
(1954) 09 AP CK 0031

In the Andhra Pradesh High Court

Case No : Revision Petns. No's. 439 and 440/4 of 1952-53

Mutsadilal and another

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-09-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Evidence Act, 1872 — Section 123, 124
Railways Act, 1989 — Section 55, 55(5)

Citation : (1954) 09 AP CK 0031

Hon'ble Judges : Misra, C.J;Srinivasachari, J

Bench : Division Bench

Advocate : Girja Pershad Sanghi, for the Appellant; Seetal Pershad Srivatchava, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasachari, J.—These are two revision applications against the judgments of the District Judge, Secunderabad, exercising jurisdiction on the Small Causes Side. They arise out of two suits instituted (1) by Mutsadilal against the East Indian Railway and (2) by Rameshwarlal and another against the Central Railway, for the recovery of amounts collected by the Railways as undercharge. Inasmuch as a common point of law was involved in these two revision petitions we heard arguments in the two Revision Petitions together and this judgment of ours will cover both the revisions.

2. We will first deal with the facts of the suit instituted by Mutsadilal. In this suit the plaintiff alleged that on each of the two dates viz., 9-6-1943 and 20-11-1943 one wagon of salt was booked from "Khewra Salt Mines" a Railway Station in the Punjab (now in Pakistan), to Mutsadilal the plaintiff-petitioner in Hyderabad. It was stated that the Railway freight payable on the above goods was endorsed on the receipt as being Rs. 1613-10-0 on the first consignment and Rs. 1476-4-0 as the freight payable on the second consignment. The salt despatched on 9-6-1943

was delivered to the consignee on 30-6-1943 and only a sum of Rs. 1360-10-0 instead of Rs. 1613-10-0 was collected from the consignee as according to a fresh calculation the freight which was chargeable was Rs. 253-0-0 less than what was entered in the initial railway receipt. The consignment despatched on 20-11-1943 was delivered to the consignee on 13-12-1943 likewise, on collection of Rs. 1247-4-0 in place of Rs. 1479-4-0. In this case also the Railway allowed the consignee an overcharge of Rs. 232-0-0.

Later on, on 15-3-1944 the Railway made a demand of Rs. 186-14-0 in respect of the second consignment (despatched on 20-11-1943) stating that the overcharges in the two consignments were allowed by mistake, and that on a proper calculation there was due from the consignee the sum of Rs. 186-14-0 for the second consignment. Likewise a demand of Rs. 202-15-0 was made in respect of the first consignment (despatched on 9-6-1943). The consignee paid these two amounts under protest on 3rd and 4th May respectively. Later on, being of the opinion that the amounts collected by the Railway subsequently from him were not payable, he issued a notice of suit to the Railway Administration under S. 80, Civil P. C., and after the expiry of two months commenced the action which gives rise to the first revision, in the Secunderabad Court for the recovery of (a) the amounts collected from the plaintiff on 3rd and 4th May respectively and (b) interest thereon at the rate of 6 per cent, per annum from the date of the collection up to the date of the suit.

The General Manager of the Railway denied the liability of the Railway and stated that the Railway was entitled to recover from the consignee any amount that had been left over by mistake under the terms of the contract embodied on the reverse of the railway receipt. The learned District Judge, Secunderabad dismissed the suit rejecting the contention of the plaintiff to the effect that his responsibility for payment of any undercharge, even if otherwise due from him ceased on the date that the goods were delivered to him. Revision Petition No. 439/4 of 1952-53 is directed against this judgment of the District Judge. When the case came on for hearing before a Single Judge. Manohar Pershad J. it was referred under S. 5 of the High Court Act to a Division Bench as the question of law which was involved in it was considered fit to be decided by a larger Bench in view of its general importance.

