

## APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

MUNICIPAL COUNCIL OF TELLICHERRY (DEFENDANT),  
PETITIONER,

1881.  
October 30.

v.

BANK OF MADRAS (PLAINTIFF), RESPONDENT.\*

*District Municipalities Act—Act IV of 1884 (Madras), ss. 55, 56, 60, 262, cl. (2)—  
Profession tax.*

The Bank of Madras carried on business at (among other places) Negapatam and Tellicherry, in both of which places the Madras District Municipalities Act was in force. The Bank paid profession tax under that Act to the Municipality of Negapatam two days before it was due. The Municipality of Tellicherry subsequently, and with knowledge of the above facts, assessed the Bank to the same tax for the same period and levied the amount which was paid under protest :

*Held*, that the Bank was entitled to recover the amount so paid, from the Municipality of Tellicherry.

*Seemle* : The aggregate income derived by the Bank from the exercise of its business in the separate municipalities would regulate the class under which it would be liable to taxation.

PETITION, under section 25 of Act IX of 1887, praying the High Court to revise the decree of C. Gopalan Nayar, Subordinate Judge of North Malabar, in small cause suit No. 336 of 1890.

Suit by plaintiff to recover Rupees 50 with interest, profession tax wrongfully collected by the defendant from the plaintiff for the second half-year ending 31st March 1890, on the ground that the tax for the half-year in question had been already paid to the Negapatam Municipality, and the fact of such payment had been brought to the notice of the defendants. The tax was paid to the Negapatam Municipality before the due date.

The Subordinate Judge of North Malabar on the authority of *Tuticorin Municipality v. South Indian Railway*(1) passed a decree for the plaintiff.

The defendant preferred this petition.

Mr. Powell and Mr. Subramanyam for petitioner.

Mr. K. Brown for respondent.

\* Civil Revision Petition No. 339 of 1890.

(1) I.L.B., 13 Mad., 78,

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JUDGMENT.—The first objection taken is that the profession tax was paid in Negapatam three days before it fell due and therefore was not paid in discharge of a legal obligation ; hence that plaintiff is liable to the tax at Tellicherry, the payment at Negapatam having been voluntary. The liability to pay is created by section 53, Madras Act IV of 1884, and section 55 operates to exempt a person who has exercised his profession for less than 60 days in the half-year. Section 55 therefore indicates a ground on which a person may, if he wishes, claim exemption from liability and also gives him the privilege of paying the tax in two instalments. It is not the petitioner's case that the Madras Bank ceased to carry on business at Negapatam before the expiry of 60 days, nor do we think that payment, three days before the expiration of that time, can be treated as made otherwise than in discharge of the liability for the second half-year.

The next contention is that each Branch Bank ought to be treated as a distinct person—but there is only one corporation, and the Bank carries on its business through agents in different municipalities. Having regard to the definition in cl. xxix, section 3, of the Act, we cannot hold that the Madras Bank is not a single person the within the meaning of the Act.

Section 60 precludes the supposition that the same person carrying on business by agents in different municipalities is liable to pay the profession tax in each municipality for the same half-year.

Section 59 is not applicable, as the person, *i. e.*, the Bank, does not carry on more than one class of business, and even if it did it would not be liable to pay more than one tax, though the class under which it was to be taxed might be determined by the aggregate income.

We dismiss the petition with costs.

*Barclay, Morgan & Orr*, Attorneys for respondent.

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