

(1956) 03 MAD CK 0009
In the Madras High Court

Palthadi Venkappa Rai

APPELLANT

Vs

Devamma

RESPONDENT

Date of Decision : 06-03-1956

Acts Referred:

Essential Supplies (Temporary Powers) Act, 1946 — Section 16(1)

Citation : AIR 1956 Mad 616 : (1957) ILR (Mad) 1381 : (1956) 69 LW 526 : (1956) 2 MLJ 207

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Judgement

Krishnaswami Nayudu, J.—This Appeal raises an interesting question as to the liability in tort of a village patel, who seems to have seized

certain paddy of the plaintiff under orders of the Tahsildar purporting to act under the provisions of the Essential Supplies (Temporary Powers) Act

(Act XXIV of 1946). The and defendant is the village patel and the 1st defendant is the Tahsildar. Both of them were sued for the recovery of a

sum of Rs. 1,000, being the damages alleged to have been caused to the plaintiff by reason of the paddy belonging to her being seized and later

sold to the South Kanara Central Co-operative Wholesale Stores, Bellary. The facts of the case are that in March, 1948, P.W. 4 bought a cart-

load of paddy for the plaintiff, who is his sister, and asked the cart-man, P.W. 5, to carry it to her. On the 6th March, 1948 while the paddy was

being loaded into the cart on the public road, the 1st defendant" who was then the Tahsildar of Puttur, appeared on the scene accompanied by the

2nd defendant, the present appellant, the patel of the village: and then the Tahsildar questioned the cart-man, the 2nd defendant and one or two

others and proceeded to seize the paddy. After seizing the paddy an yadhast was

prepared by the? Tahsildar, which is Exhibit B-2 The appellant, the 2nd defendant, removed the paddy on the instructions of the Tahsildar, and subsequently sold it to the South Kanara Central Co-operative Wholesale Stores, Bellary, and deposited the sale proceeds into the treasury. The plaintiff approached the Tahsildar for return of the paddy; but she could not get a return of the paddy. Therefore she sued both the Tahsildar and the appellant, the 2nd defendant, claiming Rs. 1,000, as damages for the pecuniary loss and mental distress suffered by her by reason of her being wrongfully deprived of the paddy, and her humiliation on account of her property being seized. The Tahsildar who is the 1st defendant died after the filing of the suit.

2. The defence of the appellant, the 2nd defendant, is that the seizure by the Tahsildar, the 1st defendant, was lawful and that under orders of superior officers he delivered the stock of paddy to the Co-operative Stores and deposited the sale proceeds in the treasury and that he only carried out the orders issued by the superior officers in the matter, as he was bound to obey as a village headman and that all the acts were official and done in the course of his legal discharge of his duty as a subordinate of the Government. The Courts below found that the appellant was not protected under any orders of the superior officers and granted a decree for a sum of Rs. 800.

3. The finding of the lower Court is that the seizure was not malicious and that the case of the plaintiff that the appellant instigated or otherwise procured the seizure has not been established. Though an attempt was made to justify the seizure on several grounds, it is now found that the seizure was not authorised by law, excepting that he acted in good faith under the directions of a superior officer, whom he was bound to obey. He does not support his action by any lawful order issued by the Tahsildar; nor has he been able to produce any order with reference to the seizure either of the Tahsildar or of any other superior officer of the Revenue Department like the Collector. In the circumstances it is for consideration whether the appellant could escape the liability for a seizure, which is wrongful, though not actuated by malice but carried out under the oral orders of his superior officer, the Tahsildar. The position of a village officer like the appellant, he being the village patel or headman, as provided under

Clause 2, heading 1, Chapter 1, Part 1 of the Village Officers" and Ryots Manual is as follows:

Village officers are under the immediate orders of the Tahsildar. It is their duty to carry out promptly and faithfully all lawful orders that may be

issued to them by Tahsildars, Deputy Tahsildars Revenue Inspectors, and other superior officers. They should also aid all officers of other

departments of Government in their villages.

