

1961

May, 5.

THE STATE OF MADHYA PRADESH

v.

SHRI MOULA BUX AND OTHERS

(J.L. KAPUR, K. SUBBA RAO, M. HIDAYATULLAH,
J.C. SHAH and RAGHUBAR DAYAL, JJ.)

Civil Procedure—Parties—Suit against Government of Part C State—Authority to be named as defendant—Code of Civil Procedure, 1908 (V of 1908), s. 79—General Clauses Act, 1897 (X of 1897). ss. 3(3), 3(8), 3(58) and 3(60)—Government of Part C States Act, 1951 (49 of 1951) s. 38 (2).

The respondents obtained a lease for plucking tendu leaves from the Government of Vindhya Pradesh. Later, the Government cancelled the lease and sought to recover the balance of the lease money. The respondents filed a suit for damages and for injunction restraining the Government from recovering the balance of the lease money and impleaded the State of Vindhya Pradesh as the defendant. They contended that the suit was incompetent as the proper defendant was the Union of India and not the State of Vindhya Pradesh.

Held, that the State of Vindhya Pradesh was the proper defendant to be sued and that the suit was properly filed. Under s. 3 (58) of the General Clauses Act "State" meant *inter alia* a Part C State and under Art. 239 (1) the Part C State was administered by a Lieutenant Governor if the President so ordered. Thus Part C States had a separate existence and were not merged with the Central Government. Though 'State Government' was defined by s. 3(60) *ibid* in relation to a Part C State as the Central Government the definition of 'Central Government' in relation to the administration of a Part C State meant the Lieutenant Governor within the scope of the authority under Art. 239 and thus the State Government. Thus cl. (b) of s. 79 applied and not cl. (a).

Satya Deo v. Padam Deo, (1955) 1 S. C. R. 549, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 127 of 1959.

Appeal from the Judgment and decree dated February 2, 1956, of the Court of the Judicial Commissioner, Vindhya Pradesh, in Review Application No. 15 of 1955.

B. Sen, B. K. B. Naidu and I. N. Shroff, for the appellant.

G. C. Mathur, for the respondents.

1961. May 5. The Judgment of the Court was delivered by

HIDAYATULLAH, J. This is an appeal by the State of Madhya Pradesh, which stands substituted for the State of Vindhya Pradesh under the States Reorganisation, Act, 1956, and is directed against an order of the Judicial Commissioner, Rewa, by which he modified, on review, his judgement and decree in a civil suit filed by the respondents against the State of Vindhya Pradesh. The appeal has been filed on a certificate granted by the Judicial Commissioner, Rewa.

The only question urged in this appeal is that the suit brought against the State of Vindhya Pradesh was defective, because the proper defendant was the Union of India. Since the question is one of law, it relieves us of the duty of narrating all the facts. Briefly stated, the suit was for damages valued at Rs. 1,00,000/- and for a permanent injunction against the State of Vindhya Pradesh. The suit was filed in the following circumstances: The respondents are bidi merchants, and for that purpose, had obtained on October 18, 1951 from the Divisional Forest Officer, Rewa, a lease for plucking and appropriating tendu leaves from the Makundpur Range for three years, commencing from October 18, 1951 on payment of Rs. 1,63,000/- per year (Ex. P. 85). For some reasons into which it is not necessary to go, this contract was cancelled, and the right was put up for auction, but no bidders came. The Government therefore, demanded the yearly instalments, claiming them under the contract as the difference between the original contract amount less the

1962

*The State of
Madhya Pradesh*
v.
*Shri Moula
Bux and others*

*M. Hidayatullah
J.*

1961

*The State of
Madhya Pradesh
v.
Shri Moula Bux
and others*

*M. Hidayatullah
J.*

amount fetched by way of fresh auction, which was nil. The suit was filed for a perpetual injunction against this claim and for damages on the averment that the State of Vindhya Pradesh was guilty of breach of the contract.

The trial Judge decreed both the parts of the claim, placing the damages at Rs. 36,570/-. Appeals were filed by both sides before the Judicial Commissioner, the appeal of the State Government was allowed and that of the plaintiffs dismissed, resulting in the dismissal of the entire suit. The Judicial Commissioner held that the State of Vindhya Pradesh was not a juristic entity and the suit ought to have been filed against the Union of India. On an application for review the Judicial Commissioner held that there was an error apparent on the face of his earlier judgment, and that the State of Vindhya Pradesh could be legally sued. He accordingly granted review, and modified his judgment and decree by upholding the claim for perpetual injunction, but he dismissed the claim for damages on merits. It is against this order that the present appeal has been filed with certificate.

