
(1915) 04 MAD CK 0056
In the Madras High Court

A.M. Ross, Duly Authorised Agent of certain Tea Companies
and Labour Associations

APPELLANT

Vs

The Secretary of State for India in Council

RESPONDENT

Date of Decision : 29-04-1915

Acts Referred:

Citation : AIR 1916 Mad 1157 : (1916) ILR (Mad) 781 : 31 Ind. Cas. 224

Hon'ble Judges : Sadasiva Aiyar, J;Bakewell, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—Plaintiff is the appellant. So far as this suit, which is brought to recover damages against the Secretary of State for India in Council, is based upon the suspension and dismissal of Rama Sastry (a "local agent" of the Assam Planters) by the Collector and District Magistrate of Ganjam, the plaintiff gave up his contention that such suspension and dismissal were wrongful.

2. The remaining facts on which the claim is founded are (a) that the Collector and District Magistrate on the 22nd February 1910 closed a labour-recruiting depot at Berhampore, that recruiting depot having been intended -for the accommodation of coolies recruited on behalf of certain Tea Planting Associations in Assam, of which Associations the plaintiff had been appointed as agent; (b) that the Governor-in-Council by a Government Order, dated 12th October 1910, ratified and confirmed the Collector's order closing the depot till that date; (c) that the Government on the said 12th October 1910 in the said order made the defamatory remark that the conduct of Mr. Rosa (the plaintiff) was not wholly above suspicion" in the matter of the irregularities committed by the local agent, T.S. Rama Sastri, on account of which irregularities Rama Sastri's license as local agent was cancelled by the Collector and District Magistrate.

3. The learned Chief Justice who tried this case on the original side, dismissed the suit making certain observations in his judgment, which observations might be stated as follows, using in great part the words of the learned Chief Justice:

1. The Collector's Order of February 1910, closing the depot to recruiting by the garden sardars working under the Assam Labour and Emigration Act, VI of 1901, on behalf of the Assam Planting Associations was ultra vires.

2. The Secretary of State in Council is not legally liable for the tortious acts of the Collector of Ganjam or of the Governor of Madras in Council. If Section 416 of the old CPC really laid down that the Secretary of State can be made liable for the tortious acts of a local Government or of an officer of that Government notwithstanding that the East India Company would not have been liable for such acts, that section is ultra vires of the Indian Legislature, as opposed the provisions of the Indian Councils Act of 1861. If the decision in *Vijaya Ragava v. Secretary of State for India* 7 M. 466 holds otherwise, it is no longer an authority as opposed to the Privy Council decision in *Secretary of State for India v. Moment* 18 Ind. Cas. 22 : 24 M.L.J. 459: (1913) M.W.N. 45 : 7 C.L.J. 194. See also *Shivabhajan v. Secretary of State for India* 28 Bk 314. In *Dhackjee Dadaji v. East India Co.* 4 Ind. Dec. 587 Sir Erskine Perry held that the only ratification which would bind the Company was a ratification by the Court of Proprietors itself. This is not a case in which a petition of right would lie against the Crown. Hence this action against the "Secretary of State, who is not alleged to have himself ratified the Collector's acts or the local Government's acts, cannot lie.

3. In *Tobin v. Reg.* (1864) C.B. 310 : 10 Jur. 1029 : 139 R.R. 504 it was held that, independently of the doctrine that the King can do no wrong, the Crown could not be made liable for the action of a Government servant purporting to act under statutory power conferred upon him, because the action of a Government servant purporting to exercise a statutory power cannot be held to be an act done as an agent of the Crown. See *Shivabhajan v. Secretary of State for India* 6 Bom. L.R. 65. There can be no ratification by the principal of such an act, as such an act was not done on behalf of the principal.

4. As regards the alleged libel by the Madras Government the Secretary of State (defendant) is not liable for reasons already stated, as the publication of the libel was not (a) made under the orders of the Secretary of State, or (6) made on his behalf and ratified by him. See *Jehangir v. Secretary of State for India* 6 Bom. L.R. 131.

