

ANDHRA PRADESH HIGH COURT

Badrinarayan

Vs.

Excise Commissioner Hyderabad

A.A.O. No. 278 of 1959.

(P. Chandra Reddy, C. J. and Jaganmohan Reddy, J.)

19.03.1959. 11.10.1961

JUDGMENT

Chandra Reddy, C.J.

1. This appeal is filed by the plaintiff in O.S. No.148 of 1958 on the file of the City Civil Court, Hyderabad, against the order of the Fourth Additional Judge, City Civil Court, returning the plaint for presentation to the proper Court.

2. The plaintiff was an abkari contractor in 1360 F. for the villages of Vemulkunta and Lachamapur Khurd in the District of Nalgonda. A penalty of Rs. 9,767-8-0 was imposed on him by the Excise Superintendent for the alleged tapping of 145 toddy and 500 sindhi trees without paying the excise duty. He carried an appeal to the Collector, the appellate authority under the rules, against this levy and a further appeal to the Excise Commissioner unsuccessfully. He then sought to have this order revised by the Minister for Revenue and Excise. As this ' was also rejected, the appellant brought the aforesaid suit against the officials concerned and the Minister impugning the levy of penalty as being ultra vires, illegal and void.

3. Various defenses were raised to the suit but the material for the purpose of the present enquiry is that the Court had no jurisdiction to entertain the suit, as the contract was entered into and executed at Nalgonda and the order impeached was made at Nalgonda.

4. The relevant issue of the issues framed for trial is:

"Whether this Court has no territorial jurisdiction to try the suit as pleaded in para (7) of the written statement?"

5. The Fourth Additional Judge took up this question as the preliminary issue and decided it against the plaintiff. It is that order of the trial Court that is now under appeal.

6. The short question for decision; in the appeal is whether the plaintiff appellant could maintain the suit in the City Civil Court. The plaint proceeded on the assumption that the defendants

resided within the territorial limits of the City Civil Court, having their offices therein.

7. The material provision of law is Section 20 C.P.C It recites:

"Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(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

(b) any 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 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

(c) the cause of action, wholly or in part, arises.

EXPLANATION I:- Where a person has a permanent dwelling at one place and also a 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.

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 at subordinate office, at such place." We may premise the discussion with the remark that the concerned officials and the Minister-were impleaded as defendants as representing the Government. So, the principal question for determination, is whether the State Government could be said to be residing or carrying on business within the ambit of Section 20 C.P.C. within the City jurisdiction of the City Civil Court.

8. The first point to be decided is whether the Government could be said to be actually and voluntarily residing within the jurisdiction of the City civil Court, Hyderabad. In the decisions: of this question, we cannot miss the significance of the expression "actually and voluntarily resides". These words, in our opinion, clearly refer to a natural person and not to a legal entity like the Government. Section 20 C.P.C. has in contemplation people dwelling within the territorial limits of a Court and persons indulging in commercial activities within that area even if they do not dwell therein. This section in plain and unmistakable language conveys that idea. The words "actually and voluntarily" cannot reasonably apply to legal entities. That being so, it is difficult to bring the Government within the import of the expression "the defendant" actually and voluntarily resides".

9. The next question is whether the Government could be said to carry on business or personally works for gain, it is beyond dispute that the Government is not personally working for gain in collecting the Revenues of the State. At the outset, it should be made clear that we are not concerned here with the point whether the Government enjoys any immunity in regard to certain matters or whether a suit could be maintained in the form in which it was brought. What we have to determine is as to which is the Court in which the plaintiff could enforce; his rights, if any. Nor

are we required to consider the position of the Government by virtue-of the powers derived under Article 298 of the Constitution.

10. The only problem we have to solve is whether the Government in obtaining the abkari revenue or in collecting revenues from other sources could be said to be carrying on business within the meaning of Section 20 (b) C.P.C. It is difficult to posit that this activity, namely, collection of excise revenue, would amount to "carrying on business". It is urged¹ by Sri Sahgal, learned counsel for the appellant, that the Government enjoys a monopoly in regard to abkari business and, therefore, the Government should be deemed to be carrying on business in Hyderabad within the sweep of Section 20 C.P.C. We are unable to accept this view. The mere fact that the Government auctions the right to carry on business in liquors as a mode of realising the abkari revenue would not establish that the Government is having a monopoly in the matter of abkari business. We consider that in gathering the revenues from various sources, the Government acts in its sovereign capacity and not as a commercial body. The collection of abkari revenue is not undertaken by a private corporation and much less by private individuals. Therefore, the concept of carrying on business cannot be imported into activities of this description. It is unnecessary to pursue this topic any further, since this section has been the subject-matter of judicial interpretation on several occasions.

