

(1923) 10 BOM CK 0008

Bombay High Court

Case No: O.C.J. Suit No. 1375 of 1922

Sukhanand Shamlal

APPELLANT

Vs

Oudh and Rohilkhand Railway

RESPONDENT

Date of Decision: Oct. 18, 1923

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 79

Citation: AIR 1924 Bom 306 : (1924) 26 BOMLR 71

Hon'ble Judges: Fawcett, J

Bench: Single Bench

Judgement

Fawcett, J.

The preliminary issue I have to decide is whether the present suit is maintainable against the first defendant as framed.

2. This is based on the plea raised by defendant No. 1, the Oudh and Rohilkhand Railway, that that railway is owned and worked by Government, and the Secretary of State for India in Council should have been the person against whom the suit should have been instituted. Since this objection was taken, the plaintiffs have amended the title of the suit by substituting for "the Oudh and Rohilkhand Railway" the words "The Oudh and Rohilkhand Railway Administration by its Manager and Agent." Mr. Munshi for plaintiffs contends that the suit is maintainable against the Railway Administration in that form, and that the Secretary of State for India in Council need not be sued.

3. The fact that the Railway is a State Railway was eventually admitted by Mr. Munshi, after his attention had been called to the official statement about it in the Imperial Gazetteer of India, Vol. III, p. 399.

4. The suit is one in which plaintiffs seek to recover from the defendants (viz., the Oudh and Rohilkhand Railway and the Great Indian Peninsula Railway Company)

damages for nondelivery at the proper time of 400 bales of cotton, which were handed over to the defendant No. 1 for carriage to Colaba and were to be carried over the track of defendant No. 2 from Jubbulpore to Colaba.

5. Mr. Munshi's main contention is that the Indian Railways Act IX of 1890 clearly contemplates a State Railway Administration being sued by its Manager, and that this special enactment is not affected by the subsequent general enactment contained in Section 79 of the CPC 1908 that suits by or against the Government shall be instituted by or against the Secretary of State for India in Council.

6. In my opinion the Indian Railways Act of 1890 contains no clear indication that a suit against a State Railway can be brought against the Manager, and on the contrary the definition of "railway administration," in the case of a railway administered by the Government, as including the Government, suggests that a suit like this should be brought against the Government. On this point I entirely agree with the view taken in the Oudh case relating to this same railway: *Traffic Superintendents, E.B. and E.I. and O. and R. Railways v. Hafiz Abdul Rahman*. (1901) Ind. Rly. Cas. (2nd Edn.) 812. I adopt the arguments given in the report of the Court's judgment at pp. 814, 815.

7. I may add that the Statement of Objects and Reasons appended to the Bill which became Act IX of 1890 clearly shows that the inclusion of the Government or State in the definition of "railway administration" was proposed for the purposes of Chapter VII of the Act relating to the responsibility of Railway Administrations as carriers. But, apart from that, the Act itself shows that that must have been the object. It is difficult to see what other intention could have led to this alteration of the previous definition contained in Section 3 of the Indian Railways Act of 1879.

8. Mr. Munshi drew my attention to Sub-sections 72-77, 97, 140 and 145 of the Act of 1890; but there is nothing in these which indicates that the Manager and not Government should be sued in the case of a State railway. Sections 72-77 use the general words "railway administration", which under the definition in the Act includes Government. Section 97 applies only to a railway company, and not to a State railway, so there is nothing incongruous in the provision that the plaintiff in the suit contemplated shall be the Secretary of State for India in Council; and it cannot be said that this in any way suggests that the Manager and not Government is to be sued in the case of a State railway. Section 140 relates to notices like those provided for in Section 77 and not to suits: it is also purely permissive in its terms. Section 145, so far as it relates to civil Courts, merely contains provisions corresponding to those in Order XXVII, Rule 2, so as to avoid the necessity of personal attendance by the Manager, as chief representative of the railway (of. Order XXIX, Rule 3, Civil Procedure Code). It certainly cannot be read as implying that the Manager can be sued as sufficiently representing a State railway.

9. Again, it is most improbable that the legislature would intend to enact that a railway administration could be sued not in its corporate name but in the name of any particular officer or agent engaged in the administration. As long ago as 1868, it was held that the East Indian Railway Company could not be sued in the form of a Deputy Agent and a District Engineer, but must be sued in its corporate name: *Ramdas Sen v. The Collector of Moorshedabad*. (18) 2 B.L.R. (S.N.) vi. It is very unlikely that Government. or the legislature would intend to make a departure from this principle of ordinary English law, and there is certainly nothing in the Act that I can see which rebuts this presumption. A Manager of a State railway can very well represent the railway administration in its ordinary business concerns and its general management: and accordingly the definition in Section 3(6) says "railway administration in such a case" means the Manager unless there is something repugnant in the subject or context.

