Union of India and Another

Vs

Ladu Lal Jain

Civil Appeal No. 717 of 1961

(K. Subha Rao, Raghuvar Dayal, J. Mudholkar JJ)

07.05.1963

JUDGMENT

RAGHUBAR DAYAL J. –

This appeal, by special leave, is directed against the order of the High Court of Assam rejecting the revision application, under s. 115 of the Code of Civil Procedure, hereinafter called the Code, of the appellants against the order of the Additional Subordinate Judge, Gauhati, in a money suit to the effect that he had jurisdiction to try the suit.

The contention of the appellants is that this view of the Subordinate Judge, confirmed by the High Court, is wrong.

To appreciate the contention for the appellants, the facts of the case may be stated. The suit was instituted by the plaintiff-respondent against the Union of India and the Northern Frontier Railway represented by the General Manager, having its headquarters at Pandu. It related to a claim for recovery of a sum of Rs. 8,250/- on account of non-delivery of the goods which had been consigned to the plaintiff's firm run under the name and style of M/s. Ladu Lal Jain. The consignment consisted of 134 bags of rice and was booked from Kalyanganj station of defendant No. 2 for carriage to Kanki station of the same defendant on April 13, 1958. The goods consigned were not delivered to the plaintiff and hence the suit, after serving a notice under s. 77 of the Indian Railways Act on the defendant railway and also serving a notice under s. 80 of the Code. It was alleged in the plaint that the cause of action arose at Pandu within the jurisdiction of the Court at Gauhati, the place where notice under s. 80 of the Code was duly served upon the defendant railway and that the suit was filed in the Court within the jurisdiction of which the defendant railway had its principal place of business by virtue of its headquarters being at Pandu. The two defendants filed a joint written statement.

Kalyanganj is in West Bengal and Kanki is in the State of Bihar. Gauhati is in the State of Assam. It was contended inter alia that Gauhati Court had no territorial jurisdiction to try the suit as neither of the aforesaid railway stations was within its jurisdiction and that the consignment never travelled within any part of the State of Assam and therefore the cause of action could not arise within the jurisdiction of any Court in Assam. It was further contended that mere service of notice, which was not admitted, on the defendants at a place within the jurisdiction of the Court, could not vest territorial jurisdiction on it and that defendant No. 1, the Union of India, had no principal place of business at Pandu or any other place within the jurisdiction of the Court, its headquarters office being at New Delhi. It was also stated that defendant No. 2 is owned and managed by defendant No. 1, that the office of defendant No. 2 at Pandu was also owned and controlled by defendant No. 1 and

that the office at Pandu was a branch office of the Union of India which was controlled by defendant No. 1 from New Delhi.

Relying on the case reported as P. C. Biswas v. Union of India [A.I.R. 1956 Assam 85.], the Trial Court decided the preliminary issue about jurisdiction against the defendants holding that the principal place from which the railway administration in a particular area is carried on is the principal place of business for the purpose of s. 20 of the Code. The single Judge of the High Court rejected the revision also on the basis of the same decision of his Court.

The territorial jurisdiction of a Court is in general determined by the provisions of s. 20 of the Code which reads :

> "Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction -
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> (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
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> (b) any of the defendant, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
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> (c) the cause of action, wholly or in part, arises.
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> Explanation I : Where a person has a permanent dwelling at one place and also temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.
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> Explanation II : A corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has also a subordinate office, at such place".

The principle behind the provisions of clauses (a) and (b) of s. 20 is that the suit be instituted at a place where the defendant be able to defend the suit without undue trouble.

The expression 'voluntarily resides or personally works for gain' cannot be appropriately applied to the case of the Government. The Government can however carry on business. The mere fact that the expression 'carries on business' is used along with the other expressions, does not mean that it would apply only to such persons to whom the other two expressions regarding residence or of personally working for gain would apply.

The sole contention raised for the appellants in this Court is that the running of railways by the Union of India cannot be said to amount to its carrying on business and that therefore the fact that the headquarters of the Northern Frontier Railway Administration is at Pandu within the jurisdiction of the Court at Gauhati does not give the Court jurisdiction under s. 20 of the Code.

The contention is based on the reasoning that any undertaking run by the Government, even if it amounts to the carrying on of a business when run by a private individual, would not be the carrying on of business by the Government if there was no element of profit making in it. There is no allegation in the written statement that the Government is not running railways for profit. No issue was framed about it. The Court below recorded no decision on the point. It cannot be presumed that the Government is not making a profit from its running the railways in the country or is not running it with a profit motive.

The fact that the Government runs the railways for providing quick and cheap transport for people and goods and for strategic reasons will not convert what amounts to the carrying on of a business into activity of the State as a sovereign body.

