

National Electric proved before him and brought to his notice. So
Supply and that this claim of the licensee cannot be accepted
Trading Corpora- either.
tion, Private
Ltd.

v. The consequence is that this appeal of the
Punjab State licensee fails and is dismissed with costs.
and another

Mehar Singh, J.
P. D. Sharma.
J.

P. D. SHARMA, J.—I agree.
B.R.T.

APPELLATE CIVIL

Before Harbans Singh, J.

MESSRS SARDARA SINGH-NIRANJAN SINGH,—
Appellants

versus

THE SUB-DIVISIONAL OFFICER AND OTHERS,—
Respondents

First Appeal from Order No. 56 of 1958.

1962
May, 1st.

Workmen's Compensation Act (VIII of 1923)—Section 12(1)—Construction or lining of Canals—Whether "ordinary business or trade" of P.W.D. Irrigation Branch of the Government—Government—Whether liable to compensate any workman injured while doing the work in connection with the lining or construction of canals—Contractor entrusted to carry on the work—Whether liable to indemnify the Government.

Held, that there can be no manner of doubt that the main business of the Irrigation Department of the Government is to maintain the canals in proper trim and to arrange for the storage and the supply of water for irrigation and other connected purposes. It is an essential part of the Department's work to plan and lay out canals by which means the water can be supplied to the public bringing revenue to the Department. The construction of the canals cannot be separated from the lining of the canals as well as their maintenance thereafter and must be treated to be in the ordinary course of business or trade of the Irrigation Department. The State Government as the principal, was, therefore, certainly liable to pay compensation under subsection (1) of section 12 of the Workmen's Compensation

Act to any workman who is injured while doing the work in connection with the lining or construction of canals. The Government is, in its turn, entitled to be indemnified by the contractor who had been given the contract for doing the lining work.

First Appeal from the Order of Shri Ishar Singh Hora, Commissioner under Workmen's Compensation Act, Ambala, dated 28th February, 1958, granting the applicant the declaration of right as applied for, under section 12 of the Workmen's Compensation Act to the effect that the applicant was entitled to be indemnified by both sets of the respondents jointly and severally to the extent of Rs. 3,696.

H. S. WASU, ADVOCATE, for the Appellant.

S. D. BAHRI AND H. S. GUJRAL, ADVOCATES, for the Respondents.

JUDGMENT

HARBANS SINGH, J.—Facts giving rise to these Harbans Singh, J.
First Appeals from Order may briefly be stated as follows: The work of lining of Nangal Hydrel Channel was given on contract basis to a number of contractors. Certain portions of the canal were entrusted to each one of the various contractors. The portion between R.D. 157,375 and 157,500 was with M/s Sardara Singh-Narinjan Singh. On 12th of May, 1954 at about 8.30 a.m. G.M.C. Truck No. PNE 3569 loaded with *bajri* was going along the ramp leading to the canal bank when its power failed and it began to go down the slope of the ramp. It got out of control and ultimately overturned resulting in serious injuries to two of the labourers employed on the truck. The injured were removed to the hospital and the matter was reported to the Sub-Divisional Officer who sent a report to the police. It was found by the police to be a mere accident. Under the Workmen's Compensation Act Rs. 2,016 were paid by the State Government to Mehar Singh and Rs. 1,680 to Tarsem Singh in respect of the injuries suffered by them. Under sub-section (2) of section 12 the Government, after having paid the amount, as the principal,

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claimed to be indemnified by the contractor. *Inter alia*, it detained a sum of Rs. 3,696 which was due to M/s Mohinder Singh-Gurbachan Singh who were said to be the owners of the truck or the persons working the truck. It may be mentioned here that Mohinder Singh-Gurbachan Singh had also a contract of lining the canal over a portion of the canal. Mohinder Singh-Gurbachan Singh got a notice issued to the Government under section 80, Civil Procedure Code, calling upon it not to detain the amount. The Superintending Engineer, Nangal Circle, Rupar, consequently, referred the matter to the Commissioner under the Workmen's Compensation Act for determining the dispute about the right of the Government to seek indemnity. According to M/s Mohinder Singh-Gurbachan Singh, the truck in question at the time of the accident, was working under the control and for the business of M/s Sardara Singh-Narinjan Singh and consequently, both the firms Sardara Singh-Narinjan Singh and Mohinder Singh-Gurbachan Singh were made parties. A number of preliminary matters were raised which it is not necessary to detail here. The main issues were as follows :—

- (1) Whether M/s Mohinder Singh-Gurbachan Singh were appointed as contractors of M/s Sardara Singh-Narinjan Singh respondents or *vice versa* ?
- (2) Whether M/s Mohinder Singh-Gurbachan Singh were doing any work of the respondent firm or *vice versa* by means of truck No. PNE 3569 on the date and the time of accident ?
- (3) If the above issues are proved whether the respondents were not legally liable for the indemnification of the amount paid to the injured labourers ?

