

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Vyas.

EATA SHOE COMPANY LTD. (ORIGINAL PLAINTIFF), APPLICANT v. THE
UNION OF INDIA REPRESENTING THE WESTERN RAILWAY
(ORIGINAL DEFENDANT), OPONENT.*

1953

Feb. 16

Presidency Small Cause Courts Act (XV of 1882), s. 18 (b)—Suit against Union of India representing Western Railway having its Head Office at Bombay—Cause of action accruing outside jurisdiction of Court of Small Causes at Bombay—Competency of Court to try suit—"Carry on business," meaning of—Running of railway whether a business when undertaken by Government.

The Union of India, which represents the Western Railway having its Head Office at Bombay, does not carry on business within the meaning of s. 18 (b) of the Presidency Small Cause Courts Act, 1882. The Court of Small Causes at Bombay has therefore no jurisdiction to try a suit against the Union of India as representing the Western Railway in respect of a cause of action which accrues wholly outside the jurisdiction of that Court.

The context in which the word "business" is used in s. 18 (b) of the Presidency Small Cause Courts Act, 1882, requires that it should be construed in a narrow and restricted sense. It denotes commercial business, that is business carried on for the purpose of making gain or profit; it has to be business with which the ordinary incidents of commercial business can be associated. The running of a railway may be a business in the hands of a Railway Company, but not so when it is carried on by the Government of the State for the benefit of its citizens.

Under s. 18 (b) of the Presidency Small Cause Courts Act a suit can be entertained by a Small Cause Court although the cause of action may have accrued wholly outside its local limits where all the defendants (1) actually and voluntarily reside, or (2) personally work for gain or (3) carry on business, within the local limits of the jurisdiction of the Court. Where the defendant is the Union of India, the first two cases cannot apply inasmuch as in the context the word "reside" may be used only in reference to a natural and living person, and the expression "personally work for gain" may be applied to a person, corporation or company, but not the Government of the State.

Doya Narain Tewary v. The Secretary of State,⁽¹⁾ *Rodricks v. Secretary of State for India,*⁽²⁾ and *Govinda Rajulla Naidu v. Secretary of State,*⁽³⁾ followed.

Golab Rai v. Secretary of State,⁽⁴⁾ not followed.

* Civil Revision Application No. 616 of 1952.

⁽¹⁾ (1886) 14 Cal. 256.

⁽²⁾ (1912) 40 Cal. 308.

⁽³⁾ (1926) 50 Mad. 449.

⁽⁴⁾ [1939] 2 Cal. 160.

1953
 BATA
 SHOE
 COMPANY
 LTD.
 v.
 UNION OF
 INDIA
 REPRESENT-
 ING THE
 WESTERN
 RAILWAY

Smith v. Anderson,⁽¹⁾ *Brown v. The London and North-Western Railway Co.*⁽²⁾ *Dominion of India v. Gopal Chandra*,⁽³⁾ *Secretary of State v. Golabrai Paliram*,⁽⁴⁾ *Bansi v. Governor General of India*,⁽⁵⁾ and *Calcutta Motor Cycle Co. v. Union of India*,⁽⁶⁾ referred to.

CIVIL REVISION APPLICATION against the order passed by M. D. Lalkaka, Chief Judge and T. B. Desai, Judge, Court of Small Causes at Bombay, in application to the Full Court against the decision of N. M. Shah, Judge, Court of Small Causes at Bombay.

Gajendra-
gadkar J.

Purshottamdas Tricumdas, with M. G. Mani and G. M. Mani, for the applicant.

D. S. Parikh, with M. N. Majumdar, for the opponent.

Gajendragadkar J. This revisional application raises a short but important question as to the jurisdiction of the Court of Small Causes at Bombay to entertain a suit against the Union of India representing the B. B. & C. I. Railway having its Head Office at Bombay. The suit has been filed to recover Rs. 844-7-0 as the value of certain goods. The plaintiff's case is that these goods were sent by the plaintiff-company from Agra Fort to Bikarner to be carried over by the B. B. & C. I. Railway. In the process of transport, the full consignment was damaged and was not delivered to the consignee. The value of the goods short delivered is claimed by the plaintiffs as damages from the Union of India.