The village officers are under duty bound to carry out all lawful orders that may be issued to them by Tahsildars. The appellant has failed to

establish that there was any lawful order of the Tahsildar, under which he has acted, except stating that he has acted on the oral instructions of the

Tahsildar, he being his superior officer. In Halsbury's Laws of England, 2nd edition at page 267, it is stated that in actions for tort against public

officers, as in actions against private individuals, it is no defence that the tort was committed by order of the Crown or of a superior officer. In

Rogers v. Rajendra Dutt 13 Moo. P.C.C. 209, which was an action for damages against Rogers, Superintendent of Marine in the service of the

East India Company, by Dutt, the owner of the Steam tug Underwriter, Rogers was charged with wrongfully issuing an order as superintendent

forbidding the officers of the Bengal pilot service to allow the Underwriter to take any ship in tow of which they had charge. There was no

evidence of malice against Rogers. In delivering the opinion of the Judicial Committee, Dr. Lushington held that no action lay against the appellant

Rogers in his official capacity. But if the act was in itself wrongful, and injured Dutt, he must have the same remedy by action against the doer,

whether the act was his own, spontaneous and unauthorised, or whether it was done by order of the superior power. The Rt. Hon. Dr. Lushington

observed:

The civil irresponsibility of the supreme power for tortious acts could not be maintained with any show of justice if its agents were not personally

responsible for them; in such cases the Government is morally bound to indemnify its agent, and it is hard on such agent when this obligation is not

satisfied; but the right to compensation in the party injured is paramount to this consideration.

Raleigh v. Goschen (1898) 1 Ch. D. 73, is also referred to. In that case the action

was against the Lords of the Admiralty with the object of establishing as against them that they were not entitled to enter upon, or acquire by way of compulsory purchase, certain land, the property of the plaintiff, for the purpose of erecting thereon a training college for naval cadets, and claiming damages for alleged trespass and an injunction to restrain further trespass. It was held that though the plaintiffs could sue any of the defendants individually for trespasses committed or threatened by them, they could not sue them as an official body, and that as the action was a claim against the defendants in their official capacity, it was misconceived and would not lie. Romer, J., laid down the general principles of law which he conceived governed this class of cases, in the following terms:

It appears to me that if any person commits a trespass (I use that word advisedly as meaning a wrongful act or one not justifiable) he cannot escape liability for the offence, he cannot prevent himself being sued, merely because he acted in obedience to the order of the executive Government, or of any officer of State; and it further appears to me, as at present advised, that if the trespass had been committed by some subordinate officer of a Government Department or of the Crown, by the order of a superior official, that superior official - even if he were the head of the Government Department in which the subordinate official was employed, or whatever his official position - could be sued; but in such a case the superior official could be sued, not because of, but despite the fact that he was an officer of State.

The liability of the individual officer for being sued is well recognised but the fact, that he is acting under the orders of the superior officer is not sufficient, unless he is able to establish that the act itself was in pursuance of the lawful order. In Halsbury's Laws of England, the latest edition (3rd edition), volume 7 at page 252, it is stated that Crown servants may however, be sued and made personally liable for tortious or criminal acts committed by them in their official capacity without showing malice or want of probable cause, unless that is of the essence of the tort or crime, and that state necessity or the orders of the Crown or of a superior officer cannot be pleaded in defence, except as an act of state in an action by a non-resident alien. The following passage from Winfield on the Law of Torts may

also be referred to. At page 19 the learned author says as follows:

If Government officials act within their powers, of course they are not liable however much they may injure other people by their official acts. Any other rule would paralyse the Government of the Country. But if they act outside their lawful powers, they are liable, although they cannot be sued as representatives of the Crown unless the Crown consents to the proceedings against them, for the public revenues cannot be made liable without the Crown's consent to remedy, wrongs committed by servants of the Crown. This may seem a hard rule for the person injured by the excess of authority, for, though the official is liable as a private individual, he is often not worth suing.... There are classical decisions that, where an official has been sued in his private capacity, a plea of responded superior will avail him nothing. On the other hand the rule that he cannot be sued as a representative of the Crown is strictly construed.