10. When we come to Chapter VII of the Act, however, which deals with responsibility of railway administrations as carriers, then there is (so far as suits are concerned) "something repugnant in the subject"--having regard to the general principles already mentioned--(which goes against the Manager being treated as a proper defendant, duly representing the State railway) and the Courts should therefore fall back on the subsidiary part of the definition in Section 3(6), which expressly says the Government are included in the words "railway administration". This follows the rule that where an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning, and it may be always a matter for argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration: see *Hardcastle on Statutory Law*, 3rd Edn., p. 223. The extended meaning given to the expression "railway administration" by the words "and includes the Government" does not apply appropriately in all cases where that expression occurs in the Act, e. g., Sub-sections 53-61 of the Act: but it can be availed of when the subject or context shows this is legitimate, as in the case of suits falling under Chapter VII of the Act and this case of notices u/s 77 (*Radha Shyam Basak v. Secretary of State for India* ILR (1916) Cal. 16.). Mr. Munshi virtually contended that the definition makes the Manager the equivalent of Government: but the definition does not say that "Manager includes Government: and obviously such a definition would be open to criticism.

11. The Secretary of State for India in Council being the proprietor working the railway is, therefore, in my opinion, clearly the proper defendant. The revenues of the Government of India are liable to pay any damages awarded to plaintiffs, and the suit lies against the Secretary of State u/s 32(2) of the Government of India Act, 1915, corresponding to Section 65 of the Government of India Act, 1858. That such a suit would have lain against the East India Company is sufficiently shown by the judgment in the leading case of *P. and O.S.N. Co. v. Secretary of State for India*

(1861) 5 B.H.C.R. App. A. 1. The remarks at pp. 12 and 13 refer to the particular case of the East India Company engaging in undertakings for the conveyance of goods and passengers by hire, and being liable for the negligent acts of their servants in the carrying on of such business. The authority of *P. and O.S.N. Co. v. Secretary of State for India* is recognised by this Court in *Shivabhajan v. Secretary of State for India* ILR (1904) 28 Bom. 314; 6 Bom. L.R. 65. and by the Privy Council in *Secretary of State for India v. Moment* ILR (1912) Cal. 391, 15 Bom. L.R. 27 In the circumstances, Section 79 of the CPC clearly applies.

12. It is unnecessary, therefore, to consider the application of the maxim *generalia specialibus non derogant*, relied upon by Mr. Munshi. But it may be pointed out that the enactment contained in Section 79(1) of the Code of 1908 is not really a subsequent enactment to the Indian Railways Act of 1890, for it merely reproduces the similar provision contained in Section 416 of Act X of 1877 and Act XIV of 1882.

13. I may add that it has long been held by other High Courts concerned that Government is the real and proper defendant in a suit against a State railway, and the Court should be slow to take a different view (of. *Kathama Natchiar v. Dorasinga Tever* (1875) L.R. 21. A. 169. and Halsbury, Vol. XXVII, Article 266, at p. 143). Thus, in the case of this same Oudh and Rohilkhand Railway the Secretary of State was sued in the case of *Banna Mal v. The Secretary of State for India in Council* (1901) I.L.H, 23 All. 367. The same applies to a suit against the Dacca and Mymensingh State Railway, which appears to have been brought in about 1888: see *Secretary of State for India in Council v. Budhu, Nath, Poddar* I.L.R (1892) Cal. 538. And there are many reported cases where Government have been sued for the North Western State Railway in Sind and in the Punjab (e. g., *Mathradas v. Secretary of State* (1911) 5 Sin L.R. 82, *Sawyers and Company v. The Secretary of State* ILR (1921) Lah. 133.; *The Secretary of State for India in Council v. Lovida Ram* (1894) Ind. Cas. 124.; *Mohamed Abdul Ghaffur v. The Secretary of State, for India in Council* (1897) IRC 131. and *Elahi Buksh v. Secretary of State for India* (1895) IRC 497.); and for the Eastern Bengal State Railway (e. g., *The, Secretary, of State for India in Council v. Dip Chand Poddar* ILR (1896) Cal. 306.; *Sarat Chandra Hose v. Secretary of State for India* ILR (1912) Cal. 1029.; *Radha Shyam Basak v. Secretary of State for India* ILR (1916) Cal. 16.; *Kala Chand Shaha v. Secretary of State for India* (1917) 21 C.W.N. 751. and *Surendra Lal Choudhuri v. Secretary of State for India in Council* (1916) 21 C.W.N. 1125.).

14. I accordingly answer the issue in the negative, and hold that the suit is not maintainable against the present defendant No. 1.