

(1932) 05 AHC CK 0009
In the Allahabad High Court

Ram Shankar

APPELLANT

Vs

Secretary of State and Another

RESPONDENT

Date of Decision : 23-05-1932

Acts Referred:

Citation : (1932) 05 AHC CK 0009

Hon'ble Judges : Bennet, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a case which has come before a Bench of this Court on revision on the application of the plaintiff, one Ram Shankar, who brought a suit against the Secretary of State for India. The chief grounds put forward in the application in revision are that the Judge of the Small Cause Court, Agra, had no jurisdiction to review his ex parte decree and that sufficient grounds were not made out for that review. Further that the claim of the plaintiff should have been allowed on the merits.

2. The claim of the plaintiff as set forth in his plaint was that one Damodar Das proprietor of a printing press was adjudicated insolvent and the Official Receiver of the time was appointed receiver of the insolvent's assets-and that the Official Receiver took possession of the press and the premises which were leased at a rent of Rs. 55 to the Damodar Printing Press by the plaintiff. Further that the Official Receiver on 1st April 1927 agreed to pay the said rent and that the Official Receiver kept possession of the house until 19th February 1928. A sum of Rs. 605 was therefore due to the plaintiff for use and occupation of the said premises and that the Official Receiver had failed to pay. The Secretary of State was represented before the Small Cause Court and the claim of the plaintiff was decreed apparently after a contest on 26th February 1931. The only issue which had been framed in that suit was : "For what amount if any is the defendant liable?" On 12th March 1931 Mr. Akhtar Ali, the Government Pleader made an application to the Judge of the Small Cause Court stating that in this suit which

had been decided a most crucial issue had not been framed which was:

Is the Official Receiver an agent or servant of the Secretary of State and is the Secretary of State liable for the acts of the Official Receiver?

3. He further stated that he had produced rulings to show that the Secretary of State was not liable. A review was therefore prayed for. The learned Small Cause Court Judge held that as the necessary issue had not been framed therefore the review should be granted and be directed that the issue should be framed accordingly. An application bearing no date but with a stamp dated 21st June 1931 was then made on behalf of the plaintiff asking that the Official Receiver be added as a defendant. The Secretary of State therefore became defendant 1 and the Official Receiver became defendant 2. The suit therefore was again tried by the learned Judge of the Small Cause Court and he dismissed the suit of the plaintiff by an order of 18th July 1931. The grounds of dismissal are firstly that the evidence falls short of proving any contract with the former Official Receiver, that a suit for compensation for use and occupation was also not maintainable, that the insolvency Court had refused permission to sue the present Official Receiver, that the suit was barred by three years limitation against the Official Receiver and was not maintainable against him for want of notice u/s 80, Civil P.C. that the suit could not succeed against the Secretary of State because the Official Receiver had done nothing for which his principal may be held liable even if he were to be considered for certain purposes an accredited agent or servant of the Secretary of State.

4. The ground on which the revision has been urged in this Court are mainly that the order for review of judgment was without jurisdiction, because the Secretary of State had not paid the decretal amount or furnished sufficient security along with the application for review. In the Provincial Small Cause Courts Act,; Section 17 it is laid down that at the time of the application for review of judgment such deposit must be made or such security must be filed and there is no exception made on behalf of the Secretary of State. This argument is undoubtedly correct, and we consider that if the attention of the learned Small Cause Court Judge had been drawn to this provision of the Small Cause Courts Act he should not have granted the review in question. But apparently this point was not raised before him. However we are now dealing with a question of revision u/s 25, Small Cause Courts Act and there is a discretion given by this section to the High Court. The words used in this section are that the High Court may call for the case and pass such order with respect thereto as it thinks fit. We are therefore to consider not merely whether the learned Small Cause Court Judge has made a technical error in his procedure but we are to consider whether the order at which he has finally arrived is an order which substantially does justice between the parties. We therefore consider that it is incumbent on us to see whether there is any liability on the Secretary of State for the alleged acts of the former Official Receiver. It is not now contended before us that there is any liability on the present Official Receiver and we are clearly of opinion that there is no such

liability. As regards the position of the Official Receiver we are of opinion that it would have been necessary to give him the two months notice prescribed by Section 80, Civil P.C., and we are further of opinion that as his name was not brought on the record until a period of three years had elapsed from the origin of the cause of action according to the plaint therefore the suit against him would be time barred.

