

(1958) 05 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 229 of 1953

State of Punjab

APPELLANT

Vs

Okara Grain Buyers Syndicate Ltd., Okara and Another

RESPONDENT

Date of Decision : 19-05-1958

Acts Referred:

Constitution of India, 1950 — Article 300

Displaced Persons (Debts Adjustment) Act, 1951 — Section 13, 2(6)

Citation : AIR 1958 P&H 456

Hon'ble Judges : S.S. Dulat, J; R.P. Khosla, J; G.D. Khosla, J

Bench : Full Bench

Advocate : L.D. Kaushal, Deputy Advocate General, for the Appellant; H.L. Sibal and S.K. Jain, for the Respondent

Judgement

G.D. Khosla, J.—The following question has been referred to the Full Bench ;

"Whether an application u/s 13 of the Displaced Persons (Debts Adjustment) Act, 1951, is not maintainable against the State of Punjab."

2. The relevant facts giving rise to this reference may be briefly stated. The Okara Grain Buyers Syndicate whose place of business is now Amritsar, filed an application u/s 13 of the Displaced Persons (Debts Adjustment) Act (hereinafter called the Act) against the Punjab State for the recovery of Rs. 4,038/-. The amount was claimed on account of a liability incurred before partition in Pakistan. The Punjab State raised a preliminary objection to the effect that the Tribunal had no jurisdiction to entertain the application as no application against the State Government could lie u/s 13 of the Act. The learned Tribunal framed the following two issues:

"1. Is the application maintainable?

2. What is the effect of the respondents not filing the reply within 15 days of the service of notice of them ?

3. It is only the first issue which is relevant for our purposes. The Tribunal held that the application was maintainable and that the Punjab Government could be sued and was not exempt from the provisions of the Act. Against this order the Punjab State filed a revision petition in this Court which came up in the original instance before Bhandari C. J. sitting singly. The learned Chief Justice was of the view that the matter was of some importance and should therefore be considered by a larger Bench. It was accordingly referred to a Bench consisting of Bishan Narain and Grover JJ.

The Division Bench heard the arguments of both parties and considered a number of cases in which this matter had come up both before this Court and other Courts. There was some conflict in the various decisions and so the Division Bench decided to refer the matter to a Full Bench. So finally the matter was brought before us and we have heard learned counsel for both sides at considerable length. Our attention has been drawn to a large number of cases which have a bearing on the point in dispute and we are now in a position to reply to the question referred to us.

4. In order to understand the nature of the objection raised it is necessary to quote Section 13 and Section 2(6)(c) of the Act. Section 13 is in the following terms :

"At any time within one year after the date on which this Act comes into force in any local area, any displaced creditor claiming a debt from any other person who is not a displaced person may" make an application in such form as may be prescribed, to the Tribunal within the local limits of whose jurisdiction he or the respondent or, if there are more-respondents than one, any of such respondents, actually and voluntarily resides, or carries on business or personally works for gain, together with a statement of the debt owing to him with full particulars thereof."

(I have underlined (here into " ") the words to which specific reference will be made in interpreting the section).

5. Section 2(6)(c) runs as under :

" "Debt" means any pecuniary liability, whether payable presently or in future, or under a decree or order of a civil or revenue Court or otherwise, or whether ascertained or to be ascertained, with --

(a) *****

(b)*****

(c) is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends;

6. The contention urged on behalf of the Okara Grain Buyers Syndicate is that

the "Punjab State" comes within the meaning of the expression "any other person ordinarily residing in the territories to which this Act extends" and therefore an application u/s 13 of the Act is competent. It is contended on the other hand that the Punjab State is not a person as that word is ordinarily understood in law Courts, and, in the second place, the Punjab State cannot be said to be ordinarily residing anywhere, because the State is not capable of residing; it is only individuals and persons who reside and not a State.

7. The matter under discussion raises a large issue and it is necessary to consider it from several aspects. I shall first consider what the position of a State or Government is in the field of litigation. It is a matter of common knowledge that the Governments can sue and be sued in Courts of Law in the same way as ordinary persons sue and are sued, although there may in certain crises be limitations and reservations or exceptions specifically provided by the legislature. Article 300 of the Constitution contains the legal authority for the Government of India or the Government of any State to sue or be sued.

