LAHORE HIGH COURT

Mahomad Sadaat Ali Khan

Vs

Administrator

(Abdur Rahman, J.)

28.05.1945

JUDGMENT

Abdur Rahman, J.

1. The following question has been referred to the Full Bench for its' opinion:

> When a plaintiff claims compensation for damage said to have been caused by the failure of a local body to maintain its water system in proper order, is the suit governed by Article 2 or Article 36, Limitation Act?

2. Article 36 is a general article. It applies to suits for compensation for certain torts only when no other article is found to be applicable. This is on the principle of law contained in the maxim generalia specialibus now derogant (a special provision does not yield to a general provision). The real question to decide, therefore, relates to the applicability of Article 2, Limitation Act, to a suit for compensation of the nature mentioned in the question referred to us for opinion. This would depend upon the correct interpretation of the language employed by the Legislature in Col. 1. The article reads as hereunder:

> 2. For compensation Ninety days When the tion for doing or for act or omis- omitting to do an act sion takes alleged to be in pursuance place of any enactment in force for the time being in British India.

3. Learned Counsel for the respondent contends that this Article would apply in preference to Article 36, Limitation Act, as the water system was required by Section 132, Punjab Municipal Act, to be maintained by the municipal committee and not only would the suits for compensation for any acts done or alleged to have been done in maintaining that system fall under this article but also those which are brought in respect of any omissions made by the committee in doing such acts. The contention that if an act is required, alleged or purported to be done by or in pursuance of any enactment, both the act and its omission will be covered by Article 2 is quite plausible and strikes one at the first blush. But the injustice that this interpretation may cause in a given case such as the present one where the omission stated in col. 3 of the article as the starting point of limitation may not come to be known by a plaintiff for a long time after the period

mentioned in col. 2 has run out makes one hesitate in accepting this interpretation and leads him to scrutinise the words of col. 1 more closely, for the Legislature cannot be presumed to be unreasonable and to have provided a short period of limitation, (however expeditiously it may have intended such suits to be instituted,) commencing from the time when a plaintiff may not know or even be capable of knowing that a cause of action has accrued to him and which he must put in a brief period of 90 days before the Court for its decision. I must concede that if no other interpretation is possible, the words of the statute must be given effect to, however unfortunate the result of that interpretation may be. But one must struggle against such an unreasonable construction as far as is possible and in doing so he must, where the language, is ambiguous, construe the words of the article strictly, i.e., in favour of the plaintiff's right to proceed. I say so with the avowed object that even if two interpretations are found to be equally possible. I must impute a reasonable intention to the Legislature and "hold the suit not to be falling within the scope of Article 2, as, being contained in a statute of repose, it has to receive such interpretation as would effectuate the intention of Legislature. If therefore two constructions are without straining the language of the article permissible, the one which leads to undesirable or unexpected results or is liable to cause hardship must be avoided as not having been intended by the Legislature. Let me now analyse col. 1 of the article. If carefully examined, it would be found to apply to two kinds of suits:

> (i) suits for compensation for doing an act alleged to be in pursuance of any enactment in force for the time being in British India; and
> (ii) suits for compensation for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.
> Apart from the authorities to which reference would be made in due course, I do not think this analysis can be said to be unwarranted. In failing to maintain its water system in proper order, the local body cannot be said to have either done or omitted to have done an 'act' alleged to be in pursuance of any enactment for the time being in force. The duty to maintain water pipes has been laid on the municipalities under Section 132, Punjab Municipal Act. Had the local body, therefore, done an act in the process of maintaining the water system (it being immaterial whether that act was in pursuance of, and thus justifiable under, the statute or was bona fide believed by the local body to be so) and was sued for compensation for having done the act, the suit would have fallen within the first category and would have been barred by limitation after ninety days of the doing of the act. Similarly, if the local body had omitted to do an act which was alleged or purported to be done in pursuance of any enactment in force, it would also have been, as falling in the second category, covered by this article. But the question to decide is whether a mere failure or non-performance of the duty imposed on the local body not in pursuance but in contravention of the Punjab Municipal Act can be held to fall within either of these categories?

4. Two main objections were raised to this interpretation. The first one was that a person or a body cannot be said to have omitted to do any act in pursuance of an enactment for the simple reason that a Legislature has nowhere imposed a duty on any person, juristic or otherwise, to omit to do an act although it could have and has in several places prohibited him or it, as the case

may be, from doing certain acts. The second criticism was to the effect that the words which "refer to acts done extend also to illegal omissions" under the General Clauses Act.

5. As to the first objection, it is quite true that the Legislature, whenever it chooses so to do, does not order a person to omit to do an act by an enactment. This is not how it expresses itself generally. It either prohibits a person from doing an act or, what is usual, it provides a sanction or a penalty when an act which it intends to prohibit is committed or done. But when a person does not do an act in pursuance of what be bona fide believes to be a prohibition (whether it was prohibited in fact or not), he complies with and carries out the order (or what he believed the order to be) prohibiting him from acting in a particular manner and does not consequently perform the act, would it be wrong to say in hat case that he has omitted to, do that act in pursuance of the enactment or what he believed or regarded to be in its pursuance? In other words, a prohibition to a person by a Legislature from doing an act may result in an omission (in the sense of non-performance) by the person if he refrains from doing the act by reason of that prohibition or for what he may have believed to be in pursuance of that prohibition. Looked at from the point of the person the non-performance could be characterised as an omission. In fact, the use of the word 'prohibition' from the person's point of view would be clearly erroneous. That is why the Legislature has used the word 'omission' and not 'prohibition'.

