

The District Board vs Ford And Macdonald Ltd. on 10 May, 1951

Equivalent citations: AIR1952ALL418, AIR 1952 ALLAHABAD 418

JUDGMENT

Chandiramani, J.

1. This is the defendant's second appeal against the appellate decree of Sri B.N. Chaudhri, Civil Judge, Mohanlalganj, Lucknow, dated 2nd November 1945.

2. It appears that the plaintiffs manufacture and sell bricks within the jurisdiction of the District Board, Lucknow. The District Board, Lucknow has made certain bye-laws regulating the manufacture of bricks tiles etc. and lime. The regulations provide for the places where such kilns shall be located. Bye-law No. 6 relates to the fees and is in the following terms :

"The following fees shall be charged :

(a) for burning lime for purpose of trade--annas four per 100 cubic feet of lime sold ;

(b) for burning bricks, floor-tiles etc. for trade--annas two per thousand bricks or floor tiles sold;

(c) (Not relevant for the present purposes);

(d) for burning lime for, private use--Re. 1.

(a) for burning bricks, floor tiles, etc. for private use-

(i) upto 15,000--Rs. 2.

(ii) over 15,000--Rs. 5."

The plaintiffs had before those bye-laws came into force on 1st January 1941 manufactured some bricks and in respect of this quantity of bricks they were assessed to a tax under the bye-laws amounting to Rs. 351-9-0. In spite of demands the plaintiffs refused to pay the money. Eventually coercive process had to be adopted to recover the money. Thereupon the plaintiffs filed a suit for recovery of Rs. 351-9-0 alleging that the District Board in realising the tax from them had acted in excess of and beyond the scope of its authority under the bye-laws and in these circumstances the money ought to be refunded and they ought to get damages also. The claim was resisted by the District Board. They stated that they acted rightly within the limits of their authority and that the remedy, if any, lay in an appeal to the authorities prescribed in the District Boards Act and not in a

suit before the civil Court. Both the Courts below have held that the District Board acted beyond the scope of its authority and the bye-laws and no tax should be charged in respect of bricks which had been manufactured before 1-1-1941 the date when the bye-laws came into force and that in these circumstances civil Court had jurisdiction. The suit was decreed accordingly for Rs. 351-9-0 and Re. 1 was granted as nominal damages. The appeal has been dismissed.

3. In this appeal it has been once more urged that the District Board under the bye-laws had the authority not only to tax the manufacture but also the sale of the bricks and the Board, therefore, acted within the scope of its authority and that in any case by virtue of Section 131, District Boards Act the civil Court had no jurisdiction.

4. I have heard the learned counsel and I am satisfied that the appeal has no force.

5. Bye-law No. 6 under which the plaintiffs have been charged the tax has already been reproduced and it clearly indicates that the liability arises on account of manufacture of bricks though the extent of the liability depends on the quantity of bricks sold where the manufacture is for trade purposes. The bye-laws are not retrospective in operation and in these circumstances it is only the manufacture, after the date the bye-laws came into force, that can be taxed and there is admittedly a finding of fact in this case that the bricks taxed in this case had been manufactured before the bye-laws came into force. Taxation of the plaintiffs in these circumstances was clearly beyond the authority contained in the bye-laws themselves. Reliance was placed by the appellant on Sheo Narain v. Town Rationing Area Panchayat, Chhabramau, 1936 ALL. W.R. 107 for the proposition that the assessment could not be challenged. That case is easily distinguishable from the present one. On the other hand, the respondents relied on District Board of Farrukhabad v. Prag Dutt, A.I.R. (35) 1948 ALL. 382, Allah Taala v. District Board of Pilibhit, A.I.R. (32) 1945 ALL. 273 and District Board of Dehra Dun v. Damodar Datt, A.I.R. (31) 1944 ALL. 223 (2) where it has been held that if the assessment complained of is beyond the competence of the Board and is therefore an illegal imposition, the civil Courts have jurisdiction to interfere. In this case, it has been shown that the District Board was not justified by its own bye-laws to collect the tax from the plaintiffs. It has exceeded its powers and in those circumstances the civil Court had jurisdiction in this matter.

6. The appeal fails and is accordingly dismissed with costs.