11. The earliest case on the point is *Cubit Sparh Hall Rundle and Co v. Secretary of State in Council*¹, That was an action for specific performance of an agreement entered into between a private individual and the Government. The plaintiff applied to the Superintendent of Darjeeling for grant of wet lands under a resolution of the Government. He was assigned 500 acres of land at Rs. 2-8-0 per acre. The plaintiff took possession of the lands after paying the stipulated amount. Instead of executing a deed of grant to the plaintiff, the Government advertised for sale of the same property and in spite of the protest of the plaintiff, the land was put up for auction. In order to prevent the land from being sold to others, the plaintiff became the highest bidder at the auction. Shortly thereafter, he laid an action in the Calcutta High Court for a declaration that the re-sale was void and for an injunction to restrain the Government from recovering the price from him and for the execution and delivery of the instrument of grant of the land. The question was whether that Court had jurisdiction within the meaning of clause 12 of the Letters Patent to take cognizance of the suit. Wells J. held that it was not competent for the High Court to entertain the suit. The remarks of the learned Judge in this regard are very instructive says the learned Judge:

"Then, can the Secretary of State in Council be said to carry on business or work for gain within the local limits of the ordinary original jurisdiction of the Court? It is true the business of the Government is carried on as well within the local limits of the ordinary original jurisdiction of the Court as elsewhere; and it is equally true that the Government obtains revenue to a large amount, from various sources within such local limits; but the business so carried on,

¹ Hyderabad 37

And the agency employed in collecting the revenue so obtained, cannot be said to be business carried on, and work done for gain, within the meaning of the 12th section of the letters patent. The words 'carrying on business and personally work for gain', do not refer to an institution like the Government; and the words 'personally work for gain' were

intended to give, fee Court jurisdiction over individuals, who, though dwelling out of the local limits of the ordinary original jurisdiction of the Court, might be personally working for gain within such local limits."

12. We may next advert to the decision of a division Bench of the Madras High Court in *Govindarajulu Naidu v. Secretary of State*², The principle enunciated there was that the word 'resides' must be taken to refer to natural persons and not to legal entities, such as limited companies or Governments and the business envisaged by that section was a commercial business and not a business of State or Government.

13. There are a number of cases which dealt with the question whether the Union Government, which own railways, could be said to be carrying on business at the headquarters of any of the railways. The weight of authority is in favour of the rule that the Government of India owning the railways could not be said to be carrying on business within the local limits of the Court where the headquarters of a particular railway is situate. On this question, there was some divergence of opinion in the Calcutta High Court. Ultimately the view prevailed that the Union Government could not be regarded as carrying on business at the place where the headquarters of any railway is located. In *K.G. Kalwani v. Union of India*³, a Bench of the Calcutta High Court decided that it had no jurisdiction, under clause 12 of the Letters patent, to entertain a suit against the Union of India as the owner of the State Railway solely on the ground that the State Railway has its head office in Calcutta. This case dealt with every aspect of the controversy and reviewed the case-law exhaustively. It is, therefore, not necessary for us to refer to the earlier decisions which expressed a contrary opinion.

14. This is also the view expressed by the Bombay High Court in *Bata Shoe Co. v. Union of India*⁴, In that case, the plaintiff sued the Union of India for recovery of Rs. 844-7-0 by way of damages for the short, delivery of the goods consigned at Agra Fort. These goods which were to be carried over by the B.B. and C.I. Railway, got damaged on the way and were not delivered to the consignee. The value of the goods short-delivered was claimed as damages from the Union of India and action was laid in the Court of Small Causes at Bombay, in upholding the objection of the defendant-Government, Gajendragadkar J. remarked:

"But we are disposed to hold that the context on which the word has been used in Section 18(b), Presidency Small Cause Courts Act, Section 20 C.P.C. and clause 13 of the Letters Patent, requires that this word should not be construed in such wide and unrestricted sense."

