

(1959) 04 MAD CK 0011

In the Madras High Court

Case No : Second Appeal No. 1008 of 1955 and 394 of 1956 and Civil Revision
Petition No. 433 of 1956

P.R. Narayanaswami Iyer and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-04-1959

Acts Referred:

Railways Act, 1890 — Section 3(6), 77, 80

Citation : AIR 1960 Mad 58

Hon'ble Judges : P.V. Rajamannar, C.J; Ganapatia Pillai, J

Bench : Division Bench

Judgement

Ganapatia Pillai, J.

(1) The two second appeals were referred to the Bench by Ramaswami J. and the civil revision petition was referred by Ramachandra Iyer J. in

view of the conflict between the decisions in Kishanlal Roopchand and Co. Vs. Indian Dominion and Another, , and the Governor-General in

Council Vs. Ajithbhai Jayanthilal and Co. and Others, . In the former case, Mack J. took the view that, in a case where a particular consignment of

goods was carried over more than one railway, each railway administration should be treated as a separate entity and a separate juristic

personality, and, though all the railways concerned were owned by the Government, a separate action notice under Sec. 77 of the Indian Railways

Act should be given to each railway administration on the pain of the plaintiff failing to recover any compensation for loss of goods. In the other

case Basheer Ahmed Sayeed J. took the view that, in the case of loss of a consignment carried over two Government railways, notice under Sec.

77 given to one such railway which entered into correspondence with the other

railway on the subject of the loss before the expiry of the period of six months mentioned in Sec. 77 of the Indian Railways Act was sufficient notice. Which of these two views is the correct one is one of the points for our determination in these three cases.

(2) The facts of these three cases are the following. In two of these three cases, suits were laid against the Union of India by the consignee of goods for recovery of compensation for the loss of goods. In the two second appeals, the lower appellate courts have dismissed the suits, and in the civil revision petition, the Chief Judge of the court of Small Causes, Madras, dismissed the suit against the Southern railways, the first defendant but granted a decree against the second defendant, the Western railway, and an application for new trial was successful and the suit was dismissed against both defendants.

(3) In S.A. No. 1008 of 1955, the appellant-plaintiff, a merchant in Tiruchirapalli, had five bales of woollen lohies and 7 bales of cotton piece-goods consigned to him from Baroda and Ahmedabad respectively on 21-10-1948 and 25-6-1950 for delivery to him at Tiruchirapalli station. Out of the first consignment of five bales of woollen lohies, only four bales were delivered on 17-11-1948. Since the fifth bale was not delivered, the plaintiff put in a claim for its value. In respect of the second consignment five bales alone were delivered to the plaintiff and the remaining two bales were not delivered. The plaintiff filed a suit against the Union of India represented by the General Manager, Southern Railway claiming the price of non-delivered goods comprised in both consignments.

(4) The trial Judge held that the claim for the one bale of lohies included in the first consignment was barred by limitation; but as regards the claim for two bales of piece-goods included in the second consignment, he gave a decree for their value. The appellate Judge reversed this decree, and dismissed the suit, holding that Sec. 80 of the Railways Act applied to the case and that the suit against the Southern Railway administration should fail, because, the evidence disclosed that the Southern railway which was not the contracting railway was not the railway on which the loss occurred.

(5) The appellant in S. A. No. 394 of 1956 is a hides and skins merchant of Vaniyambadi. The respondent in this appeal is the Indian Union

Government, represented by the General Manager, Southern Railway. The plaintiff was a consignee of 9 bags of sheep skins, which were

delivered to the Bengal Nagpur railway at Nagpur railway station for being carried to Vaniyambadi on the Southern railway on 11-10-1951. The

goods arrived at Vaniyambadi on 20-11-1951, and because of the delay in transit, the goods were damaged and open delivery was taken. The

Traffic Inspector assessed the damage at Rs. 759-9-6, which was the sum claimed in the plaint as damages.

(6) One of the pleas raised was that the suit was bad for non-joinder of the contracting railway, namely, the Bengal Nagpur railway, and

consequently, the plaintiff had no cause of action to sue the Southern railway under Sec. 80 of the Railways Act. Overruling this plea, the trial court

gave a decree for Rs. 600, which was the sum it assessed as damages occasioned by late delivery of the goods. On appeal, the District Judge of

North Arcot held that the plaintiff could not recover damages from the defendants, unless he proved that the deterioration occurred on the

Southern railway. For this conclusion, he relied on the provisions of Sec. 80 of the Railways Act and construed the suit as one against the Southern

railway, though it was laid against the Union Government. He reversed the decree of the trial Judge and dismissed the suit.