6. As to the second criticism, it cannot be disputed that words which refer to acts done with reference to an offence or civil wrong have been extended by the General Clauses Act to include 'illegal omissions'. But this would only mean that one might have in view of this provision read at the outside the words 'illegal omissions' (if one can do so at all) for the words 'doing an act' used in col. 1 of Article 2, Limitation Act, if it became necessary so to do. The article would have in that case read:

> "For compensation for an illegal omission alleged to be in pursuance of an enactment," etc.

7. Leaving the word 'illegal' for the time being out of consideration, it would have clearly meant that the omission must be alleged (or purported) to have been made in pursuance of any enactment. This could not apply to an omission made by a person as a result of the breach of a positive duty imposed upon him by an enactment. The omission to do an act alleged to be in pursuance of any enactment is one thing and the breach or disobedience of what the Legislature has ordered to be done a totally different one. And the failure to maintain a water system in proper order can only be a breach of the duty imposed by the Legislature and can never be held to be either in pursuance or in the alleged pursuance of the provisions of the Punjab Municipal Act.

8. It may then be said that if the General Clauses Act had included an omission within the definition of the word 'act', where was the necessity for the Legislature to have employed the words 'omitting to do' before the words 'an act' superfluously? The reply is that the Legislature intended to make it quite clear that such omissions alone would be covered by this article as are alleged to be in the pursuance of an enactment and not otherwise. It may very well be that the omission made by a person or body is in the execution of the 'act' alleged to be in pursuance of an enactment but it need not necessarily be so and may be independent of the 'act'. I could

illustrate my meaning by the facts in *Mukat Lal v. Gopal Sarup*[1], The plaintiff had alleged in that case that in execution of a simple money decree certain immovable property belonging to him had been advertised for sale. But the plaintiff tendered the decretal amount to the court amin on the day fixed for the sale but before it had commenced. The defendant, who was no other than the court amin and had been appointed to conduct the sale, wrongfully refused to accept the money offered to him and went on with the sale. The plaintiff was thus obliged to get the sale set aside under Order 21, Rule 89, Civil Procedure Code The cause of action on which the suit had been instituted consisted of (a) the refusal by the amin to accept the money tendered and (b) of continuance of the sale after the tender had been made. The suit was brought some 19 months after the accrual of the cause of action. It was held by a Division Bench of the Allahabad High Court to be barred under Article 2, Limitation Act. In doing so, the learned Chief Justice and Banerji J. observed as follows: In the present case if the act of the defendant complained of be the alleged refusal to accept the money due on foot of the decree, the suit is based on the allegation that the defendant omitted to do an act which it was his duty to do under one of the provisions of the Code of Civil Procedure, namely, to receive the decretal money before sale. If on the other hand the act complained of be the proceeding IO sell the property, again there can be no doubt hat the complaint is that the defendant did an act purporting to be under the Code, but improperly, namely, to sell the property after the decretal amount Had been tendered.
The omission to accept the money by the arnin was alleged to be in pursuance of an enactment as he thought or he said that he lihought, although wrongly, that he could not accept the money tendered and was obliged to conduct the sale. Hero then is an instance of both an act and an omission alleged to be in pursuance of an enactment for the time being in force. It must be, however, admitted that the article so construed would apply to very rare cases but this can't be helped if those responsible for the legislation have not succeeded in expressing their meaning (if they wished so to convey) which the Public Authorities Protection Act, 1893, or its predecessor conveyed by the expression 'alleged neglect or default in the execution of act' had succeeded in doing. And as we are called upon to interpret Article 2, Limitation Act, we would not be justified, as pointed out by their Lordships of the Privy Council in *Calcutta Commissioners v. Calcutta Corporation*[2], in taking the English Statute as our guide. If the words of the article are thus construed and the words ,'an act alleged to be in pursuance of an enactment for the time being in force' are taken to qualify the preceding words 'omitting to do', as in my opinion they must, it would seem to follow that the definition of the word 'act' as given in the General Clauses Act was not meant to be extended to the word 'act' as used in this article which must, according to the context, be confined, in my opinion, to a positive act merely and by necessary implication not to an omission which has been separately provided for in the article itself.

9. The language of col. 1 of Article 2, if it is given its ordinary grammatical meaning in such a way as not to make any words either superfluous or having been used in a wrong place (when I cannot assume, the Legislature to have either used a word redundantly or to have made a mistake) I must hold that the act or omission must have

[1] AIR 1918 All 63 : (1919) ILR 61 All 219 : 48 Ind. Cas. 815
[2] AIR 1937 PC 306 : 1937-46-LW 721

been such as the person acting or omitting may have honestly believed to be in
pursuance of an enactment. I cannot interpret the words 'alleged to be in pursuance of any enactment' as merely qualifying the doing of an act and not qualifying the words 'omitting to do any act' which immediately precede them. If this is the correct, probable or even equally possible,

interpretation of the language of col. 1 of Article 2, Limitation Act, the breach or failure by local body which it was enjoined by Section 132, Punjab Municipal Act, to perform could not necessarily or in any case reasonably fall within the ambit of this article.

