(1966) 09 KL CK 0004

In the High Court Of Kerala

Case No : C.R.P. No. 955 of 1964

Varandarapally Panchayat APPELLANT

Vs

Cochin Malabar Estates Ltd. RESPONDENT

Date of Decision : 22-09-1966

Acts Referred:
Travancore-Cochin Panchayat Rules, 1951 — Rule 123, 125, 56

Citation : AIR 1967 Ker 175

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;S. Velu Pillai, J

Bench : Division Bench

Advocate : K. Velayudhan Nair and T.K.M. Unnithan, for the Appellant; K.V. Surianarayana Iyer and T.L. Viswanatha Iyer, for the Respondent

Final Decision : Allowed

Judgement

1. The question to be deckled in the Civil Revision Petition filed by the defendant is whether the plaintiff a public limited company registered under the Companies Act is liable to pay professional tax u/s 56 of the Travancore-Cochin Panchayat Act read with Rules 123 and 125 of the Travancore Cochin Panchayat Rules. 1951.

2. Both the courts below look the view that during the relevant vears the plaintiff was not transacting any business within the Panchayat area and is therefore not liable for assessment to professional tax. The submission of the learned counsel for the defendant was that the findings of the courts below cannot be sustained u/s 56 of the Travancore-Cochin Panchayat Act and Rules 123 and 125 of the Travancore-cochin Panchayat Rules. 1951.

3. Section 56 reads thus: "Any Panchavat,- -

(a) after observing such preliminary procedure and rules as may be prescribed;

(b) subject to such live-laws as may be framed by the Panchayat; and

(c) subject to the previous sanction of Government, may impose, at such rates not exceeding the maxima prescribed, all or any one or more of the following:

(1) a cess on land other than any land or class of which Government, may, by notification in the Gazette, lands exempt;

(2) any rate tax, cess or any licence or other fee for the discharge of the duties under this Act "

4. Rules 123 Clause (1) and 125 which are alone relevant for this appeal are as follows:

Rule 123 (1). "Every Company which transacts business in a Panchayat area for not less than sixty days in the aggregate in any half-year and every person who in any half-year;

(a) exercises a profession, art or calling or transacts business or holds any appointment, public or private--

(i) within the Panchayat area for not less than sixty days in the aggregate, or

(ii) without the Panchayat area but who resides in the Panchayat area for not less than sixty days in the aggregate, or

(b) resides in the Panchayat area 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."

Rule 125. "A company or person shall be deemed to have transacted business and a person shall be deemed to have exercised a profession, article or calling or held an appointment within a Panchayat area if such company or person has an office or place of employment within such Panchavat area."

5. The argument of the learned counsel for the appellant was that the evidence in the case shows that the plaintiff company was having an office during the relevant period within the jurisdiction of the Panchayat and the company must therefore be deemed to have been transacting business in view of R. 125.

6. The courts below have not given due weight to the scope of, Rule 126. Even in the plaint, it is admitted by the plaintiff that the company owns a rubber estate within the jurisdiction of the panchayat. Dw. 2 who is the Manager of the plaintiff company, deposed that the company is having an estate office in the estate within the jurisdiction of the Panchayat. According to Dw. 2 there are two Assistant Managers and five members in the clerical staff in the office. According to the learned counsel for the plaintiff, the members working in the office are only attending to the collection of latex from the estate, which is sent to Pierce Leslie and Co.. Cochin and this will not amount to ''transacting business'' for the purpose of assessment under Rule 123 (1) of the Panchayat Rules. We do not think that this contention of the learned counsel for the plaintiff is entitled to any weight.

7. A Division Bench of this Court had to consider in O. P. No. 1103 of 1963 (Ker) the question of assessment of a company under Rule 20 of the Taxation and

Finance Rules in Schedule II to Kerala Municipalities Act, 1960. The wording of this rule is identical with the wording of Rule 125 of the Panchayat Rules. It was held that since the company had an office within the Quilon Municipality it must therefore be considered transacting business within the Municipality and thus liable to assessment. This decision was followed in Commissioner, Quilon Municipality v. Malayalam Plantations Ltd.. 1964 KLJ 1149.

8. The submission of the learned counsel for the plaintiff relying on the decision in The Malabar District Board Vs. The Cochin Malabar Estates, Limited and Another, was though the plaintiff company is having an office within the Panchayat area no sales or purchases of rubber are effected in the office and therefore the company cannot be said to be transacting business within the meaning of Rule 125 of the Panchayat Rules. We do not think that the decision relied on supports the plaintiff. The point that was decided in The Malabar District Board Vs. The Cochin Malabar Estates, Limited and Another, was whether a company was transacting business within the meaning of Section 93 of the Madras Local Boards Act, 1920 read with Rule 10 of Schedule 4 to the Act. The wording of Rule 10 of the rules framed under the Madras Local Boards Act. 1920 is identical with Rule 125 of the Travancore-Cochin Panchayat Rules. But the Madras High Court in the decision referred to interpreted the expression ''transacting business'' in Section 93. In view of Rule 10 Schedule 4. We are of the view that, there is no necessity to interpret the expression ''transacting business'' in Section 93 of the Act. The decision in The Union Board of Devakottah Vs. S. Thirumalai Ayyangar, cited on behalf of the plaintiff did not give due weight to Rule 10 in Schedule IV

9. Rule 125 of the Panchayat Rules is a deeming provision and when it is proved that a company has an office within a Panchayat area, a company shall be deemed to have transacted business. It is not necessary to find out the nature of the business that is transacted in the office in the Panchavat area. In the case before us, the plaintiff did not contend that they have no office in the Panchayat area but their only contention was that in that office no transactions of sales or purchases are concluded. In our view, this is absolutely irrelevant to satisfy Rule 125 of the Travancore Panchavat Rules.

10. In the result the decrees and judgments of the courts below cannot stand. We therefore set aside the same and allow the Civil Revision Petition dismissing the plaintiffs suit with costs throughout.