This authority is, however, not comprehensive and all embracing, because it relates back to the earlier provisions of law which conferred similar rights and liabilities on the Dominion of India and the Provinces and Indian States. When the matter is considered historically, we find that the East India Company, like any other corporation or firm, could sue and be sued. In 1858 the British Crown took over the Government of India from the East India Company and Section 65 of the Government of India Act 1858 provided

"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, had not been passed".

8. A similar provision was made and the rights and liabilities of the Secretary of State were continued by Section 32 of the Government of India Act 1915 and Section 176(1) of the Government of India Act of 1935. In 1947, when India was split into two Dominions, provision was made for the filing of suits by and against the Dominion of India and the same remedies were available against the Dominion of India as were available against the Secretary of State. The Constitution provided the last link in this chain of continuity.

9. So, it is seen that right from the beginning a suit can be brought against the authority which had at various times represented the Government of India or the Government of the States (formerly Provinces).

10. The Government, whether it represented the Government of India or the State Government, occupied in the field of litigation the status of a juristic person. It was subject to the same rights and liabilities as an ordinary individual, corporation, company etc. unless specific provision to the contrary was made in any special instance. The Government could be decree-holder and enjoy all the rights conferred upon a decree-holder under the Civil Procedure Code. It could be judgment-debtor and be subject to the obligations to which any individual

judgment- debtor would be subject. It could enter into contracts and enforce them in case the other contracting party was guilty of breach.

If the Government was guilty of breach, the other contracting party could claim relief against it. Indeed, it has never been disputed that the Government has always been in a position to sue and be sued exactly as if it were a person. Whenever the Legislature wanted to exempt Government from some particular form of liability, it made specific provision for the occasion. Instance may be cited of Section 90 of the Registration Act whereby certain documents executed by or in favour of Government were exempted "from the provisions of the Registration Act Section 2 (a) and (b) of the Indian Easements Act and Section 135 of the Indian Railways Act are other exceptions of a similar nature.

Government buildings are exempt from the operation of the Rent Control Act. On the other hand there is no such exemption from the provisions of the Court-fees Act. It will be seen that whenever any exemption from the operation of any statute was made in favour of Government it was so stated expressly in the statute. No such saving or exemption appears in the Debts Adjustment Act. Unless there is express provision for such exemption in the statute or unless exemption is a necessary or logical consequence of the phraseology used in the statute it will not be held that the State has no liability under the Act.

11. On the partition of India the Governor-General promulgated the Indian Independence (Rights, Property and Liabilities) Order, 1947. The object of this Order was to safeguard the interests of people who may have claims against the Government of India where these claims could not be enforced under the ordinary law. Where some contractual liability was incurred within the territory of the newly constituted State of Pakistan, it would be difficult to say whether a suit could be brought to enforce this liability against the Government of India. So, inter alia, a provision was made that where a contract was made on behalf of India or the Province of the Punjab and the contract was for purposes which as from 15-8-1947 were exclusively the purposes of India or the Province of East Punjab, the contract must be deemed to have been made on behalf of India or the East Punjab as the case may happen to be.

The object of the Order promulgated by the Governor-General was that certain types of claims which originated in that part of India which had become foreign territory should be enforceable against the Government of India. In other words, the Government of India assumed liability in respect of certain obligations incurred on behalf of the Government of united India. These claims could be enforced in ordinary Courts of law by persons who had migrated to India. Displaced persons also had claims against other displaced persons or non-displaced persons arising out of transactions which had taken place in Pakistan. Suits to enforce these claims could not be brought in Courts of India u/s 20 of the Civil Procedure Code.

So the Displaced Persons (Institution of Suits) Ordinance was promulgated in

1948. This Ordinance provided that a displaced person could institute a suit in a Court within whose jurisdiction he resided or carried on business or personally worked for gain, provided the defendants were not displaced persons. Some relief was also given by extending the period of limitation. This Ordinance was followed a few months later by the Displaced Persons (Institution of Suits) Act, 1948. This contained only minor alterations and modifications of the terms of the Ordinance.

The displaced person could bring a suit at a place where he resided provided the defendant was not a displaced person and resided, carried on business or personally worked for gain in India. Finally came the present Act No. LXX of 1951 which extended the provisions of the previous Ordinance and Act in certain respects and gave further relief to displaced persons. It provided that a displaced person could make an application against a debtor whether the debtor was a displaced person or not and the only requirement was that the debtor should be a person who ordinarily resides in the territories to which the Act extends.

