

## APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and  
Mr. Justice Cornish.*

1931,  
September  
17.

THE MUNICIPAL COUNCIL OF VIZAGAPATAM BY  
ITS CHAIRMAN (DEFENDANT), APPELLANT,

v.

THE TEA DISTRICTS LABOUR ASSOCIATION BY  
AGENT MR. LESLIE S. DRIVER (PLAINTIFF), RESPONDENT.\*

*Madras District Municipalities Act (V of 1920), sec. 92—“ Paid-up capital ” in—Meaning of—Benefit society or association --Members of—Subscriptions paid to society or association by, to enable it to carry on its business—Income and not capital.*

The words “ paid-up capital ” in section 92 of the Madras District Municipalities Act (V of 1920) must be given the technical meaning which is usually given to those words. Paid-up capital means so much of the authorized or stated capital of a company which its shareholders or subscribers have paid up. Subscriptions paid by the members of a benefit society or an association to the society or association to enable it to carry on its business are its “ income ” and not “ capital ”.

APPEAL from the judgment and decree of WALLER J. dated 1st October 1929 and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 721 of 1928.

*B. Satyanarayana* for appellant.

*C. Krishnaswami Ayyar* for respondent.

The JUDGMENT of the Court was delivered by

BEASLEY C.J. BEASLEY C.J.—This is an appeal from a judgment of WALLER J. The facts of the case are as follows:—The respondent association, namely, the Tea Districts Labour (supply) Association, is an association of persons

\* Original Side Appeal No. 108 of 1929.

formed for certain purposes, the main purpose being to gather recruits for tea estates for various parts of India and one of the gathering grounds being in or close to the appellat municipality. The objects of the association are fully set out in the memorandum of the association and its articles. The association is contributed to by its members who pay a subscription on a fixed scale and a capitation fee of Rs. 5 for each recruiter and Rs. 12 for each recruit. Each estate which is represented in the association makes an advance of Rs. 75 to cover the expenses of the recruiters. For the moment, we prefer to call these payments by the members of the association their contributions. The association has a branch in the appellat municipality and under section 92 of the Madras District Municipalities Act (V of 1920) the appellat municipality assessed the respondent association to companies' tax for the half-years ending 30th September 1925, 31st March 1926 and 30th September 1926 and served upon the respondent association notices demanding payments of the sums of Rs. 125 for each of the half-years already mentioned making a total sum of Rs. 500. The respondent association paid the amount demanded under protest and stating that they would file a suit in due course for the recovery of the amount paid by them under protest. The amount is a small one, but, as the respondent association had been similarly assessed by other municipalities, this suit and the other suits were, by order of the High Court, transferred here for a decision. WALLER J. allowed the respondents' suit because he held that the respondents were not assessable under section 92 of the Madras District Municipalities Act by reason of the fact that they had no paid-up capital. Upon all other points he appears to have been in favour of the appellat.

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The only point argued before us here to-day was whether the respondent association had a paid-up capital upon which it could be assessed. It is important to observe that the words used in section 92 are “paid-up capital”. Admittedly this is not a company but a mere benefit society; and it is not necessary—and so WALLER J. has held—that before a benefit society can be assessed under this Act it should carry on business within the municipality for profit. What we have to deal with here is the question as to whether or not the respondent association has any paid-up capital upon which it can be assessed. Mr. B. Satyanarayana in his very able argument contends that the contributions by the members to which we have already referred constitute the paid-up capital of it. He argues that it is quite clear that the association carries on business within the limits of the appellant municipality. He further argues that no association or company can carry on business without capital so to do and that any money it derives from its own members or from outside must necessarily be the capital of the company with which to transact business. He argues that it is not right, as our learned brother WALLER J. in the Court below did, to give a strict interpretation to the words appearing in the section, namely, “paid-up capital”, and invites us to give to those words a liberal construction and hold that any money received by a company, a benefit society, or an association which enables it to carry on its business must necessarily be capital. We are of the opinion that WALLER J. was quite right in applying to those words the technical meaning which usually is applied to those words. We find them in the section in question used in relation to a company and we decline to apply any other meaning to those words “paid-up capital” than that which is usually applied to them.

Paid-up capital means so much of the authorized or stated capital of a company which its share holders or subscribers have paid-up. In this case it appears to us that the contributions of the members of the association were in no sense capital. They were the subscriptions of the members of the association to the association and as such were the "income" and not the "capital" of the association. There is a distinct difference between "income" and "capital" and in our view this was the income of the association which enables it to carry on its business within the limits of the appellant municipality. The Legislature has chosen to say that where a company or a benefit society carries on business within a municipality it is to be assessed on its paid-up capital. But if the company or the benefit society has no paid-up capital, it follows that it cannot be assessed. Under these circumstances, in our view, the judgment of WALLER J. in the Court below was quite correct. This appeal must, therefore, be dismissed with costs.

Solicitors for respondent: *King & Partridge.*

A.S.V.

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