

(1957) 07 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 21 of 1957

Union of India (UOI) and Others

APPELLANT

Vs

Jit Ram and Others

RESPONDENT

Date of Decision : 30-07-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1958 HP 14

Hon'ble Judges : Ramabhadran, J.C.

Bench : Single Bench

Advocate : B. Sita Ram, for the Appellant;

Final Decision : Dismissed

Judgement

Ramabhadran, J.C.

(1) In this revision petition, the learned Government Advocate, vehemently argued, that no proper notice u/s 80, C. P. C., was served upon the Central Government (Union of India) and the learned District Judge of Mahasu has erred in holding otherwise.

(2) The facts of the case are, that a notice u/s 80, C. P. C., was sent by the plaintiffs to the Collector of Mahasu District, as provided in Section 80 (c), C. P. C., and a copy of that notice was also sent to the Secretary to the Government of India, Ministry of States "for necessary action."

(3) The learned counsel for the petitioners submitted, that this was not sufficient compliance with the provisions of Section 80 (a), which required that a notice in writing should be given to the Secretary of the Central Government.

(4) The short point for determination, therefore is whether the notice, admittedly, received by the Secretary to the Central Government, ceases to be a valid notice, because, it happens to be a copy of the notice, addressed to and served upon the Collector of Mahasu District.

(5) The trial Court (Senior Sub-Judge, Mahasu) holding against the plaintiffs, mainly on the basis of *Srinivasa Mudaliar v State of Madras* AIR 1955 NUO 2418 dismissed the suit, as in its opinion, the provisions of Section 80, C. P. C., had not been complied with. On an appeal, being taken to the District Judge, he reversed the finding of the trial Court, and held that the requirements of Section 80, C. P. C., had been complied with. For reasons to be stated shortly. I concur with the view of the learned District Judge.

(6) First of all, I shall refer to the authorities cited by the learned Government Advocate.

(A) AIR 1927 176 (Privy Council) . There the main point for determination was, whether it was open to the plaintiff, to bring the suit, before the expiry of two months, after the service of notice, as laid down, in Section 80, C. P. C., It was in that connection, that their Lordships indicated that:

"Section 80 is to be strictly complied with and is applicable to all forms of action and all kinds of relief."

This authority, obviously therefore, has no direct application to the facts of the present Case.

(B) *Vellayan Chettiar v. Government of the Province of Madras* AIR 1947 PC 197 This decision also has no relevancy, to the facts, of the present case. In the case, which engaged the attention of their Lordships, the facts were that the notice u/s 80, C. P. C., had been given on behalf of one plaintiff alone, but the subsequent suit was instituted by him and another. It was under those circumstances, that their Lordships, held that there was no valid notice u/s 80. The facts of the present case, as already shown, are different.

(C) AIR 1949 143 (Privy Council) . There, the facts were that, no notice was served on behalf of the plaintiffs 2 and 3 on the Government, before the filing of the suit. Under those circumstances, it was held by their Lordships, that the suit against the Government, was bad for lack of such notice. In the present case, the facts, as already indicated, are different.

(D) AIR 1955 MAD 2418 This was relied upon by the trial Court for holding against the plaintiffs. The learned District Judge, on the other hand, has rightly distinguished the facts of the present case, from those of AIR 1955 (Mad) 2418 There, the plaintiff's claim related partly to a Central subject and partly to a Provincial subject.

Consequently, notices were necessary to both the Governments. A joint notice, combining both the reliefs was given to the Secretary to the Central Government, and a copy thereof, was sent to the Chief Secretary of the Provincial Government "for information". Under those circumstances, a learned Judge of that High Court held, that the notice did not comply with the requirements of Section 80, C. P. C.

In the present case, it has to be borne in mind that Himachal Pradesh was a.

centrally administered area, at the relevant time, and the Lieutenant Governor, and the Council of Ministers were subject to the general control and directions of the President.

(7) The learned District Judge has relied on two decisions of the Court of the Judicial Commissioner, Vindhya Pradesh, reported at *Madho Prasad Salig Ram v. Vindhya Pradesh State* AIR 1955 Vin Pra 1 and *Matadin Babadin v. State of Vindhya Pradesh* AIR 1956 Vin Pra 16. In the former case, the learned Judicial Commissioner of that State, following the decisions of various High Courts in India, rightly pointed out:

"The Court should not be hypercritical in examining the language used in the notice but should interpret the same in a free and liberal spirit."

(8) Similarly, in AIR 1956 Vin-Pra 16 the learned Judicial Commissioner went to the extent of holding that

"In relation to a suit brought in the name of the Union of India, in respect of a cause of action accruing against the Government of a Part C State a notice served on the Deputy Commissioner of Part C State would be sufficient notice against the Union of India also u/s 80 (C), Civil P. C. read with Section 3 (60), General Clauses Act."

(9) In the present case, it would be relevant to point out, that in addition to the notice served upon the Collector of Mahasu District, a copy thereof, was sent to the Secretary, to the Central Government, Ministry of States "for necessary action". What could this mean? As was pointed out by Pandalai J., in *K. Ramaswami Naicker and Another Vs. Secy. of State*,

"In determining whether a particular document satisfies the requisites of a valid notice u/s 80, the Court is bound to use common sense and must look at the document and understand it in a fair and reasonable sense in the way in which the writer meant and the addressee understood it."

(10) A similar view was taken in *Secy. of State v. Nagorao Tanko* AIR 1938 Nag 415 wherein Grille J., pointed out that:

"The object of giving two months' notice to the Government, which is prescribed in Section 80, is to give Government sufficient warning of a case which is about to be brought against it, so that Government may, if it so wishes, compromise the case or afford restitution if it considers that the restitution is due, without recourse being had to a Court of law in which Government might be mulcted in costs. It is necessary to import a little commonsense into notices u/s 80. The Court should look at the wording of the notice and interpret it in the light of commonsense."

(11) Judged by this criterion, I am of the view, that the requirements of Section 80, C. P. C., have been substantially complied with, by the plaintiffs as against the Union of India. It, therefore, follows, that the learned District Judge, was

right in remanding the suit. No case is made out for interference in revision.

ORDER

(12) The revision petition is, accordingly, rejected.