12. The question arises whether the Legislature intended to exclude all State liabilities from the purview of this Act. The Government of India had been at pains to assume liability in respect of contractual obligations and some other obligations incurred at places which are not within the territory of India, and it seems inconceivable that after assuming this liability it should have destroyed the means whereby it could be enforced. The general view of the law has always been that while interpreting Section 20, Civil Procedure Code, in reference to a suit against Government, the forum is the place where the cause of action arose, otherwise absurd consequences would follow because the Government may be said to reside or transact its business at all parts of the country.

The activities of the Government extend to every corner of the country and so a plaintiff could choose to bring a suit wherever his caprice led him. u/s 20 the suit must be brought in the Court within whose jurisdiction the cause of action arose or the defendant "actually and voluntarily resides or carries on business or personally works for gain". The plaintiff would not be deprived of his right to file a suit by holding that the Government does not reside or work for gain or carry on business, for he could always bring the suit at the place where the cause of action wholly or in part arose.

Any other view would have led to chaotic results, but the partition of the country changed this stage of affairs with respect to those suits of which the cause of action lay outside the territory of India. This meant that a person who had a claim against the Government could not bring a suit u/s 20 of the Civil Procedure Code, for the cause of action lay in Pakistan and since persons who had claims against private individuals would be similarly affected, the Displaced Persons (Institution of Suits) Ordinance was promulgated.

No express exemption with regard to claims against Government was made in this Ordinance, and it is reasonable to infer that a person who had a claim

against the Government could take advantage of the provisions of the Ordinance. In all other statutes wherever the word "person" appears it has always been taken to include the Government as well as a company, or association, or body of individuals, whether incorporated or not (vide Section 3(42) of the General Clauses Act). In the subsequent enactments dealing with the institution of suits by displaced persons also no express saving in favour of Government was made, and there is no reason to believe that the Legislature intended to annihilate the liability of the State which had been so carefully assumed in 1947.

13. Let us now examine the definition of "debt" as given in Section 2(6)(c). A creditor can make an application u/s 13 if the debt is due to him from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends. The first point to consider is whether the word "person" does not include "State". I have already shown that in all other statutes the word "person" has been understood to include a State, and as there is no express saving in favour of Government, here too, the word "person" must be deemed to include the State.

The second argument of the learned Deputy Advocate-General was that the word "person" is qualified by the phrase "ordinarily residing in the territories to which this Act extends" and since the State is not) capable of residing anywhere an application against the State u/s 13 is not competent. If this argument is valid, then Clause (c) may be expanded to read as follows :

"is due to a displaced person from any other person (whether that person has been displaced or not) provided always that he is capable of residing in the ordinarily understood meaning of that word and provided also that he is actually residing in the territories to which this Act extends."

14. We see, however, that the word "person" includes "any company or association or body of individuals" and a person whether he is real or juristic is capable of residing or transacting business at a particular place. It will not be denied that if the debtor is such a juristic person having his office or place of business in India, an application u/s 13 can be brought against him. The object of the adjectival clause which follows the bracket is to limit the category of debtors to those who are not residing outside India. For instance, a foreigner who is a casual visitor to India cannot be deemed to be a person who ordinarily resides in this country, and clearly, if a debt is due from him, no application against him u/s 13 would be competent.

To argue that because the State of Punjab or the Government of India is not capable of residing, (and Courts of law have taken the view that they are not capable of residing with reference to Section 20 of the Civil Procedure Code), would be to defeat the objects of the Displaced Persons (Debts Adjustment) Act, for it would deprive the displaced persons of all remedies in respect of their claims against the State Government and this clearly was not the intention of the Legislature.

To hold that the State Government is capable of residing in all parts of India would not lead to absurd results because the creditor will have to bring the suit at the place where he resides. Therefore, in a suit against the Government in which the cause of action arose in Pakistan the creditor will have to go to a Court within the jurisdiction of which he himself resides. It would be unreasonable to hold that because the Punjab State or the Government of India cannot reside in the way a man or a woman can reside, the debt due from it is not a debt at all,

15. Our attention was drawn to a number of rulings in which it has been held that the Government does not reside or carry on business anywhere. The earliest of these is *Doya Narain Tewary v. Secy, of State* ILR 14 Cal 256. It was held in this case that a suit against the Secretary of State for India was not a suit against a person who was capable of carrying on business, dwelling or personally working for gain anywhere and that in order to determine the forum for a suit against the Secretary of State the place where the cause of action arose was the relevant factor. *Rodricks v. Secretary of State* ILR 40 Cal 308 was a case which merely followed the decision of the earlier case cited above.