(7) The petitioner in the revision petition sued the Southern Railway and the Western Railway owned by the Union of India for recovery of Rs.

1053-10-6 for loss of a bale of piece-goods-despatched by rail from Sidhpur to Madras on 12-12-1952. Sidhpur is located on the Western

railway, and the goods had to travel over the route of Southern railway before reaching the destination at Madras. The Western railway, which is

the second defendant, resisted the suit on the plea that there was no notice to them under Sec. 77 of the Railways Act. The Southern Railway, the

first defendant, denied liability on the ground that the goods never reached their limits.

(8) The learned Chief Judge of the court of Small Causes, Madras, found that the goods never entered the route of the southern railway, having

been lost by theft committed by railway servants while they were on transit over the route of the Western railway. But, on the finding that notice

under Sec. 77 of the Railways Act was given only to the Southern railway, he purported to follow the decision in Governor-General in Council Vs.

Ajithbhai Jayanthilal and Co. and Others, , and held that the plaintiff's claim was communicated by the first defendant, the Southern railway, to the second defendant, the Western Railway, within the six months' period, and, therefore the notice given was sufficient as against the second defendant, the Western railway also. He gave a decree for the sum claimed against the second defendant, the Western railway, but dismissed the suit as against the first defendant, the Southern railway. The two other Judges of the Small Cause Court who heard the new Trial application held that a separate notice under Sec. 77 of the Railways Act was necessary to the second defendant; and, since such notice was not given, they dismissed the suit against both the defendants. Against that dismissal, the plaintiff has preferred the revision petition.

(8a) The common question arising in all these cases is, what is the scope and effect of Secs. 77 and 80 of the Railways Act? Sec. 77 reads thus:

Notification of claims to refunds of overcharges and to compensation for losses: A person shall not be entitled to a refund of an overcharge in

respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so

carried, unless his claim to the refund or compensation 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.

(9) Section 80 of the Railways Act, which figured largely in the arguments before us, may be thus reproduced shorn of its irrelevant parts:

Notwithstanding anything in any agreement purporting to limit the liability of a railway administration, a suit for compensation for loss, destruction

or deterioration of goods may be brought either against the railway administration, to which the goods were delivered by the consignor thereof, or

against the railway administration, on whose railway the loss, destruction or deterioration occurred.

We may now notice the definition of "'railway administration'" contained in Sec. 3(6) of the Railways Act of 1890. It runs thus:

"Railway administration" or "administration" in the case of a railway administered by the Government means the manager of the railway and

includes the Government, and, in the case of a railway administered by a railway company, means the railway company.

(10) The definition of a railway company occurring in S. 3(5) of the Act, runs as follows:

"Railway Company" includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway.

Before we consider the arguments addressed to us, it may be necessary to give a brief account of the history of the different railway system in India

and how most of the systems came to be ultimately owned and managed by the Government. In all the cases before us, the various railways over

which the goods were carried were all owned and managed entirely by the Central government both at the time when the goods were carried and

also at the time when the suits were instituted.

(11) Upto 1925, most of our railways were managed by companies, though all the principal railway systems were the property of the Central

government. The management of all the major railway systems were taken over by the Central Government one by one from these companies

during the period between 1-1-1925 to 1-10-1944. By 1944, except a few railways owned by the then existing Indian States and a few small

railway systems owned by District Boards or by companies, the rest of the railways in India were directly run by the Central Government. The

railways owned by the Indian States were taken over by the Central Government in 1949 and 1950, and they were merged with the adjoining

Government-owned railway systems.

Thus, by 1-4-1950, the entire railways of the country were owned by the Government excepting the few small railways, owned by District Boards

or by companies. After the Government thus became not only the owner but also the agency working these railways by 1-4-1950, a reorganisation

of the railway systems owned and run by the Government was undertaken in the beginning of 1951. For this purpose, all the Government railways

were regrouped and six railways were evolved--respectively called the Southern railway, the Central railway, the Western railway, the Eastern

railway, the Northern railway, and North-Eastern railway. The regrouping of these railways commenced on 14-4-1951 and ended on 14-4-1952.

