
(1967) 69 BOMLR 869

Bombay High Court

Case No: Civil Revision Application No. 602 of 1964

Transport Manager,
Poona Municipal
Transport and
Undertaking

APPELLANT

Vs

Maharashtra State
Road Transport
Corporation

RESPONDENT

Date of Decision: July 10, 1967

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 " Section 487

Citation: (1967) 69 BOMLR 869

Hon'ble Judges: K.K. Desai, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

K.K. Desai, J.

This is a revisional application on behalf of the original defendants against the judgment and decree dated October 11,

1963, passed by the 2nd Additional Judge, Court of Small Causes, Poona, in Civil Suit No. 2752 of 1962 in favour of the opponent-plaintiff.

2. Defendant No. 1 is the Poona Municipal Corporation, Defendant No. 2 is Poona Municipal Transport which is not a legal entity and merely one

of the activities of defendant No. 1. The suit arose out of collision between the motor vehicles belonging to the plaintiff on the one hand and the

defendants on the other. The plaintiff's case was that the collision was the result of the negligence of the driver of the vehicle of the defendants and

the plaintiff had by such negligence suffered damages claimed in the suit, The collision occurred on September 14, 1960. The defendants inter alia

contended that by reason of the provisions in Section 487 of the Bombay Provincial Municipal Corporations Act, 1949, the suit was time barred.

In connection with the cause of action in the suit, a notice under that section was necessary. A notice having not been served in accordance with

the provisions in the section, the suit was not maintainable. On these two contentions, the learned Judge below made findings in favour of the

plaintiff by observing that the Act ""comes into force only when the act is done under the said Act."" ""Running the transport undertaking is certainly

not an act done under the said Act, though the Corporation may carry on such an undertaking. Obviously, therefore, Section 487 was not

applicable to the present case.

3. Now, these findings of the learned Judge are patently erroneous. The learned Judge failed to notice the provisions in the Act relating to the

obligations of a Municipal Corporation to run public transport and numerous provisions in the Act in that connection. Mr. Dalvi for the defendants

has rightly referred to the provisions in Sections 2(70), 4(1)(D) & (E), 25(1), 40, Chapter XX containing Sections 341-362 and Section 481(2).

These sections relate to (i) definition of a transport undertaking, (ii) Transport Manager being one of the authorities under the Act, (iii) appointment

of Transport Committee by the Corporation and (iv) appointment of Transport Manager. The Chapter XX relates to ""the operation of the

Undertaking and the Construction and Maintenance of ""Works"" and provides inter alia for levy of fares and charges, acquisition and disposal of

property, matters relating to officers and servants, revenue and expenditure of the Transport Fund and accounts of the Transport Undertaking.

Sub-section (2) of Section 481 provides that in relation to legal proceedings the word ""Commissioner"" in Sub-section (1) shall apply as if the word

meant ""Transport Manager"" and for such other matters.

4. The relevant part of Section 487 runs as follows:

487. (1) No suit shall be instituted against the Corporation..., or the Transport Manager,..., in respect of any act done or purported to be done in

pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act:~^1/2

(a) until the expiration of one month next after notice in writing has been,... left at the chief municipal office..., stating with reasonable particularity

the cause of action and the name and place of abode of the intending plaintiff and of his attorney, advocate, pleader or agent, if any, for the

purpose of such suit, nor

(b) unless it is commenced within six months next after the accrual of the cause of action....

5. Now, having regard to the sections which I have referred to above, it was not possible for Mr. Agarwal for the plaintiff to deny that provision

was made in the Act to enable the Corporation to run Municipal public transport for the benefit of the general public. In the present case,

apparently, the Poona Municipal Corporation was running the Poona Municipal Transport in accordance with and in the manner authorised by the

provisions which I have referred to above. The findings that the learned Judge made were not justified in view of the above provisions. It is

abundantly clear that defendant No. 1 Corporation was running the Poona Municipal Transport, being the defendant No. 2 undertaking, and the

driver who was running the vehicle in question was doing so in pursuance of the provisions in the Act. The act of driving was in execution of the

Corporation's duties to run the Poona Municipal Transport.

6. Mr. Agarwal argued that there was no authority in the driver of the vehicle of the defendants to run it negligently. For that reason, the provisions

in the Section 487 were not applicable. There is no substance in the argument. The act of driving was authorised to be undertaken by the Act. The

section provides for serving of the notice when the authorised act is alleged by a plaintiff to have been done negligently. That was exactly the case

in this suit. The plaintiff's allegation was that the driver of the defendants' vehicle drove the same negligently. That being the cause of action in the

suit, notice u/s 487 was absolutely essential. The suit was liable to be filed within six months from the date of the accrual of the cause of action. The

plaintiff's suit was filed on August 6, 1962. The cause of action had accrued in September 1960. The suit was filed beyond six months from the

date of the accrual of the cause of action. The suit was accordingly not maintainable by reason of failure to serve notice "under Section 487. The

suit was also barred by time by reason of the provisions in the section.

7. The findings made by the learned Judge below are set aside. The decree passed by him is also set aside. The suit will accordingly stand

dismissed with costs. Rule absolute with costs.