10. This takes me to the cases which were referred to us by either of the parties. I may say at once that out of the cases cited at the bar the decisions in *Narpat Rai v. Sirdar Kirpal Singh*[3] *Jai Ram v. Gurmukh Singh*[4] *Amar Singh v. Deputy Commissioner Gujranwala*[5] and *Shiam Lal v. Abdul Raof*[6], are of no assistance in this case as they merely lay down that before the provisions of Article 2, Limitation Act, can be attracted, the person must be found to have been honestly acting in conformity with the Act or what he understood to be in its conformity but not merely pretending to act, under a statute or simply trying to take shelter behind the Act by asserting its provisions arbitrarily. Nor has the case in *Prasaddas Sen v. K.S. Bonnerjee*[7], any application as it was only considering the provisions of Section 80, Civil Procedure Code, and did not even refer to Article 2, Limitation Act. It is true that in dealing with the definition of the word 'act' the learned Chief Justice held the omission to be included in it. But this was in view of certain English decisions and with reference to the definition of the words in the General Clauses Act to which I have already referred and which having regard to the context cannot, in my Opinion, be applied to Article 2, Limitation Act. But, even if it did, the 'omission' like the word 'act' must be alleged to have been made in the pursuance of an enactment and not otherwise. In substituting the word 'omission' for the word 'act' one cannot detach it from the qualifying words which followed the latter.

11. The decision in *Richard Watson v. Municipal Corporation Simla*[8] was, and I say so with respect to the learned Judges, correct on the facts of that case and Article 2, Limitation Act, could not be excluded simply because before acting the municipal committee had not served Mr. Bliss with the notice prescribed by Section 120(c), Municipal Act, then in force for the committee was acting and in any case purported to act under the provisions of the Act. As to *Municipal Board Benares v. Bihari Lal*[9], I may say at once that the following observation by the learned Judges is far too general and with great deference I am not prepared to accept it as laying down sound law. They observed as follows:

> In *Municipal Board Mussoorie v. Goodal*[10] a Bench of this Court pointed out that the terms of this article were very wide and general. The alleged omission to complete repairs quickly and the closing of the road at both ends would fall within those terms. No other article provides specifically

[3](86) 65 P.R. 1886 [5] A.I.R. 1937 Lah. 748
[4](86) 105 P.R. 1886 [6] AIR 1935 All 538 : 1935 AWR (H.C.) 547 : 155 Ind. Cas. 131
[7] AIR 1931 Cal 61 : (1930) ILR 57 Cal 1127
[8](09) 72 P.R. 1909 [9] AIR 1926 All 538 : (1926) ILR 48 All 560 : 95 Ind. Cas. 1030
[10](04) 26 All. 482

> for the alleged acts of negligence and malice of the municipality.

12. The terms of Article 2 may be very wide or general but the burden of proving that a certain act or omission falls within its ambit clearly lies on those who wish it to be applied. For reasons which I have already given 'omission to complete repairs' could not fall within the article unless it

(the omission) was in pursuance of an enactment or at least purported to be so. If it was merely a breach of certain duties imposed by the Municipal Act, Article 2 could have had no application. The learned Judges failed to consider that the failure to perform a statutory duty as a result of negligence was an act of 'misfeasance' and not merely that of 'non-feasance' and was specifically provided by Article 36, Limitation Act. It may have been that 'the closing of the road at both ends' might have, as being an 'act' done or purported to have been done in pursuance of an enactment, fallen within the scope of Article 2 and if it did, the decision is to that extent unassailable but this is because to that extent the Municipal Engineer was found to have been acting in pursuance of an enactment or at all events alleged to be so.

13. Learned Counsel for the petitioner had relied on the decision in *Wali-Ullah v. Raj Bahadur*[11] It does not, however, help him as the question in that case was not whether the breach of an act which an official was required to perform fell within Article 2 but whether it applied when the act was done by him 'in an improper manner out of malice or carelessness'? It is unnecessary to examine the correctness of that decision now but I cannot help observing that the statement by the learned Judicial Commissioner that the article might have applied if the damages had resulted from 'the doing of an act or from failure to do it' was an incomplete one inasmuch as either of these (i.e. the act or omission) were not stated by him to have been done in pursuance of an enactment or alleged to have been so.

