

(1929) 06 CAL CK 0022

Calcutta High Court

Case No: None

In re : Marine Insurance Policies

APPELLANT

Vs

RESPONDENT

Date of Decision: June 25, 1929

Acts Referred:

- Stamp Act, 1899 - Article 47A(1)(ii), 57

Citation: 126 Ind. Cas. 135

Hon'ble Judges: George Claus Rankin, C.J; Philip Lindsay Buckland, J; Charu Chunder, J

Bench: Full Bench

Judgement

George Claus Rankin, C. J.

1. This is a Reference made by the Board of Revenue, Bengal, u/s 57 of the Indian Stamp Act, 1899. The Reference is for the opinion of the Court as to whether a certain type of document represented by a blank form attached to the statement of the case drawn up by the Board of Revenue should be stamped with duty payable under Article 47-A (1) (ii) of Schedule I to the Indian Stamp Act or with duty under Article 62 (c) of the said Schedule or with some other and what duty. It appears that a certain Company or Association called the Marine Insurance; Association, Calcutta, carry on business in India in the course of which they issue Marina Insurance Policies upon goods. Accordingly, they have upon their policies to pay the stamp duty required by the Schedule to the Indian Stamp Act. This Association has observed that, in the course if shipments to India, the policies of insurance or their equivalents sometimes take the form not of policies that have been executed in India but of certificates that policies have been taken out abroad. It, appears that this kind of certificate is so worded in some cases that it may be construed as a document which transfers the rights of the original policy-holder under a policy taken out abroad to the person interested in India in the goods shipped--in many cases to the Bank through whom the bills for the price of the goods are discounted. Accordingly, this Marine Insurance Association appears to have entered into

correspondence with the Government of Bengal representing that these certificates, to give them a neutral name, ought to be subjected to duty under the Indian Stamp Act before they are allowed to operate in India, This question has been discussed in the correspondence between the Association and the Government of India, Finance Department (Central Revenues) as well as the Government of Bengal. Various views have been expressed. One view has been expressed by the Stamp superintendent, Calcutta, to the effect that these documents are chargeable with duty as though they were Marine Insurance Policies. Another view has been expressed by a Department of the Government of India that these documents are of the nature of transfers of interest in a policy and are chargeable with duty under some other heading in the Schedule to the Indian stamp Act. Accordingly, without taking steps with reference to any particular document or seeking to make any person liable for duty upon any particular document, the board of Revenue, Bengal, have attached to their case stated a specimen blank form of certificate and have asked for the opinion of this Court u/s 57 of the Act upon the question whether documents of the character disclosed by this blank form are able to stamp duty and, if so, under what reading.

2. In my opinion, this Reference is entirely a competent. It is not within the purview of Section 57 of the Indian Stamp Act at all that section does not provide a means by which the authorities concerned in collecting stamp duty can get advice from the Court by laying a case before it for the decision a general question. It provides the machinery by which, when an actual case is being dealt with--a particular instrument being in question and a particular party being sought to be charged with duty upon that instrument, a question of doubt may be referred to this Court by the Revenue Authority setting forth facts in the form of a case stated and the Court, either in the presence of the parties concerned or, at all events, with opportunity to the parties concerned to argue the matter, is to decide the question of law raised on the facts. In the ordinary way, if the Government desires legal advice upon a general question, it can obtain it by consulting the law officers of the State or by taking such other advice as it may think desirable. It is well-settled by the decisions of all the High Courts in India that Section 57 cannot be used for the obtaining of an opinion from the High Court on questions of a general nature--not arising out of any particular case. This is clear enough if one reads Section 56 of the Act together with Section 57. Section 56, Sub-section (2) contemplates that a Collector acting u/s 31, Section 40 or Section 41, that is to say, dealing with a particular document and finding a doubt in his mind as to whether that instrument is chargeable may draw up a statement of the case and refer it with his own opinion for the decision of the Chief Controlling Revenue Authority. There is no provision there that the Collector at any time entertaining a doubt as to whether documents of a certain type amount or do not amount to policies of Marine Insurance can formulate this general question and get an opinion from the Controlling Revenue Authority. The arrangement is that the Collector acting upon a particular case under one or other of the three sections

