

# PATNA HIGH COURT

Kamta Prasad Singh

Vs

Food Corporation of India

A.F.A.D. No. 400 of 1971

(S. Sarwar Ali, J.)

13.05.1974

## JUDGMENT

### **S. Sarwar Ali, J.**

1. The plaintiffs, who are appellants in this Court, filed a suit challenging the transfer order passed by the Food Corporation of India, in whose employment they claim to be. They also filed an application for grant of temporary injunction, restraining the defendants from giving effect to the transfer order and directing them to maintain status quo till the hearing of the injunction matter. The injunction application was taken up for hearing. In disposing of the application, the learned Munsif came to the conclusion that no case has been made out for grant of injunction. He also held that on account of non-service of notice, as contemplated under Section 80 of the Code of Civil Procedure, the suit was not maintainable. He accordingly rejected the plaint under Order 7 Rule 11(d) of the Code.

2. The plaintiffs went up in appeal and labelled their appeal as miscellaneous appeal. The appeal has been dismissed. While dismissing the appeal, the learned Subordinate Judge came to the conclusion that although prima facie case has been made out, the balance of convenience does not lie in the grant of injunction. He further came to the conclusion that notice under Section 80 of the Code of Civil Procedure was mandatory. He thus affirmed the view of the learned Munsif. After the decision aforesaid, the plaintiffs first filed a civil revision application, which, on the objection of the Stamp Reporter, has been converted into a second appeal.

3. The learned counsel for the appellants contended that the view of law taken by the courts below that a notice under Section 80 of the Code of Civil Procedure was necessary so far as the Food Corporation of India or its officers are concerned, is not a good view in law. He referred to the provisions of Section 80 of the Code, as also some of the provisions of the Food Corporation Act, 1964 (Act 37 of 1964) (hereinafter referred to as the Act). The learned Counsel for the

respondents contended that in view of certain provisions, on which he relied. Section 80 of the Code was applicable.

4. Section 80 of the Code of Civil Procedure requires service of notice on the Government before instituting a suit against the Government or against a public officer in respect of any act purported to be done by such public officer in his official capacity. We have, therefore, to see whether the Food Corporation of India is covered by the expression "Government", we have also to see whether the expression "public officer" as used in the Section would cover officers of the Corporation.

5. Section 3 of the Act is as follows :-

"With effect from such date as the Central Government may, by notification in the official Gazette, specify in this behalf, the Central Government shall establish for the purpose of this Act a Corporation known as the Food Corporation of India.

(2) The Corporation shall be a body corporate with the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act. to acquire, hold and dispose of property and to contract, and may, by that name, sue and be sued."

It would thus appear that the Corporation is a body corporate and can sue and can be sued in its own name. The fact that the capital of the Corporation may be provided by the Central Government or that the working of the Corporation can be supervised or directions may be issued by the Government does not, in my view, constitute it a "Government" within the meaning of Section 80 of the Code. Although the expression "Government" has not been defined in the Code, it cannot in my view, include a "Corporation" constituted under an Act of the Parliament. The expression "public officer" has been defined in Sub-Section (17) of Section 2 of the Code. The only sub-clause, which might have some relevancy is sub-clause (h), which is as follows :-

"(h) Every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty;"

Here the officers of the Corporation are not in the service or pay of the Government. They are in the service and pay of the Corporation and are paid out of the funds of the Corporation. In this view of the matter. I do not think that the officers of the Corporation are 'public officers' within the meaning of Section 80 of the Code of Civil Procedure . The view of the courts below, therefore, that the plaint could be rejected under the provisions of Order 7 Rule 11 of the Code does not appear to be sustainable in law.

6. So far as the order relating to the injunction is concerned, it is doubtful, whether the question of propriety of the order regarding injunction can be raised in this second appeal. Assuming, however, that it can be raised. I do not think, it is a fit case in which there can be an interference

with that part of the order. The learned Counsel for the appellants emphasises that the appellate court has found prima facie case in their favor. That may be so, but, without examining the correctness of the finding, I may observe that only establishment of prima facie case is not sufficient to entitle a party to the grant of an order of injunction. The question of balance of convenience has been examined by both the courts below. They have come to the conclusion that in the circumstances of the case, the balance of convenience does not lie in the grant of injunction. I do not find any error of law or approach in that conclusion. The appellate court has considered the question of balance of convenience and of irreparable injury in paragraphs 8 and 9 of its judgment. The trial Court has also considered the question of balance of convenience, although shortly, in paragraph 8. As already indicated, I do not find any error in the orders of the courts below so far as this aspect of the case is concerned.

7. In the result, this appeal is allowed to the extent indicated above. The suit is held to be maintainable. The court below will now proceed to dispose of the suit at an early date in accordance with law. There will be no order as to costs.

Appeal allowed partly.