5. We now turn to consider the general question which is of much greater importance, namely, whether there is any liability of the Secretary of State for the acts of an Official Receiver. u/s 56, Provincial Insolvency Act 5 of 1920, the Court may appoint any person as a receiver. There is nothing in this section which indicates that the Government or the Court have any liability for the acts of a receiver. On the contrary it is laid down in Section 56(4) that where a receiver appointed under this section occasions loss to the property by his wilful default or gross negligence, the Court may direct that his property be attached and sold and may apply the proceeds to make good any balance found due from him for any loss so occasioned by him that is, that a receiver can be made personally liable for his negligence as regards the property entrusted, to him. It is obvious from the section that the liability of a receiver as regards his actions towards other persons would be personal and that he would not involve the Court or the Government in any liability as regards other persons.

6. Section 57 states that the Local Government may appoint certain persons as Official Receivers and that such persons shall be receivers for all cases of insolvency unless the Court for special reasons otherwise directs. It is also provided in Sub-sections 3 and 4 that sums payable in respect of the services of Official Receiver shall be credited to a fund and the Official Receiver shall receive remuneration out of that fund, but not beyond a fixed rate. In Section 59 it is provided for both classes of receivers that they may by leave of the Court carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same. Apparently the former Official Receiver was acting under this provision in Section 59(c) when he arranged with the plaintiff that the press should remain for a period in the house of the plaintiff where the press was. It is important to note that that arrangement should have; been made by leave of the Court and it is not shown in the present case that any such leave was obtained.

7. We now turn to deal with the general" question of liability of the Secretary of State. It is laid down in the Government of India Acts 9 and 10, Geo. 5, Ch. 101, Section 32 as, follows:

(1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council as a body corporate. (2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act 1858, and this Act had not been passed.

8. It is therefore necessary for us to-examine what would have been the liability

of the East India Company in a case like the present. The earliest law dealing with the liability of the East India, Company is contained in Bengal Regn. 3 of 1793, and this is the foundation of the liability in question. It is provided in the preamble and in Sections 10 and 11 as follows:

Preamble. - They have resolved that the authority of the laws and regulations so lodged in the Courts shall extend not only to all suits between native individuals, but that the officers of Government employed in the collection of the revenue, the provisions of the Company's investment, and all other financial or commercial concerns of the public, shall be amendable to the Courts for acts done in their official capacity in opposition to the regulations; and that Government itself, in superintending these various branches of the resources of the State, may be precluded from injuring private property they Slave determined to submit the claims and interests of the public in such matters, to be decided by the Courts of justice according to the regulations, in the same manner as suits between individuals.

10. Collectors of the revenue and their assistants and native officers, commercial residents and agents and their assistants and native officers employed in the provision of the investment, salt agents and their assistants and native officers concerned in the manufacture of salt, the collectors of the custom and their assistants and native officers employed in the collection of the customs, the mint and assay masters and their assistants and native officers, are declared amenable to the zillah or city Court in the jurisdiction of which they may reside or carry on the public business committed to their charge, for any acts done in their official capacity, in opposition to any regulation printed and published in the manner directed in Regn. 41 of 1793."

11. If a native, or any other person not being a British subject, shall consider himself aggrieved under any regulation printed and published in the manner directed in Regn. 41, 1793, by an act done by any of the officers of Government described in Section 10 pursuant to a special order originating with the Governor-General in Council or the Board of Revenue or of Trade, the officer by whom the Act may be done is not to be liable to be sued for it. In such cases, Government is to be considered as the defendant; and the person deeming himself aggrieved is to present a petition to the Judge of the Dewanny Adawlnt of the zillah or city to which the officer by whom the act complained of may have been done shall be amenable in his public capacity, stating wherein he considers himself injured under the regulations, and praying that the Governor-General in Council will order the Court of Dewanny Adawlut in which the cause may be cognizable to try the points or matters contested agreeably to the regulations....

