

OFFICIAL  
RECEIVER,  
ANANTAPUR  
v.  
RAMA-  
CHANDRAPPA.

Bench when the question arises. I have indicated my view on this point in order to help discussion when the question is again brought up.

Following the decision of SUBRAHMANYA AYYAR, J., in *Rangayya Chetty v. Thanikachalla Mudali*(1), and the decision of the bench of WALLER and MADHAVAN NAIR, JJ., in A.A.O. No. 31 of 1925, I answer the question referred to me in the affirmative.

K.R.

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## APPELLATE CIVIL.

1928,  
Apr. 28.

*Before Mr. Justice Phillips and Mr. Justice  
Madhavan Nair.*

P. M. SIVAPATHA MUDALIAR (PLAINTIFF) APPELLANT

v.

SIKANDAR ROWTHER (DEPENDANT), RESPONDENT.\*

*Madras Local Boards Act (V of 1920), ss. 104 (2), (3) (c), and 166—"Licensed" in sec. 104 (3) (c), meaning of—Motor vehicles, licensed under sec. 166, whether exempt from tolls under sec. 104.*

The word "licensed" in section 104 (3) (c), of the Madras Local Boards, 1920, means licensed under clause 2 of the same section, and is not used in the wider sense of "licensed for any purpose whatever."

Consequently, although a licence was granted under section 166 of the Act to use a motor vehicle to ply for hire or to take passengers or goods at certain rates, still such a vehicle is liable to pay tolls under section 104 of the Act.

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(1) (1895) I.L.R., 19 Mad., 74.

\*Second Appeal No. 7 of 1928.

SECOND APPEAL, against the decree of the District Court of Chingleput in A. S. No. 397 of 1927, preferred against the decree of the Court of the District Munsif of Poona-mallee in Original Suit No. 597 of 1927.

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The plaintiff is the owner of a motor bus, licensed to ply for hire between Kunnathur and Madras, and the defendant is a toll-gate contractor. Plaintiff sued for a declaration that his vehicle licensed under section 166 of the Local Boards Act, 1920, is entitled to pass and ply along and through the roads specified in the licence without paying toll and for a permanent injunction restraining the defendant and his servants from levying such toll. The trial Court decreed the suit. On appeal the District Judge reversed the decree and dismissed the suit. The plaintiff preferred this second appeal.

*T. M. Krishnaswami Ayyar* for appellant.—The question is whether a District Board, after granting licence to a motor owner for one year is entitled to collect toll, when the vehicle passes through a toll-gate, through the medium of the toll-gate contractor. Under section 166 of the Local Boards Act, 1920, no person can ply any motor vehicle for hire, etc., except on licence obtained. The charges are Rs. 1,000 for Dodge buses and Rs. 800 for Ford buses, per annum. Under section 104 of the Act, tolls shall be levied as per rules framed. Section 104 (3)(c) says that no toll shall be levied for carriages licenced by the District Board for the period specified. It would be a case of double taxation, if a licensed vehicle should again be liable for tolls under section 104. The licence is for the motor vehicles. The basis of the licence is the car and not the business. When private cars are sold, the licence passes with the car. Under section 104, the toll is levied on the animals, carriages, etc., and the exemption is towards buses, etc., already licensed by the District Board. Under section 166, the payment may be compounded annually or for shorter periods. Section 75, clause (5) provides for the levying of taxes, tolls, etc., by District Boards, and section 104, clause (3) exempts vehicles licensed by the District Board for the period so licensed. The provisions of the District Municipalities Act, 1920, are similar. If a person compounds with a District Board, he cannot be taxed indirectly by levying

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tolls through the toll-gate contractor. In the case of an owner of ordinary carriages, they pay toll if they are not exempted by a licence or there was no compounding with the District Board. In the licence, the route is specified, the toll-gates are specified; and the owner carries with him the licence. A taxing statute should be equitably construed in favour of the subject in cases of doubt; see 27 Halsbury, 180; *Pryce v. Monmouthshire Canal and Railway Companies*(1), *Stockton and Darlington Railway Company v. Barret*(2).

*P. Venkataramana Rao* (with *P. K. Janakiram*) for respondent was not called upon.

The JUDGMENT of the Court was delivered by

PHILLIPS, J.—The only question for decision here is whether the word “licensed” in section 104 (3) (c) of the Madras Local Boards Act of 1920 means licensed under clause 2 of the same section or in the wider sense of licensed for any purpose whatever. The appellant contends that if a licence is granted under section 166 to use a motor vehicle to ply for hire or to take passengers or goods at certain rates, then such a vehicle is one licensed within the meaning of section 104 and is not liable to pay toll. To put this general construction upon the word “licensed” when it follows immediately after the clause dealing with certain particular licences, would be straining the words of the section and consequently the interpretation put upon it by the District Judge seems to be the correct one. The various arguments put forward here have all been dealt with in his judgment and there is really nothing to be added thereto. The question of construing taxing Acts in the strictest sense in favour of the subject can hardly apply here, for there cannot really be reasonable doubt as to the meaning of the word “licensed” in clause (c). Judicial opinion as to whether

(1) (1878) 4 A.C., 197.

(2) (1844) 7 Man and Gr., 870; S. C., 135 E.R., 853 (357).

statutes imposing tolls need not be construed so strictly appears to be somewhat divided in England, but it is unnecessary to consider that point here, for there is really no doubt in this matter.

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APPELLATE CIVIL.

*Before Mr. Justice Wallace and Mr. Justice  
Thiruvengkata Chariar.*

BALAKRISHNA MENON (LATE OFFICIAL RECEIVER)  
(FIRST COUNTER-PETITIONER), APPELLANT,

1928,  
August 31.

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v.

KAKKAT MANAKKAL UMA AND SIX OTHERS (PETITIONER'  
AND SECOND COUNTER-PETITIONER), RESPONDENTS.\*

*Costs—Decree for costs against Official Receiver—Personal  
liability.*

Where a decree dismissing an Official Receiver's appeal directed him to pay the costs of the respondents, without stating that the costs should be paid out of the insolvent's estate, the costs are executable personally against the then Receiver, though he had ceased to hold office at the time of execution.

APPEAL against the order of the District Court of South Malabar at Calicut in M. P. No. 619 of 1926.

The necessary facts appear from the judgment of WALLACE, J.

*K. Kuttikrishna Menon* for appellant.—Whenever an Official Receiver is made to pay the costs of an action, they are not payable by him personally, but they are payable out of the estate of the insolvent concerned, unless he had been personally guilty of any fraud or negligence; *Abdul Rahiman and Co. v.*

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\* Civil Miscellaneous Appeal No. 408 of 1927.