Thereafter, the railways systems in India fell under one or other of the following categories: (1) railways owned and managed by Government, (2)

railways owned by companies or District Boards, but worked by the Government, and (3) railways owned by companies or District Boards and

worked by the owning companies or District Boards and themselves.

(12) As regards the railways concerned in the suits now before us they were all owned by the Government even before 1925: but all of them came

to be taken over from the companies, which were previously running them, one by one at various points of time between 1925 and 1944, so that,

the result is that, at the time when the goods in these cases were consigned to one or other of these railways, all the railway systems, over which

the goods had to be carried, not only belonged to the Government, but were also run by the Government. For purpose of these cases, the

reorganization, and regrouping of the Government railways undertaken in April 1951, has therefore no significance except in relation to the

arguments addressed to us on the question of the General Manager of the particular railway to whom notices under Sec. 77 of the Railways Act

and Sec. 80 of the CPC had to be given.

(13) The main contention of the learned counsel, Mr. K. Rajah Aiyar, for the Union of India representing the various railways was that Sec. 77 of

the Railways Act should be interpreted in conjunction with Sec. 80 of that Act, and, for this purpose, each railway system, comprised in the six big

units of the Government railways mentioned above should be taken to be a separate unit and a separate legal entity both for the purpose of giving

notice under Sec. 77 and for the purpose of liability and for the claim for compensation arising under Sec. 80. He referred us to the various

sections of the Railways Act to show that, under the scheme of this Act, the various railway units worked by the Government, though owned by a

single person in the eye of the law, were still treated as separate railway administration.

He also drew our attention to the definition of "railway administration" in Sec. 3(6) of the Act, and contended that, for the purposes of the Railway

Act, a distinction was made between the Central Government which owned the railways, and the railway administration as such. In the Railways

Act of 1879, the words "includes the Government" now found in Sec. 3(6) of the Railways Act of 1890 were not found in the corresponding

definition of the "railway administration." In our opinion, this has not any

significance, because, in 1879, none of the major railways were owned by the Government; nor was any railway run by the Government. It was only by 1890 when the present Railways Act came to be passed that the Government came to own some of the railways, though all the railways owned by the Government were managed by companies, which previously were the owners of these railways.

In order to support his argument that, though the Government owned a major part of the railway systems in this country, still, for the purpose of administration of the Railway Act, the Government maintained a distinction between themselves and the railway administration as such, learned counsel referred to Sec. 4 of the Act and numerous other sections, wherein, according to him, even in cases where the power vested in the Government under the Act has to be exercised in respect of a railway administration managed by the Government, it was the President who should be deemed to be the Government exercising its executive function and he is to issue directions to the managers of the railways through the railway inspectors appointed under the Act.

As illustrating this point Mr. Rajah Aiyar said that the "Central Government" mentioned in the Railways Act was the President of the Union of India by reason of S. 3(8) of the General Clauses Act and the power of the President in relation to the railways is exercised through the Communications Department of the Government of India, which controls the work of the railway inspectors. But the running of the railways is the responsibility of the railway Minister who is in charge of a separate department of the Government of India. He also referred to the fact that, in Sec. 77, notice is directed to be given of the claim for compensation, not to the Central Government in the case of a railway owned by the Government, but only to the railway administration.

(14) This distinction appears to us to be without any basis, because, the scheme of the Railways Act was intended to cover not only railways owned and managed by the Government, but also other railways like company railways and District Board railways. Powers taken by the Government under the Act of 1879 to direct and regulate running of railways by companies and other bodies had necessarily to be retained in the Railways Act of 1890, because, even then, many of the railways continued to be

owned and managed by companies and District Boards. One illustration would be sufficient to show the hollowness of this argument. Penalties provided under Ch. IX of the Railways Act would obviously have no place in the case of railways administered by the Government. It cannot be maintained that the President has the power to fine either the Railway Minister or the Manager of a Government owned railway for any of the transgressions for which penalties are provided under Ch. IX.