9. Now it is also provided in Bengal Regulation 1 of 1823, Section 38 as follows:

It is hereby declared and enacted, that Government is not and shall not beheld liable for any error or irregularity which may have occurred, or shall occur, in any order, proceeding, or decree of-any Court of judicature whether a revenue or

other officer of Government may or may not have been, or shall or shall not be, employed in giving effect to the order, proceeding, or decree deemed to be erroneous or irregular. Nor shall any officer of Government be held liable for anything done or suffered in conformity with an order, proceeding, or decree of a Court as aforesaid, and if any person or persons shall sue Government, or any officer of Government, for anything done or suffered under an order proceeding, or decree of Court as aforesaid, such person or persons shall be non suited, with costs. The same principle is and shall be held applicable to all orders, proceedings, or decrees made, held, or passed by any public officer, in virtue of powers vested in him for the judicial cognizance of any pleas, suits, complaints, or informations whatsoever, unless otherwise specially provided.

10. From these two regulations the whole of the case law of the liability of the Secretary of State has evolved. We may point out in the beginning that in England it was not possible to bring a suit against the Crown and that the only procedure for a person who wishes to have a remedy against the Crown is by a petition of right which is left at the Crown office and if the law officers of the Crown approve then a fiat is granted "Let justice be done and the suit proceed between the petitioner and the Crown." The East India Company did not occupy the same position in India as the Crown did in England, and therefore the procedure are so under the rule of the Company that a certain liability attached for certain purposes to the East India Company. That liability has been continued against the Secretary of State by the Act of 1858 and the Act of 1920. It is true that in most cases which have come before the Courts the contest has been on the liability of the Secretary of State for torts committed by Government officers in India and the question has not so often arisen on account of liability on contract, because it is easier to ascertain the liability on a contract by the simple criterion of whether the officer in question was authorized to bind the Secretary of State by his contract. We may refer to some of the earlier rulings. There is a case of *Dhackjee Dadajee v. E.I. Co.* [1843] 2 Mor. Dig. 307.

11. In that case a police officer under a warrant from the Governor in Council of Bombay trespassed into a house. Sir Erskine Perry held that an action against the Company would not lie, as they were a governing body and were only liable for personal misconduct. In *Shibhajan Durga Prasad v. Secy. of State* [1904] 28 Bom. 314 there was a suit for negligence of a police officer for property seized under the Criminal Procedure Code and Jenkins, C.J., quoted the above case and held that the Secretary of State was not liable as the East India Company had never been held liable for the illegal acts of Governors and Members of Council. The case of *Dhakiee Dadajee v. E.I. Co.* [1843] Mor. Dig. 307 was also quoted in *Boss v. Secy. of State* AIR 1915 Mad. 434 where the Government was held not to be liable as a principal for the acts of its servants as agents. The Court also quoted from Story on p. 63 as follows:

Section 319. - It is plain, that Government itself is not responsible for the misfeasances, or wrongs, or negligences or omissions of duty of the subordinate

officers or agents engaged in the public service, for it does "not undertake to guarantee to any persons the fidelity of any of the officers or agents, whom it employs, since that would involve it, in all its operations, in endless embarrassments and difficulties and losses, which would be subversive of the public interests.

12. This passage is also cited with approval in the Secy. of State v. Kasturi Beddi [1903] 26 Mad. 268. Similarly in a recent case of Mackenzie v. Corporation of Chilliwack [1912] A.C. 888 their Lordships of the Judicial Committee appear to have been of opinion that a local authority can be made responsible for the misconduct of a constable appointed by it, if at all, only on the ground that the appointment was not fitly or properly made. A different class of case is reported in Peninsular and Oriental Steam Navigation Co. v. Secy. of State [1861] 5 B.H.C.R. App. 1. Here the P. & O. Company sued for damages caused by the servants of the Government Dockyard at Kidder-pore. It was held that the Secretary of State was responsible as this was a business undertaken by Government. The ruling distinguished acts done in the exercise of what are usually termed sovereign powers and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them. Acts of the sovereign power are said to be the maintenance of the Army, the Navy and the Judicial service. It will be noted that in Regn. 3 of 1793, Section 10 laid a certain liability on Collectors of revenue which might be adopted by the East India Company. Cases in which this liability has been held to lie on the Secretary of State are reported in Hari Bhanji v. Secy. of State [1879] 4 Mad. 344 where the Collector had illegally levied a duty and Government was held liable if Government had ratified the act, and in Daya Ram Vs. Secretary of State, where it was held that the person who pays takavi under protest, has a right to sue in the civil Court u/s 183, Land Revenue Act.

