
(1966) 05 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 99-D of 1966

N.C. Maitra

APPELLANT

Vs

Desh Bandhu Gupta and Others

RESPONDENT

Date of Decision : 06-05-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 2(17), 80
Constitution of India, 1950 — Article 227
Limitation Act, 1908 — Article 14
Securities Contracts (Regulation) Act, 1956 — Section 11, 12, 23, 29, 3
Securities Contracts (Regulation) Rules, 1957 — Rule 10, 11, 16

Citation : (1967) 1 ILR (P&H) 448

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : S.N. Shanker and N. Srinivasa Rao, for the Appellant; Party-in-Person and Radhey Lal Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—A somewhat unique question of law that has arisen in this case is whether a suit for damages for defamation or libel can be instituted without serving a notice u/s 80, Code of Civil Procedure, against a representative of the Central Government nominated on the governing body of a recognised Stock Exchange u/s 4(2)(iii) of the Securities Contracts (Regulation) Act (No. 42 of 1956), 1956 (hereinafter called the Regulation Act) in respect of contents of some communication by such a nominee to some office bearer of the Stock Exchange. In other words, the question is whether such a nominee of the Central Government is a public officer within the meaning of Clause (h) of Sub-section (17) of Section 2 of the Code and while sending such a communication the representative of the Central Government purports to act in his official capacity or.

2. The facts leading to the filing of this revision petition lie in a rather narrow compass. Respondent No. 5, Delhi Stock Exchange Association Ltd. (hereinafter

referred to as the Exchange) is a recognised Stock Exchange under the Regulation Act. Respondent No. 3, Shri N.C. Sen, Distiller, Punjab Distilling Company, Kharsa (Amritsar) is admittedly a member of the Exchange. According to Mr. Sen, Desh Bandhu Gupta, Respondent No. 1 (hereinafter called the Plaintiff) had sold 300 shares of Hindustan Gas to Mr. Sen and bought for Mr. Sen 200 shares of Hyderabad Allwyn Co. Mr. Sen was complaining that the Plaintiff had failed and neglected to deliver 500 new shares to Mr. Sen for nearly 2 years since the shares had been purchased and that the dividends had already accrued thereon. Prafulla Kumar Roy, Advocate, Calcutta, gave some notice to the Plaintiff in that respect. Mr. Sen sent complaint in writing to Mr. N.C. Maitra, Petitioner in connection with his said complaint against the Plaintiff. D.O. letter, dated 2nd February, 1965, was sent by the Petitioner in his capacity as Deputy Director of Stock Exchange to Shri Bharat Bhushan, President of the Exchange, wherein details of the complaint made by Mr. Sen were given. Mr. N.C. Maitra, Deputy Director of the Exchange concluded that D.O. letter with the following passage:

Even upto this date, the shares in question have not been delivered to Shri Sen. If the facts reported to me as above are correct in substance, this will only corroborate the apprehension of the said complainant-investor that he had been duped in the above transaction and his funds misappropriated by M/s. Desh Bandhu Gupta. The matter thus appears to be very serious and warrants immediate action by your Exchange.

I shall be grateful if you will kindly send a report about this case as early as possible at my Calcutta office address.

Again on March 16, 1965, the Petitioner wrote an official letter in his capacity as Deputy Director of Exchange to the Secretary of the Exchange regarding the complaint from Shri N.C. Sen wherein certain remarks were made to which the Plaintiff has taken exception. The said letter ended with the following passage:

The facts that a responsible member of the Exchange who is also represented in the Board of Directors of your Exchange could make payment of a part of the claim on dividend accounts for a transaction which is reported to have taken place about 3 years back and has not delivered the shares are clear evidence for immediate processing of the complaint by your Exchange and for taking such disciplinary action as the circumstances should warrant.

While, therefore, no part of the complaint should on any account be deemed to have been settled, as a first step, it is requested you should immediately impress the member on the need for delivery of the shares in question or to make payment of Rs. 5,000 as requested for in the present letter under reference. It is further requested that action taken on receipt of this letter be intimated to me immediately.