(15) In this connection, we may also notice another argument of Mr. Rajah Aiyar. He stresses the fact that Sec. 80 of the Railways Act was

retained in the statute, despite most of the railways having become government-managed by 1948. He also pointed to the amendment of Sec. 80

C. P. Code in 1948 by Act 6 of 1948. The purport of this amendment was to introduce a new clause in that section relating to notice to

Government for suits concerning railways owned and run by the Government. In the section as it stood before amendment, in the case of a suit

against the Central Government, a notice to the Secretary of that Government was sufficient. But, after the amendment, cl. (b) of Section 80

provided that, in the case of a suit against the Central Government, where the suit relates to a railway, notice was necessary to the General

Manager of that railway. The contention pressed upon us was that, if the different railway systems managed by the Government were not distinct

legal entities, notice to the General Manager of the different railway systems would not have been insisted upon by the amending Act.

(16) In our opinion, neither considerations of the person to whom notice is directed to be given in the case of a suit against the Central Government

in relation to its management of railways, nor the provisions of Sec. 80 of the Railways Act could govern the scope and application of Sec. 77 of

the Railways Act. It is well known that statutory notices to Government found in various enactments are only matters of procedure & are not

matters of substantive rights. True, failure to give such notice might result in the suit being dismissed; but that does not alter the situation. In its

essence, notice of a claim or of a suit to the Government is only a provision, the purpose of which is to prevent vexatious suits against Government,

and also to facilitate composition of just claims made by parties against the Government, resulting in avoidance of unnecessary litigation against

Government.

Such a provision in any Act cannot be construed as limiting or governing the substantive rights of parties like the citizens of the country who deal

with railways managed by the Government. The liability of the Government arising by reason of its owning and managing the railway systems of the

country is a liability arising under statute law relating to contracts. True, this liability is in some instances limited and regulated by the Railways Act;

but, that is entirely different from saying that the liability owes its origin to the Railways Act. Sec. 79 C.P.C., contains the provision regulating suits

against Government. It provides that, in a suit by or against the Government, the authority to be named as plaintiff or defendant shall be, in the case

of a suit by or against the Central Government, the Union of India.

It will be seen that this provision makes no distinction between the various activities of the Union Government, some of which are commercial and

the rest are governmental in the strict sense of that term. The Central Government may incur liability, for which a suit may be laid against it either in

its commercial activity or in its other activities. The form of the suit laid against the Central Government in either case is the same. To contend that,

in its railway activity, the Central Government has created separate legal entities like the different railway systems called the Southern railway, the

western railway, etc., one finds no authority either in the CPC or in the Railways Act.

In Chapter 7 of the Railways Act, which deals with the responsibilities of railway administrations as carriers, the term used, wherever the measure

of liability has to be fixed, is "railway administration". The same term is found used in Ss. 77 and 80 of the Railways Act also. The definition of this

term in the Railways Act includes, in the case of railway administered by the Government, the government itself. But in the case of a railway

administered by a railway company, this term means the railway company. Of course, this definition also provides that, in the case of a railway

administered by the Government, the term "railway administration" shall mean the Manager of the railway.

But, from this alone, one cannot conclude that railway administrations as such have a separate legal existence in the eye of the law as persons

having juristic personality capable of being sued for a liability incurred by the

Central Government. In many places in the Indian Railways Act, responsibilities and duties are cast upon the Manager of the railways, and certain functions are also allotted to such managers. In the case of railways managed by Government, such duties and responsibilities have to be undertaken only by the manager of the railway as an authority nominated under the Railways Act.

In such cases, it was necessary to make a distinction between the owner of the railways, namely, the Central Government, and the authority

actually running the railway upon whom duties have been cast by the Railways Act. Thus, the definition of "railway administration" with reference to

a Government railway had to make provision for indicating not only the Government, but also the Manager of the railways. That is the real

explanation for this definition in relation to Government railways. From this, it cannot be inferred that either the managers of the different

Government railway systems or the different zonal units of the Government railway systems were intended to be separate legal entities capable of

being sued, apart from the Central Government.

