
(1935) 04 AHC CK 0009
In the Allahabad High Court

(Firm) Balakram-Atma Ram

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision : 09-04-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1935 All 900

Hon'ble Judges : Malik, C.J

Bench : Single Bench

Judgement

1. This is a plaintiff's appeal arising out of a suit for damages against the Secretary of State on account of the loss of 18 cases of vegetable oil which were consigned to Shahjahanpur from Bombay. The consignment was not delivered at Shahjahanpur and the plaintiff sent notice to the Collector of Shahjahanpur u/s 80, Civil P.C., claiming damages and after having waited for over two months brought the present suit. Admittedly no separate notice u/s 77, Railways Act, was served on any officer of the railway. The suit was contested inter alia on the ground that it must fail for want of a notice u/s 77, Railways Act. The first Court held that the notice not having been given, the suit was not maintainable, and dismissed the claim. On appeal the lower appellate Court came to the conclusion that the notice given to the Collector was quite sufficient and the defect was cured. On appeal to this Court a Judge has come to a contrary conclusion and restored the decree of the first Court.

2. The only point for consideration in this Letters Patent appeal is whether the notice given to the Collector dispensed with the necessity of serving any other notice u/s 77, Railways Act. Obviously the object of the two provisions are quite distinct and separate. Section 80, applies to all suits brought against the Secretary of State and it requires that no suit shall be instituted until the expiration of two months next after notice in writing has been given to a Secretary to the Local Government or the Collector of the District. Section 80 therefore provides a period for the notice, and the person who has given such

notice must wait for that full period before he brings any suit. That the Collector does not necessarily represent the Secretary of State for India in Council in all cases is apparent from the fact that the Legislature has thought fit to name him specifically in this section.

3. Section 77, Railways Act, is meant for an entirely different purpose. It is confined to suits brought against the Railway Administration for loss, destruction or deterioration of goods, and provides that no person shall be entitled to a refund or to compensation unless his claim has been preferred in writing by him or on his behalf to the Railway Administration within six months from the date of the delivery of the animals or goods for carriage by railway. The object obviously is that prompt notice should be given to the railway company to enable them to make enquiries and settle the matter out of Court by paying compensation to the plaintiff, if possible. The period of six months prescribed in this section is by way of a bar of limitation and is not like the period prescribed in Section 80, Civil P.C., which has to be excluded from computation u/s 15(2), Limitation Act. It follows that the two sections being clearly independent, two separate notices are necessary before the suit can be maintained. There must be a notice given to the Railway Administration u/s 77, Railways Act, within six months of the date of the delivery of the [goods, and the plaintiff must also give notice to the Collector u/s 80, Civil P.C., and wait for a period of two months before he sues.

4. The advocate for the appellant contends before us that "Railway Administration" has been defined in Section 3(6), Railways Act, as meaning the manager of the railway, including the Government. He then argues that notice to Government is quite sufficient. This must be conceded. He then infers that notice to the Collector would be notice to the Government of India and would therefore be sufficient. This contention cannot be accepted. The Collector of a District does not represent the Government of India in railway matters, and unless there is a statutory provision to that effect a notice sent to the Collector of a District would not be a notice served on the Government of India. As already pointed out, the reason why a notice to the Collector for purposes of Section 80, is sufficient is that there is a specific provision to that effect in that section, and not that the Collector represents the Secretary of State in all matters.

5. Section 140, Railways Act, lays down that a notice or other document required or authorised by this Act to be served on a Railway Administration may be served, in the case of a railway administered by the Government, on the manager. That obviously indicates the way in which a notice required by Section 77, Railways Act, is to be served. Indeed, it has been held in a number of cases by this Court that the word "may" in this section is the equivalent of the word "must" and that there is no other way open except that provided in the section : see *G.I.P. Ry. Co. v. Chandra Bai* (1906) 28 All 552, *G.I.P. Ry. Co. v. Ganpat Rai* (1911) 33 All 544 and *Cawnpore Cotton Mills Co. Ltd. v. G.I.P. Ry.* 1923 All. 301). Even without going to this length, it is quite sufficient to say that for purposes of Section 77, a notice to a Collector cannot be considered to be a notice to the

Government, in the case of a State Railway. The advocate for the plaintiff has relied strongly on *Radhe Shyam v. Secy. of State* 1917 Cal 640. In that case attention was concentrated on the question whether Section 140 was exhaustive and must be strictly complied with. One Judge simply took it for granted at p. 25, that the notice served upon the Government through the Collector within, six months was sufficient to satisfy the requirements of Section 77. No reason was given and no authority was quoted, and it is even doubtful whether the point was at all pressed at the bar. The other learned Judge had some doubts on this point, for at p. 27 he remarked:

Whether the Collector is the proper person to receive notice u/s 77, on behalf of the Government when notice is served on the Government and not on the manager, I express no opinion.

6. But as the learned Government Pleader for the railway had omitted to suggest that he was not the proper person, the learned Judge did not differ from the view held by his learned colleague. That case cannot therefore be taken to be any conclusive authority on this point. The next case on which reliance is placed is *Hirachand Succaram v. G.I.P. Ry. Co. Bombay* 1928 Bom. 421. There again one learned Judge following the opinion of one of the Judges in *Radhe Shyam v. Secy. of State* 1917 Cal. 640, remarked at p. 555, that notice served u/s 80, Civil P.C., on the Collector within six months may be considered to be a good notice u/s 77 to the Railway Administration. The use of the word "may" might suggest that that was not the final opinion intended to be expressed. In any case the other learned Judge refrained from expressing any such opinion. With great respect we are not prepared to accept such a view.

7. It seems to us that in view of the provisions of Section 77 and Section 140, Railways Act, it is impossible to hold that a notice served on the Collector of a District is a sufficient notice served on the Government of India for the purposes of Section 77. We accordingly dismiss this appeal with costs.