

(2003) 07 KL CK 0057

High Court Of Kerala

Case No: Unnumbered L.A.A. of 2003

Chief Project Manager

APPELLANT

Vs

Aji Kurian

RESPONDENT

Date of Decision: July 15, 2003

Acts Referred:

- General Clauses Act, 1897 - Section 3
- Kerala Court Fees and Suits Valuation Act, 1959 - Section 73A

Citation: AIR 2004 Ker 206 : (2003) 3 ILR (Ker) 292 : (2003) 3 KLT 56

Hon'ble Judges: K. Thankappan, J; J.B. Koshy, J

Bench: Division Bench

Advocate: K.V. Sadananda Prabhu, for the Appellant; R. Muraleedharan Pillai, Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

J.B. Koshy, J.

Whether the word "the Government" used in Section 73A of the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960) (hereinafter referred to as the Act) would include the Central Government? If so whether the officers of the Railway also can claim benefit of the above Section treating them as officers of the Central Government while filing suits, appeals etc. on behalf of the Railways? These are the questions to be considered in this order. Section 73A was inserted by Kerala Court Fees and Suits Valuation (Amendment) Act, 2002 which provides that no court fee is payable on suits, appeals, revisions, etc. filed and presented on behalf of the Government before any court under the provisions of the Act. Section 73A of the Act is as follows:-

"73A. Special provision regarding suits, appeals, revision etc. filed by or on behalf of the Government before the Court.- Notwithstanding anything contained in any other provisions of this Act, where a suit, appeal, revision, review or other pleadings

or documents is filed or presented by or on behalf of the Government or its officers in their official capacity before any Court, no court fee shall be chargeable in respect of such suit, appeal, revision, review or other pleadings or documents under the provisions of this Act".

2. These appeals were filed by the Chief Project Manager, Railway Electrification, Egmore, Chennai. It is the contention of the appellant that in view of Section 73A of the Act no court fee is payable by the appellants. The Registry raised an objection stating that in view of the decision of this Court in [Kerala Water Authority Vs. Valsan](#), a statutory body or a local authority cannot get the benefit of the Act. According to the Senior Standing Counsel for the Railways, Railways cannot be equated to merely statutory body or local authority. It is a department of the Central Government and it is part of Central Government itself as can be seen from the provisions of the Railways Act, 1989. Before considering the question whether railway administration can be termed as part of Central Government, first we may consider the question whether Central Government is included in the term "Government" used in the State Act. According to the Government Pleader appearing for the State, exemption u/s 73A is applicable only to State Government and not to the Central Government and therefore even if Railway can be considered as part of Central Government, appeal cannot be filed without paying proper court fee.

3. We may now consider the question whether the term "the Government" used in Section 73A include Central Government The principal Act and the Amendment Act were passed by the Kerala Legislature and they are State Acts. The word "the Government" is not defined in the Act. It is the contention of the Standing Counsel for the Railways that in the absence of a definition of Government in the Act, guidance should be obtained from the General Clauses Act, 1897. The General Clauses Act, 1897 defines "Government" as follows:-

"Section 3. Definitions.- In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context:

.....

(23) "Government" or "the Government" shall include both the Central Government and any State Government;

....."

The word "Government" is not defined in the Act. It is not defined anywhere in the Constitution also. Of course under Article 12 of the Constitution "State" includes Government and Parliament of India and the Government and Legislature of each of the States and all local and other bodies within the territory of India or under the control of India. But it is only for the purpose of Article 12 of the. Constitution. Section 3(23) of the General Clauses Act quoted above is an inclusive definition. The

Allahabad High Court in [Basti Sugar Mills Co. Ltd., Basti and Another Vs. The Union of India \(UOI\) and Others](#), considered the question. There the Stamp Act, a Central Act was amended by State Act. There the Court held that since the Stamp Act is a Central Act and even though that Act was amended by the State Act, Principal Act being a Central Act, definition in the General Clauses Act will apply in the absence of a specific definition in that Act and the term "Government" will include Central Government and State Government. It was also held by that court that there is nothing in the context in which the expression "Government" finds a place in the relevant provision in Section 3 as amended in the State of Uttar Pradesh which may include that it was intended to be used in a sense different from that defined under the General Clauses Act. But in this Case the parent Act as well as the Amendment Act are State laws and not Central laws. As held by the Bombay High Court in [Rampratap Jaidayal Vs. Dominion of India](#), definition of "Government" in Section 2(23) does not apply to State laws. The first part of the definition itself shows that the General Clauses Act, 1897 is applicable only to Central Acts and Regulations and not to State Acts. The learned Senior Standing Counsel for the Railways relied on a Full Bench decision of the Jammu and Kashmir High Court in Asst. Director, C.I. v. Harnam Chand (AIR 1979 J&K 33) (FB). There the Court was considering the word "Government" used in Jammu and Kashmir Houses and Shops Rent Control Act, The Jammu and Kashmir Houses and Shops Rent Control Act exempted houses leased to Government. The question was whether the term "Government" used in that Act would include the Central Government. The Full Bench held that the affairs of the State are run by both the State Government and also the Union Government and there is nothing in the definition to exclude the Union Government and when the term "Government" is used without any prefix and the intention of the Section was to exempt the house taken on rent for running the departments engaged in the administration, and in that context the term "Government" in Section 1(3)(i) of the Act includes Union Government. On the basis of the above judgment it was contended that in this case also the term "Government" would include Central Government.