If regard is had to the language of Sec. 79 C.P. Code, it would be obvious that a suit would be laid against the Central Government without

impleading the manager of a railway belonging to the Central Government either as a party defendant or as the officer who should represent the

Government in that suit. In many of the decisions cited before us, suits were laid against the Union of India representing a particular railway owned

by it. This feature has been emphasised in some of the decisions, as though it meant that the principal defendant was the railway system and the

Government of India represented that system. In our opinion the reverse ought to be the correct position. Section 80 C.P.C., was amended in

1948, when different railway companies were running the railways owned by the Government, and, in the eye of the law, they were the persons

responsible to the public who dealt with them. Amalgamation was effected only in 1951, and this is one additional reason why the amending of S.

80 C.P.C. could not have any effect upon the question as to who is liable to answer a claim arising after 1948, with reference to a railway system

owned and run by the Central Government.

(17) The provisions of Sec. 80 of the Railways Act were sought to be interpreted

by Mr. Rajah Aiyar, on the basis that the Central Government in relation to one railway system run by it is different from the same Government in relation to another railway system run by it. Just as we have pointed out that the question of notice under Sec. 80 C.P.C., has no bearing on the liability of the Central Government in relation to the railways run by it, similarly, the provision in Sec. 80 of the Railways Act has no relation to the frame of the suit, which has got to be filed against the party liable to a citizen dealing with the railways in the country. Section 80 of the Railways Act was intended to provide for the liability of different railway systems in connection with what is called "through traffic".

In 1890, when this section was enacted, different railways in the country were owned by different railway companies and administered by them. Traffic passing through the railway of one or more of such different railway companies gave rise to claims for compensation. The contracting railway, wherein the traffic originated, was in the habit of inserting clauses in the agreement called Risk notes limiting its liability when loss or destruction of the goods took place in another railway, through which through traffic had to pass. Difference in judicial opinion arose as to the liability of the respective railways, over which the traffic passed, and the necessity for giving notice to all these railways under Sec. 77 of the Act. Differences of opinion also arose as to whether the contracting railway was the principal and the delivery-railway, its agent.

In some cases, the opinion was also expressed that there was something like a partnership between the railways constituting the route through which the goods had to pass. In order to set at rest this conflict, the legislature enacted Sec. 80 of the Railways Act. The purpose of the enactment was to simplify the law as to liability and to indicate clearly the persons who could be sued for that liability. It provides that the owner of the goods lost or destroyed in the case of through traffic could sue either the contracting railway or the railway over which the loss or destruction of the goods had occurred. This provision was an overriding provision, because, the section says that this would be the remedy open to the person dealing with railways notwithstanding any clause in the contract which was entered into with the originating railway. That this provision was retained even after 1948 when all the major railway systems of the country came to be owned and

run by the Government is the main plank in the argument of Mr.

Rajah Aiyar. According to him, it follows from this that though the six zonal railways of the Government may not be separate juristic entities in the

eye of the law, they were treated for the purpose of the Railway Acts and claims of the public dealing with those railways, as separate entities. In

our opinion, this inference does not follow, because even after 1948, a few railway systems are still working in this country which are not owned

by the Government and are also not run by the Government.

These are District Board and company railways. Though they may be very few in number, their existence accounts for the continued retention of S.

80 in the Railways Act, because even now, it is quite necessary to provide for liability in the case of through traffic, where such traffic is carried not

only over Government-run railways, but also over what we would call private railways. Section 80 which was intended to deal with liability of the

railway system for through-traffic, could yield a workable result only if different railway systems are treated as units according to ownership. It may

be open to the Government to convert their different zonal systems into corporations or juristic entities, when alone the argument of Mr. Rajah

Aiyar would have any point.

The provisions of the Railways Act do not contain any indication that, this was attempted or effectuated, though for the purposes of supervision

and control of the opening and running of the railways in the interests of the public, the Act treated each railway system including Government

railways as a separate unit. We are here concerned only with legal liability which can be determined only with reference to juristic entity, and, in the

case of all railways owned by the Government, they fall under one ownership, and, for the purpose of legal liability, they must be treated as one

person.

(18) Section 80 of the Railways Act cannot be tacked on to Sec. 77 of that Act which contains a rule as to notice. In other words, to interpret S.

80 of the Railways Act, Sec. 77 of the same Act has no relevance. A rule as to notice is a technical rule relating to procedural matters. But a

question of liability is neither a technical matter, nor a procedural one. It deals with substantive rights of parties.