Article 298 of the Constitution provides that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and cl. (6) of Art. 19 provides that nothing in sub-cls. (g) of cl. (1) of that Article shall prevent the State from making any law relating to the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. These provisions clearly indicate that the State can carry on business and can even exclude citizens completely or partially from carrying on that business. Running of railways is a business. That is not denied. Private companies and individuals carried on the business of running railways, prior to the State taking them over. The only question then is whether the running of railways ceases to be a business when they are run by Government. There appears to be no good reason to hold that it is so. It is the nature of the activity which defines its character. Running of railways is such an activity which comes within the expression 'business'. The fact as to who runs it and with what motive cannot affect it.

This Court had occasions to determine the nature of certain activities of Government. The rationale of those cases is a good guide for determining the point before us. In State of Bombay v. The Hospital Mozdoor Sabha [[1960] 2 S.C.R. 866.]' the question was whether the relevant provisions of the Industrial Disputes Act, 1947, applied to the group of hospitals run by the State of Bombay and whether they are 'industry' within the meaning of that Act. The decision of the question depended on the interpretation of the definition of 'industry' prescribed by s. 2(j) of the Act. This section provides that industry means any business, trade, undertaking etc., of employers. In considering the question it became necessary to enquire whether that activity, i.e., the running of the hospitals, would be an undertaking if it is carried on by a private citizen or a group of private citizens. It was held that if a hospital is run by private citizens for profit, it would be an undertaking very much like the trade or business in their conventional sense. It was observed at p. 878 :

> "Thus the character of the activity involved in running a hospital brings the institution of the hospital within s. 2.(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word 'undertaking' in s. 2(j) ? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of s. 2(j); who conducts the activity and whether it is conducted for profit or not do not make a material difference".

To similar effect were the observations in The Corporation of the City of Nagpur v. Its employees [[1960] 2 S.C.R. 942, 962.], where it was said :

> "If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation".

It was earlier said at p. 960 :

> "Monetary considerations for service is, therefore, not an essential characteristic of industry in a modern State".
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> "Barring the regal functions of a municipality, if such other activities of it, if undertaken by an individual, would be industry, then they would equally be industry in the hands of a municipality".

Lastly, in Satya Narain v. District Engineer, P.W.D. [A.I.R. 1962 S.C. 1161.], the question for determination was whether plying motor buses by the Government by way of commercial activity amounts to its running it on a public service. In determining this question, this Court observed at p. 1163 :

> "It is undoubtedly not easy to define what is 'public service' and each activity has to be considered by itself for deciding whether it is carried on as a public service or not. Certain activities will undoubtedly be regarded as public services, as for instance, those undertaken in the exercise of the sovereign power of the State or of governmental functions. About these there can be no doubt. Similarly a pure business undertaking though run by the Government cannot be classified as public service. But where a particular activity concerns a public utility a question may arise whether it falls in the first or the second category. The mere fact that that activity may be useful to the public would not necessarily render it public service. An activity however beneficial to the people an however useful cannot, in our opinion, be reasonably regarded as public service if it is of a type which may be carried on by private individuals and is carried on by government with a distinct profit motive. It may be that plying stage carriage buses even though for hire is an activity undertaken by the Government for ensuring the people a cheap, regular and reliable mode of transport and is in that sense beneficial to the public. It does not, however, cease to be a commercial activity if it is run with profit motive. Indeed even private operators in order to attract custom are also interested in providing the same facilities to the public as the Government undertaking provides. Since that is so, it is difficult to see what difference there is between the activity carried on by private individuals and that carried on by Government. By reason of the fact that a commercial undertaking is owned and run by the State it does not ipso facto become a 'public service'."

This case simply held that commercial activity carried on with profit motive cannot be held to be 'public service'. It does not hold that such activity carried on by Government will not be 'business' if conducted without profit motive.

We are of opinion that 'profit element' is not a necessary ingredient of carrying on business, though usually business is carried on for profit. It is to be presumed that the Railways are run on a profit basis, though it may be that occasionally they are run at a loss.

The case reported as Director of Rationing & Distribution v. The Corporation of Calcutta [[1961] 1. S.C.R. 158.], relied on for the appellants is really of no help to them. It was in connection with the

sovereign activities of the State that it was said that the State was not bound by any statute unless the statute provided to that effect in express terms or by necessary implication. The contention that the Government could not get the benefit of this law in connection with its business activities was neither repelled nor considered. It was held to have no foundation as there was nothing on the record that the Food Department of the Government of West Bengal by undertaking rationing and distribution of food on a rational basis had embarked upon any trade or business and, in the absence of any such indication, it appeared that the department was discharging the elementary duty of a sovereign to ensure proper and equitable distribution of available foodstuffs with a view to maintaining peace and good government.

In view of what we have said above, we hold that the Union of India carries on the business of running railways and can be sued in the Court of the Subordinate Judge of Gauhati within whose territorial jurisdiction the headquarters of one of the railways run by the Union is situated. We accordingly dismiss the appeal with costs.

Appeal dismissed.

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