named may refer to the Controlling Revenue authority in the manner set forth. Now, Section 57, goes on to say: "The Chief Controlling Revenue Authority may state any case referred to it u/s 56, Sub-section (2), or otherwise coming to its notice and refer such case with its own opinion thereon to the High Court." It is quite clear that there again it must be a specific case--a definite document, a definite person who is sought to be charged with duty--not an abstract question of chargeability of a certain kind. When we go on, we find that the particular High Court to which the reference is to be made depends upon the territory within which the case arises. This emphasizes, if possible, the necessity of a concrete case; and, lastly, it is quite clear that the Revenue Authority on receiving the judgment of the Court has to dispose of the case conformably to the High Court judgment.

3. These matters have not arisen in this case for the first time. So far back as 1877, In the matter of Thomson's Policy 3 C. 347, it was laid down by Garth, C. J. "I feel very strongly that, in giving an opinion upon questions submitted to us by the Board of Revenue which may serve in the future as guide to the Board in imposing taxes upon the public, we are bound to advise upon the actual facts before us and have no right to speculate upon the possible nature of transactions of which we have no certain knowledge." In the case of In re Reference under Stamp Act 25 M. 752, a Sub-Registrar had impounded certain documents and forwarded them to the Deputy Collector who certified that they were exempt from stamp duty. The Inspector-General of Registration disagreed and referred the matter to the Board of Revenue. The Board of Revenue referred the question to the High Court and the High Court held that the Reference was absolutely incompetent because when the Deputy Collector had certified that the documents were free from stamp duty there was no way by which any duty could be collected from the person sought to be made liable. The case was at an end. There was no case to be referred to the Court and no case which could be entertained by the Revenue Authority after the Court had given its opinion. In the same way, in In re Stamp Reference 27 Ind. Cas. 501; 37 A 125 : 13 A. L. J. 47, there had been certain legislation for the protection of agriculturists in Bundelkhand. When a decree on a mortgage was made against an agriculturist, instead of being executed in the usual way, it was provided that the decree should be sent to the Collector who should offer the decree-holder a mortgage in a certain form. A question arose whether this document had to be stamped and before any such mortgage had been executed, the form of the mortgage which might or might not be executed was referred to the High Court for its opinion as to whether such a mortgage would be liable to stamp duty. It was pointed out by the Full Bench that, reading Section 56 and Section 57 of the Act, the power to make a reference to the High Court had reference to instruments which were already in existence and did not include a power to refer speculative questions of the liability to duty of documents which had not been executed, Again in the case of Usuf Dadabhai v. Chand Mahommed 91 Ind. Cas. 299 : 27 B. L. R. 1273 : A.I. R. 1925 B. 51, there was a decision in Bombay of the Chief Justice and two other Judges

pointing out that the Chief Controlling Revenue Authority could refer a case u/s 57 of the Indian Stamp Act only when there was a case which was to be disposed of by him on receipt of the High Court judgment and that he had no power to refer an abstract question when there was no case pending before him. In that case, the Collector had validated certain documents on stamps of proper description being affixed thereto--the documents having been admitted in evidence and a decree passed. Thereupon the question was referred to the High Court as to whether or not the amount which had been levied was sufficient. It was held that there was no case remaining to be disposed of by the Revenue Authority and, therefore, the reference was not competent.

4. In the present case, the person at whose instance this matter has been raised as a general question is the Marine Insurance Association, Calcutta. Its complaint is that certain of its rivals are wrongly escaping stamp duty. No one of these rivals has been attacked either by being threatened that the documents will be impounded or in any other way. No one of the persons concerned is before the Court or has had an opportunity of coming before the Court or can be brought before it. This case illustrates very strongly the necessity of seeing that general questions are not referred to the High Court under the machinery provided by Section 57 of the Indian Stamp Act.

5. In my opinion, this Reference must be dismissed.

C. C. Ghose, J.

6. I agree.

Buckland, J.

7. I agree.