(19) Learned counsel for the railways put forward the extreme contention that

the intimation required by Sec. 77 of the Railways Act should be given to every railway administration, that is to say, to every zonal unit of the Government railways, over which through traffic passed in a particular case. We do not find any warrant for this extreme contention in the language of the enactment. It merely says that a person shall not be entitled to compensation in respect of loss or destruction of goods carried by railway unless his claim to the refund or compensation has been preferred in writing to the railway administration within six months from the date of delivery of the goods for carriage by railways.

At first sight, this can only mean that notice of the claim should be given to the railway administration, to which the goods were delivered. In the case of through traffic, which has to be carried over more than one zonal unit of the Government railways, the term "railway administration" in Sec. 77 can either mean the Central Government or the Manager of the railways. Section 140 of the Railways Act describes the mode in which such notices should be served on railway administrations. Clause (a) of that section provides that such notice should be delivered to the manager or agent of the railway. In the case of Government railways comprised in different zonal units, any manager of one such unit will answer the description. We do not find any warrant for the contention that notice should be given to every one of the managers of the different zonal railways owned by the Government before Sec. 77 could be said to be complied with.

Only one notice is contemplated under S. 77 and does not say that such notice should be given to the General Manager of more than one railway.

In all the cases now before us, notice under Sec. 77 has been served within the time fixed namely, six months, upon the General manager of the delivering railway. This has been held by the lower courts to be ineffectual and not in accordance with Sec. 77. The purpose of a notice under Sec. 77 is not anything more than giving information of the claim to the concerned authorities to enable them to investigate and satisfy the claim. By no stretch of reasoning could such notice form part of the cause of action, upon which the right of the plaintiff to claim compensation rests though it might be relevant on the question of the forum in which the suit could be brought.

The result of non-compliance with Sec. 77 may lead to the dismissal of the suit;

but, that would not be on the ground that the plaintiff had no cause of action in law for his claim. Viewed in this light, one notice to a General Manager of one Government railway concerned in the route over which through traffic passed in the cases before us should, in our opinion, be sufficient because all the railways over which the traffic passed, are owned by the Central Government.

If the Central Government desires that such notice should be given either to its contracting railway unit or to its delivery railway unit, Sec. 77 should be suitably amended, in order that no confusion may arise and lawful claims may not be defeated on technical pleas. In the absence of any specific enactment either in Sec. 77 or in S. 140, indicating the particular General Manager, to whom notice ought to be given in a case of through traffic carried over more than one zonal unit of the Government railways, we are unable to hold that notice to any one such General Manager is insufficient compliance with these provisions.

(20) The case-law on the subject discloses divergent views taken by different High Courts. Even in this court, no uniform view has held the field as regards the notice required to be given under S. 77 and the import of Sec. 80 of the Railways Act. Cases which were decided before 1948 touching the question of the import of Sec. 80 of the Railways Act do not, in our opinion, afford any safe guidance for the decision of the cases now before us which have arisen subsequent to the independence of his country. Indeed, this difference was specifically noticed in *Dominion of India v. Firm, Museram Kishun Prasad* AIR 1950 Nag 85. The Bench in that case observed.

Further, merely suing the Governor General as representing the entire State-owned railways (at least before the Indian Independence Act was passed, which is the case here), is not a proper form of suit, because, that would render Sec. 80 of the Indian Railways Act otiose and meaningless.

That case laid down that, before the Indian Independence Act, Sec. 80 of the Railways Act treated each railway administration in the case of through traffic as a separate entity. There have been, however, decisions of other High Courts after 1948, which have recognised the difference which we have endeavoured to point out. Before we refer to these decisions, we

would refer to Governor-General of India in Council Vs.

Sukhdeo Ram Marwari and Another, , in which almost all the case-law on the subject has been reviewed. There, the plaintiff consigned 600 tins of

cocoanut oil to a station on the South Indian Railway for delivery at Monghyr railway station on the East Indian Railway.

The consignment had to traverse three railway systems, namely, the South Indian Railway, Bengal Nagpur Railway and the East Indian Railway.

On reaching Monghyr, the consignment was found short by 25 tins. The plaintiff claimed damages for this short delivery. The East Indian Railway

which was made a defendant to the suit resisted it on the ground that the loss had not occurred over its route. The trial court held that the Governor

General was liable in view of the fact that all the three railway systems were State-managed and it did not matter where the loss took place. Both

the trial court and the first appellate court, got over the provisions of Sec. 80 of the Railways Act either on the ground that the delivery railway was

the agent of the contracting railway or on the ground that the definition of ""Railway administration"" in Sec. 3 of the Railways Act included the

Government.

