
(1975) 01 MP CK 0003
In the Madhya Pradesh High Court
Case No : C.R. No. 148 of 1974

Ramjilal Sukhiram

APPELLANT

Vs

Municipal Committee, Sarangarh

RESPONDENT

Date of Decision : 01-01-1975

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 176, 83, 97

Citation : (1976) ILR (MP) 976 : (1978) JLJ 75

Hon'ble Judges : G.P. Singh, J

Bench : Single Bench

Advocate : S.C. Pandey, for the Appellant; D.M. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.—This order shall also dispose of civil Revision No. 149 of 1974 (Hulas Singh v. Municipal Committee, Sarangarh).

2. Civil Revision No. 148 of 1974 arises out of a suit which the Municipal Council, Sarangarh against the applicant Ramjilal was filed by of Rs. 1683.70. All that it is necessary to state here is that the plaintiff alleged that Ramjilal was employed as a cashier during the period from 3rd May 1968 and 1st July, 1968 and was entrusted with certain items of case out of which he misappropriated the amount for which the suit was brought Ramjilal defendant-applicant, raised a preliminary issue of limitation which was decided against him by the trial Court on 14th December 1973 It is against this order that Ramjilal has filed Civil Revision No. 148 of 1974.

3. Civil Revision No. 149 of 1974 arises out of a filed by the Municipal Council Saranagarh against Hulas Singh has been this revision). The suit is for recovery of. Rs. 5000 alleged to have been misappropriated by the defendant who was working as cashier in 1967-68. In this suit also the defendant Hulas Singh raised a plea of limitation which was deeded against him by the trial, Court on 14th

December Hulas Singh thereafter filed Civil Revision No. 149 of 1974. December 1973. Hulas Singh thereafter filed Civil Revision No. 149 of 1974.

4. The trial Court has held that the period of limitation in such a suit filed by the Municipal Council shall be governed by Article 112 of The Limitation Act which provides for 30 years limitation. This article relates to a suit which is filed by or on behalf of the Central Government or the State Government. The suits with which I am concerned are certainly not suits filed by or on behalf of any Government. The benefit of the article has been allowed to the Municipal Council by the trial Court by relying upon section 97 of the M.P. Municipalities Act, 1961. The section reads as follows :

Liability of Municipal employee for misappropriation of funds.--Employee of the Council shall be personally liable for the loss, waste, mis-application or misappropriation of any money or other property (held for the administration of the Council) if such loss or waste or misapplication is a direct consequence of his neglect or misconduct in his capacity as servant of the Council, and a suit for compensation for the same may be instituted against him, as if the money or the property had belonged to the State Government.

The argument in support of the view taken by the trial Court is that the words of the section "a suit for compensation for the same may be instituted against him, as if the money or the property had belonged to the State Government" go to show that a suit instituted by the Municipal Council for compensation against its employee would be treated to be a suit by or on behalf of the State Government. In my opinion, there is no merit in this argument. Section 97 makes an employee of the Council personally liable for the loss, waste, mis-application or misappropriation of any money or property if such loss etc., is a direct consequence of the employee's neglect or misconduct. The section further provides that a suit for compensation for the loss, waste etc., may be instituted against the employee "as if the money or the property had belonged to the State Government". The fiction created by this section makes the money or property which has been lost or wasted, misapplied or misappropriated as the money or property belonging to the State Government. The result of the fiction is that the State Government can bring a suit for compensation against the employee concerned because the money or property lost, wasted etc., is deemed to be belonging to the State Government. The fiction cannot be read as providing that although the money or the property should be deemed to be belonging to the State Government, the Municipal Council can sue for it or that a suit instituted by the Municipal Council for recovery of compensation will be deemed to be a suit by or on behalf of the State Government. A municipal employee is liable to the Municipal Council under the general law for all loss caused to the council which is a direct consequence of his neglect or misconduct. It was, therefore, not necessary to make a statutory provision to make the municipal employees liable in such a case to the Municipal Council. Section 97, in my opinion, was intended to create a liability which could be enforced by the State Government as if the

money or property which was lost or wasted etc., by the employee concerned was the property belonging to the State Government. A suit brought by a Municipal Council against its employee for loss caused to it by the neglect or misconduct of the employee is not a suit u/s 97 but is a suit under general Law.

5. My attention was drawn to section 83 which deals with the responsibility of councillors for mis-application of municipal funds. The section provides that a suit against a councillor can be instituted either by the council or the State Government. This section specifically provides for a suit by the Council probably to clear the doubt that the council is entitled to make a councillor liable for misapplication of municipal funds. Similar language could have been used in section 97 to clarify the position. However, that section, as it stands, cannot be construed to confer a right of suit on the Municipal Council. As already stated, the Municipal Council has a right of a suit under the general law which is not taken away. Section 97 confers a right of suit on the State Government by creating a fiction.

6. As a result of the above discussion it is clear that the trial Court was wrong in holding that the suit instituted by the Municipal Council is a suit by or on behalf of the State Government and is governed by Article 112 of the Limitation Act.

7. The question then is as to which article applies to the suits with which we are concerned. Learned counsel appearing for the Municipal Council referred to me section 176 of the M.P. Municipalities Act. This section provides that no distraint shall be made and no suit shall be instituted for the recovery of any sums due to a Council under this Act after the expiration of six years from the date on which such sum became due. This section is limited to sums due under the Act. I have already stated that the liability of the employees for the neglect or misconduct which the Municipal Council is enforcing under these suits is a liability under the general law. For this reason the compensation that is claimed under these suits cannot be called "sums due under this Act". Section 176 is, therefore, not applicable.

8. Coming to the provisions of the Limitation Act, in my opinion, Article 4 will apply to these suits. This Article applies to suits by principals against agents for neglect or misconduct. The employees, who are entrusted with the funds of the Council to be utilized in a particular manner, stand in the position of agents and if they misappropriate the amount, the suit filed for recovery of compensation would be a suit by a principal against his agent for compensation for misconduct. The limitation under this Article begins from the date when the neglect or misconduct becomes known to the plaintiff. The limitation in the present suits would, therefore, begin from the date when the Council came to know of the misappropriation of the particular items. The trial Court did not enquire into this question of fact because it held that the suits were governed by Article 112. A fresh enquiry will, therefore, have to be made to find out as to when the plaintiff came to know of the different acts of misappropriation.

9. The revisions are allowed. The orders passed by the trial Court holding the suits to be within limitation are set aside and the Court shall re-determine the question of limitation in the light of the observations made above. There shall be no order as to costs.