14. I might refer to two cases at this stage both of which help the petitioner although one of them, *Maya Ram v. Municipal Committee Lahore*[12] does not discuss the reasons as to the applicability of Article 36 for the point was not, as pointed out in *Municipal Committee Lahore v. Maya Ram*[13] by a Division Bench of this Court while deciding the application for leave to appeal to Privy Council, seriously contested at the hearing of the appeal. The first of these *Runchordas Moorarji v. Municipal Commissioner of Bombay*[14] was decided by a Division Bench of the Bombay High Court to which eminent Judges like Sir Lawrence Jenkins C.J., and Tyabji J. were parties. The appeal which they were called upon to decide arose out of a suit instituted by Ranchordas on a refusal to refund certain town duties which he had paid on importing grain and sugar but which he was entitled to have refunded on exporting them out of the municipal limits of the City of Bombay under Section 195, City of Bombay Municipal Act. He had applied for refund in October 1899, but his claim was rejected by the Municipal Commissioner on 2lst February 1900. The suit was filed on 2lst August 1900. Inter alia, pleas as to want of notice and of limitation under Article 2 were raised on behalf of the defendant. In repelling these pleas, the learned Chief Justice relied on Lord Blackburn's observations in *Selmes v. Judge*[15] which were as follows:

[11](13) 16 21 O.C. 211 [13](29) 121 I.C. 506 [15](1871) 6 Q.B. 724
[12] A.I.R. 1929 Lah. 730 [14](01) 25 Bom. 387

> It has long been decided that such a provision as that contained in this section is intended to protect persons from the consequences of committing illegal acts, which are intended to be done under the authority of an Act of Parliament, but which by some mistake are not justified by the terms and cannot be defended by its provisions. I agree that if a person knows that he has not under a statute, authority to do a certain thing and yet intentionally does that thing, he cannot shelter himself by pretending that the thing was done with intent to carry out that statute.

The learned Chief Justice then proceeded to say:

So here, if (as we have to assume) the amount payable by way of refund was ascertained and the plaintiff's right to receive it admitted, the refusal to refund would have been a deliberate and conscious contravention of the provisions of the Act. In such ii case, it would be impossible to hold that the money was bona fide withheld 'in execution of the Act,' and such conduct would fall precisely within the description given by Lord Blackburn as disentitling a person to notice.

15. And that was because he was acting in breach of the Act and not in its pursuance. The decision by the Division Bench in *Maya Ram v. Municipal Committee Lahore A.I.R. 1929 Lah. 730(SUPRA)* although on all fours and quite unambiguous gives no reasons for applying Article 36, Limitation Act, in preference to Article 2. It was observed: The question of limitation has been in our opinion correctly decided by the Court below. The case is clearly governed by Article 36, Limitation Act, and Article 2 relied upon by the defendant municipality has no application to the present case.

16. This decision is thus in accordance with the view which I am inclined to take although in the absence of any discussion it does not render any substantial help to me in interpreting Article "2, Limitation Act. The same may he said of the decision by a learned Single fudge of this Court in Notified Area Committee *Chinchawatni v. Lada Ram A.I.R. 1935 Lah. 47(SUPRA)*. It refers however to a decision of their Lordships of the Privy Council in *Punjab Cotton Press Co. Ltd. v. Secretary of State*[16], which affords some help in construing, his article. The facts of the case briefly were hat the canal authorities had cut the bank of a canal to avoid accident to the adjoining railway and not to the canal. On a suit being instituted for damages alleged to have, been caused to the plaintiff's adjacent mills, an objection was raised that it was barred under Article 2, Limitation Act. In overruling that contention Viscount Dunedin observed as follows:

It is quite clear that, upon the plaintiffs' showing, this was an act which the defendants performed at their own hands, and which, so far as statutes were concerned, they do not seem on the statement contained in the plaint in a position to justify. No doubt, if they can show that what was done falls within the provisions of the Canal Act, that is to say, if they can show that it was really done, as Section 16(15?), Canal Act, says, in order to avoid accident to the canal, then, they will come straight within the clause already mentioned, Article 2 of Schedule 2 (1?). But their Lordships think the lower Court has

[16] AIR 1927 PC 72 : 103 Ind. Cas. 1 : 1927-26-LW 134

strayed into an error, in that they have taken that as if it were proved against the averment of the plaintiffs. The plaintiffs' case as it stands does not show that the action was done for any purpose of protecting the canal, but only for the purpose of protecting the railway and letting the water away.

This would show how their Lordships construed Article 2 in regard to the act which the canal authorities had performed although it must be admitted that the question of 'Omission' which has to be determined in the present case was not before their Lordships. Learned Counsel for the respondent drew our attention to a decision by a learned Single Judge of this Court in *Baiza Khan v. Municipal Committee of Amritsar*[17] where a suit for damages against the municipal

committee on the ground that it had been negligent in repairing a drain was held to be governed by Article 2. The reasoning contained in the judgment which induced the learned Judge to come to that conclusion does not, and I say so with deference, appear to me to be sound. The contention advanced by counsel for the petitioner in that case that the negligence (or breach) by the municipal committee in failing to repair the drain did not fall within Article 2, Limitation Act, was repelled as fallacious on the ground that the negligence had arisen out of the act done under the statute; but the question to decide was whether the failure to perform an act negligently in contravention of the statute could have fallen within Article 2, Limitation Act. The learned Judge omitted to consider that aspect of the case. No distinction was drawn by him between the performance of an act required to be done by the statute and the failure to perform it in breach or contravention of the statute. Learned Counsel for the respondent relied upon the following, statement of the law given at para. 1061 (p. 773) of volume 20 of Halsbury's Laws of England (Hailsham), second Edition:

> Where a statute imposes a duty,' the omission to do something that ought to be done in order completely to perform the duty, or the continuing to leave any such duty unperformed, amounts to an act done or intended to be done within the meaning of a statute which provides a special period of limitation Jot such an act.