5. In *Grant v. Secretary of State for India in Council* (1877) 2 C.P.D. 445 it was held that the Secretary of State was not liable for the publication of an alleged libel in the Fort St. George Gazette as, at all events, the libel was not alleged to have been published maliciously and without reasonable and probable cause; see also *Chatterton v. Secretary of State for India in Council* (1895) 2 Q.B. 189 : 72 L.T. 858.

4. In the decision of this appeal, I shall confine myself to the following questions on which we have heard arguments from the appellant's learned Vakil, Mr. C.P. Ramaswami Aiyar:

(1) Whether the Collector's act in closing the plaint depot gave a cause of action

to the plaintiff against the Government.

2. Whether even the Collector and District Magistrate of Ganjam who passed the order closing the depot, is liable to the plaintiff.

3. Whether assuming that the remark in the Government Order referred to in the plaint is libellous and was published, the statement is privileged and the Governor-in Council cannot be made liable for making and publishing that statement.

5. There can be no doubt that the Collector and District Magistrate in ordering the closing of the depot intended to use the powers given to him by Section 22, Clause 3, of the Assam Labour and Emigration Act, VI of 1901. That clause says: "Where the Superintendent" (in this case the Collector and District Magistrate)

considers that any depot is unhealthy or has become unsuitable for the purpose for which it was established, he may, by order in writing, prohibit the use of the depot for the reception and lodging of labourers.

6. I am clear that the Government cannot be made liable for illegal orders made by the Collector and District Magistrate purporting to use the powers given by this Statute Law, the authority of *Tobin v. Reg.* (1864) C.B. 310 : 12 W.R. 838 : 139 R.R. 504 followed in *Shivabhajan v. Secretary of State for India* 6 Bom. L.R. 65 being, in my opinion, almost conclusive on this point. The District Magistrate who purported to use the powers given by the Statute Law cannot be treated as the agent of the Government of Madras, nor can the Government ratify that act so as to make itself liable for that act, because that act was not done on its behalf and the Government cannot be treated as a principal and the District Magistrate as its agent when the latter purported to exercise statutory powers. "When the duty to be performed is imposed by law" on the agent...the employer is not liable for the wrong done by the agent in such employment." See *Tobin v. Reg.* (1864) C.B. 310: 10 L.T. 762 : 143 E.R. 1148 and *Niredha Tarnahi v. Baker* (1901) A.C. 561. Before leaving this part of the case I might finally add that on the highest grounds of public policy, the Government should not be made liable for the tortious acts of its agents or servants, except probably for acts done in the course of those kinds of transactions, which even an ordinary private mercantile firm can enter into. This, namely, the civil irresponsibility of Government for tortious acts" of its agents has been assumed as undoubted law in *Thomas Eales Rogers v. Rajendro Dutt* 8 M.I.A. 103 : 2 W.R. 51 : 3 L.T. 160 ; 1 Suth P.C.J. 413 and though it may be argued that the observation was obiter, the obiter of the Privy Council expressed through the mouth of that most eminent jurist, His Lordship the Right Hon^{ble} Dr. Lushington, ought, I think, to be followed by this Court.

7. I am further of opinion that the District Magistrate himself even in his personal capacity cannot be made liable to the plaintiff for the order made by him to close the depot, though it was an illegal order. I shall assume that the depot was a place which was provided not only by the local agent (who was bound to provide

