M.L.J. 525 : ILR 52 Mad. 207.

2. With reference to the claim for profession tax of the later years we have not been referred to any materials for holding that the recovery of the tax was unlawful or that the procedure in assessment was contrary to law. An attempt has been made to show that the estimate of the plaintiff's income was wrong, in fact in that it differed from an Income Tax assessment made subsequent to the date of the Municipal assessment and apparently on the basis of different accounts. The profit and loss statement for eighteen months which was the main material available to the Municipality discloses a profit which formed the basis of the estimate of the plaintiff's income. It would appear that at some subsequent date the plaintiff was permitted by the Income Tax Department to write off his accounts the whole of this profit by making a substantial allowance for depreciation of machinery which was not made at the time when the profit and loss statement was originally prepared. Perhaps if the plaintiff had furnished proper accounts and full materials to the Municipality the tax which has been imposed upon the company would not have been recovered. But it does appear that the plaintiff company is itself to blame for not having furnished proper materials to the Municipality and there is nothing to show that the procedure of the Municipality was irregular or that the taxation of the plaintiff was inspired by any improper motive. We therefore find that the plaintiff is not entitled to recover any of the profession tax

levied from it.

3. The question of the licence-fees is somewhat different. The plaintiff's factory was engaged in what is admittedly an offensive trade which

requires to be controlled by the Municipal authorities, lest it should be a nuisance to the public. For that reason it has to be licensed and it has to be

inspected. The fee charged for the licence was Rs. 100 up to 1936 at which time it was represented to the Municipal Council that the existing scale

of fees was too low and that the distribution of the cost of supervision, etc., among the various factories was inequitable and consequently the

Municipal Council resolved to raise the fee to one based on the horse-power of the engine of the factory concerned at a rate of Re. 1 per horse-

power. The result of this new scale was that the plaintiff's licence-fee suddenly went up from Rs. 100 to Rs. 1,050. There is no suggestion that the

raising of the fee was beyond the powers of the Municipality provided that the considerations which led the Municipality to raise the fee were

proper. Nor is there any evidence that the fee was raised arbitrarily with a view to damage any particular individual. The truth seems to have been

that the existence of this factory in an area which had hitherto been unoccupied owing to its malarious character did involve the Municipality in

considerable extra expense, owing to the large number, of employees squatting in the neighbourhood of the mill. It was also found that the mill

caused very heavy traffic on the roads much of which was unremunerative to the Municipality because the carts came from outside the town. The

supervision of this factory so far as its internal sanitation was concerned involved regular visits from the Commissioner, Health Officer and Sanitary

Inspector. It is, we think, well settled that a licence-fee for carrying on a particular trade or industry should not be regarded as a form of taxation

the extent of which is to be governed purely by revenue considerations. The licence-fee should bear as nearly as possible a relation to the cost of

issuing the licence and the cost of supervising the trade or of any special measures rendered necessary by the character of that trade. We doubt

whether the Municipality could be justified in increasing the licence-fee chargeable upon a particular industry merely by reason of the cost of

ordinary municipal services to which that industry is entitled by virtue of its position as a tax-payer in the Municipality. But if the industry involves

special sanitary precautions, a special supervising agency or such like expenditure, it is, we think, reasonable to take this expenditure into account in fixing the amount of the fee. When a supervising agency is necessary for a number of industries it will always be difficult to say how the cost is to be apportioned and so long as the apportionment is made on a reasonable basis, it is not for the Courts to interfere with the way in which it has been achieved. There are no materials before us to justify a conclusion that the raising of the licence-fees charged on the plaintiff's factory was arbitrary or that the Municipality did not fix those fees in an endeavour to distribute as equitably as possible the special cost of the supervision of the various factories according to their sizes. It may well be that an error of judgment might have been committed in estimating the amount of extra expense involved by the supervision of these offensive trades, but even so the matter is one within the competence of the Municipal Council which is of course always subject to the control of the Government. The Courts certainly should not declare a fee or a levy to be ultra vires merely because it is somewhat higher than might have been thought necessary on a different view of the facts. We are of opinion that it has not been established that the levy of the licence-fee in this case bears no relation to the costs and expenses entailed in the supervision of the trade and of its sanitation. In this view we dismiss the appeal with costs.