17. A number of English decisions are cited in that work in support of this statement and it was this view that was expressed by Rankin C.J. at p. *Prasaddas Sen v. K.S. Bonnerjee, AIR 1931 Calcutta 61 : (1930) ILR 57 Cal 1127(supra)*. Effect might have had to be given to the view of the English law if the term 'act' had not been defined in the General Clauses Act and particularly if the omission had not been clearly provided by Article 2, Limitation Act, itself. When the Legislature has mentioned a type of omission which would fall within that article, if the article 'has been correctly analysed by me, it would be, in my opinion, incorrect to import the English view and to read into the article what was clearly not meant or intended by the Legislature to be road into it

18. The last decision on which great emphasis was laid by learned Counsel for the respondent Vat that of their Lordships of the Privy Council in *Calcutta Commissioners v. Calcutta Corporation, AIR 1937 PC 306 : 1937-46-LW 721(supra)*. This case was noticed by Beckett J. in his referring order. This case had arisen out of

[17](30) 122 I.C. 111

a suit for damages caused to the plaintiffs by a flooding of the defendants' pumping station on account of their negligence. It was decreed by the High Court of Calcutta but on an appeal to the Privy Council it was held to be barred by limitation. It may however be remembered that the issue which their Lordships of the Privy Council were called upon to decide in that case was in these terms: "Is the suit time-barred by reason of Section 142, Port Act?" That section reads as follows: No suit shall be brought against any person for anything done or purporting or professing to be done in pursuance of this Act, after the expiration of three months from the day on which the cause of action is such suit shall have arisen.

19. It was contended before their Lordships that while the above stated section protected against a claim based on breach of statutory duty, it did not protect against an omission to perform such a duty. This contention was not accepted by their Lordships. This led learned Counsel for the

respondent in the present case to contend that an omission to perform a statutory duty of maintaining water pipes would also be covered by Article 2, Limitation Act. But the word a of that article are, as I have pointed out in the beginning, substantially different from Section 142, Port Act. There is no reference in that section to the omission of the type referred to in Article 2, Limitation Act. If, therefore, the Legislature intended to provide for a particular type of omission only in Article 2, would it be correct to read omission in view of this decision or of English cases referred to in the Halsbury's Laws of Eng. land in the word 'act' or in view of their Lordships' decision in *Calcutta Commissioners v. Calcutta Corporation, AIR 1937 PC 306 : 1937-46-LW 721(supra)*.

20. If one were to read it in that way, the provision in regard to the omission in the article itself must be held to be superfluous. If every omission was included in the doing of the act, why should have a particular type of omission been provided for by the article itself? I might say in the end that the breach of a duty imposed under a statute is usually the result of negligence, and negligence is a definite act of malfeasance, not merely that of non-feasance. Had the leaking pipe in the present case been repaired in time, the plaintiff would have suffered no damage and the present suit would not have been instituted. If the Municipal Committee did not discharge its functions and was guilty of a breach of duty imposed by the Punjab Municipal Act, it cannot be said to have omitted to do so in pursuance of the Act but in contravention of the Act. This breach would be, in my judgment, covered by Art; 36, Limitation Act, and not by Article 2. That is my answer to the question referred to the Full Bench.

Mahajan J.

The question referred to the Full Bench is in the following terms:

When a plaintiff claims compensation for damage said to have been caused by the failure of a local body to maintain its water system in proper order, is the suit governed by Article 2 or Article 86, Limitation Act?

21. Article 2 runs thus:
For compensation Ninety days. When the act or for doing or for omit- omission takes ting to do an act place." alleged to be in pursuance of any enactment in force for the time being in British India.

22. Article 86 is as follows:

For compensation Two years. When the mal for any malfeasance, feasance, mis misfeasance or non-feasance or feasance independent non-feasance of contract and not takes place." herein specially provided for.

23. I had the advantage of perusing the judgment which my Lord Rahman has just delivered and I entirely agree with the answer that he has given to the reference to the effect that such a suit is governed by Article 86 and is outside the ambit of Article 2, Limitation Act. I, however, do not fully subscribe to the reasoning of my learned brother and wish to briefly state the grounds on which I concur in the result.

24. The main point to decide in this matter is the scope of Article 2, Limitation Act. The language employed by the draftsman of the statute, I speak with great respect, is not very happy and is not susceptible of easy interpretation. However, the object of providing a short period of limitation for certain kinds of suits is quite well known and if the phraseology used by the statute is considered in the light of its intention, then the meaning and the scope of the article becomes quite clear. In my view, no apology is needed for answering the reference in the way that my Lord Rahman has answered it, because that is the only answer that can be given to this question taking into consideration the way in which the article has been expressed. Any other answer would be incomplete as it would either fail to give meaning to all the words used by the Legislature in expressing its intentions or would enlarge their meaning by adding words to the section which do not exist there.