Taking an exception to the remarks made by the Petitioner in his above-said communication, the Plaintiff filed a suit against the Petitioner (Defendant No. 1),

Shri Prafulla Kumar Roy (Defendant No. 2), Shri N.C. Sen (Defendant No. 3), Shri Bharat Bhushan (Defendant No. 4) and Exchange (Defendant No. 5) for the recovery of Rs. 10,500 as damages for having defamed him by writing and publishing certain passages occurring in the above-mentioned letters and in certain other matters detailed in the plaint. In his written statement Defendant No. 1 took up a preliminary objection to the effect that the suit against him was barred by Section 80, Code of Civil Procedure, as the Plaintiff had not served any notice upon the Petitioner as required by that provision. It was prayed in the written statement that the suit was liable to be dismissed for want of compliance with the mandatory provisions of Section 80 of the Code. In reply to the said objection it was pleaded by the Plaintiff in his replication that the Petitioner had no such capacity as a Government Officer and that whatever might have been his responsibilities at the Calcutta Stock Exchange, he had none of the nature at the Delhi Stock Exchange. On that basis it was averred by the Plaintiff in his said replication that Defendant No. 1 had not acted in his capacity as a Government Officer while sending the relevant communication. The Plaintiff pleaded that Defendant No. 1 was only one of the Directors of the Delhi Stock Exchange and had no powers beyond that. It was added in the replication that the functions of the Petitioner were not and could not be his duties as a public officer in the Government of India. The above-said contentions of the parties gave rise to the following preliminary issue:

(1) Whether any notice was essential to be served on Defendant No. 1 u/s 80, Code of Civil Procedure, before filing the present suit? If so, what is the effect of non-service of such notice?

Four other preliminary issues were framed by the trial Court with which we are not concerned in the instant case. By order, dated 7th December, 1965, the Court of Shri V.K. Kaushal, Sub-Judge, 1st Class, Delhi, held on the above-mentioned issue that the Petitioner was working as one of the Directors of the Exchange when he wrote the letter in question which was alleged to be defamatory and that the Petitioner's actions which were alleged to be defamatory were performed by him while acting as such a Director. Relying on a judgment of the Allahabad High Court in Muhammad Ekram Khan and Another Vs. Mirza Muhammad Bakar and Others, , the Sub-Judge, held that the Petitioner was not acting in his official capacity as Deputy Director in the Ministry of Finance when he wrote the alleged defamatory letter. In fact, it has been held by the trial Court that the Petitioner was at the relevant time only a member of the Exchange. On that basis the preliminary issue was decided in favour of the Plaintiff and it was held that the Court was competent to try the suit without there having been any notice u/s 80 of the Code, Aggrieved by the said judgment of the trial Court on the first preliminary issue, N.C. Maitra, Defendant No. 1 has filed this petition for revision of those orders.

3. It is settled law that the provisions of Section 80 of the Code are mandatory and non-compliance with the same is fatal to the suit which falls within the

mischievous of that section in so far as the Defendant who was entitled to get a notice under that section is concerned.

4. The Respondent, who appeared before me in person but argued his own case with the great clarity and ability took up a preliminary objection to the effect that this Court has no jurisdiction in exercise of its revisional powers u/s 115 of the Code to interfere with the decision of the trial Court on the first preliminary issue. In this connection, he relied on the judgment of their Lordships of the Supreme Court in Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, and argued that the High Court cannot, while exercising its jurisdiction u/s 115, Code of Civil Procedure, correct errors of fact, however gross they may be, or even errors of law. It is argued that it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. In Pandurang Dhondhi's case, the Supreme Court held that points of law may arise which are related to matters of jurisdiction and that in such circumstances an erroneous decision on such pleas can be said to be concerned with questions of jurisdiction falling within the purview of Section 115 of the Code, though an erroneous decision on a question of law having no relation to questions of jurisdiction will not be corrected by the High Court under that section. No exception whatever can be taken to the law laid down by their Lordships of the Supreme Court. It, however, appears to me that the question as to the necessity of serving a notice u/s 80 of the Code on Defendant No. 1 (Petitioner before me) relates to the jurisdiction of the trial Court to entertain and try the suit against the Petitioner and an erroneous decision in law on that question would be an issue on which decision can be subjected to the revisional jurisdiction of this Court. It has been held in The Province of Madras Vs. Sri Sri Vikrama Deo Varma Maharajulungaru, Maharaja of Jeypore and Zamindar of Madgole, , that if the requisite notice is not given in a case where it is required to be given, the Court has no jurisdiction to entertain the suit against the party entitled to such a notice. While deciding the revision petition before that Court, the Madras High Court further observed in the above--mentioned case that the question does not cease to be a question of jurisdiction merely because the lower Court has decided wrongly questions which, if decided rightly, would have left it without jurisdiction to entertain the suit. I am in respectfully agreement with the ratio of the judgment of the Madras High Court in the above said case. I, therefore, hold that this case falls within the scope of the jurisdiction of this Court u/s 115 of the Code as defined by their Lordships of the Supreme Court in Pandurang Dhondhi's case. The preliminary objection of the Defendant-Respondent is, therefore, over-Ruled.