The Bench of the Patna High Court disapproved of this reasoning of both the lower courts on the ground that the specific purpose of the enactment

of Sec. 80 in 1890 was to set at rest the wide divergence of judicial opinion the question of the exact relationship between the consignor and the

receiving railway and the other railway systems over which the goods had to be carried in order to reach the destination. The Bench held that Sec.

80 laid down a specific rule of law governing the liabilities of the different railway administrations as regards compensation for loss, and, therefore,

it being a specific provision, must be given effect to, irrespective of any other considerations based on the doctrine of agency or of partnership

which may lead to conflicting results.

In our opinion, this approach lost sight of the fundamental difference between the conditions which existed before 1948 and the conditions which

came into existence after 1948. Section 80 was a creation of the statute to lay down a rule of law governing liability, irrespective of the contract

between the parties. At the time when the rule was laid down, the Government as such was not liable for the loss of goods on through traffic; but

the different railway system or companies were so liable. To say that that rule must apply even where through traffic is carried exclusively over

Government railways and the liability for loss on such traffic is that of one individual--the Government--seems to us to ignore a material difference.

(21) The view which we have taken gains some support from *Dominion of India v. Jagadish Prosad Pannalal* a firm AIR 1949 Cal 622. There, a

Bench of the Calcutta High Court had to deal with a case of compensation for loss in transit of goods consigned at Alleppey on the South Indian

Railway for delivery at Gaya on the East Indian railway. The suit was laid against the Governor General-in-Council as representing the Bengal

Nagpur railway and the East Indian railway. When the goods were delivered at Gaya on the East Indian Railway, a shortage of 9 maunds was

found. The suit was filed in the Presidency Small Cause Court, Calcutta. The maintainability of the suit in that Court was questioned by the

Governor General on the ground that neither the Bengal Nagpur railway nor the East Indian railway carried on business within the local limits of the

Courts and no part of the cause of action arose within those limits.

There was a provision in S. 18 of the Presidency Small Cause Courts Act, which gave jurisdiction to the Calcutta Small Cause Court to try a suit

where the cause of action had arisen either wholly or in part within the local limits of the jurisdiction of that Court, and leave of the Court had been

obtained before the institution of the suit. The Small Cause Court Judge held that loss occurred over the Bengal Nagpur railway and granted a

decree against the Governor-General-in-Council as representing the Bengal Nagpur railway. An application was then made to a Full Bench of the

Small Cause Court, which held that the court had jurisdiction to entertain the suit by reason of the provision in S. 18 of the Presidency Small Cause

Courts Act mentioned above. The suit had been treated in the Small Cause Court as laid against two defendants, namely, the two different railway

systems and not against the only defendant to the suit, the Governor-General. In discussing this question, the learned Chief Justice observes thus,

It is to be observed that the learned advocate for the petitioner concedes that the proper way of viewing the suit is as a suit against the Governor-

General-in-Council and not as a suit against the Governor-General-in-Council representing two railways. The Governor-General-in-Council, and

now, the Dominion of India, does own these two railways, but, as owner of the railways, the Governor-General-in-council, or the Dominion of

India, is the same entity. It does not own the East Indian railway in one capacity and the Bengal Nagpur railway in another capacity. It owns both

and therefore it may well be that, upon the true view of the facts in this case, this was a suit against one defendant, and one defendant only, namely,

the Governor-General-in-Council, and now, the Dominion of India. As I have said, regarded in that way, this case clearly falls within S. 18-A of

the Presidency Small Cause Courts Act and the Court had jurisdiction.

The learned Chief Justice went on to discuss the question at issue regarding the suit as against two entities. Though he upheld the finding of the

Small Cause Court that it had jurisdiction both in the view that the suit was laid against one defendant, namely, the Governor-General-in-council,

and in the view that the suit was laid against two entities, he expressed his preference for the former view in the following terms:

It was urged, however, that eventually it was held that the Bengal Nagpur railway was solely responsible and the suit as against the East Indian

Railway was dismissed. If the suit could be regarded as a suit against two entities, that would be so. But, if it should be regarded, as I think it might

well be regarded as a suit against one entity, there was no dismissal of the suit in part at all.