13. There is an important doctrine in English law to the effect that the Crown cannot be liable for the acts which its servants perform in accordance with statutory provisions. This has been recognized in 37 Mad. 55 at p. 67 (3), where there is a reference to Tobin v. Reg. [1864] 16 C.B. 310 for the proposition that independently of the doctrine that the Queen can do no wrong, the Crown could not be made liable for the action of a Naval Captain purporting to act under the Slave Trade Acts in seizing and destroying the plaintiff's vessel, as he was not acting in obedience to the command of Her Majesty, but in the supposed performance of a duty imposed on him by Act of Parliament. This doctrine was also applied in Shibhajan Durga Prasad v. Secy. of State [1904] 28 Bom. 314 where it was held that the Secretary of State in Council could not be made liable for the negligence of a chief constable about the custody of hay seized by him under the Criminal P.C. At p. 352 the quotation is made, but it is settled law that where the duty to be performed is imposed by law and not by the will of the party employing the agent, the employer is not liable for the wrong done by the agent in such employment. "We would point out that in the present case the Official Receiver was appointed by Government to perform certain duties under

the Provincial Insolvency Act. Those duties were imposed by statute and therefore the Government has no liability for whatever the Official Receiver has done in the discharge or supposed discharge of his duty or supposed duty. There is one other ruling of this Court dealing with this question of liability of the Secretary of State reported in *Secy. of State v. Sukhdeo* [1899] 21 All. 341 where the plaintiff's property was wrongfully seized by a Magistrate and sold for a fine which was really against another person. It was held by each of the two Judges that the Crown was not liable to pay compensation for the illegal acts of its servants, but it was bound to make restitution to the extent it has benefited by the illegal acts. The two Judges were agreed on this point of the nonliability of the Crown although they differed on other points.

14. We may now turn to the question of contracts. Part 3, Government of India Act 9 and 10 Geo. V is headed Property Contracts and Liabilities and in that part it is laid down in Sections 29, 29-A and 30 what contracts can be made under that Act. Then follows Section 32 stating the liability of the Secretary of State to which the plaintiff has made reference in the present case. It would appear prima facie that the liability of the Secretary of State on contracts was limited to the contracts laid down in the previous sections, and if so the, present case would clearly not involve the Secretary of State any liability as the contract in question was not one which would come under any of the sections of Part 3. We also find in Manual of Government Orders, para. 1455, which states:

The rules regulating the powers of the Government of India and Local Governments to enter into or sanction contracts and agree" means involving liabilities on the part of the State are contained in Appendix 34.

15. Appendix 34 of the Manual of Government Orders lays down certain definite conditions which must be observed for contracts. It is obvious that the alleged contract in the present case does not comply with the necessary conditions in Appendix 34. There is moreover nothing to show that a person in the position of an Official Receiver has any authority whatever to bind the State by his contracts. We are of opinion that all that he can do by making a contract is in the first place to render the property of the insolvent liable for the performance of the contract, if the receiver has obtained the sanction of the insolvency Court to the making of the contract; and if he has not obtained that sanction, then he is personally liable on the contract. Under no circumstances do we find that there is any liability imposed on the Secretary of State in Council by an (Official receiver making a contract. Even if it were shown that he is in any sense an agent of the Secretary of State or the Government, if has not been shown that the Official Receiver has any authority to make contracts on behalf of the Secretary of State or the Government. We are of opinion that the Regulations of the East India Company drew a distinction between the acts of executive officers for which a certain liability might be assumed under Regn. 3 of 1793, Ch. 11, and the acts of Courts for which Regn. 1 of 1823, Section 38, disclaimed all responsibility. For the reasons which -we have set forth we are of opinion that the Secretary of

State in Council was not liable for the alleged act of the Official, Receiver in the pre sent case. Accordingly we consider that the final order of the Small Cause Court Judge dismissing the suit of the plaintiff is an order which has done substantial justice between the-parties. We therefore think that this is a case in which we should not interfere and we dismiss this application in revision. We direct that the applicant should pay the costs of the Government Advocate in the present case.