5. There is another way of looking at this matter. If the Court below has no jurisdiction to try the suit against the Petitioner for want of requisite notice and if I do not interfere at this stage on that ground, the parties will have to undergo the unnecessary travail of a long-drawn trial of the suit which would prove to be

absolutely fruitless of and when the judgment and decree of the trial Court is reversed on this legal question. In the circumstances of this case and in the view I have taken of the merits of the controversy involved in the first preliminary issue I would have interfered in this case under Article 227 of the Constitution if I had held that I could not do so u/s 115 of the Code. Vast and plenary powers of Superintendence are vested by Article 227 of the Constitution in this Court though the same have to be exercised with the extreme restraint and only in cases of exceptional nature.

6. This is a convenient stage where I may first set out the scheme of the Regulation Act and its relevant provisions. The Regulation Act was passed in September, 1956. According to the official statement of objects and reasons for the bill which became the Regulation Act, the scheme of the Regulation of stock exchanges and of transactions in securities dealt in on them contemplated in the bill was described as follows:

(a) the prior recognition of the stock exchanges, subject to the fulfilment by them of certain conditions relating to their membership and their rules and bye-law (Clauses 3, 4 and 5); and (b) a general control over their trading methods and practices, to be exercised through the powers proposed to be conferred on the Central Government to approve of their rules, regulations and bye-laws and to make or amend them (Clauses 8, 9 and 10). Powers are taken in Clauses 11 and 12 to deal with abnormal situations or emergencies, which may gravely affect the working of the stock exchanges and call for urgent and drastic action by the Central Government.

The Central Government are also empowered to call for such information as they may require in respect of the affairs of a stock exchange or of any of its members and also to direct investigations to be made into the affairs of a stock exchange, if they consider that it is in the interest of trade or in the public interest to do so (Clause 6).

Clauses 13 and 14 of the Bill impose certain restrictions on transactions in securities carried on in or outside the recognised stock exchanges, while Clause 19 specifically prohibits dealing, in option in securities. Power is also taken in Clause 17 to prohibit transactions in specified securities after consultation with the exchanges concerned, in order to prevent undesirable speculation in them.

In order to regulate the buying and selling of securities outside the recognised stock exchanges, the Bill provides for the licensing of all dealers in securities who are not members of a recognised stock exchange or are otherwise exempted from the licensing requirements (Clause 18). The provisions of the Bill on this subject broadly follow the pattern of control underlying the Prevention of Fraud (Investments) Act in the U.K. which was passed in 1939 and are intended to protect small and ill-informed investors against unscrupulous share-brokers and dealers. (Gaz. of Ind. 1954, Extra Pt. 11-Sec. 2, p. 796).

The preamble of the Act shows that it was passed to prevent undesirable

transactions in securities by regulating the business of dealing therein, by prohibiting options and by providing for certain other matters connected therewith. Section 3 of the Act provides for the application for recognition of stock exchanges, contents of such applications and the manner of making them. Section 4 provides for the grant of recognition to stock exchanges. Sub-section (1) of that section details the circumstances for the grant of recognition subject to such conditions as may be imposed on a stock exchange with a view to ensure fair dealing and "to protect investors". Sub-section (2) of Section 4 gives a list of some such conditions. Item (in) of the illustrative conditions is described as below in Section 4(2) of the Act:

(iii) the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

Section 6 confers certain powers on the Central Government to call for periodical returns or direct inquiries to be made. Clause (a) of Sub-section (3) of that section authorises the Central Government by order in writing to call upon a recognised stock exchange or call upon any member of exchange to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange as the Central Government may require. Clause (h) of that sub-section authorises the Central Government to appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to the Central Government. Section 11 of the Act authorises the Central Government to supersede governing body of a recognised stock exchange in certain circumstances. Section 12 of the Act authorises the Central Government to suspend the business of a recognised stock exchange. Section 23 contains the penalties which can be imposed upon any person who contravenes certain provisions of the Act. A person convicted of any of the offences mentioned in Sub-section (1) of Section 23 of the Regulation Act is punishable with imprisonment for a term which may extend to one year, or with fine, or with both. Section 29 of the Act gives protection against the institution of suits or prosecution or other legal proceedings whatsoever against the governing body or against any member, officebearer or servant of any recognised stock exchange for anything which is in good faith done or intended to be done in pursuance of the Regulation Act or of any rules or bye-laws made thereunder. In exercise of the powers conferred by Section 30 of the Act the Central Government has framed the Securities Contracts (Regulation) Rules, 1957. Rules 10, 11 and 16 of those rules have been referred to by the learned, counsel for the parties and are therefore, quoted verbatim below:

10. Government nominees on the governing bodies of recognised stock exchange--

The Central Government may nominate one or more persons not exceeding three in number, as member or members of the governing body of every recognised stock exchange. Such member or members shall enjoy the same status and powers as other members of the governing body.