With great respect, we are disposed to agree with the law as stated by the learned

² AIR 1927 Mad 689

⁴ AIR 1954 Bom 129

³ AIR 1960 Cal 430

Judge there.

15. The doctrine of *Azizuddin v. Union of India*⁵, is in consonance with this. Rajamannar, C.J., who spoke for the Court, discussed this subject elaborately and referred to all the cases bearing on this matter. While disagreeing with the view expressed by Venkatarama Ayyar, J., in C.R.P. Nos.1573 and 1574 of 1950 (Mad) who expresses a contrary view, this is what Rajamannar, C.J.,

observed:-

"The learned Judge begins the discussion of the point as to jurisdiction by an analysis of the distinction, owing to historical reasons, made between the acts of the Government in its sovereign capacity and its commercial activities. That distinction has a material bearing only on the question of the liability of the Government to be sued in a Court of law. The rulings in *Peninsular and Oriental Steam Navigation Co. v. Secy. of State*⁶, *Secy. of State v. Cockcraft*⁷, *Mrs. Constance Zena Wells v. Governor General of India*⁸, and *Secretary of State v. Moment*⁹, related to a determination of the liability of the Government, and were not concerned with the jurisdiction of the Court in which the action was brought against the Government. But with great respect to the learned Judge, we are unable to follow that because the Government would be liable to be sued in a Court of law for acts done in a capacity not of a sovereign character, the Government can be held to carry on a business' with reference to such acts."

16. The only other case which struck a different note is *P.C. Biswas v. Union of India*¹⁰ of the Assam High Court. In that case, Ram Labhaya, J., who delivered the Opinion of the Court, remarked:-

"To say that the Government is not carrying on business for, purposes of section 20, Civil Procedure Code or Clause 12 of the Letters Patent, even when actually it is engaged in the business of transport is to introduce a legal fiction into the law."

17. The Calcutta High Court in AIR 1960 Calcutta 430 differed from AIR 1956 Assam 85 and we also express our respectful dissent from the principle underlying that case. The preponderance of judicial opinion is in favour of the principle that Union of India, which owns several railways, could not be described as a person carrying on business within the territorial limits of the Court in which the head-quarters of that railway is situated. If in regard to running of Railways the Union Government could not be said to be carrying on business for purposes of section 20, a fortiori the State Government on obtaining abkari revenue in the exercise of its sovereign rights could not come within the purview of that section.

18. It is maintained by Sri Sahgal that all these cases deal with Clause 12 of the Letters patent and, therefore, they are inapplicable to a case arising under section 20, Civil Procedure Code. We cannot accede to this proposition. There is no material difference between the phraseology of Clause 12 of the Letters patent and that of

⁵ ILR (1955) Mad 912 : (AIR 1955 Mad345)

⁷ ILR 39 Mad 351 : AIR 1915 Mad 993

⁶⁵ Bom HCR App 1

⁸ AIR 1946 Lahore 50

⁹ ILR 40 Cal 391 (PC)

¹⁰ AIR 1956 Ass 85

section 20, Civil Procedure Code, While Clause 12 uses the word "dwells" the word used in section 20, Civil Procedure Code is "resides". We do not think that these two words have two different connotations. The policy underlying Clause 12 and in section 20, Civil Procedure Code is the same. The former says "or, if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally works for gain". A comparison of the two provisions does not reveal any dissimilarity between them. Even otherwise this submission lacks

substance for the reason that AIR 1927 Madras 689 and ILR 1955 Mad 912 : AIR 1955 Madras 345 bear on section 20, Civil Procedure Code and AIR 1954 Bombay 129 deals with section 18 (b) of the presidency Small Cause Courts Act.

19. Apart from the decided cases, the view taken by us is warranted by the language of section 20, Civil Procedure Code. Any other interpretation would be contrary to the spirit and also the letter of, the section. In our opinion, the conclusion of the City Civil Judge is the correct one and does not call for interference.

20. We accordingly confirm the order of the trial Court and dismiss the appeal with costs.
Appeal dismissed.