The position taken up by M/s Sardara Singh-Narinjan Singh was that their lining work had finished and they never got any *bajri* through this

truck. On the other hand, the position taken up by M/s Mohinder Singh-Gurbachan Singh was that about 6 or 7 days before the occurrence, through the good offices of Mehar Singh, Overseer-in-charge, the services of the truck had been lent to M/s Sardara Singh-Narinjan Singh and the labourers were also engaged and paid by that firm. The learned trial Court found that the plea taken by M/s Mohinder Singh-Gurbachan Singh was false and that the truck was not under the control of or exclusively used by M/s Sardara Singh-Narinjan Singh. However, it found that both the firms were in the nature of contractors from the government and because the Government, as the principal, had paid the compensation under sub-section (1) of section 12 of the Workmen's Compensation Act, both the firms were liable jointly and severally to indemnify the Government. Both the firms have filed separate appeals against this order.

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sional Officer
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On behalf of M/s Mohinder Singh-Gurbachan Singh, the main point raised is that construction or lining of the canal cannot be said to be the "ordinary business of trade" of the P.W.D. Irrigation Branch of the Government and hence under sub-section (1) of section 12 Government was not liable to compensate any labourer who was injured while doing the work in connection with the lining or construction of the canal. This point was not raised in the Court below but being a legal question I allowed it to be argued. As this point affected the State Government I adjourned the case on two occasions to allow the State Government to be represented.

It was argued on behalf of the appellants that the ordinary trade or business of the Irrigation Department is to supply canal water and the original work of construction of the canals may be a work ancillary to its ordinary work but cannot be said to be in the nature of its ordinary trade or business. Reliance in this respect was placed on three decided cases. In *Rabia Md. v. G.I.P. Railway* (1), the G.I.P. Railway had to electrify a railway track. In connection therewith they built a

(1) A.I.R. 1929 Bom. 179.

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power station near Kalyan and had to construct a transmission line to carry electric power to various substations on the railway. This work of constructing the transmission line had been entrusted to an independent contractor and the deceased workman died while employed by this independent contractor during the course of his duties in connection with the erection of the steel towers which had to carry the overhead cables. These electric towers were not on the railway track but were at a distance of 400 to 700 feet from the railway line which was to be electrified. Relying on a number of English rulings it was held that the construction of a power-house or transmission lines for supply of electric current to its substations for electrification of its railway line can, at best, be ancillary or incidental to but not a part of or a process in the business which the company carried on. In one of the cases relied on viz., *Wrigley v. Bagley and Wright* (2), a firm of engineers had contracted with the owners of a cotton-spinning factory to put a new driving wheel into the steam engine. A workman suffered injury during this process and it was held by Romer L.J. as follows:—

“Putting a new driving wheel into an engine cannot be said to be part of, or a process in, the business of cotton spinner any more than building the factory in which they intend to carry on their business can be said to be a part of, or process in, that business.”

The learned counsel for the appellants argued that just as the building of a factory cannot be said to be the ordinary business of a cotton-spinning company and constructing of a power station and the transmission line not part of the ordinary business of a railway company, similarly the construction of the canal cannot be considered to be a process in the ordinary business of the Irrigation Department. The learned counsel further referred to *Ghosh v. National Sheet and Metal Works* (3). In this case it

(2) (1900) 1 K.B. 780.

(3) A.I.R. 1950 Cal. 548.

was held that the painting of a factory cannot be said to be in the ordinary business of National Sheet and Metal Works. In *New India Tannis v. Aurora Singh* (4), it was held as follows:—

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“Where a company carries on the business of manufacturing goods and requires a factory for performing the manufacturing process and the factory requires a chimney, the work of occasional repairs to the chimney is no part of the ordinary trade or business of the company. The business of the company in such a case is to manufacture the goods which it produces. The manufacture may be done inside a factory and the factory may require a chimney which would occasionally need repairs but repairing the chimney can in no view be a part of the company’s trade or business whether ordinarily or extraordinarily.”

On the basis of these, the learned counsel went to the extent of urging that even the maintenance or the repairs of the railway line or the railway track would not be in the ordinary course of business of the Railway and, consequently, even the repairs and maintenance of the canals would not be in the ordinary course of the business of the Irrigation Department.