25. So far as I have been able to see an omission cannot be alleged to be in pursuance of any statute. A statute usually expresses the commands of the Legislature and prescribes the performance of positive or negative duties by the subjects. Failure to observe these commands is punishable in various ways. Certain officials are charged with the duty of executing these commands and to give effect to the will of the Legislature. In execution of these commands, these officials are liable to act in excess of their statutory powers in the honest belief that they enjoy those powers, though in fact they do not do so. It is to protect these persons and safeguard them that a short period of limitation is provided for suits for compensation for their tortious acts. When I said that an omission could not be claimed to be in pursuance of a statute, I meant to say that it could not be pleaded as a defence by a person that he omitted to do an act in the honest belief that that omission was authorized by the statute. All that he could plead was that in the execution of a statutory job he omitted to do an act in the honest belief that that act was not required to be done by the statute, though as a matter of fact, it was so required to be done. I concur in the view of my learned brother Rahman that if an act is done as laid down by the statute, no question for giving compensation arises, and no period of limitation need be provided for that case. When an act is not done which is prescribed by the statute, the failure to do it is a breach or disobedience of the command of the Legislature and cannot be said to be an omission to do an act alleged to be in pursuance of a statute so as to bring into play the provisions of Article 2, Limitation Act. If the object of the article is, as I understand it, to provide for cases where a public official or a public authority does an act injurious to another under powers honestly believed to be conferred by some Act of the Legislative, and its intention is to afford protection to persons doing. acts in the execution of the statutory powers,, then it is not necessary for the applicability of this article that the act should be directly justifiable under the enactment, as this would reduce the protection to a mere nullity. It is, however, necessary that the defendant should have honestly believed in the existence of a state of facts which if it had existed would have justified him under the enactment to do the thing complained of. In *Selmes v. Judge (1871) 6 Q.B. 724(supra)*, Blackburn J. observed as follows:

> It has long been decided that such a provision as that contained in the Public Authorities Protection Act, is intended to protect persons from the consequences of committing illegal acts, which are intended to be done under the authority of an Act of Parliament but which by some mistake are no justified by the terms and cannot be defended by its provisions.... I agree that if a person knows that he has not, under a statute authority to do a certain thing and yet intentionally does that thing, he cannot shelter himself by pretending that the

thing was done with intent to carry out that statute.

26. This article, in my view, is a provision intended to afford protection to persons acting in pursuance of the enactment against stale claims. A short period of limitation is provided for such cases in order that such acts which are of a public nature shall not give rise to a protracted litigation. In *Secy. of State v. Lodna Colliery Co. Ltd*[18]. Courtney-Terrell C.J., observed as follows:

> The object of the article is the protection of public officials, who, while bona fide purporting to act in the exercise of a statutory power, have exceeded that power and have committed a tortious act; it resembles in this respect the English Public Authorities Protection Act. If the act complained of is within the terms of the statute, no protection is needed, for the plaintiff has suffered no legal wrong. The protection is needed when an actionable wrong has been committed and to secure the 'protection there must be in the first place a bona fide belief by the official that the act complained of was justified by the statute; secondly, the act must have been performed under colour of a statutory duty, and thirdly, the act must be in itself a tort in order, to give rise to the cause of action. It is against such actions for tort that the statute gives protection.

27. With great respect to the learned Chief Justice of the Patna High Court, I record my respectful agreement with the above observations and I will attempt to, analyse the answer to this reference in the light of these observations. Before proceeding further, however, it will be relevant to inquire into the scope of the protection granted to such per-sons by the Public Authorities Protection Act in England, as it would help in arriving -at the result in the present case, and in visualizing whether the Indian

[18] A.I.R. 1936 Pat. 510

statute affords the same measure of protection or whether its language has a limited scope. Section 1 Public Authorities Protection Act, 1893, 56-57 Viet., chap. 61 is in these terms:

> Where after the colmencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect:
> (a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof;...."

28. It is clear that if the language of this Act had been adopted by the framers of Article 2, Limitation Act, the case of default by a municipal corporation and the failure on its part to maintain its water system in proper order resulting in damage to the plaintiff would be governed by this article. It would clearly be a default in the execution of a public duty by the corporation. The question, therefore, is whether a default of a public duty by a corporation or by any person is

