

(1900) 10 MAD CK 0015

Madras High Court

Case No: None

The Municipal Council

APPELLANT

Vs

The Standard Life
Assurance Company

RESPONDENT

Date of Decision: Oct. 12, 1900

Acts Referred:

- Contract Act, 1872 - Section 4

Citation: (1900) 10 MLJ 401

Judgement

1. The decree in favour of the plaintiff is impugned on the ground that the substantial question in the case has been wrongly decided and on the

ground that the action to recover the money-paid was barred by the provisions of Section 262 of the Act IV of 1884 (Madras).

2. In regard to the substantial question there are two points to be considered--it has to be ascertained whether the Company was exercising any

art, profession, trade, or calling specified in the schedule to the Act and whether to the Company exercised such art, profession, trade, or calling

within the Municipality within the meaning of the 53rd section. The business of life insurance does not appear in the schedule as one of the business

or trades in respect of which a tax may be levied, and therefore, it would seem that the plaintiff Company whose business is that of life insurance

could not by any possibility be liable. But it is said that, as the schedule includes in its list of denominations, ""carrying on business as a company,

any company that does carry on business becomes chargeable whether or not its business is otherwise one of the kinds mentioned in the schedule.

Now there are several difficulties in the way of this construction. Considering the terms of the section one would expect to find in the schedule a

catalogue of arts, professions, trades and callings, but the schedule does not strictly correspond with the section, since it gives a list of persons, and

not of trades or professions. In order to apply the schedule to the present case we should have to say that the transaction of the business of a

company is designated by the Legislature as a trade or calling. Ordinary people in making a list of trades or callings would make their classification

with reference to the nature of the employment and without regard to the question whether the business was transacted by individual persons or by

an incorporated company, and they would not denote the business of companies in general as one of the known trades or callings. That is one

difficulty in the way of the Council. Another difficulty is that whereas the schedule denotes a banker or barrister as a person who may be taxed, it

does not in similar language declare that any company may be taxed. It is apparently person "carrying on business as a company" who is to be

taxed. What that is intended to mean we do not pretend to know, but it can hardly mean "a company carrying on business as a company." It that

was intended it was easy to say so in plain language. Whether it was one individual person or the company that was in contemplation of the

Legislature, it is also difficult to believe that all companies without reference to the nature of their business were intended to be included. No

limitation is placed on the meaning of the word Company and therefore it must denote companies incorporated not for purposes of gain as well as

ordinary trading companies. It is said that the Act was amended in consequence of the decision in *Corporation of Calcutta v. Standard Marine*

Insurance Company (1896) A.C. 325 which apparently turned on the language of an Act similar to the original Madras Act of 1884. That may be

so, and it is true that this Court in ILR 21 M. 5 considered that an effective amendment of the Act had been made. But we cannot suppose that the

learned Judges intended to decide authoritatively a point which was in no way before them. The meaning of the Legislature is in our opinion so

doubtful that we are unable to say, with the certainty requisite in cases where taxation is involved, that companies carrying on the business of

insurance are liable to be taxed under the Act.

3. If there is any doubt as to that question, there is certainly none as to the question whether this particular company was doing business within the

Municipality. On the facts the case is undistinguishable from *Grainger v. Gough* (1896) A.C. 325. In that case as in this, there was an agent

employed to canvass, and take orders for another person, with no power to make contracts. An attempt was made to distinguish the cases on the

ground that according to Section 4 of the Indian Contract Act, the acceptance of a proposal is not binding on the acceptor until he becomes aware

of it. That rule of law has in our opinion no bearing whatever on the question where a man's trade or business is carried on. That is a question of

fact and we can see no reason why it should not receive in this country the same answer as that which was given in the House of Lords. On the

ground that the company was not doing business in Cocanada, the Municipality went beyond their powers in exacting the tax.

4. It is then argued on behalf of the Council that they are protected from acting by Section 262, and reliance is particularly placed on the case in

Municipal Council, Nellore v. Rangayya ILR 19 M. 10 where that section as it stood before the recent amendment was considered. Whatever was

the intended effect of the amendment it certainly cannot prejudicially affect the plaintiff. The question really is whether when a company, which in

respect; of its particular business is not taxable under the Act or does not transact business within the Municipality, is nevertheless taxed, it can be

said that "the provisions of the Act have been in substance and in effect complied with." The question whether there has been a substantial

compliance with the Act is one of fact which has to be determined with reference to the particular circumstances of the case. The case in Municipal

Conncil, Nellore v. Rangayya ILR 19 M.k 10 was one of an unfinished house and we were not satisfied that any provision of the Act had been

contravened. The cases reported in Municipal Council of Tuticorin v. South Indian Railway Company ILR 13 M.k 78 are cases on the other side

of the liae. The last of these cases closely resembles the present, the same Municipality was petitioner and yet the objection now under

consideration was either not taken or was overruled.

5. We can see no difference in principle between the exaction of a tax which has not been legally imposed and the exaction of a tax from a person

who is not taxable under the Act. In the latter case no less than in the former there has been a substantial disregard of the provisions of the Act.

6. For these reasons, we think the petition fails and must, therefore, be dismissed with costs.

7. Attorneys for the Respondents:Barclay, Orr and David.