The learned Counsel for the Government, however, relied on the following passage in Pollock on Torts, 14th edition at page 96, in support of the contention that the appellant is protected, if he acts under orders of a person, whose orders he is bound to obey:

How far the orders of a superior officer justify a subordinate who obeys them as against third persons has never been fully settled. But the better opinion appears to be that the subordinate is in the like position with an officer executing an apparently regular civil process, namely, that he is protected if he acts under orders given by a person whom he is generally bound by the rules of the service to obey, and of a kind which that person is generally authorized to give, and if the particular order is not necessarily or manifestly unlawful.

But this opinion of the learned author is not with reference to all servants of the Crown but it is only with reference to acts done by naval or military officers in the execution or intended execution of their duty, for the enforcement of the rules of the service and preservation of discipline, which require implicit obedience of the orders of the superior officer. In such circumstances the action of the servant can be justified, considering the emergency of the situation and the nature of the service to which he belongs. But this principle cannot be applied to the other classes of servants, as

in the case of a village servant, who is only expected to obey a lawful order of the Tahsildar.

4. That the mere order of a superior officer, which is not in accordance with law or supported by a lawful order, would not afford justification is

also the view taken by the American Courts as could be seen from the view taken by Mclean, J. in *Tracy v. Swartwout* 10 Pat. 80; Introduction to

Administrative Law, 2nd edition, p. 280, where the learned Judge in posing the question whether the instructions given by the Secretary of the

Treasury, when not given in accordance with the law, afford a justification to the collector of the customs, or exonerate him from the payment of

adequate damages for an injury resulting from his illegal acts took the view that these instructions were no justification to the defendant and that the

illegal acts, though they be done in good faith would not exempt him from giving compensatory damages. The legal position both under the English

law, which is also the view of the American Laws is that a mere reliance on an order of a superior officer cannot exempt an officer like the 2nd

defendant from liability in respect of a tort committed as in the present case, so long as the commission of the act is not supported by any lawful

order, on which, he could rely.

5. In this case an attempt has been made to bring himself under the protection afforded u/s 16(1) of the Essential Supplies (Temporary Powers)

Act (XXIV of 1946), which provides that no suit, prosecution or other legal proceeding; shall lie against any person for anything which is in good

faith done or intended to be done in pursuance of any order made u/s 3. Sub-clause (1) of Section 3 of the Act provides that the Central

Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for

securing their equitable distribution, and availability at fair prices, may by order provide for regulating or prohibiting the production, supply and

distribution thereof, and trade and commerce therein. As observed by the learned District Judge no order issued by the Tahsildar has been

produced and in the absence of such an order it could not be presumed that the appellant must be deemed to have acted in pursuance of an order

issued u/s 3 of the Act, and in the absence of such an order there is no scope for the application of Section 16(1) of the Act. An argument based

on the protection given u/s 276 of the Government of India Act for acts of public servants was also sought to be raised, 51 but that plea not having been specifically taken in the lower Courts, I do not consider it necessary to examine that aspect of the case. Ordinarily therefore, the fact that the village officer merely acted on the oral orders of the Tahsildar, though he was in the position of an inferior bound to obey his superior, the Tahsildar, under the Village Officers and Ryots' Manual - but only in respect of lawful orders which the Tahsildar would issue - would not be a sufficient justification for seizing the property of the plaintiff and selling them, with the result that loss was caused to the plaintiff. Reliance cannot, therefore, be placed on the orders of a superior officer, unless there is a lawful order under which protection can be claimed; and in the absence of an immunity clause, which is common in all legislation, which empower officers to interfere with the rights of private persons, the mere reliance on the oral orders of superior officer would not help the appellant. Though, no doubt a statutory immunity is provided u/s 16(1) of the Act, no attempt has been made on the part of the appellant to bring himself within that section by substantiating the act as one done in pursuance of an order passed u/s 3 of the Act. In the circumstances I should consider that the learned District Judge in affirming the decree of the learned District Munsif has taken a correct view as regards the liability of the appellant, the second defendant, notwithstanding the absence of malice or want of good faith.

6. The result is the appeal fails and is dismissed. There will, however be no order as to costs.