

(1959) 04 MAD CK 0008
In the Madras High Court

P.R. Narayanaswami Iyer

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-04-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Presidency Small Cause Courts Act, 1882 — Section 18A
Railways Act, 1890 — Section 77

Citation : (1959) ILR (Mad) 939 : (1959) 72 LW 556 : (1959) 2 MLJ 479

Hon'ble Judges : Ganapatia Pillai, J

Bench : Division Bench

Judgement

Ganapatia Pillai, J.—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. v. Indian Dominion (1955) 1 M.L.J. 79 and

The Governor-General in Council v. Ajit Bhai Jayantilal (1952) 2 M.L.J. 24. 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 notice u/s 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 u/s

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 Section 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 Railway, 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 piecegoods

consigned to him from Baroda and Ahmedabad respectively on 21st October, 1948 and 25th June, 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 17th November, 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 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 the two bales of piecegoods included in the second consignment, he gave a decree for their value. The appellate Judge reversed this decree,

and dismissed the suit, holding that Section 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 nth October, 1951. The goods arrived at Vaniyambadi on 20th November, 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 u/s 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 Section 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. 1,053-10-6 for loss of a bale of piece-goods despatched by rail from Sidhpur to Madras on 12th December, 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 u/s 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 u/s 77 of the Railways Act was given only to the Southern Railway, he purported to follow the decision in *The Governor-General-in-Council v.*

Ajit Bhai Jayantilal (1952) 2 M.L.J. 24 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 u/s 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.

9. The common question arising in all these cases is, what is the scope and effect of Sections 77 and 80 of the Railways Act ? Section 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.

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 Section 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 Section 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.

11. Before we consider the arguments addressed to us, it may be necessary to give a brief account of the history of the different railway systems 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.

12. 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 1st January, 1925 and 1st October, 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 1st April, 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 1st April, 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 the North Eastern Railway. The

regrouping of these railways commenced on 14th April, 1951 and ended on 14th

April, 1952. Thereafter, the railway 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 themselves.

13. 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 the purpose of these cases, the reorganisation, 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 u/s 77 of the Railways Act and Section 80 of the CPC had to be given.

14. The main contention of the learned Counsel, Mr. K. Rajah Ayyar, for the Union of India representing the various railways was that Section 77 of the Railways Act should be interpreted in conjunction with Section 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 u/s 77 and for the purpose of liability for the claim, for compensation which arises u/s 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 administrations. He also drew our attention to the definition of "railway administration" in Section 3(6) of the Act, and contended that, for the purposes of the Railways Act, a distinction was made between the Central Government which owned the railways, and the railway administrations as such. In the Railways Act of 1879, the words "includes the Government", now found in

Section 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 Railways Act, the Government maintained a distinction between themselves and the railway administrations as such, learned Counsel referred to Section 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 Ayyar said that the "Central Government" mentioned in the Railways Act was the President of the Union of India by reason of Section 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 Section 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.

15. 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 Chapter 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 Chapter IX.

16. In this connection, we may also notice another argument of Mr. Rajah Ayyar. He stresses the fact that Section 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 Section

80 of the CPC in 1948 by Act VI 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, Clause (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.

17. 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 Section 80 of the Railways Act could govern the scope and application of Section 77

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

matters of substantive rights. True, failure to give such a 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 instance limited and regulated by the Railways Act ; but, that is entirely different from saying that the liability owes its origin to the Railways Act. Section 79. Civil Procedure Code, 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 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 VII 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 Sections 77 and 80 of the Railways Act also. The definition of this term in the Railways Act includes, in the case of a 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 the 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 in had to the language of Section 79, Civil Procedure Code, it would be obvious that a suit could be laid against the Central Government without impleading the Manager of a railway belonging to the Central Government either as a separate 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, CPC 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 amendment of Section 80, Civil Procedure Code, 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.

18. The provisions of Section 80 of the Railways Act were sought to be interpreted by Mr. Rajah Ayyar 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 u/s 80, Civil Procedure Code, has no bearing on the liability of the Central Government in relation to the railways run by it, similarly, the provision in Section 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 u/s 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 Section 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 Ayyar. 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 Railways 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 Section 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 systems 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 Ayyar 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.

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

Section 80 of the Railways Act, Section 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.

20. Learned Counsel for the railways put forward the extreme contention that the intimation required by Section 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 Section 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 everyone of the Managers of the different zonal railways owned by the Government before Section 77 could be said to be complied with. Only one notice is contemplated u/s 77, and it 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 u/s 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 Section 77. The purpose of a notice u/s 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 Section 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, Section 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 Section 77 or in Section 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.

21. 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 u/s 77 and the import of Section 80 of the Railways Act. Cases which were decided before 1948 touching

the question of the import of Section 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 this country. Indeed, this difference was specifically noticed in *Dominion of India v.*

Firm of Museram Khun 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 Section 80 of the Indian Railways Act otiose and

meaningless.

That case laid down that, before the Indian Independence Act, Section 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 Section 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 Section 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 Section 80 in 1890 was to set at rest the wide divergence of judicial opinion on 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 Section 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 systems 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.

22. The view which we have taken gains some support from *Dominion of India v. Jagadiah Prasad* 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

delivered 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 Section 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 Section 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-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 Section 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 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 Section 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.

23. 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 u/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 Section 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 case 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 Gowardhandas Vs. Union of India (UOI)*, . It is unnecessary to refer in detail, to this decision, because, there is not much discussion of the question" in it.

24. In this Court, Mack, J., in *Kishanlal Roopchand v. Dominion of India (1955) 1 M.L.J. 79* mainly relied on Governor-General of India in

Council Vs. Sukhdeo Ram Marwari and Another, for holding that Section 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 v. Ajit Bhai Jayantilal (1952) 2 M.L.J. 24*

took the view that notice u/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 Section 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 Ayyar. 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 u/s 80, Civil

Procedure Code, in a case where the notice required u/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 u/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 u/s 77 of the Railways Act. Section 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 u/s 77, Indian Railways Act and Section 80, Civil Procedure Code, to the General Manager of one or other of the railway administrations concerned must be held to be sufficient notice.

25. The Second Appeals are therefore allowed, and in both cases, the decrees of the trial Courts are restored with costs.

26. 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.