
(1959) 07 MAD CK 0014

In the Madras High Court

Case No : O.S. No. 46 of 1954, Second Appeal No. 1108 of 1956

C. Gurusamy Konar

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 22-07-1959

Acts Referred:

Citation : (1959) 10 STC 553

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : K.S. Desikanand K. Raman, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is an appeal preferred against the decree and judgment of the learned Subordinate Judge of Kumbakonam in A. S.

No. 63 of 1955 reversing a thoroughly ill-considered judgment of the learned district Munsif of Kumbakonam is O.S. No. 46 of 1954.

2. The case for the plaintiff is : He is a paddy and rice merchant in Papanasam having his branches at Saliyamangalam and also at Sathur in

Ramnad District. In the course of business he has to transport rice and paddy from one branch to another. This he had to do after obtaining

necessary permits from the Assistant Commercial Tax Officer, Papanasam. He made one such application on 26th October, 1953, for transporting

150 bags of rice from Saliyamangalam to Sathur. The permit was refused illegally by the officer. Representations to the District Commercial Tax

Officer were of no avail. At the time when the application was made, the price of rice was Rs. 45 per bag. On 12th November, 1953, when a

permit was issued to him the price of paddy went down to Rs. 35 per bag. In this manner the plaintiff has suffered loss of Rs. 1,500 which he

would have got as profit had he transported the 150 bags in time to Sathur. On these allegations, the plaintiff brought the suit for recovery of Rs.

1,535-4-0 against the State of Madras represented by the Collector of Tanjore.

3. The case for the defendant is: On a reference made by the Board of Revenue, the Government apprehended that there was evasion of payment

of sales tax due to the Government by merchants exporting clandestinely large stocks of paddy and rice without exhibiting the transactions in their

accounts. They therefore sent a letter No. 97398 N/52-5 (Revenue Department) dated 10th August, 1953, to the Chief Operating Superintendent,

Southern Railway, Madras, that paddy or rice should not be booked from any station unless the consignor produced permit issued by the

Commercial Tax Officer as proof of payment of sales tax on the turnover of the goods. They also directed the Board of Revenue to take

immediate action to prescribe the export permits to be produced by the exporting merchants and to issue suitable instructions to the District Supply

Officers and the Commercial Tax Officers in the matter. In pursuance of that the Board of Revenue issued the reference No. 112722 A-2 of 53

C.S. dated 28th August, 1953, directing that in the case of movement of rice and paddy of over 15 maunds the Commercial Tax Officer should

issue a certificate in the form appended to it so that the merchant might produce it before the railway authorities along with the food grains licence

or the exemption certificates. The contents of the certificates are that sales tax on the quantity sought to be transported had been paid and that

therefore the transport of the goods was certified. In this case, the officer authorised to issue permit was the Assistant Commercial Tax Officer,

Papanasam. When the plaintiff applied to him on the 28th October, 1953, for a permit he in good faith in the course of the execution of duties and

of the discharge of his functions thought that the circular requiring issue of a permit did not apply to this case because it did not involve payment of

sales tax and he informed the plaintiff accordingly. The plaintiff wrote to the Commercial Tax Officer complaining about the refusal. He directed the

Assistant Commercial Tax Officer to issue the permit. Thereupon on 12th November, 1953, the Assistant Commercial Tax Officer called for an

application from the plaintiff and issued the permit. On a prior occasion after the receipt of the instructions from the Board of Revenue, the plaintiff

applied for transporting 11 bags of paddy from Papanasam to Sathur and the officer concerned issued a permit on an incorrect and incomplete

reading of the instructions. Thereafter he was pulled up by the Commercial Tax Officer drawing his attention to his irregular procedure followed.

Hence it was that the Assistant, Commercial Tax Officer refused to grant permission on the application dated 26th October, 1953. The Assistant

Commercial Tax Officer has acted perfectly in consonance with the rules when he rejected the application dated 26th October, 1953. In any

event, it could not be said to be wilful or illegal. The Government do not take responsibility for any loss occasioned to merchants if the officer acted

within the scope of his authority.

4. On the evidence on record the learned Subordinate Judge found that the action of the Assistant Commercial Tax Officer could at the worst be

described only as an honest error of judgment and that he was acting bona fide within the scope of his authority (a finding of fact based upon

acceptable and relevant evidence and after a careful analysis which could not be challenged before us) and that Government could not in any way

be made responsible for any loss that might have been occasioned to the defendant.