For the defendant a preliminary point of jurisdiction was raised. It was urged on their behalf that, since the cause of action had accrued wholly outside the jurisdiction of the Court of Small Causes, it was not competent to that Court to entertain the present suit. This plea was met by the plaintiffs on the ground that the Union of India carries on business within the local limits of the Bombay Small Cause Court within the meaning of s. 18 sub-s. (b) of the Presidency Small Cause Courts Act, XV of 1882, and if that be so, the Court would have jurisdiction to entertain the suit. The learned trial Judge upheld the plaintiffs' contention, found in their favour that he had jurisdiction to entertain the suit and decreed the claim as made in the plaint. When the matter was taken by the defendant before the full Court under s. 38 of the Presidency Small Cause Courts Act, the learned Judges who heard the application came to the

⁽¹⁾ (1880) 15 Ch. D. 247.

⁽²⁾ (1950) 55 Cal. W.N. 113.

⁽³⁾ [1952] A. I. R. Cal. 35, F.B.

⁽⁴⁾ (1863) 4 B. & S. 326.

⁽⁵⁾ [1938] A. I. R. Cal. 298.

⁽⁶⁾ [1953] A. I. R. Cal. 1.

conclusion that the Union of India could not be said to be carrying on business within the local limits of the jurisdiction of the Court of Small Causes, and so they held that the Court had no jurisdiction to entertain the suit. On that view, the application for summons presented by the plaintiffs to the trial Court was ordered to be returned to him for presentation to the proper Court. That is how the short question which we have to decide in the present revisional application is whether the Union of India, which presents the B. B. & C. I. Railway having its Head Office at Bombay, can be said to carry on business within the meaning of s. 18 sub-s. (b) of the Presidency Small Cause Courts Act.

1953
 BATA
 SHOE
 COMPANY
 LTD.
 v.
 UNION OF
 INDIA
 REPRESENT-
 ING THE
 WESTERN
 RAILWAY
 Gajendra-
 gadkar J.

Section 18 (b) confers jurisdiction on the Small Cause Court to try all suits of a civil nature within its pecuniary jurisdiction where all the defendants at the time of the institution of the suit actually and voluntarily reside, or carry on business or personally work for gain, within the local limits of the Court. The words used in this sub-section are identical with the words used in s. 20 of the Code of Civil Procedure and substantially similar to the words used in cl. 12 of the Letters Patent of this Court. The clause "carry on business" in reference to the Government of India has been judicially interpreted by the Calcutta and the Madras High Courts. But there is no reported decision of this Court where this question has been considered. We may, therefore, first consider the clause itself apart from judicial authority.

In construing this clause, it must be borne in mind that the Union of India and the Governments of different States in the Union of India are liable to be sued in the Municipal Courts of the land. It is no doubt true that in considering the question as to the liability of the State a distinction has to be made between acts of Government which are done in the purported exercise of what can conveniently be called the sovereign powers and those done in the course of undertakings which may be carried on by private individuals. Claims arising on torts or out of contracts fall in the latter category of acts, whereas acts done by the Government purely in exercise of its executive authority and in the course of governing the country may fall in the first category. The acts falling in the first category are sometimes described as governmental acts to distinguish them from other acts for which Government may be liable. As early as 1861 it was decided in the *Peninsular & Oriental Steam Navgn.*

1953
 BATA
 SHOE
 COMPANY
 LTD.
 v.
 UNION OF
 INDIA
 REPRESENT-
 ING THE
 WESTERN
 RAILWAY
 Gajendra-
 gadkar J.

Co. v. *The Secretary of State for India*,⁽¹⁾ 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. This view has never been doubted and has indeed been always acted upon. The Constitution of India makes no change in regard to the liability of the Government of India or the Governments of respective States to be sued, because art. 300 specifically provides for suits by or against the Government of India or by or against the Government of a State, in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding States might have sued or been sued if this Constitution had not been enacted. This position is different from the position under the English law which believes in the maxim that the King can do no wrong; though even in England the provisions of Crown Proceedings Act, 1947 have materially affected this fiction. There is, however, no doubt that the Union of India can be sued in a proper case.