3. In the other case in which Rameshwarlal, petitioner was the consignee 397 lumps of jaggery were despatched on 7-4-1943 from Jahanabad on the East Indian Railway to Mancharial on the Nizam State Railway (now Central Railway). The freight which was payable at destination was mentioned in the receipt as Rs. 566-9-0. The goods were delivered to the consignee on 23-4-1943 and a sum of Rs. 566-9-0 was collected. On 4-7-1943 the consignee Rameshwarlal made a claim for an overcharge and the Railway instead of allowing the alleged overcharge made a demand for a further sum of Rs. 129-13-0 which on recalculation was found to be undercharged. It may be mentioned here that in this case a reweighment was made at Gaya and excess freight was found to be

due and hence the claim of the Railway This amount was paid by the consignee on 4-5-1944 under protest and later the present suit was filed for the recovery of the aforesaid sum of Rs. 129-13-0 and interest thereon of Rs. 24-9-0 up to the date of the suit on the same ground as in the other case. The District Judge sitting as a Small Causes Court rejected the contention of the plaintiff and dismissed the suit. Civil Revision No. 440/4 of 1952-53 is directed against that decision.

4. Elaborate arguments were addressed to us by the parties' learned advocates. After a careful consideration of the points raised on either side we have come to the conclusion that both application should fail. We now proceed to state the reasons for our view.

5. The contention of the petitioners as stated above is that the right of the Railway to collect any undercharge was limited by conditions Nos. 6 and 7 printed at the back of the railway receipts till the time of delivery of the consignments. It was open to the Railway, it was argued, under the terms of the contract to collect the undercharge if any at the destination before the goods were delivered to the consignee but once the delivery was made the Railway lost its right to collect the amount subsequently.

6. Clause 6 of the Notice to consignors printed on the reverse of the consignment receipt stipulates that the Railway shall have the right to re-measure, reweigh and reclassify the commodity consigned and that they shall also have the right to recalculate the rates, terminals and other charges at the destination and to recollect before the goods are delivered any amount that may have been omitted or undercharged. Clause 7 gives the Railway the right to exercise a lien over the goods despatched in respect of the amount due and this lien is not only exercisable over the consignment while it is in the possession of the Railway (before delivery) but also over any other goods of the same consignee which may come into its possession on a subsequent date. In addition to the rights given to the Railway under these Clauses, the Railway has a further right under the provisions of S. 55(5) , Railways Act, (9 of 1890) to recover by way of suit any such rate, terminal or other charges or the balance thereof. The combined effect of Clauses 6 and 7 of the Rules printed on the railway receipt and S. 55(5), Railways Act. is that the Railway is given the power to withhold delivery of the goods until the amount due to it on account of an undercharge is paid, and if the goods have been delivered, to exercise such a lien over the goods of the consignee which may come into its possession and if no lien is exercised or no goods come into its possession the law gives the Railway the right to file a suit for the recovery of the amounts due.

7. The learned advocate for the petitioner lays emphasis on the following words in clause 6:

That the Railway Administration has the right of remeasurement,.....at the place of destination and of collecting "before the goods are delivered" any

amount that may have been omitted or undercharged.

The words "before the goods are delivered", the learned advocate contends, are significant and conclusively indicate that such undercharge cannot be recovered subsequently.

8. Reading Clauses 6 and 7 together with sub-section (5) of Section 55, Railways Act, it would appear that the interpretation urged by the learned advocate could not be sustained. If the idea was that any arrears due from the consignee should be collected only before the goods were made over to him, there would not be a right given to the Railway to exercise a lien over the goods of the same consignee that may come into its possession at a later date. The fact that the Railway is given such a power would conclusively prove that the right to recover is not restricted till the time of the delivery of the goods. The Railways' right to recover the undercharge by filing a regular suit as would appear from the provisions of S. 55 already adverted to is not taken away by condition 6 and, therefore, the language employed in Clause 6 can only be regarded as an enabling provision giving the Railway the right to recover the amount even before the delivery of the goods. In this connection the learned advocate invited our attention to certain decisions relating to the construction and interpretation of statutes. We do not think it is necessary to refer to them for the purposes of the present case as in our view when the two conditions are read with Act, the meaning of Clause 6 is clear and unambiguous. We do not have to enter into the rules of interpretation to discover the rights of the defendant.