5. The law regarding misperformance of quasi-judicial powers by administrative officers as contra-distinguished from judicial officers protected by

the Judicial Officers Protection Act (Act 18 of 1850) is the same in England, United States of America and India, and has been fully discussed in

Thangavelu Mudaliar v. V. N. Manickam (S. A. No. 1030 of 1956) by me and can be gathered from the following standard treatises :

Kameswara Rao ""Laws of Damages and Compensation"", 2nd Edn., Ch. 31, pp. 1002 and the following; S. Ramaswami Iyer, ""The Law of Torts"",

5th Edn., pp. 676-678 ; Harper's Law of Torts, U.S.A., p. 666 and the following; Restatement of the Law of Torts, Vol. IV, Division Eleven, Ch.

42, p. 395 and the following, U.S.A.: Clark and Lindsell on Torts, 11th Edn., p. 164, U.K.

6. The Government is not responsible for the misfeasance or negligence or omission of duty of the subordinate officers or agents in the public

service. It does not undertake to guarantee to any person the fidelity of any of the officers or agents whom it employs; since that would involve it in

all its operations, in endless embarrassment and difficulties and losses which would be subversive of the public interest Story on Agency, S. 319.

These principles were applied by the Privy Council when they said that acts of a Government Officer bind the Government only when he is acting

in the discharge of a certain duty within the limits of his authority, or if he exceeded that authority when the Government in fact or in law directly or

by implication ratified the excess: The Collector of Masulipatam v. Caval Venkata Narainappa 8 M.I A. 529; See also AIR 1944 41 (Federal

Court) affirming AIR 1942 Mad. 539, Mani Vs. State of Madras, , Gopal Singh Vs. Union of India (UOI), , Mohammad Murad Ibrahim Khan

and Another Vs. Govt. of U.P. of Agra and Oudh, , Palthadi Venkappa Rai Vs. Devamma, , State v. Thakkar Vallabhadas AIR 1956 Sau. 65.

7. The subject who has sustained damage from the tortious acts of the Government and their officers, is not without any remedy, for the officer

who is responsible for the injury is personally liable for it. A servant of the Crown cannot rely on the authority of the Crown as a defence to a

wrongful act done to a fellow subject: Rogers v. Rajendro Dutt 8 M.I.A. 103.

8. This principle has, however, received a much restricted scope in practical application for the reason that public officers doing public duties must

be fearless of the consequences of their acts and must perform them with a sense of security. Law has, therefore, given them an immunity from the

consequence of their acts performed bona fide in the discharge of public duties. Cases may easily be imagined where a public officer acting in his

official capacity may cause harm or injury to an individual, (i) in the bona fide and honest exercise of his functions, and within the scope of his

authority, (ii) in acting beyond the scope or in excess of his authority, and (iii) in the negligent non-performance of his duties.

9. With regard to cases falling under class (i) it is manifest that the officer charged with the duty is perfectly immune, for he will then be doing what

the law bids him to do, and no one can be liable for doing anything which the law authorises him to do. If a person charged with the execution of a

statute honestly intends to put the law in motion, and really and not unreasonably believes in the existence of facts, which, if existent, would justify

his acting and acts accordingly, his conduct will be in pursuance of the statute and will be protected: *Dhandu v. Secretary of State of India* 17 I.C.

673, following *Herman v. Sencheal* (1862) 3 L.L.J. 43, and *Spooner v. Juddow* 4 M.I.A. 353.

10. In cases falling under class (ii) where the officer overshoots his mark and does anything in excess of or beyond the scope of his authority,

whether negligently or maliciously, the protection afforded by law vanishes, for the acts complained of will be wholly illegal and ultra vires. "An

officer representing the Sovereign, Civil and Military, may be made to answer for an abuse of his authority, and for the exercise of arbitrary power

above and beyond the law. An act of authority lawful in itself, if rightfully done, may become wholly unlawful and unjustifiable by the harsh,

oppressive and cruel manner in which it is executed; for where the law authorises an act to be done it does not protect unnecessary violence or

cruelty in the doing of it": *Addison's Law of Torts*, 5th Edn., pp. 663 and 664.

11. But if parties bonafide and not absurdly believe that they are acting in pursuance of a statute and according to law, they are entitled to the

special protection which the legislature intended for them although they have done an illegal act: *Spooner v. Juddow* 4 M.I.A. 353. In other words,

an honest error of judgment on the part of the officer may protect him from all liability.

