

Jagat Singh
and others
v.
The State of
Punjab
and others

Dua, J.

Shamsher
Bahadur, J.

this point, as it has been dealt with at some length by the learned Chief Justice with whose reasoning and conclusion on this point I agree.

The result is that this petition fails with no order as to costs.

SHAMSHER BAHADUR, J.—While I feel bound to say that I am unable to deny the cogency of the reasoning which has led my Lord the Chief Justice to conclude that agrarian reform has never been intended by the legislature to form an essential prerequisite for imparting validity to legislation made under Article 31A(1)(a) of the Constitution of India, it seems to me that it is not necessary to decide this question in the instant case. To say that agrarian reform is an essential prerequisite to legislation under this Article would in effect add to it a new and vital limb by judicial process. The majority view of their Lordships of the Supreme Court in *Kochuni's case* however having been so clearly expressed, the question whether or not agrarian reform should be a touchstone to test the validity of legislation is not open to debate at least by this Court. I am in complete agreement with the views which have been expressed by my learned brethren that the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act L of 1948 is a measure designed to promote agrarian reform and its *vires* in any event cannot be challenged. I would concur that the petition be dismissed without any order as to costs.

B.R.T.

FULL BENCH

Before D. Falshaw, Mehar Singh and A. N. Grover, JJ.

THE UNION OF INDIA,—Appellant

versus

JASSO AND OTHERS,—Respondents

Regular First Appeal No. 281 of 1957

Tort—Master and servant—Liability of the Government for the tortious acts of its servants—Nature and extent of—

1961

Nov., 13th

Driver of a military truck carrying coal to Army Headquarters running down and fatally injuring a person—Government—Whether liable for compensation to his dependants.

Held, that the Government's immunity from actions in respect of the acts of its servants is limited to cases involving acts of State and cases involving the use of sovereign powers. In a case where the driver of a military truck carrying coal to Army Headquarters runs down and fatally injures a person, no question of any act of State can arise since acts of State can only be taken against persons not subjects of the Government concerned. Nor can it be said that carriage of coal by a military truck to the General Headquarters building at Simla, presumably for the purpose of heating the rooms, is something done in the exercise of a sovereign power, since such a thing can obviously be done by a private person. The mere fact that the truck happened to be an army truck and the driver a military employee can make no difference to the liability of the Government for damages for the tortious act of the driver.

Case referred by Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Grover, on 3rd January, 1961, to a larger Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Falshaw; Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Grover, after answering the question returned the case to a Division Bench. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Dulat and Hon'ble Mr. Justice Grover, on 10th January, 1962.

First Appeal from the decree of the Court of Shri R. S. Bindra, Senior Sub-Judge, Simla, dated the 22nd day of June, 1957, granting the plaintiffs a decree for Rs. 5,000 with proportionate costs against the defendant and further ordering that the defendant would pay 1/4th of the court-fee and 3/4th would be paid by the plaintiffs and further ordering that the Collector would be apprised accordingly and the defendant would make the payment in two months time from 22nd June, 1957.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Appellant.

MANMOHAN NATH AND S. S. MAHAJAN, ADVOCATES, for the Respondents.

ORDER

Falshaw, J.

FALSHAW, J.— The following question arising out of a first appeal in this Court has been referred to a Full Bench:—

“Whether the Union of India is liable to be sued in respect of a tort committed by a military driver while transporting coal to General Headquarters at Simla in discharge of his duties.”

Briefly the facts are that on the morning of the 7th of December, 1954, Rakha Ram deceased was run down and fatally injured by a military truck which was carrying coal and being driven by an army driver to the Army General Headquarters' building in Simla. His dependents, a widow and two children, instituted a suit for the recovery of Rs. 20,000 as damages against the Union of India alleging that the death of the deceased was due to the rash and negligent driving on the part of the soldier who was driving the truck, and that the Union of India was liable to pay the damage caused by the rashness and negligence of its employee.

