

(1941) 05 CAL CK 0002

Calcutta High Court

Case No: Criminal Revision No. 127 of 1941

Bata Shoe Company, Ltd.

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision: May 21, 1941

Judgement

Derbyshire, C.J.

On January 2nd, 1941, the Municipal Magistrate of Calcutta convicted the Bata Shoe Company, Limited of an offence under sec. 492/175 of the Calcutta Municipal Act of 1923. On February 3rd, 1941, this Court issued a Rule calling upon the Municipal Magistrate and also upon the Chief Executive Officer of the Corporation of Calcutta to show cause why the conviction referred to and the order made under it should not be quashed. The matter arises in this way: The Bata Shoe Company Limited is a limited liability Company incorporated, under the Indian Companies Act with a capital of rupees ten lacs. The registered office of the Company is situate at 1B, Old Post Office Street, Calcutta, within the Original Jurisdiction of this Court. The Company is mainly engaged in the making and sale of foot-wear; for that purpose it has a factory outside Calcutta, at Batanagar, where shoes and other kinds of footwear are made. We are informed that the Company sells its wares to the public through its shops of which it has over seven hundred in India and some sixty-seven inside the municipal boundaries of the City of Calcutta.

2. Sec. 175 of the Calcutta Municipal Act of 1923 provides that every person who exercises or carries on in Calcutta, either by himself or by an agent or representative, any of the professions, trades or callings indicated in Schedule VI, shall annually take out a license and pay for the same such fee as is prescribed.

3. Until the year 1939, the Company duly paid license fees in respect of each of its premises that I have mentioned in Calcutta. But in the year 1939, the Company contended that the only license fee that it was legally liable to pay was the one in respect of its registered office and that it was not liable to pay in respect of the sixty-seven shops in Calcutta. In order to test the legal liability of the Company to

pay these license fees, the Company duly paid such license fees which were hitherto paid in respect of its registered office and sixty-six of its shops, but formally declined to pay the license fee in respect of one shop situate at 49A, Dhurumtolla Street. The Calcutta Corporation thereupon took proceedings under sec. 492/175 of the Act with the result that the Municipal Magistrate recorded a conviction against the Bata Shoe Company, Limited and fined them Rs. 50 being the amount of the license fee in respect of 49A, Dhurumtolla Street in order that that amount should be paid to the Corporation in respect of the fee. It was purely a test case and there was no contumacy on the part of the Company.

4. The question this Court has to decide is as to whether that conviction was correct. Sec. 175 of the Calcutta Municipal Act of 1923 provides:

Every person who exercises or carries on in Calcutta, either by himself or by an agent or representative, any of the professions, trades or callings indicated in Schedule VI, shall annually take out a license and pay for the same such fee as is mentioned in that behalf in the said schedule :

Provided that the grant of such a license shall not be deemed to affect the liability of the licensee to take out a license under any other section of this Act.

Then follows a further proviso enabling the Corporation, under certain specified conditions, to remit or refund part of the fees. We are not concerned with this second proviso.

5. Sec. 177 of the same Act provides:

The liability of any person to take out a license and the class under which he shall be deemed bound to take out a license, shall be determined in accordance with the rules contained in Schedule VI.

6. Schedule VI is headed "Rules as to licenses for the exercise or carrying on of professions, trades and callings-

Rule 1." Rule 1 provides:

Every license shall be granted under one or other of the classes mentioned in the second column of the following table, and there shall be paid annually for the same the fee mentioned in that behalf in the third column of that table.

7. Serial No. 2 of that table is headed "Class II" and in the second column are these words:

Company or association or body of individuals, the paid-up capital of which is equivalent to ten lakhs of rupees or upwards, which exercises or carries on any profession, trade or calling whatsoever, but is not included in Class I.

Class I relates to Companies of which the paid-up capital is rupees twenty lacs or upwards.

In column 3 of serial No. 2, the license fee is set out as Rs. 250.

The only other item in that table which is relevant is No. 29 and in the second column under head "Class V" are these words:

Hotel-keeper, boarding house-keeper, lodging, house-keeper, manufacturer, retail trader, or shop-keeper who is not included in Class IV and the rent of whose place of business is valued under Chapter X at Rs. 100 per mensem or upwards.

In column 3 is set out the license-fee of rupees fifty. Rule 2 of Schedule VI provides:

(1) Licenses shall be either personal or local.

(2) "Personal license" means a license which is not a local license, and includes a license granted to a company or association or body of individuals.

(3) " Local license " means-

(a) a license the classification of which depends on the valuation of the place of business, and

(b) a license granted under Class IV, number 13, or Class V, number,

32, or number 33, or class VI, number 42, or number 43, or Class VII," number 64, or number 69, or class VIII, number 80, in the table in rule 1.

Rule 5 provides:

A separate local license shall be taken out in respect of the business carried on in each separate place of business

Provided that-

(a) separate licenses shall "not be required in respect of any business carried on in adjacent premises which form one place of business or in any yards, godowns or factories which are auxiliary to any place of business; and

(b) the amount of the valuation of snob premises, yards, godowns or factories shall be included in the computation for determining the class under which the license shall be taken out,

Rule 7 provides:

When any person exercises or carries on a profession, trade or calling for which a personal license should under these rules be taken out, and is also the owner or occupier of a place of business for which a local license shall be taken out, he shall, if the Corporation so direct, take out both a personal license and a local license :

Provided that, where the place of business is auxiliary to the exercise or carrying on of the profession, trade or calling, only one license shall be required, and such license shall be either personal or local as the Corporation may direct.

8. The Company is clearly a person within the meaning of the Municipal Act and it is admitted that the Company is bound to take out a personal license and pay Rs. 250 in respect of its registered office. But it is contended that once that personal license has been taken out and paid for, the Company is not under any liability to take out a further license in respect of the shops.

9. Now, the license in respect of the shops is a local license mentioned in Schedule VI, Rule 2 (3). The contention that no further local license need be taken out, once the personal license in respect of the registered office is taken, seems to me to be untenable, because Rule 7 of Schedule VI provides that a person carrying on a trade for which a personal license should be taken out, if he is the owner or occupier of the place of business for which a local license should be taken out, shall, if the Corporation so direct, take out both a personal license and a local license.

10. It is clear then that taking out a personal license does not absolve a person from taking out a local license. As regards the proviso to Rule 7, it was not contended that the retail shops of the Company were auxiliary to the carrying on of the business. Such contention was specifically disclaimed by the learned Advocate who appeared for the Company. In my opinion that disclaimer was well-founded, because the retail shops are not simply auxiliary to the Company; they are part of the business of the Company. The Company exists for the purpose of making shoes and selling them; it is in the shops that they are sold. There is nothing then in the proviso to Rule 7 which exempts the Company from taking out a local license in respect of the retail shops after it has paid personal license in respect of its registered office.

11. It appears to me that the wording of Rule 5 is conclusive:

A separate local license shall be taken out in respect of the business carried on in each separate place of business.

12. That appears to me to be clear and conclusive. I am, therefore, of the opinion that the Bata Shoe Company is liable to take out and pay for, as it has done hitherto, the personal license in respect of its registered office in Calcutta; it is also liable to take out and pay for a proper local license in respect of each one of its retail shops situate inside the municipal boundaries of Calcutta. For these reasons I am of the opinion that the conviction and order in this case are correct and that this Rule must be discharged.

Bartley, J.

I agree.