9. The learned advocate further argued that it was not the intention of the Railway to collect the dues by way of an undercharge once the goods had been delivered to the consignee. In support of this contention he relied upon certain communications issued by the Indian Government to the Railway Authorities. It would appear that the petitioners' advocate made an application in the lower court for the summoning of letter No. 678 dated 3-9-1897 said to have been issued by the Under Secretary to the Government of India to the Secretary to the Government of Bombay, Public Works Department, and another letter of 24-2-1897 said to have been issued by the Secretary to the Bombay Government, Public Works Department. A Commissioner who was appointed to take the evidence of the Secretary, Railway Board, called upon the Secretary to produce the aforesaid letters but he claimed privilege under S. 124, Evidence Act, and declined to tender the documents on the ground that they were in the nature of communications made in official confidence and that in his opinion public interest would suffer by their production and disclosure.

The claiming of the privilege by the Secretary, Railway Board, was challenged by the advocate for the plaintiffs and the court, after hearing the arguments of both sides and after perusing the letter, passed an order to the effect that in its opinion the letter was only an opinion of the Governor-General with respect to the interpretation of the Railway Act. It merely gave reasons for not amending the existing rules and as such the Secretary's view was justified and the

communications were privileged. The learned advocate for the petitioners urged that no privilege could be claimed in respect of the documents.

10. Under the provisions of S. 123, Evidence Act; no one could be permitted to give evidence derived from unpublished official records relating to any affairs of a State except with the permission of the officer at the head of the department who shall give or withhold such permission as he thinks fit. In our opinion the letters in question being limited for communication to the officers of the Railway, were not meant for publication. They were, therefore, rightly regarded as unpublished official records. The contents of the letters related to an affair of the State and on ground of public policy the official transactions between heads of departments of Government and their subordinate officers are treated as secrets of the State. Where, therefore, it was an unpublished official record and it related to an affair of the State the question whether the disclosure of its contents would be against public interest and whether privilege could be claimed rested with the head of the department and if the head of the department refused to disclose it, the court would not compel him to produce the document or disclose its contents.

We might refer to the observations of Pobleck C. B. in the case of -- "Beatson v. Skene", (1860) 29 LJEX 430 at p. 437 (A):

It appears to us, therefore that the question whether the production of the document would be injurious to the public service must be determined not by the Judge but by the head of the Department having the custody of the paper; and if he is in attendance and states that in his opinion the production of the document would be injurious to the public service the Judge ought not to compel the production of it.

There is the further ground that since the lower court having exercised its discretion in a judicial manner in allowing the Secretary, Railway Board, to claim the privilege in respect of the document called for by the plaintiffs' advocate it would be wrong to interfere with it in revision.

11. Another argument was advanced by the learned advocate for the petitioners, viz., that the Railway was estopped from claiming the undercharge because they had already allowed to the plaintiff an amount by way of an excess charge. It was urged that having once found that there had been an overcharge and having paid the amount to the plaintiff it was no longer open to the Railway to get back any portion.

It was said that by its action the Railway made the plaintiffs believe that the charge was much less than what was mentioned in the railway receipt and the plaintiffs acting upon this belief entered into transactions with other parties on the basis that the railway freight payable was the amount mentioned in the receipt less the amount found to be overcharge; they thereby altered their position by reason of the representation made by the defendants and under those circumstances the latter cannot be allowed to turn round and say that the amount mentioned as overcharge was wrong. The argument is fallacious.

In order to operate as an estoppel it ought to be established that the person had by his declaration, act or omission intentionally caused or permitted another to believe a thing to be true. The significance of the word "intentionally" has been pointed out by their Lordships of the Privy Council in the leading case of -- "Sarat Chunder Dey v. Gopal Chunder Laha", 19 Ind. App. 203 (PC) (B). It cannot be said in this case that there was any intentional declaration or act on the part of the Railway to make the plaintiffs believe a particular fact. Further it is also necessary for the plaintiffs to show that they were not aware of the true state of things, for if they had the means of knowledge of the real state of affairs there could be no estoppel. The amount mentioned on the railway receipt as the freight due on the goods consigned is always subject to revision and since we have held that mistakes could be corrected even after the delivery of the consignment under the contract and the law applicable thereto, the plaintiffs must be deemed to have entered into the contract knowing their liabilities. There is in our opinion no room for application of the doctrine of estoppel in these circumstances.

12. We dismiss the applications with costs.