The learned counsel for the respondent, however, referred to *Perivakkal v. S. I. Railway* (5), where the learned Judges after considering the decision in *Rabia Mohammad’s case* came to the conclusion that the business of keeping the railway line in proper trim is certainly in the ordinary course of business or trade of a railway company whose main business may be to work as carriers. In that case a workman suffered injury in connection with the construction of a bridge and it was observed that inasmuch as the construction of the

(4) A.I.R. 1957 Cal. 613.

(5) A.I.R. 1935 Mad. 721.

Messrs Sardara bridge was for the maintenance of the railway line
 Singh-Narinjan as distinct from the laying of the original railway
 Singh track the same must be treated to be in the ordi-
 v. nary course of the business or trade of the rail-
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I have given my anxious thought to the entire argument and I am definitely of the view that there can be no manner of doubt that the main business of the Irrigation Department is to maintain the canals in proper trim and to arrange for the storage and the supply of the water for irrigation and other connected purposes. The question, however, is whether the original construction of the canals can be treated to be outside the scope of the ordinary business of the Irrigation Department. In my view, none of the decided cases directly assists us in deciding this point. The building of a factory for running a manufacturing process or construction of a power station and the transmission lines for supply of electric power to the substations meant for the electrification of the railway line, are quite different from the construction and maintenance of the canals so far as the Irrigation Department is concerned. In case of a manufacturing company, the erection of the factory to house the machinery, etc., can reasonably be treated as an ancillary work. Similarly it is open to the railway not to have its own power stations and transmission lines and towers and to obtain supply from an electric supply concern. The same cannot, however, be said about the Irrigation Department. It is an essential part of the Department's work to plan and lay out canals by which means the water can be supplied to the public bringing revenue to the Department. I am, therefore, of the view that the construction of the canals cannot be separated from the lining of the canals as well as their maintenance thereafter and must be treated to be in the ordinary course of business or trade of the Irrigation Department.

In view of the above, therefore, the State Government, as the principal, was certainly bound to pay compensation under sub-section (1) of section 12 of the Workmen's Compensation Act.

The question that arises next is whether any one of the firms is liable to indemnify the State Government under sub-section (2) of section 12, and if any one of these firms is liable to indemnify the State Government, whether that firm, in its turn, can claim to be indemnified by the other firm under the latter part of the sub-section (2) of section 12.

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The position taken up by M/s Mohinder Singh-Gurbachan Singh, that they had nothing to do with the carriage of material on the day in question and that the truck was entirely under the control of M/s Sardara Singh-Narinjan Singh cannot be accepted at all. Gurbachan Singh has gone into the witness-box and had made a statement which cannot be accepted. According to him, the truck belonged to this witness and Jarnail Singh and that for the purposes of the contract with the Irrigation Department he was a partner with Mohinder Singh and that Jarnail Singh had nothing to do with the contract work. It has been established on the record that the route permit was in the name of M/s Mohinder Singh-Gurbachan Singh. Statement A (Movement of truck No. PNE 3569 from 1st of May to 18th of May), clearly shows that the truck was working for M/s Mohinder Singh-Gurbachan Singh on all these days. The entry made on 11th of May, also was to the same effect but that was later on scored out and the name of Bakhshish Singh written. On 12th of May, i.e., the date of accident, ditto is put below the earlier entry. The entries on 16th of May and thereafter are again in the name of M/s Mohinder Singh-Gurbachan Singh. There is also evidence that the labour was engaged by Mohinder Singh-Gurbachan Singh and was paid by them. In view of this, there is no doubt about the matter that the truck was in the employment of M/s Mohinder Singh-Gurbachan Singh. There is no evidence that on the date of the accident or for any particular day earlier it was entirely under the control of or worked exclusively for M/s Sardara Singh-Narinjan Singh. There is, however, evidence particularly circumstantial,

Messrs Sardara Singh-Narinjan Singh which goes to indicate that at the time of the accident the truck was taking the *bajri* for M/s Sardara Singh-Narinjan Singh. Mehar Singh, " Canal Overseer, R.W. 9, had stated that the *bajri* The Sub-Divisional Officer was being carried for the work of M/s Sardara Singh-Narinjan Singh and that the ramp on which and others the said accident took place, led to the work of Harbans Singh. M/s Sardara Singh-Narinjan Singh and Chaman J. Lal. On several other matters he has given contradictory statements in the Court and before the Sub-Divisional Officer who had made a preliminary enquiry and, therefore, he is not a reliable witness at all. Yet it cannot be denied that he had categorically stated in the examination-in-chief that the ramp leads only to the work which was carried on by M/s Sardara Singh-Narinjan Singh and no cross-examination was directed challenging this statement. Bakhshish Singh, R.W. 11, who is also not a reliable witness, had similarly stated that the ramp led to the work of M/s Sardara Singh-Narinjan Singh and Chaman Lal at that time. In addition to these two witnesses we have the statement of S. Jagat Singh, S.D.O., Nabha Sub-Division, P.W. 1. In cross-examination by Mr. H. L. Chhabra, he stated as follows:—