11. Obligation of the governing body to take disciplinary action against a member if so directed by the Central Government.

After receiving the report of the result of an enquiry made under Clause (h) of Sub-section 3 of Section 6 of the Act, the Central Government may take such action as they deem proper and in particular, may direct the governing body of the stock exchange to take such disciplinary action against the offending member, including fine, expulsion, suspension or any other penalty of a like nature not involving the payment of money, as may be specified by the Central Government, notwithstanding anything to the contrary contained in the rules or bye-laws of the stock exchange concerned, the governing body shall give effect to the directions of the Central Government in this behalf and shall not, in any manner, commute, revoke or modify the action taken in pursuance of such directions, "without the prior approval of the Central Government. The Central Government may, however, either of its own motion or on the representation of the member concerned, modify or withdraw its direction to the governing body.

16. Manner of inquiry in relation to the affairs of the governing body of a recognised stock exchange or the affairs of any member of the stock exchange in relation to the stock exchange--

(1)(a) The person or persons appointed by the Central Government to make an inquiry under Clause (b) of Sub-section (3) of Section 6 of the Act shall hereafter in this rule be referred to as the inquiring authority;

(b) where the inquiring authority consists of two or more persons, one of them shall be appointed as the chairman or senior member thereof;

(c) the inquiring authority shall hand over a statement of issues to be inquired into the governing body or the member concerned, as the case may be, who will be given a reasonable opportunity to state their or his side of the case;

(d) if any witness is called for examination, an opportunity shall be provided to the governing body or the member whose affairs are being; inquired into, as the case may be, to cross-examine such witness;

(e) where the inquiring authority consists of more than one person, the views of the majority shall be deemed to represent the findings of such authority and in the event of an equality of votes, the chairman or senior member shall have a casting vote;

(f) the inquiring authority shall submit its report in writing to the Central Government within a period specified in the order of appointment;

(g) temporary absence from any hearing or hearings of any member of inquiring

authority shall not vitiate its proceedings.

(2) Where the Central Government has directed the governing body of a stock exchange to make an inquiry under Clause (b) of Sub-section (3) of Section 6 of the Act, the governing body concerned shall appoint one or more members thereof to make the inquiry and the provisions of Sub-rule (1) shall apply mutatis mutandis to such inquiry.

The filing of only such suits without giving the requisite notice u/s 80 of the Code is prohibited which suit is:

(1) against the Government or against a public officer; and

(2) if the suit is against a public officer only if it is "in respect of" any act purported to have been done by such public officer in his official capacity.

Only such persons are public officers for purposes of the CPC as fall within any of the descriptions contained in Clauses (a) to (h) of Sub-section (17) of Section 2 of the Code. The Petitioner has only invoked Clause (h) out of those clauses, which reads as follows:

In this Code unless there is anything repugnant in the subject or context public officer means a person falling under any of the following descriptions, namely:

(a) * * * * *

(h) every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty.

Coming, to the merits of the controversy, the following points appear to emerge from the history of the case and the relevant provisions reproduced above:--

(1) that the Petitioner is an officer in the service of the Government and was in the service and pay of the Government at the relevant time.

(2) that the impugned letter containing the alleged defamatory statement at least purported to have been written by the Petitioner in his official capacity.

If the above analysis of the factual and the legal position is correct, the case falls within the mischief of Section 80 of the Code without it being necessary to go into anything more.

7. The first objection of the contesting Respondent is that the finding of the trial Court to the effect that the impugned letter was not written by the Petitioner in his official capacity is a finding of fact which cannot be disturbed by me in exercise of the revisional jurisdiction of this Court. It is no doubt true that this Court does not interfere with pure findings of fact or even with erroneous decision of law simpliciter in exercise of its powers u/s 115 of the Code, but in order to invoke Section 80 of the Code it is certainly not necessary to prove that the act of the officer was in fact performed by him in his official capacity. It is enough for the purposes of Section 80 of the Code that the act may merely