The Government's defence was two-fold, firstly a denial of any negligence on the part of the driver of the truck and secondly that the Union was not liable for the tortious acts of its servants. The quantum of damages was also challenged, but the lower Court held that the death of the deceased was due to rash and negligent driving and that the Union was liable. The damages were computed at Rs. 5,000 and a decree for that amount was passed. The learned Judges who first heard the appeal of the Government against this decree, and who are now sitting with me in this Bench, felt some difficulty regarding the question of the liability of the Union of India for damages in these circumstances and hence they formulated the question set out above for reference to a larger Bench.

It is clear from the order of reference that the difficulty in deciding the question raised arose mainly out of a decision of two of us, Mehar Singh, J., and myself, in the case of *Union of India v. Harbans Singh and others* (1), in which we allowed an appeal by the Union of India against a decree for damages passed in favour of the defendants of a man who had been fatally injured by a military vehicle. We held that the Union of India can be sued as provided under Article 300 of the Constitution, in relation to its affairs in the like cases in which the Dominion of India could be sued and that when the various Government of India Acts are referred to, ultimately it is found that the Union of India can be sued on the same basis as the East India Company could be sued. The facts in that case were that a driver of the military department was driving a motor vehicle of the department under the orders of his superiors of the Defence Forces and was using the vehicle to supply meals to military personnel on duty. It appears that in fact a situation had arisen in consequence of which some detachments of troops were posted at various places in the city of Delhi and the truck concerned, driven by a military driver, was in the course of a round for delivering ration to these soldiers when the accident occurred and the deceased received his fatal injuries. In these circumstances we held that the driver was acting in the exercise of the sovereign powers of the Union Government and, therefore, no action could be taken against Government.

A study of the authorities as a whole appears to indicate that the law on the point is fairly clear and well-settled, and that the decision of any case of this kind must depend on its own facts. The first of these decisions is in the case of the *Peninsular and Oriental Steam Navigation Company v. The Secretary of State for India* (2). It was in that case that it was laid down that the Government of India would be liable for damages in the same circumstances as would have been the East

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(1) 1959 P.L.R. 30.

(2) 5 Bombay High Court Reports, Appendix A, page 1.

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India Company and this proposition has never been disputed. It was held that the Secretary of State in Council of India is liable for the damages occasioned by the negligence of servants in the service of Government if the negligence is such as would render an ordinary employer liable. The test of in what circumstances the Government is liable was laid down by Peacock, C.J., in the following words:—

“But where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by sovereign, or private individual delegated by a sovereign to exercise them no action will lie.....There is a great and clear distinction between acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them.”

On the facts of that case the Government was held to be liable for damages. The facts briefly were that some damage was caused to the horses and carriage of the plaintiff while they were passing along a public road on either side of which Government dockyard premises lay when a heavy iron casting was dropped by some dockyard servants as it was being conveyed along the road from one part of the dockyard to another. In *the Secretary of State for India in Council v. Hari Bhanji and another* (1), it was even held by Sir Charles A. Turner, C. J. and Muttusami Ayyar, J., that where an act complained of is professedly done under the sanction of municipal law, and in the exercise of powers conferred by that law, the fact that it is done by the sovereign power and is not an act which could possibly be done by a private individual, does not oust the jurisdiction of the civil Courts. That case referred to the imposition of some kind of duty on Salt.

(1) I.L.R. 5 Mad. 273.

From these authorities it would appear that the Government's immunity from actions in respect of the acts of its servants is limited to cases involving acts of State and cases involving the use of sovereign powers. In a case like the present no question of any act of State can arise since acts of State can only be taken against persons not subjects of the Government concerned, and the question which thus arises in this case is whether the act of the servant which gave rise to the suit for damages is one which was carried out in exercise of the sovereign powers of the State.

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A more or less similar question arose recently in this Court *Rup Ram v. The Punjab State and another* (1), in respect of an accident involving a motor vehicle owned by the Public Works Department of the Punjab which was being driven for the purposes of the Department as the result of which a suit was brought by the injured plaintiff. The suit was decreed to the extent of Rs. 7,000 against Durga Das, the driver of the vehicle who was impleaded as a defendant, but dismissed as against the State of Punjab. In the resultant appeal by the plaintiff two questions were referred to a Full Bench (i) does the tortious act of defendant No. 2 (Durga Das driver) in the present case fall within the category of acts done in the course of exercise of what are usually called sovereign powers of the State and (ii) can the Punjab State be held liable for damages for the tortious act in question. The leading judgment with which may lord the Chief Justice and Harbans Singh, J., agreed was delivered by Dulat, J., who after discussing the authorities observed:—

“The decided cases thus show that the State is in certain circumstances liable for the tortious act of its servant, but that the circumstances must be such as to make the relation between the State and that particular servant identical with

(1) I.L.R. (1961) 2 Punj. 325=(1961) 63 P.L.R. 231.