In this case, too, the cause of action arose outside the civil jurisdiction of the Court in which the suit against the Secretary of State was instituted and it was held that since the Secretary of State for India in Council did not dwell or carry on business or personally work for gain within the local limits of Calcutta, although Calcutta was the capital of India at that time, a suit could be instituted in the Calcutta Court. The suit could, undoubtedly, be instituted in a Court within the local jurisdiction of which the cause of action arose. *Dominion of India Vs. R.C.K.C. Nath and Co.*, is another exactly similar case. *Govindarajulu Naidu v. Secretary of State* AIR 1927 Mad 689 arose out of similar circumstances. *Bata Shoe Co. Ltd. Vs. Union of India*, was also a case of the same type. In this case goods were sent from the Agra Fort to Bikaner by the B. B. and C. I. Railway.

The entire consignment was damaged and a suit to recover the value of the goods short-delivered was instituted in the Court of Small Causes at Bombay on the ground that the head office of the B. B. and C. I. Railway was located at Bombay. The cause of action arose outside the jurisdiction of the Court of Small Causes, Bombay and it was held that the Union of India representing the B. B. and C. I. Railway could not be said to carry on business within the meaning of Section 18(b) of the Presidency Small Cause Courts Act. The plaintiff therefore should have instituted the suit at the place where the cause of action, wholly or in part arose. *Calcutta Motor Cycle Co. Vs. Union of India (UOI)*, was another case in which it was held that the Union of India could not be said to carry on business anywhere and so the suit against the Union of India must be brought at the place where the cause of action arose.

In all these cases the plaintiff was not being nonsuited because he had a perfectly good remedy and could go to the place where the cause of action arose. To allow him to file the suit on the basis that the Union of India resided everywhere in India would be to give indulgence to his caprice and such a view

might lead to absurd or even chaotic results. It seems to me that the weight of these rulings must have overwhelmed the Judges when they came to consider the provisions of the Debts Adjustment Act.

A Division Bench consisting of Chagla C. J. and Desai J. in *Lachmandas H. Advani and Another Vs. Union of India*, took the view that where a displaced person made an application u/s 13 against the Union of India claiming from the latter a sum of money being the sum paid by him in respect of a contract entered into with the Punjab Government before partition and for damages for breach of contract, the application was not maintainable because the Union of India could not be said to reside in the territories to which the Act extends as contemplated by the definition of "debt" in Section 2(6)(c). Chagla C. J., while discussing the matter, referred to a number of previous Bombay decisions in which the provisions¹ of Section 20, Civil Procedure Code, and Clause 12 of the Letters Patent were considered. The learned Judge observes in paragraph 8 of the report:

"The language of Section 13 also seems to lend support to the view that we have formed that it was not the intention of the Legislature to permit displaced persons to recover their debts from the Union of India by the special machinery set up under the Act. Section 13 deals with jurisdiction and the application under that section is to be made to the Tribunal within the local limits of whose jurisdiction the displaced person or the respondent or, if there are more respondents than one, any of such respondent, actually and voluntarily resides or carries on business or personally works for gain, together with a statement of the debt owing to him with full particulars thereof."

Looking at Section 13 in the way Section 20 Civil Procedure Code, was interpreted, all that can be said is that the suit cannot be brought at a place chosen capriciously by the creditor but must be brought at the place where he himself resides. With great respect to Chagla C. J. I find myself unable to subscribe to the view that the debts due from the Union of India were, by implication and necessary intendment, excluded from the ambit of Section 13, nor am I persuaded that the definition of "debt" given in Section 2(6)(c) is to be so narrowly interpreted as to exclude from it money due from a debtor who is not capable of residing like an ordinary individual. *Lakhmi Chand L. Nanak Chand Vs. Punjab State*, was a case in which a claim was made by a displaced person against the Punjab State.