12. In cases falling under class (iii) where the officer is guilty of negligent non-performance of his official and public duty, there appears to be no

reason why the officer, whose omission may have caused serious injury to a person, should not be made answerable. If a duty is assumed to exist,

there must always be a remedy for its non-performance, and if the non-performance be the result of negligence or malicious design it is clear that

the officer cannot claim any protection, *Mervanji v. Secretary of State* 16 I.C. 714, for, if the law enjoins upon a public officer a duty to be

performed for the benefit of the public, and if the damage sustained by any member of the public is directly traceable to the non-performance of

such duty, either through design or negligence, redress can most properly be obtained by an ordinary action at law. It is needless to mention that a

public officer may be sued in his individual capacity for acts done or performed as a private individual, and not as a public servant. The fact that

the defendant was a public official when he acted in the manner complained of, cannot affect the character in which he is sued. The term

jurisdiction"" has been interpreted by the Allahabad High Court to mean authority or power to do an act in a particular manner or form: Teyen v.

Ramlal 12 All. 115; See also Rohini Kumar v. Niaz : AIR1944Cal4 , Sewalram Agarwalla and Another Vs. Abdul Majid and Others, , Girija

Shankar v. Gopalje 30 Bom. 241, Mahalinga Iyer v. Rajam Iyer 10 M L J. 232, Collector of Sea Customs v. Chithambaram (1876) 1 Mad. 89,

Raghunatha Rao v. Nathamuni Tatamayyangar (1871) 6 M.H.C.R. 423. If an official acts within his jurisdiction he cannot be sued on the ground

that he acted dishonestly or maliciously (vide Ramaswami Iyer supra, page 652).

13. The term bonafide as pointed out by Scotland, C.J., in Raghunatha Rao v. Nathamuni Tatamayyangar (1871) 6 M.H.C.R. 423 does not mean

a groundless belief formed from ignorance or rashness. The belief must be entertained in good faith. The term is meant to require an honest

persuasion formed, after fair enquiry and consideration, upon what might mistakenly either in point of law or fact, be considered a reasonable and

probable ground by a person possessing ordinary qualifications for the office held by him and sought to be made liable. The belief must appear to

have been trustworthy to his mind. A belief cannot be said to have the quality of trustworthiness unless it rested upon some probable foundation for

it in the judgment of a man of ordinary capacities. In short, bona fides does not protect an officer who does not act with due care and attention and

the mere absence of mala fides is not a good defence: Ammappa Mudali v. Muhammad 2 M.H.C.R. 443, Rohini Kumar's case.

14. Thus, the law enjoins upon an officer the duty to be careful and cautious in the discharge of his official duties. His immunity will fail if the power

or discretion conferred by a statute is not exercised bona fide or in good faith and in accordance with the requirements or formalities prescribed by

the statute.

15. But if the officer charged with execution of the duty honestly intends to put the law in motion, and really and not unreasonably believes in the

existence of facts which, if existent, would justify his acting and acts accordingly, his conduct will be in pursuance of the law and he will be

protected. But if, however, there is an abuse of authority on the part of the

officer, and if it were found that the act complained of was not done

fairly and honestly, and is wholly ultra vires and illegal there is no reason to exempt him from responsibility for the consequence: *Everett v. Griffiths*

(1921) 1 A.C. 631, *Westminster Corporation v. L. N. and W. Rys* (1905) A.C. 426, *Fennell v. East Ham Corporation* (1926) Ch. 641, *Nagar*

Valab v. Municipality of Dhendhuka 12 Bom. 490, *Muhammad v. Madras Corporation* 25 Mad. 118 and *Lalbhai v. Municipal Commissioner of*

Bombay 33 Bom. 334.

16. To sum up in the words of Harper (*supra*) at pages 668 and 669, if administrative officers exercising what are frequently called quasi judicial

powers act bona fide and honestly within the general range of their duties they are not liable for an error in judgment or for a mistake innocently

made. But if they act maliciously or for a purpose not intended to be advanced by the policy of the privilege of their office, they are liable. They

would be liable to an individual for the mis-performance thereof.

17. Bearing these principles in mind if we examine the facts of this case the conclusion of the learned Subordinate Judge that the Government (:

AIR1944Cal4 .) are not in any way responsible and are, therefore, not liable is irreproachable.

18. This second appeal has got to be dismissed and is hereby dismissed and in the circumstances with costs.