such a depot under Clause 8 of Rule 11 made by the Local Government in exercise of the power conferred on the Governor-in-Council by Section 91, Clause (6), of the Assam Labour and Emigration Act) but that that same depot was also the depot provided by the planters' garden sardars u/s 62, Clause (1), of Act VI of 1901. The illegal order of the District Magistrate affected directly only the local agent and then it affected the garden sardars; the local agent's license having been probably cancelled, he had no cause of action against the District Magistrate. Assuming that the garden sardars and even the plaintiff's employers whose labour supply was cut off are entitled to sue the Collector and District Magistrate for damages, they have not brought any suit. It is the plaintiff who has lost his expected commission as agent that has brought this suit. No malice or fraud or deceit is alleged as against the Collector and District Magistrate. Has an agent a right to bring a suit for recovery of damages incurred by him against a person who illegally prevented his principal's garden sardars from taking their coolies to the Emigration depot if the tortfeasor is not proved guilty (a) of personal malice directed against the agent or of fraud or deceit, (b) or, if it is not proved that his object was to injure the plaintiff's legal right (to receive commission from his employers for coolies sent through the depot)? The Collector and District Magistrate was under no obligation created by contractual, Statute or any other law to the plaintiff in the plaintiff's individual capacity. The Collector's action in closing" the depot was passed against the local agent directly and indirectly against the garden sardars and still more indirectly against the planters. So far as that action affected the plaintiff's pocket, it did so in the third or fourth degree of remoteness, so to say. Passages from some of the judgments, in well known cases of *Lumley v. Gye* (1893) 2 El. & Bl. 216 : 17 Jur. 827; 118 E.R. 749, *South Wales Miners' Federation v. Glamorgan Coal Co.* (1905) A.C. 239 : 53 W.R. 593 and *Quinn v. Leathern* (1900) A.C. 495 : 70 L.J.P.C. 76 might be quoted (and they are usually quoted in those cases where a person, who is not directly affected by an alleged tortious act, seeks to recover damages) which passages, taken apart from the context, can ingeniously be interpreted to support claims by a person most remotely connected with the wrongful act for recovery of damages of as remote a kind. See the observations of Lord Halsbury in *Quinn v. Leathern* (1900) A.C. 495 : 50 W.R. 139 itself as to the right mode of interpreting such passages.] As Mr. Justice Joyce put it in *National Phonograph Co. Ltd. v. Edison Bell Consolidated Phonograph Co. Ltd.* (1908) 1 Ch. 335 : 77 L.J. Ch. 218: "What was said was never intended to be, and ought not to be, treated and construed as an Article of a Code or a section of an Act of Parliament." In *Allen v. Flood* (15) six very learned Law Lords formed the majority and three other learned Lords including Lord Halsbury were in the minority. In *Quinn v. Leathern* (1900) A.C. 495, the House of Lords, led by Lord Halsbury without overruling *Allen v. Flood* (1898) A.C. 1 explained its real effect. Even Lord Halsbury, who seems to have gone furthest in his judgment in *Allen v. Flood* (1898) A.C. 1 in favour of the claims of a plaintiff who is injured by the defendant's bringing about a breach of relations between plaintiff and a third party, said that the defendant should be held liable if he maliciously and

wrongfully with intent to injure the plaintiffs intimidated and coerced" the third party not to enter into contracts with the plaintiffs." I need not say that the question of remoteness of damages is much more strictly considered against a plaintiff who makes a claim based on other torts committed by a defendant than the tort of inducing a breach of contractual relations of a third party with the plaintiff. Even as regards oases of the procuring of a breach of contract, see Rigby, L.J., in *Exchange Telegraph Co. v. Gregory & Co.* (1896) 1 Q.B. 147: 65 L.J.Q.B. 262 and Justice Joyce's remarks at page 350 in *National Phonograph Co. Ltd. v. Edison Bell Consolidated Phonograph Co. Ltd.* (1908) 1 Ch. 335.

8. In the present case, there is not a word in the plaint to indicate that the Collector and District Magistrate in closing the depot maliciously intended by his order to hit at the plaintiff's right to the benefit of the commission obtainable by the plaintiff from the plaintiff's employers, or that the Collector and District Magistrate was actuated by any indirect motive directed against the plaintiff, I am clear that even if the garden sardars and the planters have claims for damages against the Collector (on which I express no opinion), the plaintiff who is an agent of the planters has no legal claim to recover damages for any injury caused to himself pecuniarily and not to his employers. On the question of the alleged liability of the Governor-in-Council for defaming the plaintiff, I have nothing to add to the reasons given by the learned Chief Justice (in which I concur) for holding that the Governor-in-Council is not liable for publishing words concerning the plaintiff in the course of the official duties of the Governor-in-Council, when it is not alleged that the publication was made maliciously and without reasonable and probable cause.