The matter came up before a Division Bench consisting of my Lord the Chief Justice and myself and it was held, (a) that the Punjab Government was not capable of carrying on business or personally working for gain and (b) that the liability in question was not the liability of the Punjab Government under the Indian Independence (Rights, Property and Liabilities) Order, 1947, and therefore the plaintiff could not maintain his claim. In coming to the conclusion (a) the Chief Justice relied on the previous decision to which I have already made a reference including the early Calcutta case ILR 14 Cal 256.

In this case there were two grounds upon which the plaintiff could be non-suited. In my view, the first ground relating to the non-maintainability of the suit on the ground that the Punjab State could not be said to carry on business anywhere was erroneous. There is another Division Bench unreported ruling of this Court in *Amar Nath Issar Vs. Union of India (UOI) and Another*, in which the same view was taken. This decision too, was based on the large number of previous rulings referred to above. The learned Judges did not take into consideration the fact that in all those previous cases where it was held that the Secretary of State for India or the Union of India could not be said to reside anywhere the plaintiff had a perfectly good remedy open to him by going to the place where the cause of action arose.

He, however, did not choose to pursue this remedy. In the present case we are not interpreting Section 20 but another section which is not exactly analogous to Section 20. The result of holding that a State Government or the Union of India does not reside anywhere would be that the plaintiff is completely non-suited and is deprived of his remedy against the Government. This obviously was not the intention of the Legislature, because the original Ordinance of 1948 and the two subsequent statutes were intended to give relief to displaced persons and not to divest them of their claims against the State. There is one decision of a Single Bench of the Patna High Court in which a contrary view was taken.

In *State of Punjab (India) Vs. Mangal Singh Nagpal*, Sinha J. held that the expression "any other person" occurring in Section 13 of the Displaced Persons (Debts Adjustment) Act covers the State of Punjab. The judgment does not contain a very full discussion of the matter, but I find myself in agreement with the conclusion that an application against the State Government u/s 13 of the Act is maintainable. I may also refer to a decision of Kapur J. in *Nagi Brothers v. Dominion of India* AIR 1951 P&H 92 in which it was held that the Dominion of India could not be said to carry on business anywhere. This case followed the previous Calcutta decisions to which a reference has already been made.

16. Upon a consideration of the cases to which a reference has been made by me it appears that in all those cases in which the Union of India or a State Government was held to be not capable of residing anywhere, it was the provisions of Section 20 CPC which were being considered. The plaintiff had, in all those cases, the right to bring a suit at the place where the cause of action arose. He, however, chose to go elsewhere by saying that the Union of India was living at that latter place. The Courts correctly took the view that the plaintiff could not choose his forum in a capricious and arbitrary manner by merely saying that the Union of India was an all-pervading ubiquitous person.

In the case before us the emphasis is not on where the Union of India resides but that the Union of India is subject to the territorial jurisdiction of the Debts Adjustment Tribunal. That seems to me the real meaning of Section 2(6)(c). If a debt is due from a person who ordinarily lives in India, which means who is ordinarily subject to the territorial jurisdiction of Courts in India, then the

displaced creditor can maintain an application against him u/s 13. It cannot be denied that the Union of India is subject to the territorial jurisdiction of Courts in India, and that being so, the Courts in India have jurisdiction to entertain an application u/s 13. A "debt" is a debt which is due to a displaced person provided the debtor, whether he is real or juristic person, is subject to the territorial jurisdiction of Indian Courts.

It seems to me that this is the only contrition which must be satisfied. We cannot restrict the meaning of Clause (c) to exclude juristic persons incapable of residing at any place, otherwise we should have to exclude everybody except a human being. This clearly was not the intention of the Legislature. Had the Legislature intended to exclude debts due from Government, it could have expressed its intention simply and effectively by adding a short saving clause as has been done in other statutes where a special exception in favour of Government was sought to be made.

17. I would therefore hold that an application u/s 13 against the State of Punjab is maintainable. The decisions of this Court in *Lakhmi Chand L. Nanak Chand Vs. Punjab State*, and *F.A.F.O. No. 40-D of 1954: Amar Nath Issar Vs. Union of India (UOI) and Another*, would be considered as having been overruled.

S.S. Dulat, J.

18. I agree.

H.P. Khosla, J.

19. I agree.