within the scope of the Indian statute, as it 13 within the clear language of the Act of Parliament. My answer is in the negative because the language of Article 2 is not as wide as is the language of the English statute. It is less comprehensive in terms and scope. It gives protection only for doing or omitting to do an act alleged to be in pursuance of a statute and does not proceed further. It does not provide for cases of any alleged neglect or default in the execution of a duty or authority. It is confined to cases where any act is done in the honest belief that it is being done in pursuance of a statute or in the execution of an act an omission is made in the honest belief that such an act is not required to be done under the statute. In my judgment, this article has a limited scope and application, and comes into play only where specific acts under cover of the statute are being done or executed. It does not apply to cases of performance or non-performance of statutory duties in general and in their wider sense. The best illustration that I can think of to explain my meaning is furnished by the decision of the Allahabad High Court in *Mukat Lal v. Gopal Sarup, AIR 1918 Allahabad 63 : (1919) ILR 61 All 219 : 48 Ind. Cas. 815(Supra)*. A court amin in that case was charged with the execution of a statutory act, namely, the sale of the property of a judgment-debtor in execution of a money decree. The statute provided that in case the judgment-debtor tendered decretal debt to the amin on the date fixed for the sale and before its commencement, he, the amin, was bound to accept it and was also bound to stop the sale. The court amin in this case wrongfully declined to accept the money in the honest belief that he was not bound to do so. In other words, he omitted to do an act which the statute stated he should do. The amin further proceeded to sell the property contrary to the provisions of the statute in the honest belief that he was entitled to do so. Therefore, in the execution of the warrant of sale, which was a statutory act, the amin performed an act (of selling the property) which he honestly believed to be pursuant to a statute, though in the state of facts that existed, he should not have done it, but he believed it to be otherwise. He exceeded his power. In the performance of the same statutory act, he omitted to do an act (that is, of receiving the money when tendered) in the honest belief that he was justified by the statute not to' receive it, though in fact the statutory direction was the other way.

29. The emphasis in the article, in my opinion, is on the word act' which ordinarily would include an ' omission,' but in this article the word 'act' cannot include an omission, because it has been specially provided for. The omission is in the doing of an act, which act is honestly believed to be justified by the statute. Unless an act is being done, the article does not come into play. When a statute says that a public body will keep its water mains in good repair, it is laying down a statutory duty and is not directing a particular or specific act being done by the public authority. Article 2, Limitation Act, does not concern itself with performance or non-performance of such duties, but has application as soon as in performance of those duties that public body or any official employed by that body starts execution of any act; in other words takes into hand a particular job to fulfil or to discharge the statutory duty. If in the execution of that act, he acts in excess of his powers, or there is an omission in the doing of that act, the article in my view comes into play. The point may be illustrated by a hypothetical case. Suppose the municipal engineer is charged with the execution of a work, namely, to construct a drain. Further suppose that the statute lays down that no drain shall be constructed within three feet of the foundations of a residential house and that it should be five feet deep. The engineer constructs the drain within three feet of the foundations of a residential house and fails to dig it to the depth of five feet as laid down by the statute. He is under an honest belief that he can dig the drain within three feet of a residential house and that he can dig it to any depth up to five feet and in that belief digs it only to two feet. Both these omissions on his part in the honest belief that he was justified by the

statute not to do both these acts load to damage to plain, tiff's property. Such a case would be covered by the language of Article 2. The omission has arisen in the execution of the act, that is, the act of building a drain, and the act itself is a statutory one. Suppose again that instead of digging the drain to the depth of five feet, as laid down by the statute, he digs it to the depth of seven feet and thus causes damage to a neighbouring house. His defence is that he dug it to the depth of seven feet in the honest belief that he was entitled to do so, though the statute had only prescribed a depth of five feet. Article 2 would again cover this case because the engineer did an act in the honest belief that he was justified by statute to do so. But the article has no application to cases where there is a failure or non-performance of statutory duties by an official public body when it is not executing any particular act. To such cases Article 36 applies. In my' view, therefore, both acts of, omission and commission done by an official in the honest belief that he is authorized by statute to do them, or not to do them, afford him protection of the article provided they are done in the execution of a particular and specific act.

30. This matter can be examined on the tests laid down by the Chief Justice of the
Patna High Court in the case cited above. The first test for the application of the article is a bona fide belief by an official that the act complained of was justified by the statute. Can it be seriously argued that the corporation or its officials honestly believed that Section 182 did not exist in the statute, or that they had no duty to repair and to look after the municipal pipes? In my view, the defence that Section 182 did not exist in the Punjab Municipal Act could not possibly be urged, and it could not be said that there was a bona fide belief in the non-existence of that section. If an official had been charged with the duty of repairing the water pipe that had been laid in the neighbourhood of the plaintiff's house and that official was guilty of acts of omission and commission while executing his job, he could claim protection of the article by pleading that he honestly believed that the directions laid down in the statute for doing the job entrusted to him were different from the ones that he thought had been laid down in the statute. A mere default in repairing the municipal water pipes is a breach of a statutory duty, but is outside the phraseology of the article, though it is clearly within the English statute which has used appropriate language to cover such cases. Again, in the present case, no act was being executed under colour of a statutory duty. That duty was being simply ignored. I do not think that when a corporation is simply sitting idle and doing nothing, to such apv omission Article 2 has any application. It is only an omission in the execution of an act which is within the ambit of the article. In short, in the present case, the omission to do an act could not have been made under colour of a statutory power, nor could such an omission be in the honest belief that that omission was justified by the statute. That being so, in the light of the observations of the Chief Justice of the Patna High Court, the question referred, can only be answered in the manner indicated by my learned brother Rahman.

