

(1957) 11 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 40-D of 1954

Amar Nath Issar	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 27-11-1957

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 13, 2(10), 2(6)

Citation : AIR 1958 P&H 420

Hon'ble Judges : Mehar Singh, J;D. Falshaw, J

Bench : Division Bench

Advocate : B. Mehtab Singh and D.D. Chawla, for the Appellant; B. Dayal and K. Dayal, for the Respondent

Final Decision : Dismissed

Judgement

Mehar Singh, J.—This judgment will dispose of three first appeals against orders NOS. 40-D/54, 97-D/54 and 101-D/54, as a common question of law arises in all the three appeals.

2. In each case the claim is against the Union of India respondent in an application u/s 13 of the Displaced Persons (Debts Adjustment) Act, 1951 (Act No. 70 of 1951), hereinafter to be referred as "the Act", for an amount stated in the application. A preliminary objection was taken on behalf of the respondent, in each application that the respondent is not a "person", within the scope of Section 2(6)(c) and 13 of the Act, who either ordinarily or actually and voluntarily resides, or carries on business or personally works for gain in the territory of India and so no application u/s 13 of the Act is competent. This has found favour with the Tribunal and by three separate orders of 22-12-1953 in F. A. O. No. 40-D/54, of 29-4-54 in F. A. O. 97-D/54, and of 20-4-1954 in F. A. O. No. 101-D/54, the applications have been dismissed. Each applicant has filed a separate appeal against the order.

3. The question raised being of some importance a learned Single Judge has

made reference to a larger bench and this is how these appeals come before us.

4. The Union of India can by no consideration or by interpretation of any provision in the Act be described as a "displaced person". The definition of "debt" in so far as a claim by a displaced person against a non-displaced person is concerned is to be found in Section 2(6), which says

"Section 2(6). "Debt" means any pecuniary liability, whether payable presently or in future, or under decree or order of a civil or revenue Court or otherwise, or whether ascertained or to be ascertained, which

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(c) is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends....."

In relation to this definition the question for consideration is whether the Union of India ordinarily resides in the territories to which the Act extends?

5. Section 13 of the Act provides thus :

"Section 13. Claims by displaced creditors against persons who are not displaced debtors -- At any time within one year after the date on which this Act comes into force in any local area, any displaced creditor claiming a debt from any other person who is not a displaced person may make an application, in such form as may be prescribed, to the Tribunal within the local limits of whose jurisdiction he or the respondent or, if there are more " respondents than one, any of such respondents, actually or voluntarily resides, or carries on business or personally works for gain, together with a statement of the debt owing to him with full particulars thereof."

The question is whether the Union of India, respondent, "actually or voluntarily resides, or carries on business or personally works for gain" within the local limits of the Tribunal's jurisdiction.

6. In Clause 12 of the Letters Patent of the Calcutta and Madras High Courts the words used are

".....or if the defendant shall dwell or carry on business or personally work for gain within those limits."

There is no difference in the meaning of the words "dwell" and "reside" in so far as the question under consideration is concerned. These two words have the same meaning in so far as the question under consideration is concerned. In Section 19 of the CPC the words used are

"..... the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court....."

In Section 20 of the same Code similar expression has been used in these words :

".....actually and voluntarily resides, or carries on business, or personally works for gain."

It will be seen that the words used in Clause 12 of the Letters Patent and Section 19 and 20 of the CPC are identical to the words used in Section 2(6)(c) and 13 of the Act, Those words as used in Clause 12 of the Letters Patent and in the two sections referred to of the CPC came for consideration in *Dova Narain Tewary v. Secy. of State* ILR 14 Cal 256 and the learned Judges held that they did not apply to the Secretary of State for India in Council, in other words, to the Government.

In the Calcutta High Court some dissent was shown with that decision by Piggot, J in one case and by Chaudhury, J. in another case, both referred to at pages 309 to 315 in *Rodricks v. Secretary of State* ILR 40 Cal 308 but in the last mentioned case Sir Lawrence Jenkins, C.J., approved of the previous Division Bench decision of the same Court and the head-note of the last case reads :

"This Court has no jurisdiction to entertain a suit brought against the Secretary of State for India in Council where the cause of action has arisen wholly outside the ordinary original civil jurisdiction of this Court, on the sole ground that the Secretary of State for India in Council dwelt or carried on business or personally worked for gain within the local limits of Calcutta, the Capital of India at the time of the institution of this suit."

Those two cases have been followed by a Division Bench of the Calcutta High Court in *Dominion of India Vs. R.C.K.C. Nath and Co.*, in the Madras High Court in *C. Govindarajulu Naidu v. Secretary of State* ILR 50 Mad 449 : AIR 1927 Mad 689 in the Lahore High Court in *R.J. Wyllie and Co. v. Secretary of State* AIR 1930 Lah 818; in *Nagi Brothers v. Dominion of India*. AIR 1951 P&H 92 and in *Shiv Parshad Vs. Punjab State*, and in the Bombay High Court in *Lachmandas H. Advani and Another Vs. Union of India*,

Of these cases the last mentioned was a case arising out of an application u/s 13 of the Act and the learned Judges considered the definition of "debt" in Section 2(6)(c) of the Act and also the provisions of Section 13 of the Act, They held, even though the learned Chief Justice, at page 44, observed that "it may be conceded that the Union of India is an artificial or juristic person" that it could not be predicated of the Union of India that it ordinarily resides in the territories to which the Act extends as contemplated by the definition of "debt" in Section 2(6)(c), and, therefore, the claim not being in respect of a debt, the application was not maintainable. On the side of the appellant no single authority has been referred to in which it has ever been held that the government ordinarily. or actually and voluntarily resides, or carries on business, or personally works for gain in India or in the territories of the State concerned.