9. In the result, I would dismiss the appeal with costs.

10. Two Counsels certified.

Bakewell, J.

11. By virtue of Section 3 of the Assam Labour and Emigration Act, 1901, and the notification of the Local Government made thereunder, all persons are prohibited from recruiting, engaging, inducing or assisting any native of India to emigrate from certain parts of the District of Ganjam to any labour District of Assam, otherwise than in accordance with the provisions of Chapters III and IV of the Act; and u/s 163 of the Act any person who knowingly does or attempts to do any of the acts so prohibited, is punishable with imprisonment or fine or with both. u/s 4 of the Act, the Local Government has appointed certain of its officers, by virtue of their official position, to exercise the powers and perform the duties therein mentioned. The general scheme of the Act is that the acts mentioned shall only be done by particular persons duly licensed by the specified authority, under the supervision and control of specified officers and in a particular manner; and the different classes of licensees and their respective powers and duties are carefully enumerated and described.

12. The Act provides that every intending emigrant shall be brought by the

recruiting agent before a registering officer, but the Local Government has enabled certain licensees termed "local agents" to perform the duties of this officer. The local agents represent the employees of the emigrants in all matters connected with supervision of garden sardars under Chapter IV of the Act (Section 64), the garden sardar being a person employed on an estate and deputed by his employer to engage labourers [Section 2(1)(h)]. Every garden sardar is bound u/s 62 to provide sufficient and proper accommodation in a suitable place for the labourers or persons intending to become labourers collected by him and u/s 68 to produce them before the registering officer.

13. The plaintiff owns a building at Berhampore, in the District of Ganjam, which has been used by numerous garden sardars working in the district as a joint depot for the accommodation of the labourers collected by them. In his evidence, the plaintiff said, the depot belongs to me. I purchased it. I own the building. I did not rent it to my employers. I bought it out of the commission paid to me.... Now it has been passed as a depot under Chapter IV of the Act since 1906. It is a place of accommodation which sardars are bound to maintain.

14. The plaintiff holds Powers-of Attorney from various Tea Companies and Superintendents of Companies owning tea gardens in Assam, who are employers" within the Act: an employer" being the chief person for the time being in charge of any estate upon which labourers are employed [Section 2(1)(f)]. In his evidence, the plaintiff said that the Superintendents were resident in Assam and the chief authorities on the spot they hold Powers-of-Attorney from the Companies. In 1906, I held a contractor"s license. I gave it up that year. Since then I have taken no license. I first began to work with local agents about October or November 1906, if I remember a right, and continued up to the present time. I was working with local agents." In paragraph 3 of his plaint, he alleges that various labour employers in Assam have nominated him as their emigration agent for the Madras Presidency for the purpose of securing coolies for labour on the several tea estates," The plaintiff holds general Powers-of-Attorney from the several companies aforesaid and by agreement with them is entitled to be paid Rs. 7 for every cooly recruited by him; and in paragraphs 8 and 11 he says: The plaintiff has several local agents working under him and several garden sardars engaged in recruiting.... Both the sardars and the local agents mentioned above and working on behalf of the various tea Companies and employers of labour, are placed under the direction and superintendence of the plaintiff and work under him subject to his orders. And the depot mentioned above is also maintained under his supervision and control."

