

(1960) 03 MAD CK 0019

In the Madras High Court

Case No : Civil Revision Petition No. 716 of 1959

The State Electricity Board

APPELLANT

Vs

K. Govindarajulu and Others

RESPONDENT

Date of Decision : 18-03-1960

Acts Referred:

Limitation Act, 1963 — Article 149, 36

Citation : AIR 1960 Mad 571 : (1961) ILR (Mad) 321 : (1960) 73 LW 477 :
(1960) 2 MLJ 245

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

(1) This is a petition to revise the decree of the learned District Munsif of Sankari at Salem in S. C. S. No. 366 of 1958 dismissing the suit on the

ground that it was barred by limitation. The plaintiff which is the State Electricity Board, is the petitioner.

(2) The suit was to recover a certain sum of money being the cost of a pole which had been broken by the 2nd defendant's lorry on 22-7-1955

and the loss of revenue to the plaintiff on account of interruption of electric supply to consumers for six hours. The plaintiff Board came into

existence on and from 1-7-1957. It instituted the suit on 5-4-1958. The lower Court dismissed the suit in the view that the suit was governed by

Art. 36 of the First Schedule to the Limitation Act, and should have been filed within two years from the date when misfeasance occurred. This

view is supported by the decision in Corporation of Madras by Commissioner Vs. B.D. Kothandapani Chetty, . It was held in that case that a suit

by a municipality for recovery of damages caused to one of its lamp posts by the defendant's lorry would be governed by Art. 36 of the Schedule

I of the Limitation Act and the suit should be instituted within two years of the misfeasance taking place.

(3) Mr. T. Venkatadri, learned counsel for the petitioner, however, argued that the suit was governed by Art. 149 which is applicable to a suit by

or on behalf of the Central or State Government. The contention was that the misfeasance occurred at a time when the electricity system was a

part of the Government department, that the Electricity Board was but a limb of the Government, and that as Art. 149 would undoubtedly have

applied to a suit by the Government, the same Article should apply to a suit instituted by the Board as well. I think that this contention has no

substance.

The Electricity Board was constituted under the provisions of the Electricity (Supply) Act, 1948. Section 5 of the Act provided that the State

Government should as soon as might be after the issue of the notification under sub-sec. (4) of S. 1, constitute by notification in the Official Gazette

a State Electricity Board under such name as might be specified in the notification. The Board so constituted is, as enacted by S. 12, a body

corporate having perpetual succession and a common seal, with power to acquire and hold property both moveable and immovable, and shall sue

or be sued in its name.

The plaintiff-Board is thus a legal person in the eye of law and a body distinct from and independent of the Government with powers, rights and

obligations provided under the statute. It is no doubt true that under the provisions of the Act, the Government have certain controlling powers

over the Board. The Government have also, under S. 78, power to make rules to give effect to the provisions of the Act and the Board should, as

provided by S. 78-A be guided by such directions on questions of policy as may be given to it by the State Government.

The learned counsel contended that in view of the rule making and controlling powers of the Government, the Board practically functioned under

the direction and as part of the Government. But mere control exercised by one independent body upon another, however effective, may not by

itself be sufficient to regard them but as a single body. The suit in this case was factually one instituted by the board and can by no means be

regarded as one instituted by or on behalf of the Government. In my opinion,

therefore, Art. 149 of the Limitation Act has no application to the suit.

(4) Sri Venkatadri next referred me to S. 60(1) of the Electricity (Supply) Act, 1948, and contended that if the Government had a period of sixty years to sue the 2nd defendant, the Board must be deemed, under this statutory provision, to have the same period of limitation. Section 60(1) is as follows:

60(1). All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for the State

Government for any of the purposes of this Act before the first constitution of the Board shall be deemed to have been incurred, entered into or

engaged to be done by, with or for the Board, and all suits or other legal proceedings instituted or which might but for the issue of the notification

under sub-sec. (4) of S. 1. have been instituted by or against the State Government may be continued or initiated by or against the Board.

(5) The first part of the sub-section provides that the Board shall assume the rights and liabilities of the Government including any contracts entered

into by or with them for any of the purposes of the Act. The second part of the sub-section enables both continuation by or against the Board of all

suits or legal proceedings originally instituted by or against the Government before the constitution of the Board, and also the institution by or

against the Board, of suits and proceedings, which but for the constitution of the Board, the Government might have instituted. The learned counsel

particularly relied on the second limb of the sub-section and urged that the Board was entitled to have the benefit of Art. 149 of the Limitation Act.