purport to have been done in the official capacity of line Defendant concerned. The trial Court has not at all decided whether the impugned letter purports to have been written in the official capacity of the Petitioner or not. The Court below has taken pains to find out prima facie if in fact the letter was written in the official capacity or not. Such an enquiry for the purpose of deciding the preliminary issue relating to Section 80 of the Code is not only unnecessary but is also, in the circumstances of this case, irrelevant. The Plaintiff, who is the contesting Respondent, has himself stated in the opening lines of para 16 of the plaint that the Petitioner (Defendant No. 1), is a Director of the Defendant No. 5 (Exchange) nominated by the Government under the Regulation Act and that the Government nominees enjoy the same status and powers as other members of the Board of Directors. This admission in the plaint clearly brings the Petitioner within the field covered by Clause (h) of Sub-section (17), of Section 2 of the Code. Even the other admitted facts do not leave any room for doubting the fact that the Petitioner was a public officer for purposes of Section 80 of the Code at the time he wrote the impugned letter. The said letter is on the Government of India's form and is addressed demi-officially. It also bears the official despatch number. It relates to nothing except the official duties of the Petitioner as a nominated representative of the Central Government. Without going into the intricate questions of fact relating to the scope of the Petitioner's official duties it is clear to me that the letter in question at least purports to have been written by the Petitioner in his official capacity. The trial Court relied on, the judgment of the Allahabad High Court in Muhammad Ekram Khan's case. In that case it was held that a Deputy Magistrate who had been appointed as the returning officer by the District Magistrate for the purposes of election work of the Municipality at the time, could not be said to be a public officer who was acting in that connection in his official capacity as such public officer within the meaning of Section 80 of the Code and that therefore, no notice under that section was necessary to the said returning officer in a suit instituted for injunction to restrain him from recording the Defendants vote at Municipal Election and for a declaration that some of the votes already recorded be declared invalid. I think the said judgment of the Allahabad High Court is of no assistance to the Petitioner in this case. The Deputy Magistrate while acting as the returning officer was not performing any official duties but was doing the election work of the Municipal Committee. His services were lent for the election purpose and he was not doing anything for the Government. In the instant case the Petitioner was not working for the Exchange but for the Central Government as a nominee and representative in order to enable the Central Government to exercise its functions under the Regulation Act in relation to the Exchange.

8. The Plaintiff-Respondent then referred to the judgment of a Division Bench of Bombay High Court in Sulleman Aba Mahomed Vs. The Secretary of State for India, , wherein it was held that it does not suffice for an officer of Government to purport to act in his official capacity to bring his act or order within the purview of Article 14 of the Limitation Act. In that case a notice u/s 80 of the

Code had been given. The trial Court had held that the suit was barred under Article 14 of the Limitation Act. On an appeal to the High Court the judgment of the trial Court was affirmed. It was held that in order to bring the action of the Government servant within Article 14 of the Limitation Act, it would not suffice for the officer to merely purport to act in his official capacity. Article 14 of the Limitation Act of 1908 relates to a suit "to set aside any act or order of an officer of Government in his official capacity * * * *". The Article does not at all talk of any act purporting to have been performed in the official capacity of the public officer. In contradistinction to that provision, Section 80 of the Code clearly brings within its ambit a suit against a public officer in respect of any act "purporting to be done" by such officer in his official capacity. The judgment of the Bombay High Court is, therefore, wholly irrelevant for the purpose of deciding the preliminary issue in this case.

9. I, therefore, hold that a representative of the Central Government nominated on a recognised Stock Exchange u/s 4(2)(iii) of the Regulation Act is a public officer. On the facts of this case it is further held that the Petitioner as such public officer purported to issue the letter in question in his official capacity. In this view of the matter, the decision of the trial Court on the first preliminary issue has to be reversed.

10. Mr. S.N. Shanker, learned Counsel for the Petitioner then argued that I should dismiss the whole suit because it is not entertainable without service of the requisite notice u/s 80 of the Code. This argument appears to be misconceived. Section 80 only bars the suit against the Government or the public officer in the circumstances specified in that section. The suit against the first Respondent would stand dismissed on account of the finding on preliminary issue No. 1 recorded by me. None of the other Defendants in the suit is either a Government servant or a public officer. The suit against the other Defendants would not, therefore, fail merely because of the finding on preliminary issue No. 1.

11. Mr. R.L. Aggarwal argued that the suit against the other Defendants should be dismissed because it is barred u/s 29 of the Regulation Act. That is not a matter which falls within the scope of the present revision petition and I decline to go into the same.

12. In the above circumstances this revision petition is accepted, the judgment and order of the trial Court on preliminary issue No. 1 are reversed and it is held that the suit against Defendant No. 1 is not maintainable for want of requisite notice u/s 80 of the Code of Civil Procedure. The Petitioner will have the costs of this petition from Respondent No. 1 Counsel's fee Rs. 200. The other Respondents will bear their own costs.