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the circumstances of private employment. The liability would depend not only on the nature of the act in which the servant may have been engaged but also on the nature of the employment and, of course, the nature of the tort committed. The mere fact that the act may or may not have been done in the course of governmental activity is not one way or the other conclusive.

It now remains to consider whether on the facts of present case the State is liable for the negligent act of the truck driver. It is not suggested that the truck driver had any peculiar duties assigned to him by any law or rule, nor that there was anything special about his employment. In the face of it, therefore, there seems no reason why his employer, although the State, should not shoulder the responsibility for his negligent act committed in the course of his employment just as an ordinary employer would. No consideration of public policy points to the contrary."

In these circumstances after discussing a decision of the Rajasthan High Court in *Mst. Vidhyawati v. Lokumal* (1), he went on—

"Mr. Doabia's main contention regarding the facts of the present case is that the Public Works Department of the State is not a commercial department in the sense that it is not concerned with making profits. That matter is, in my opinion, too far removed from the tortious act complained of in the present case to be of any help. As I have said, there was nothing peculiar about the employment or about the act in which the driver was at the moment engaged. Neither on principle, therefore, nor on

(1) A.I.R. 1957 Rajasthan 305.

authority, am I persuaded that the State should not be held liable for the tortious act of its servant in the same way as an ordinary employer would be. I would, in the result, answer the second question referred to us in the affirmative. The first question then would not arise.

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In the Rajasthan case referred to above the deceased was killed by being run down by a motor vehicle owned by the State of Rajasthan and driven by a driver employed by the State. The appeal was heard by Wanchoo, C.J., and Dave, J. who after considering the standard authorities held the State to be liable for damages for the rash and negligent driving of its employee. It was observed by Dave, J.—

“There is a great and clear distinction between acts done in exercise of what are usually called sovereign powers and acts done in the conduct of undertakings which may as well be carried on by private individuals.”

Applying this test to the present case it is difficult to see how it can possibly be held that such a routine task as the driving of a truck loaded with coal from some depot or store to the General Headquarters' building at Simla presumably for the purpose of heating the rooms, is something done in exercise of a sovereign power, since such a thing could obviously, be done by a private person. Such being the case, I do not consider that the mere fact that the truck happened to be an army truck and the driver a military employee can make any difference to the liability of the Government for damages for the tortious act of the driver. As I have observed earlier I do not think that any difficulty would have been felt by my learned brothers in this case, but for the decision in *Harbans Singh's case* which happened to involve a military truck and in which on the peculiar facts of that case we came to the conclusion that the driver was acting in exercise

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of a sovereign power and doing something which could not be done by private individuals. It can be said regarding that case that the truck was being driven for supplying the needs of army personnel engaged on military duties which could not be performed by civilians. It is at any rate safe to say that that case cannot be regarded as an authority for the general proposition that in no case can an action for damages be brought against the Government merely because the vehicle involved in the accident is an army truck driven by a military employee in the performance of some duty or other. The result is that I would answer the question referred to a Full Bench in the affirmative. The case may be returned to the Division Bench for consideration of any other point which may arise.

MEHAR SINGH, J.—I agree.

A. N. GROVER, J.—I concur.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw, J.

RAM CHAND,—*Petitioner*

versus

SARDARA SINGH AND ANOTHER,—*Respondents*

Civil Revision No. 447 of 1961.

*Succession Act (XXXIX of 1925)—Sections 57 and 213—
Probate of a will executed in the Punjab— Whether neces-
sary in order to set up a claim to movable or immovable
property on the basis thereof.*

1961
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Nov., 17th

Held, that the provisions of section 213(1) of the Succession Act, 1925, requiring probate do not apply to wills made outside Bengal and the local original jurisdictional limits of the High Courts at Madras and Bombay except where