In support of his contention, that in nationalising the B. B. & C. I. Railway the Union of India has undertaken to carry on business, Mr. Purshottam relies upon the provisions of art. 289 (3) and arts. 294 to 299 of the Constitution of India. Mr. Purshottam argues that, in dealing with the present question, we cannot overlook the fact that modern democratic States tend to take part in commercial activities, may be in order to carry out their welfare policies; and that if they do so, there is no reason why they cannot be said to carry on business at the place where the head office of the commercial activity in question is situated. It is undoubtedly true that the Union Government as well as the Governments of the respective States own property and assets, enter into contracts and undertake activities of a commercial character. In this connection, it may even be conceded in favour of Mr. Purshottam that, if the present dispute had arisen between the plaintiffs and the B. B. & C. I. Railway Company as such, it would have been open to him to contend that the railway company carried on business at its head office at Bombay and so a claim can be made against the railway company in Bombay though the cause of action may have accrued wholly outside the local limits of the jurisdiction of the Bombay Court. But the question which falls to be considered in the present revisional application is whether it can be

⁽¹⁾ (1861) 5 B. H. C. R. (Appx.) 1.

said of the Union of India that it is carrying on business in Bombay by reason of the fact that the head office of the B. B. & C. I. Railway is situated in Bombay and the answer to this question would depend upon the interpretation to be put on the word "business" used in s. 18 sub-s. (b) of the Presidency Small Cause Courts Act.

Now, it would be noticed that s. 18 (b) refers to three different cases where a suit can be entertained by the Small Cause Court at Bombay, though the cause of action may have accrued wholly outside its local limits in the three different kinds of cases. It is quite clear that two out of these cases can never arise in respect of the Union of India. The condition that the defendant actually and voluntarily resides within the jurisdiction of the Court, as well as the condition that the defendant personally works for gain within such jurisdiction, cannot be predicate of the Union of India. In the context, the word "reside" can be used only in reference to a natural and living person, and the expression "personally work for gain" can be applied to a person, corporation or company, but not to the Government of the State. It is impossible to hold that the Government of the State or of the Union of India personally work for gain in any part of the territory within their respective jurisdictions or that they voluntarily reside in any such part. This position is not disputed before us. Thus it is clear that a substantial part of s. 18 (b) is wholly inapplicable to the Union of India or to the Government of the State. Then there is another consideration which is not altogether irrelevant. If it is held that the Union of India carries on business, say, in Bombay, by reason of the fact that the head office of the B. B. & C. I. Railway Company is situated in Bombay, suits against the Union of India could be filed in the Courts at Bombay whatever the nature of the cause of action may be. In the present case, it is an accident that the claim arises out of the alleged negligence of the B. B. & C. I. Railway Company in transporting and delivering a consignment entrusted to the Company, and in that sense the claim has some connection with the alleged business whose head office is situated in Bombay. But s. 18 (b) does not require that there should be any connection, direct or indirect, between the cause of action and the business which is being carried on by the defendant within the jurisdiction of a Court. Therefore, if Mr. Purshottam is right, by reason of the fact that the head office of the B. B. & C. I. Railway is situated in Bombay, the Union of India could be sued in Bombay in respect of

1953

BATA
SHOE
COMPANY
LTD.

v.

UNION OF
INDIA
REPRESENT-
ING THE
WESTERN
RAILWAYGajendra-
gadkar J.

1953
 BATA
 SHOE
 COMPANY
 LTD.
 v.
 UNION OF
 INDIA
 REPRESENT-
 ING THE
 WESTERN
 RAILWAY
 Gajendra-
 gadkar J.

all kinds of justiciable claims against the Union of India wherever the cause of action in respect of them may have arisen. Mr. Purshottam contends that we should not hesitate to give the expression "carry on business" its proper meaning merely because the consequence of putting the said interpretation on this expression would lead to inconvenient results. That indeed is true. But before accepting Mr. Purshottam's construction of this clause, it may not be irrelevant to consider whether the construction which leads to such surprising results can be the natural and reasonable construction of the clause.