It appears to me that the sub-section has nothing to do with limitation.

The object of the sub-section is merely to enable the Board to continue pending suits and legal proceedings and institute fresh ones. The sub-

section does not speak about the period of limitation applicable to institution of suits or proceedings by or against the Board. The provision that

suits or proceedings which might but for the notification under sub-sec. (4) of S. 1, have been instituted by or against the State Government, may

be instituted by or against the Board cannot, in my opinion, be read as implying that in such suits or proceedings instituted by or against the Board

Art. 149 of the Limitation Act should apply.

(6) Sri T. Venkatdri invited my attention to a number of authorities in support of his contention that the plaintiff-Board should have the benefit of

Art. 149 of the Limitation Act but I do not think it necessary to refer to any of them as, in my opinion, none of them was in point. On the other

hand, I may refer to certain decisions which suggest in principle that the contention of the learned counsel for the petitioner is untenable. In

(Ayyagari) Venkata, Suryanarayana Vs. Makka Venku Naidu and Others, , Phillips and Ramesam JJ. held that where a person had been in

adverse possession for 12 years of the lands belonging to Government and the lands were granted by Government to a third person, the grantee

could successfully be met with a plea of adverse possession although it would have been open to Government to resume the lands, 60 years"

adverse possession not having been completed against the Government and that whether 12 years" possession as against the grantee was

completed before the grant or afterwards was immaterial.

In that case the suit was to recover certain lands which were originally service inam lands attached to the office of Karnam and were enfranchised

by Government. The trial Court had found that item 1 had been held adversely to the defendant from before 1889 and as to items Nos. 1 and 3

that the defendants were holding them adversely for at least 20 years before suit. The enfranchisement was effected by the Government in 1906

and the suit was filed in June 1918. If the plaintiff got a fresh cause of action from the date of the enfranchisement by the Government the suit

would be in time. The trial Court dismissed the suit in the view that it was barred by time.

The point in appeal in that case in this Court reduced itself to the question, when the Court made a grant at the time when the defendant was

already in adverse possession for less than 60 years what adverse possession counted in a suit by a grantee. After referring to a number of earlier

authorities the learned Judges reached the conclusion that the suit was barred by time on the view that the grantee from the crown was not entitled

to the benefit of Art. 149 of the Limitation Act and that the period of limitation applicable to the suit would be 12 years. Though the decision in

(Ayyagari) Venkata, Suryanarayana Vs. Makka Venku Naidu and Others, is not conclusive on the point I have to decide in this case, it recognised

that Art. 149 of the Limitation Act was based on public grounds and was specially applicable only to suits the Crown or the Government and the

benefit of the article did not pass to the grantee from the Crown or Government.

(7) In *Bengal North Western Rly. Co. Ltd. v. Janki Prasad*, AIR 1936 Pat 362, the decision was that where certain lands belonging to a railway

company were transferred by the railway company to a person for cultivation under a licence, a suit by the Railway Company and the Secretary of

State, for ejectment of the licensee after the expiry of the license and for rent and mesne profits was governed by Art. 149 and not Art. 109 or 116

inasmuch as the Railway company was merely managing agent on behalf of the Government. It should be observed that the Secretary of State

himself was the 2nd plaintiff in the suit to eject the defendants from the lands there in question. Reference may also be made to the Municipal

Commr. for Madras v. Sarangapani Mudaliar, ILR 19 Mad 154, in which this Court held that the period of sixty years could not be taken

advantage of by a Municipality.

The Judicial Committee of the Privy Council in *Jagadindranath Roy v. Hemantakumari Debi*, ILR 32 Cal 129, pointed out that the period of 60

years under Art. 149 did not avail a grantee from the Crown and therefore the period of limitation was only 12 years. On principle, therefore,

when the Board was under the statutory provision given the right to institute a suit which the Government might have but for the notification

constituting the Board, such a suit instituted by the Board would be governed not by Art. 149 but by the other articles normally applicable to

parties other than the Government. In my opinion, the proper article applicable to the suit instituted by the Board is Art. 36 of Schedule I to the

Limitation Act. On that view the suit was rightly dismissed by the lower Court as barred by limitation.

(8) The revision petition fails and is dismissed but with no costs.

(9) Revision dismissed.