Prior to the formation of the State of Vindhya Pradesh, a Union of 35 States in Baghelkhand and Bundelkhand had been formed by the Rulers in March, 1948. On December 26, 1949, this Union merged with India, and on January 22, 1950, the United State of Vindhya Pradesh became a Chief Commissioner's Province under the Government of India Act, 1935. On the commencement of the Constitution, the Chief Commissioner's Province of Vindhya Pradesh became a Part C State administered by the President. In September, 1951, an Act known as the Government of Part C States Act, 1951, was passed by Parliament, and under it, a Lieutenant-Governor was appointed for Vindhya Pradesh. In 1956, under the States Reorganisation Act, 1956, this Part C State became a part of the State of Madhya Pradesh.

The suit was filed on May 11, 1953, after notices under s. 80 of the Code of Civil Procedure were served, *inter alia*, on the Secretary, Forests and Industries Department, Vindhya Pradesh and the Collector of Rewa. The defendants raised the plea for the first time in appeal before the Judicial Commissioner that the suit was filed against a wrong defendant. According to them, the proper defendant was the Union of India. The Judicial Commissioner, relying upon Art. 300 of the Constitution and the definition of "State" in Art. 264, which did not include Part C States, held that the State of Vindhya Pradesh was not a juristic entity, and that the suit could not be filed against it. Later, on an application for review, he held that Art. 300 was not applicable to suits by or against Part C States, and he, therefore, considered the matter in the light of s.79 of the Code of Civil Procedure. Before him, a notification issued by the President appointing the Lieutenant-Governor as a person authorised under Order 27 of the Code of Civil Procedure was produced, to which earlier his attention had not been called. He, therefore, held that, in view of the provisions of s. 79 and the definition of "State Government" in s. 3(60) of the General Clauses Act, the proper defendant was, in fact, the State of Vindhya Pradesh. He accordingly observed as follows :

"The previous judgement of this Court was based on the assumption that the State of Vindhya Pradesh was not a legal entity, that is, entity capable of holding property and of entering into contracts. As has been shown above this assumption was erroneous."

In the view of the matter, he reviewed his order, with the result stated above.

The provisions which are material to the discussion may now be set down. Section 79 of the

1961

*The State of
Madhya Pradesh*
v.
*Shri Moula Buz
and others*

*M. Hidayatullah
J.*

1961

*The State of
Madhya Pradesh*
v.
*Shri Moula Buz
and others*
*M. Hidayatullah
J.*

Code of Civil Procedure lays down:

- “79. In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be—
- (a) In the case of a suit by or against the Central Government, the Union of India, and
 - (b) In the case of a suit by or against a State Government, the State.”

The following definitions in the General Clauses Act, 1897, as they stood at the time, are also relevant:

“3 (8) ‘Central Government’ shall.—

* * *

- (b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include—

* * *

- (ii) in relation to the administration of a Part C State, the Chief Commissioner or Lieutenant-Governor acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be :”

3 (58) ‘State’ shall mean a Part A State, a Part B State or a Part C State :

3 (60) ‘State Government’,—

* * *

- (b) as respects anything done or to be done after the commencement of the Constitution, shall mean in a Part A State, the Governor, in a Part B State, Rajpramukh, and in a Part C State the Central Government :”

It is contended before us that s. 79, which lays down the procedure for suits by or against

Government and the authority to be named as plaintiff or defendant provides that (a) in the case of a suit by or against the Central Government, the Union of India and (b) in the case of a suit by or against the State Government, the State, shall be named as plaintiff or defendant, as the case may be. It is contended that under the General Clauses Act, s. 3 (8), "Central Government" means in relation to anything done or to be done after the commencement of the Constitution, the President, and under s. 3(60), "State Government" means as respects anything done or to be done after the commencement of Constitution, in the case of a Part C State, the Central Government. The contention, therefore, is that if the State Government means the Central Government in the case of Part C States, then under cl. (a) of s. 79 of the Code of Civil Procedure, the proper party to sue would be the Union of India. This argument was not accepted by the Judicial Commissioner, and, in our opinion, rightly.

The matter has to be looked at in this way. "State" is defined by s. 3(58) as a Part A State or a Part B State or a Part C State. This shows that wherever the word "State" is used, it includes a Part C State. In *Satya Deo v. Padam Deo* (1) it has been held by this Court that Part C States had a separate existence and were not merged with the Central Government. "State Government" is then defined in s. 3(60) in relation to a Part C State, as the Central Government and "Central Government" is defined in s. 3(8)(ii) as including the Lieutenant-Governor acting within the scope of authority given to him under Art. 239. Article 239 reads as follows :

"239(1) Subject to the other provisions of this Part, a State specified in Part C of the First Schedule shall be administered by the President acting, to such extent, as he

(1) (1955) 1 S.C.R. 549.