Reading s. 18 (b) as a whole, it seems to us that the context requires a somewhat narrow and restricted meaning to be placed on the word "business" used in the expression "carry on business." The word "business" denotes we think, commercial business: business carried on for the purpose of making gain or profit. It should be business with which the ordinary incidents of commercial business are associated. The person carrying on the business may contract debts to carry it on and may, therefore, be liable to be sued in respect of such debts. But the dominant, if not the sole, motive for carrying on such business is to make profit. The person who carries on the business thereby becomes a businessman, as he is described in the usual parlance by the common man. In its wider denotation, the word "business" may have a more extensive meaning than the word "trade". But in the context, we think it would be safe to adopt the definition of the word "business" laid down by Jessel, M. R., in *Smith v. Anderson*,⁽¹⁾ where the learned Judge has observed that "anything which occupies the time and attention and labour of a man, for the purposes of profit, is business". It is true that the word "business" in its most general and unrestricted sense may conceivably cover all human activities. It may even include the business of governing a country. But we are disposed to hold that the context in which the word has been used in s. 18 (b) of the Presidency Small Cause Courts Act, s. 20 of the Code of Civil Procedure and s. 12 of the Letters Patent, requires that this word should not be construed in such a wide and unrestricted sense.

It is well known that the Union of India and the Governments of respective States in India have set before themselves the ideal of a Welfare State and for achieving this ideal Governments have inevitably to carry on many undertakings which in the hands of private agencies partake of the character

⁽¹⁾ (1880) 15 Ch. D. 258.

of commerce or trade. If a private person starts a hospital for patients, it may, in a sense, be business in his hands, because the primary object of the private individual is to make a profit. But if the State starts hospitals to render service to the invalid and the sick, the dominant intention is to render social service and the motive of profit-making is totally absent. If a merchant conducts a grain-shop, it is a business. But if the State undertakes the supply of essential foodstuffs to its citizens to enforce its policy of controls, that is not business. It seems to us that activities or undertakings which may properly be treated as commercial in the hands of private agencies would not necessarily continue to partake of the same character when they are undertaken by the Government of the State in pursuit of its welfare policies. In our opinion, therefore, the fact that the running of the railway would have been treated as a business in the hands of the Railway Company would not necessarily show that it is business when it is undertaken by the Government of the State. Indeed, in regard to the running of the Railway itself as such, it is possible to take the view that it forms an important part of the governance of the State. The State naturally requires the lines of transport to be kept in order, both for the purpose of keeping internal peace and for the purpose of defending the borders of the country in case of emergency. It is true that in normal times and in an ordinary way the Railways bring income to the State. But it is difficult to hold that the Railway has been nationalised by the State for the purpose of making income or profit. The running of this railway may, and indeed does, bring profit; but such profit goes to the Public Exchequer; and that makes a material difference. That is why nationalisation is often described as socialisation. In a sense, many of the essential services which the State undertakes to render in modern times could easily be converted into business in the hands of private agencies. But it would be difficult to describe these activities as business when they are carried on by the Government of the State for the benefit of its citizens.

Incidentally, if Mr. Purshottam's contention is accepted, it would not be easy to resist the conclusion that the Union of India carries on the business of running the Railway throughout the country wherever railway stations are situated. If the running of the Railway constitutes business, *prima facie* the business is carried on at all places where railway tickets are sold and passengers are allowed to get in or get out of the

1953
 BATA
 SHOE
 COMPANY
 LTD.
 v.
 UNION OF
 INDIA
 REPRESENT-
 ING THE
 WESTERN
 RAILWAY
 Gajendra-
 gadkar J.

1953
 BATA
 SHOE
 COMPANY
 LTD.
 v.
 UNION OF
 INDIA
 REPRESENT-
 ING THE
 WESTERN
 RAILWAY
 Gajendra-
 gadkar J.

trains. Mr. Purshottam has, no doubt, invited our attention to an old English decision in *Brown v. The London and North-Western Railway Company*⁽¹⁾ where it had been held that a railway company carries on its business within the meaning of the 9 and 10 Victoria Clause 96, s. 60 only at the principal stations where the general superintendence of the whole concern is centered, and not at any station, however large, where the local management of any portions of the line is conducted subject to the supervision of the general manager at the principal station. With respect, we feel some difficulty in accepting this view. However that may be, we have come to the conclusion that the construction put by the learned Judges of the full Court on the language of s. 18 (b) was right and that the Small Cause Court of Bombay has no jurisdiction to entertain the suit.