7. However, on behalf of the appellants it has been strenuously urged that the Union of India is a corporation of the total inhabitants and subjects of India and is a "person" having regard to the definition of that word in Section 3(42) of the

General Clauses Act, 1897. In that provision the definition of the word "person" reads :

"Section 3(42). "Person" shall include any company or association or body of individuals whether incorporated or not."

8. It is further pointed that once it is conceded that the Union of India is a corporation and as such a person, it must reside somewhere and it either resides where its main seat is or in every nook and corner of the country and so it comes within the scope of Section 2(6)(c) and 13 of the Act. Similar argument was repelled in the Calcutta, Madras and Bombay cases - ILR 14 Cal 256 : ILR 50 Mad 419: AIR 1927 Mad 689 and Lachmandas H. Advani and Another Vs. Union of India, and no fresh argument has been advanced to indicate that the correctness of the view taken in those cases is to be doubted.

Certain authorities relied upon on behalf of the appellants in this connection may now be considered. The first case to which reference has been made in Doss v. Secretary of State for India-in-Council (1875) 19 Eq 509 in which at page 535, the learned Vice-Chancellor observes that the Secretary of State is in India and can be sued there. On the basis of this observation it is contended that similarly the Union of India is in India and can be sued here.

Actually in Article 300 of the Constitution it has been provided that "the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State....." This more or less provides the manner and the method of impleading the Union of India or the State Government as a party defendant in a claim against the Exchequer.

It does not say that the Union of India or the State Government resides anywhere or carries on business or personally works for gain. The same is the effect of the case last cited. But that case proceeded on consideration of Section 65 of Act 21 and 22 Vict. 106 in which it was provided that "the Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of Secretary of State in Council as a body corporate,"

It will be seen that by statutory fiction the Secretary of State in Council was to be treated as if a body corporate in the matter of suing and being sued. It was in the wake of that statutory provision that the learned Vice-Chancellor made the observation and I fail to see how it helps the appellants at all.

Reference has then been made to Stilton Hospital case 1612 ER 937 as digested at page 270 of Volume 13 of the English and Empire Digest, and reliance has been placed on the part of the head-note in it that the King of England is a corporation according to the common law of England, but that obviously can have no application in this country for there is no King here and that case is no authority that a Republic is a corporation. In this connection reliance has been placed on Article 459, at page 229, of Volume 59 of Corpus Juris where it is

stated :

"Although the right to sue is sometimes expressly conferred by statute, it is well settled that, independently of any statutory provision therefor, a state may sue in its own Courts either as Sovereign, or by virtue of its right as a political corporation. Also, a state may sue in Courts of a sister State, at least to enforce its rights as a corporation; and in federal courts, apparently in its sovereign capacity, as well as its corporate capacity."

This again deals with how the State is to be sued and may sue, it does not in the least settle the question of the residence of the State or its capacity to carry on business or work for gain. In *Steel and General Mills Co. Ltd. Vs. General Accident, Fire and Life Assurance Corporation Ltd. and Another*, Soni, J. held that a corporation like a company has its residence in a place where its administrative office is situate and is a displaced person within the scope of Section 3 of the Displaced Persons (Institution of Suits) Act, 1948.

The position of a Government is not the same as that of a corporation like a company and in the present cases there is no question of the Union of India being a displaced person. That case is entirely irrelevant so far as the present appeals are concerned. In *Maqbulunissa and Others Vs. Union of India (UOI) and Another*, considering Article 226 of the Constitution and the challenge to its jurisdiction under that Article the Allahabad High Court was of the opinion that the Union of India can be said to be within the territorial jurisdiction of the Allahabad High Court as it has been given authority throughout the length and breadth of the country.

Subsequent decisions of the Supreme Court show that this dictum is not correct and must be considered to be not a correct view. So none of the authorities relied upon by the appellants are helpful in any way in first showing that the Union of India is a body corporate, and secondly, even if it is considered to be an artificial or juristic person as Chagla, C.J. was of the opinion at page 44 of *Lachmandas H. Advani and Another Vs. Union of India*, in the words of the learned Chief Justice "even so it must be a person of whom it could be predicated that he ordinarily resides in the territories to which the Act extends; and the learned Chief Justice, following a previous case of the same court *Bata Shoe Co. Ltd. Vs. Union of India*, which case relied upon the authorities cited earlier in this judgment, observed as follows:

"The Union of India by its very nature is ubiquitous, it resides in every part and corner of India, and, therefore, a litigant could say;

"Never mind the cause of action I am entitled to file a suit in this Court because the Union of India resides here".

It is precisely because of this that the authorities have taken the view that the test of residence and even the test of carrying on the business cannot be applied where the defendant is the Union of India. Therefore, a plaintiff can only file a

suit against the Union of India provided the cause of action accrues or arises within the jurisdiction of the Court where he intends to file a suit.

There was no decision of our Court with regard to this question, but recently a Division Bench of this Court consisting of Gajendragadkar and Vyas JJ. in Bata Shoe Co. Ltd. Vs. Union of India, after reviewing all the authorities have fallen into line with the view taken by the other High Courts and they have held that the expression "residing" or "working for gain" or "carrying on business" cannot apply to the Union of India".

The contention on behalf of the appellants is completely met by this observation of the learned Chief Justice.

9. The result is that the Union of India neither ordinarily resides in the territories to which the Act extends within the scope of Section 2(6)(c) nor actually and voluntarily resides, or carries on business or personally works for gain within the scope of Section 13 of the Act. There is no scope for interference with the orders of the Tribunal. The three appeals are dismissed, leaving, in each case, the parties to bear their own costs.

D. Falshaw, J.

10. I agree.