31. My Lord Rahman, while delivering the judgment of the Pull Bench in this case, has observed that it would work great injustice if the period of limitation in such cases was held to be 90 days from the date of the act of omission complained of. With great respect, I cannot subscribe to that proposition. That is the law in the United Kingdom and if Article 2 used the language of the English Statute, that would be the law in India. The view that the. date of the act of omission may not be known for a long time to the plaintiff and that the Legislature could not be presumed to be unreasonable so as to provide a short period of limitation commencing from the time when the plaintiff may not know or even be capable of knowing that a cause of action had accrued to him, does not take notice of the clear provisions of Sections 23 and 24, Limitation Act. Section 24,

Limitation Act, provides that in the case of a suit for compensation for an act which does not give cause of action unless some specific injury actually results there from, the period of limitation shall be computed from the time when the injury results. Even if Article 2 has application to the case, the period of limitation can only commence from the date the damage accrues and within 90 days of that date, the plaintiff can bring a suit. There may be torts which give a recurring cause of action to the plaintiff. In other words, in the case of a continuous damage or injury to the plaintiff, Section 23 would enlarge the period of limitation and would provide a sufficient safeguard against the hardship envisaged by my learned brother. These considerations, therefore, could not affect the application of the article to the present case, if on its plain language it came within its ambit. I do not propose to discuss the conflicting decisions of-this Court which have given rise to this reference, and the other cases that were cited at the bar. My learned brother Rahman has fully dealt with them. All I wish to say is that there is no well-considered decision in support of either view which can furnish a, guide in solving this problem. In my view, the decisions that applied Article 36 to cases of municipal corporations failing to keep their water mains in good repair laid down sound law on the rubjent and should be followed. Even if Article 2 had any application to such cases, question would still arise whether in the case of leakage of water from municipal water mains where damage results from the recurrence of that leakage from day to day, the provisions of Section 23, Limitation Act, would not bring the suit of a plaintiff in a particular case within limitation. That matter, however, was not argued in this case and need not be considered.

Harries C.J.

32. I agree to the answer proposed for the reasons suggested by my brother Mabajan J.

Munir J.

33. I agree with the answer proposed to be returned by my brothers Rahman and Mehr Chand Mahajan to the question referred to the Full Bench. The language of Article 2 is not happy and differs materially from the corresponding provision of the English Statute, the Public Authorities Protection Act, 1898. The article provides a short period of ninety days for suits for compensation (1) for doing an act alleged to be in pursuance of any enactment, and (2) for omitting to do an act alleged to be in pursuance of any enactment. The word 'alleged' does not occur in the English Statute, and as used in the article, is liable to cause some confusion and mis-comprehension. I do not think the rule is absolute that under the substantive law there never can be a claim for compensation when an act is done in pursuance of, and in strict compliance with, an enactment. When, as an exception to the general rule, a plaintiff is entitled to compensation on the defendant's doing an act in pursuance of an enactment, the article will undoubtedly be applicable to the suit. But the application of the article is not limited to such cases and also extends to those cases where damage is caused to the plaintiff by an act of the defendant who alleges that the act was done in exercise of a statutory duty, the essential condition for the application of the article to such cases being that the Court should find, as under the English Statute, that the act was done in pursuance, or execution or intended execution of any enactment. Mere allegation by the defendant that the act was done in pursuance of an enactment will not attract the article and in order to have it applied the defendant will have to show that he acted bona fide in the belief that the act was required or permitted by the enactment.

34. In the present case the first part of the article is not applicable because the alleged damage was not caused by the. Defendant doing any act in pursuance of any enactment. The damage was not caused merely by the defendant's maintaining a water supply but is alleged to have been caused by leakage from a ferule and the cause of action is the defendant's negligence in not detecting and preventing the leakage. Can it be said that the cause of action is the omission to do an act alleged to be in pursuance of any enactment? The answer to this question is clearly in the negative. On the facts, the plaintiff cannot say that the defendant omitted to do a particular act enjoined on him by an enactment and the defendant cannot say that he omitted to do any act in pursuance of any enactment. The claim is founded on the general law of negligence and to such cases Article 2, in my opinion, is not applicable. That article is applicable only to cases where the damage on which the claim for compensation is founded is caused in "the doing of, or by the omission to do, a specific act enjoined by an enactment.

Achhru Ram J.

35. I agree with the answers of my brothers Rahman and Mehr Chand Mahajan to the questions referred to the Pull Bench. On the question of the interpretation to be placed on the words appearing in col. 1 of the article, I am inclined to agree with my brother Rahman. The interpretation which my brother Mahajan has placed on these words has the advantage of making the provision enbodied in the article more logical, clear and consistent in its application, but I have grave doubts if it is possible to accept this interpretation without doing some violence to the language used by the Legislature. The word 'act' as used in col. 1 appears to have reference only to that which has been done or omitted to be done by the defendant and not to the 'job' in the performance whereof the act of commission or omission, as the case may be, has taken place. The words that follow the word 'act' seem to make it clear. The words used in col. 3 appear to lend further support to this view. The word 'act' in col. 3 could not have been used in a sense different from that in which it was used in col. 1. There can be no reasonable doubt that as used in col. 3 it does not connote the job in the performance whereof something has been done or omitted to be done by the defendant but the very act which is said to have given rise to the liability to compensate the plaintiff. As I read the article it is intended only to cover cases in which the plaintiff sues for compensation for an injury suffered by him in consequence of an act or omission which purports to be an act or omission in the bona fide exercise of a statutory power.

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