We may now refer to the judicial decisions bearing on this point. There have been a large number of decisions of the Calcutta High Court where this question has been considered; and, broadly, it may be stated that the consensus of judicial opinion in that High Court is in favour of the construction which we have accepted. A voice of dissent has been raised in the Calcutta High Court by Choudhuri J. and Lort-Williams J. on two occasions. But the current of authority is against this view. *Doya Narain Tewary v. The Secretary of State for India*⁽²⁾ is treated as a leading case by the Calcutta High Court, and the judgment of Mr. Justice Nitter has, on the whole, been followed by the Calcutta High Court ever since it was delivered in 1886. According to this decision, the work carried on by the Government of India in governing India in respect of salt, opium, etc., although carried on by Government officers in charge of the several departments of Government, is not, properly speaking, business carried on by Government, but work carried on for the benefit of the Indian Exchaquer. It was also held that the words of s. 12 of the Letters Patent "carry on business or personally work for gain" are inapplicable to the Secretary of State for India in Council. Mr. Justice Mitter expressed the view, "that the word 'business' in s. 12 of the Letters Patent was used in a restricted sense is also indicated by the words 'personally work for gain' to be found in the same section. The latter words would be unnecessary if the word 'business' had been intended to be used in an unrestricted sense." It is true that one of

⁽¹⁾ (1863) 4 B. & S. 326.

⁽²⁾ (1886) 14 Cal. 256.

the reasons given by Mr. Justice Mitter in support of this decision was that the Secretary of State was merely a nominal person or rather a mere name. But it must be added that it was a part of the ratio adopted by Mr. Justice Mitter that the State or the Government could not be said to carry on business within the meaning of s. 12 of the Letters Patent. This view has received the approval of Sir Lawrence Jenkins in *Rodricks v. Secretary of State for India*.⁽¹⁾ The matter came before a Division Bench in an appeal from a judgment of Mr. Justice Chaudhuri, who followed Tewary's case and held that the suit filed before him was without jurisdiction. But he did so with great reluctance, and in fact he elaborately expressed his dissent from the said view. That is what encouraged the appellants to challenge the decision, and so the question had to be considered by the appellate Court as to whether Tewary's case had been properly decided or not. Both views were, therefore, canvassed before the Court of appeal. Sir Lawrence Jenkins, who delivered the judgment of the Bench, refused to entertain the challenge to the decision in Tewary's case, and he added that it is (p. 317):

"...important that matters of this kind should have all the certainty possible and that the Court should not lightly disregard a decision definitely setting a question of jurisdiction such as that which arises in this case."

For his own part said the learned Chief Justice, he preferred "to follow it as being a decision of a Bench of the Judges which has long been accepted as a governing authority." It would thus be noticed that the voice of dissent raised by Mr. Justice Chaudhuri was not accepted by the Division Bench. In 1941, a similar voice of dissent was raised by Lord-Williams J. In *Golab Rai v. Secretary of State*,⁽²⁾ Mr. Justice Lord-Williams took the view that the carriage by railway was a business within the meaning of cl. 12 of the Letters Patent and that it was carried on by the Government of India under the name of the Western Bengal Railway at its head office in Calcutta. On this view, he entertained the suit in Calcutta against the Secretary of State though the cause of action had arisen wholly outside the local limits of the jurisdiction of the Calcutta High Court. I may incidentally add that Mr. Justice Lord-Williams also held that the cause of action could be said

1953
BATA
SHOE
COMPANY.
LTD.
v.
UNION OF
INDIA
REPRESENT-
ING THE
WESTERN
RAILWAY
Gajendra-
gadkar J.

⁽¹⁾ (1912) 40 Cal. 308.