1961

—
*The State of
 Madhya Pradesh*
 v.
*Shri Moula Bux
 and others*
 —
M. Hidayatullah
 J.

1961

—
*The State of
 Madhya Pradesh*

v.

*Shri Moala
 Bux and others*

—
*M. Hidayatullah.
 J.*

thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him.....”

The administration of a Part C State was thus being carried on under the provisions of Art. 239, and, as has been rightly pointed out by the Judicial Commissioner, was not affected by Art. 300. On April 8, 1953, the President issued the following notification :

“S. R. O. 699”—In pursuance of clause (1) of Article 239 and clause (1) of Article 243 of the Constitution, and in supersession of the notification of the Government of India in the late Home Department No. 204/37—Judicial, dated the 5th May, 1938 and in partial modification of the notification of the Government of India in the Ministry of States No. S. R. O. 460 dated the 24th August, 1950, in so far as it relates to the Civil Procedure Code, 1908 (Act V of 1908), the President hereby directs that the functions assigned to the Central Government by Order XXVII of the First Schedule be discharged by the Lieutenant-Governor or the Chief Commissioner as the case may be, of every Part C State except the State of Manipur, in respect of such Part C State, and by the Chief Commissioner of the Andaman and Nicobar Islands in respect of those Islands.”

In view of this notification, the Lieutenant Governor became the proper authority under 0.27 of the Code Civil Procedure. By virtue of the definitions of “State” and “Central Government” read with the definition of “State Government”, the Lieutenant-Governor of the State was the proper party to be sued. The Government of Vindhya Pradesh meant the Lieutenant-Governor only by an amendment made in 1954 in the

Vindhya Pradesh General Clauses Act. Since the contract in question was entered into by the Government of Vindhya Pradesh and could not be construed as a contract with the Central Government, see *Satyee Deo V. Padam Deo* (1) the suit had to be brought against the State of Vindhya Pradesh, and the State was the proper authority to be named under s. 79(b) of the Code. In addition to this there was the Act called the Government of Part C States Act, and under s. 38(2) of that Act, all executive action of a Part C State was to be expressed to be taken in the name of the Lieutenant-Governor and the executive power of the Government was to be exercised by him, including the grant, sale, disposition or mortgage etc., of any property held for the purposes of the State. The combined effect of all these provisions was to constitute the Part C State of Vindhya Pradesh into a separate State, and under Art. 239, the administration of it was to be done by the President through such person, as he notified. Under the notification, the Lieutenant-Governor was appointed as the person to discharge the functions under O. 27 and under s. 38 (2) of the Government of Part C States Act he exercised the executive power of Government. The Government of the State of Vindhya Pradesh entered into the contract with the plaintiffs in respect of the property of the State. The definitions to which we have referred, made the State the proper authority to be sued, even though the State Government was defined in the General Clauses Act as the Central Government, because the definition of "Central Government" takes us to the Lieutenant-Governor, and from the Lieutenant-Governor we go to the State. In this view of the matter, s. 79(a) of the Code, which says that in a suit by or against the Central Government, the proper plaintiff or defendant, as the case may be, is the Union

(1) (1955) 1 S.C.R. 549.

1961

—
*The State of
 Madhya Pradesh*
 v.
*Shri Moulvi Bux
 and others*
 —
*M. Hidayatullah
 J.*

1961

—
*The State of
 Madhya Pradesh*
 v
*Shri Moula Bux
 and others*

—
M. Hidayatullah
 J.

of India, does not apply to a Part C State, and only the definition in cl. (b) of the section applies to this State, even though a Part C State. In our opinion, therefore, the decision of the Judicial Commissioner was correct.

Since no other point was urged in this appeal, it must fail, and it is accordingly dismissed with costs. There is no need to pass any order on C. M. P. No. 40 of 1960 by which the respondents asked for amendment of the plaint and addition of the Union Government as a party. The application shall be filed.

Appeal dismissed

1961

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May, 5.

THE RIVER STEAM NAVIGATION CO., LTD

v.

SHYAM SUNDAR TEA CO., LTD.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO AND
 K. C. DAS GUPTA, JJ.)

Common Carrier—Steamship Company carrying, goods by steamer in main stream—Feeder service by boats in tributary—Goods lost in transit in such service—Liability—Company, if, a common carrier in the feeder service—Test Carriers Act, 1865 (3 of 1865), s. 2.

The question whether a carrier is a common carrier or not has to be decided on its public profession and such profession may be either by public notice or by conduct. It is immaterial if the carrying is limited to particular goods or particular routes or between specified points.

Lane v. Cotton 12 Mod. 474; *Ingate v. Christie*, (1950) 3 Car. and K. 61 and *Jhonson v. Midland Rly., Co.* (1849) 4 Ex 367, referred to.