“The way leading to the contract work of M/s Mohinder Singh-Gurbachan Singh was a different one. That way was at a distance of about 2,500 feet from the work of M/s Mohinder Singh-Gurbachan Singh.”

He had also stated—

“As there was no other work at that side on that day, therefore, I say that the truck was carrying the *bajri* of M/s Sardara Singh-Narinjan Singh on that day.”

This would meet the objection raised by the learned counsel for M/s Sardara Singh-Narinjan Singh that the case set up by M/s Mohinder Singh-Gurbachan Singh having not been accepted it

should be presumed that the *bajri* was being carried by the truck for M/s Mohinder Singh-Gurbachan Singh's own work. It having been categorically established that there were only two works which were served by the ramp on which the accident took place, namely, those of M/s Sardara Singh-Narinjan Singh and Chaman Lal and that the work of M/s Mohinder Singh-Gurbachan Singh was at a distance of 2,500 feet from there and was served by a separate ramp or passage, it is obvious that the *bajri* was being carried either for Chaman Lal or for M/s Sardara Singh-Narinjan Singh. It is nobody's case that the *bajri* was ever carried for Chaman Lal nor was any cross-examination directed in that respect. It is, therefore, not difficult to accept the evidence on the record that the truck in question was carrying *bajri* for M/s Sardara Singh-Narinjan Singh. If the truck was not under their exclusive control, then the supply of *bajri* was obviously made on a contract basis. It was up to M/s Sardara Singh-Narinjan Singh to arrange for the supply of the *bajri*, and instead of doing it themselves they had obviously entered into a contract with M/s Mohinder Singh-Gurbachan Singh for the supply of the *bajri* though the terms on which the supply was being made had not been brought on the record by either of the two firms.

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The result of the above discussion, therefore, is that the truck was engaged at the time in connection with the work of lining of the canal. This was in the course of the ordinary business or trade of the Government and the Government was, therefore, principally liable. The State Government had given the contract for doing the lining work to M/s. Sardara Singh-Narinjan Singh and the *bajri* was being brought for their work and they are, therefore, liable to indemnify the Government. The truck as well as the labourers were in the employment of M/s Mohinder Singh-Gurbachan Singh and were supplying the *bajri* under an agreement to M/s Sardara Singh-Narinjan Singh. M/s Mohinder Singh-Gurbachan Singh, in turn, are

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therefore, liable to indemnify M/s Sardara Singh-Niranjan Singh, the net result being that the Government must be indemnified ultimately by M/s Mohinder Singh-Gurbachan Singh. However, if the Government cannot recover the money from M/s. Mohinder Singh-Gurbachan Singh, the primary liability of M/s Sardara Singh-Niranjan Singh to indemnify the Government will stand, though M/s Sardara Singh-Niranjan Singh, in turn, will be entitled to get themselves indemnified from M/s. Mohinder Singh-Gurbachan Singh. From the record it appears that the Government has already detained some amount from M/s Mohinder Singh-Gurbachan Singh and if that be the case, the Government's claim would stand satisfied without its first realising the money from M/s Sardara Singh-Niranjan Singh and then M/s Sardara Singh-Niranjan Singh realising the same from M/s Mohinder Singh-Gurbachan Singh. The appeal filed by M/s Sardara Singh-Niranjan Singh is, therefore, partly accepted to the extent of modification of learned Commissioner's order in the terms stated above. The appeal filed by M/s Mohinder Singh-Gurbachan Singh will stand dismissed. In view of the fact that the question was far from clear, the parties will bear their own costs in this Court.

K.S.K.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Inder Dev Dua, J.

M/s PURAN CHAND-GOPAL CHAND,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ Application No. 1704 of 1960

1962
 May, 2nd.

East Punjab General Sales Tax Act (XLVI of 1948) as amended by Act VII of 1958—Section 2(ff)—Conversion of old ornaments into bullion—Whether involves manufacturing process—Purchase tax—Whether leviable on