In referring to the decision of a single Judge of that Court which took a contrary view, the following observations of the learned Chief Justice

further reveal his opinion,

This case before Lord J. of course, proceeds on the assumption that these three railways which are now owned by the Dominion of India were

three separate entities. But it may be said that they are now merely three pieces of property owned by one owner, the Dominion of India. The

Dominion in that case might have been sued, and if requisite notices were served at the Head Offices of either the East Indian Railway or Bengal

Assam Railway, it might be said that the case fell within S. 18-A of the Presidency Small Cause Courts Act, and no question of jurisdiction would

have arisen.

Of course, we realise that the learned Chief Justice did not decide the case on this point; but he was prepared to hold that the Small Cause Court

had jurisdiction, treating the suit laid as one against the Dominion of India alone.

(22) A Full Bench of the Assam High Court in Chandra Mohan v. Union of India AIR 1953 Ass 193, had to deal with the question whether a suit

could be brought against the Central Government for loss occasioned to goods which were to have been carried over railways owned by that

Government. The full Bench held that a suit under S. 80 of the Railways Act in such a case could be brought against the Government of the State

concerned and that the railway administration as such need not be impleaded as a party to that suit. The Full Bench laid stress on the difference

pointed out by us, namely, that S. 80 was intended for ascertaining the liability of various railways where they are owned by different bodies and

not by the same owner.

The Full Bench made further observations as to what the plaintiff must allege on the face of it to show the cause of action, that is to say, as to how

and in what capacity the State is sought to be made liable, -whether as owner of the railway to which the goods were consigned or as owner of the

railway on which the loss occurred or both. That question has no significance in the cases now before us, because the plaintiffs in all the cases set out

all the necessary facts constituting the cause of action. This Full Bench decision has been followed in Natwarlal v. Union of India AIR 1957 MP

1587. It is unnecessary to refer in detail to this decision, because, there is not much discussion of the question in it.

(23) In this Court, Mack J. in Kishanlal Roopchand and Co. Vs. Indian Dominion and Another, , mainly relied on Governor-General of India in

Council Vs. Sukhdeo Ram Marwari and Another, , for holding that S. 80 treated every railway system, even though owned by the same

Government, as a separate entity for the purpose of liability for loss of goods concerned in through traffic. In the view we have taken, we must

express our respectful disagreement with Mack J. Basheer Ahmed Sayeed J. in Governor-General in Council Vs. Ajithbhai Jayanthilal and Co.

and Others, , took the view that notice under S. 77 of the Railways Act given to the delivery railway would be sufficient compliance if it was

proved that before the expiry of the period of six months such notice was communicated to the contracting railway. It is not necessary for us to rest

our conclusion upon this circumstance of communication of the notice to the

contracting railway, because we have held that S. 77 does not contemplate more than one notice and it does not specifically lay down that such notice should be given to any particular railway administration.

Other decisions of the Patna, Orissa and the Punjab High Courts have been cited before us by Mr. Rajah Aiyar. We are relieved of the duty of

examining these decisions, because, they do not set forth any new ground apart from the grounds noticed by us already. It appears to us desirable

that the Central Government should undertake legislation dispensing with notice under S. 80, C.P.C. in a case where the notice required under S.

77 has been given. It would also be better if legislation is undertaken to clarify which is the railway administration to which notice should be sent

under S. 77 in a case where through traffic passes through more than one railway system owned by the Government.

We assume for this purpose that not more than one notice would be necessary in any event under S. 77 of the Railways Act S. 140, which only

deals with the manner of service of notices on railway administrations, does not, however need any clarification by amendment. In the view we

have taken on the question of the frame of the suit in these cases and the liability of the Government as owner of the railways, over which the traffic

in these cases passed, the notice given both under S. 77 of the Indian Railways Act and S. 80, C.P.C. to the General Manager of one or other of

the railway administrations concerned must be held to be sufficient notice.

(24) The second appeals are therefore allowed, and in both cases, the decrees of the trial Courts are restored with costs.

(25) C. R. P. No. 433 of 1956 is also allowed, and the decree of the Chief Judge, Court of Small Causes is restored with costs.

(26). Appeals allowed.