4. It is contended by the Government Pleader that the parent Act as well as the Amendment Act which introduced Section 73A relates to the payment of court fees when cases, petitions etc. are filed in the State of Kerala. It is specifically stated in the Act that the provisions of the Act will not apply even when cases and documents are presented before an Officer serving under the Central Government even if that office is situated in Kerala State. Section 2(1) of the Act provides as follows:-

"2. Application of Act- (1) The provisions of this Act shall not apply to documents presented or to be presented before an officer serving under the Central Government".

The revenue collected under the Kerala Act goes to the State only. When suits, appeals etc. are filed on behalf of the State, payment of court fee becomes a mere

formality as the exchequer of the State Government pays the court fee and it will be received back by the State. The rest is only accounting formality. But many suits and appeals were rejected because of non-payment of court fee in time by Government Pleaders and that necessitated the amendment itself. In the statement of objects and reasons it is mentioned as follows:

STATEMENT OF OBJECTS AND REASONS

A comprehensive amendment to the Kerala Court Fees and Suits Valuation Act, 1959 was made by the Kerala Court Fees and Suits Valuation (Amendment) Act, 1991 (6 of 1991). The Government have now felt that the Act need be amended again so as to effect timely changes in the court fee collected under the Act.

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4. In accordance with Schedules I & II of the Kerala Court Fees and Suits Valuation Act, 1959, Government have to pay proper court fee for filing plaint, Memorandum of Appeal, petitions, other pleadings and all other documents before Courts. Government have noticed that much difficulties are being experienced by the office of the Advocate General and offices of Government Pleaders in meeting the expenditure towards the court fees on plaints, petitions etc. presented on behalf of the State before Courts. Government have examined the matter in detail and decided to exempt the State from payment of court fees under this Act by inserting a new section, namely Section 73A".

Therefore the intention of the Act is very clear that the introduction of Section 73A is only to exclude the State Government from payment of court fees and not the Central Government. Unlike Jammu & Kashmir Houses and Shops Rent Control Act the word "the Government" used in this section refers to State Government.

5. Section 3 of the General Clauses Act, 1897 defines the words used in Central Acts and Regulations only and not State Act. As far as the State Act is concerned we refer to the "Kerala Interpretation and General Clauses Act 1125" as amended by Act 3 of 1957. The word "Government" is defined in Section 2(15) of the Kerala Interpretation and General Clauses Act, 1125 (Kerala Act7 of 1125). This is as follows:-

"2. Definitions. In this Act, and in all enactments now in force or passed after the commencement of this Act, unless there is anything repugnant in the subject or context-

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15. "Government", "the Government" or "State Government"-

(a) as respects anything done before the commencement of the Constitution, shall mean the Government of Travancore or Cochin or Travancore-Cochin, as the case may be;

(b) as respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean the Government of the State of Travancore-Cochin and

(c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean the Government of the State of Kerala;

and shall, in relation to functions entrusted under Article 258A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article;"

So the word "Government" used in the State Act, after the commencement of the 57th Amendment Act, 1956 shall mean the Government of the State of Kerala. Therefore the word "the Government" used in Section 73A of the Kerala Court Fees and Suits Valuation Act, 1959 only means Government of the State of Kerala and not the Central Government. From the context as can be seen from objects and reasons for the insertion of Section 73A no other interpretation is possible. In other words the exemption for payment of court fee granted u/s 73A is applicable only to State Government and not to Central Government. Therefore when suits and appeals are filed before a Court in the State, the Central Government has to pay court fee according to the rates prescribed under the above Act. Since Central Government is not exempted, questions whether Railway is part of Central Government or whether when Railway Employees are filing cases on behalf of Railways whether it is filed on behalf of the Central Government etc. need not be considered in this case.

In the result in these appeals court fee according to law has to be paid by the appellant. We give one month's time from today to pay the Court fee payable on these appeals.