15. In his evidence the plaintiff speaks repeatedly of my local agents", "my depot" and "my business."

16. In February 1910 the District Magistrate and Superintendent of Emigrants, suspecting that the local agent at Berhampore was collecting coolies from parts of the District of Ganjam in which recruiting was absolutely prohibited under the Act, suspended his license and issued orders to the local officials to close the

plaint depot, which was under the superintendence of this agent. The plaintiff claims that these acts of the Magistrate were unauthorised and ultra vires, that they have resulted in stopping the work of emigration, have interfered seriously with plaintiff's business" and have prevented him from earning his commission of Rs. 7 per " head of adult cooly remitted and forwarded to Assam under his supervision and of the local agent. The plaintiff in his cross-examination, and his Vakil in his argument before us, contended that he was in the position of an employer, and not one of the agents mentioned in the Act, but a kind of diplomatic agent between the employers and the local authorities. It is, however, perfectly clear from the allegation of the plaint and the plaintiff's evidence that he has been carrying on the business of a wholesale emigration agent and supplying tea planters in Assam with labourers at a fixed rate per head, and that the injury which he complains of, is the damage caused to his own business.

17. I think that the act contemplates only two classes of persons to whom it shall be lawful to carry on this business, namely, the employer and the employer's licensed agent, and that the plaintiff is not included within either of these classes and was, therefore, prohibited from carrying on this business and was criminally liable for so doing. The only argument of the learned Vakil for the plaintiff when this aspect of the case was put to him was that this point was not taken before the learned trial Judge, and that argument might avail him in most oases; hut this Court cannot possibly ignore the facts that the plaintiff has been carrying on an illegal business and that his complaint is that the defendant and his agents have interrupted its course and prevented him from reaping its profits. I am of opinion that this suit might have been dismissed on the ground that the plaintiff has no right of action in respect of an illegal business.

18. If the plaintiff's contentions were correct, and he should be considered to be in the position of an employer, I am still of opinion that he has no remedy. His Vakil has abandoned the first part of the case, the suspension and subsequent dismissal of the local agent, and has relied upon the closing of the plaintiff's depot, and the latter act did not result in any direct damage to the plaintiff or his employers. The plaintiff has not shown that the garden sardars could not accommodate their labourers in other suitable places, and could not register their coolies with the Government registering officers and that the business of his employers could not be carried on without using this building, and the evidence goes to show that the stoppage in the flow of emigrants resulted from the plaintiff's attempt to continue the system of registration by a "local agent" and the resistance thereto of the District Magistrate. The latter's power of appointing local agents is discretionary, [Section 64(1)], so that the plaintiff could not base his claim upon a refusal to appoint. It has not been shown that the District Magistrate was aware of the terms of the contract between the plaintiff and his principals, or of the manner in which a stoppage of the flow of emigrants would injure the plaintiff. The only evidence on this point appears in Mr. MacMichael's cross-examination," Q. You know that by this order (that is, to close the depot) you would not only be causing loss to these tea associations but also to Mr. Ross

personally? A. I knew in a general way that Mr. Ross was commonly interested,
Q. And, therefore, that he would be financially a loser by this order? A, Probably."

19. The District Magistrate cannot be presumed to have known that the plaintiff was remunerated in a manner which suggests an active recruitment of labour by him, and an infringement of the provisions of the Act. The doer of an unlawful act is liable for its ordinary consequences, but not for consequences which he did not and could not reasonably be expected to foresee *Sharp v. Powell* (1872) 7 C.P. 253, and I am of opinion that the District Magistrate could not be expected to foresee that his act in closing the depot would result in so injuring the business of the plaintiff's principals that further damage would result to the plaintiff himself. The observations of Lord Penzance in *Simpson v. Thomson* (1877) 3 A.C. 279 : 38 L.T. 1 relate to a negligent act, but indicate the manner in which the Court will limit the liability of a tortfeasor.

20. I am of opinion that the plaintiff has failed to show that the damage complained of was the consequence of the Magistrate's act, and that in any case it is too remote to give a cause of action.

21. I agree with the judgment of the learned Chief Justice with respect to the claim for damages for defamation and with the order proposed by my learned brother.