⁽²⁾ (1941) 2 Cal. 160.

1953
 BATA
 SHOE
 COMPANY
 LTD.
 v.
 UNION OF
 INDIA
 REPRESENT-
 ING THE
 WESTERN
 RAILWAY
 Gajendra-
 gadkar J.

to have partly arisen within the jurisdiction of the Calcutta High Court because notice of the intended action had been given to the Secretary of State for India-in-Council at the head office of the Western Bengal Railway at Calcutta. A third point was also decided in this case, and that was that the article of limitation applicable to such a case was 115 and not 30. So far as the Calcutta High Court is concerned, all the three propositions which were laid down by Mr. Justice Lort Williams in this case have been subsequently reversed. Vide *Dominion of India v. Gopal Chandra*⁽¹⁾ *Secretary of State v. Golabrai Paliram*⁽²⁾ at p. 302; and *Bansi v. G. G. of India in Council*⁽³⁾. In *Calcutta Motor Cycle Co. v. Union of India*⁽⁴⁾. Mr. Justice Mukharji has exhaustively considered the development of case law in the Calcutta High Court and has shown that Mr. Justice Mitter's judgment in Tewary's case is still treated with respect as good law by the Calcutta High Court.

We would like to add that before us Mr. Purshottam did not seriously support Mr. Justice Lort-Williams' view that a notice given by the plaintiff to the Union of India before the institution of the present suit is itself a part of the cause of action; and since the said notice was given in Bombay the Court of Small Causes has jurisdiction to entertain the suit. A statutory notice required by the provisions of the Railway Act as well as the Civil Procedure Code is no doubt an essential preliminary step for the valid institution of a suit; but that would not make such a notice a part of the cause of action for the suit itself. If it is borne in mind that such a notice is required to state amongst other facts the cause of action on which the proposed suit would be based and the relief intended to be claimed, it would be clear that the notice follows the cause of action and it merely paves the way for the institution of the suit itself. That is why it is an essential preliminary step and no more.

This question has been considered by the Madras High Court in *Govindarajule Naidu v. Secretary of State*⁽⁵⁾. The argument urged before the Court was that the Secretary of State for India, which must be taken to be a paraphrase for the Madras Government, carried on business within the limits of the jurisdiction of the Madras High Court, as the head quarters of the Madras Government was situated in Fort St. George. This

⁽¹⁾ (1950) 55 Cal. W.N. 113 at pp. 114-115.

⁽²⁾ [1938] A.I.R. Cal. 298 at p. 302.

⁽³⁾ [1952] A. I. R. Cal. 35, F. B.

⁽⁴⁾ [1953] A. I. R. Cal. 1.

⁽⁵⁾ (1926) 50 Mad. 449.

argument was rejected. In doing so, Coutts Trotter, C. J. considered the expression carries on business" and observed that the business intended by s. 19 of the Civil Procedure Code is a commercial business and not a business of State or Government. Mr. Justice Beasley, who delivered a separate judgment concurring with the conclusion of the learned Chief Justice, cited with express approval the decision of Mr. Justice Mitter in Tewary's case⁽¹⁾ (p. 459):

"Nor do I think" observed Mr. Justice Beasley, "that Government can be said to dwell anywhere. Whereas the words 'carry on business' apply to a corporate body and to limited companies and 'personally work for gain' to an individual or individuals, the wrd 'dwell' can only apply to an individual in a private sense and not to an entity."

Mr. Purshottam drew our attention to the observations of Mr. Justice Shah in *G. A. Randerian Ltd. v. Governor General in Council*⁽²⁾ which show that Mr. Justice Shah was disposed to accept the contention that the Union of India could be said to carry on business within the local limits of the original jurisdiction of the High Court of local limits of the original jurisdiction of the High Court of Bombay by reason of the fact that the head office of the G. I. P. Railway and the N. W. Railway was situated in Bombay. It, however, appears that Mr. Justice Shah dismissed the suit on the ground that it was not maintainable by reason of want of proper notice in accordance with the provisions of ss. 77 and 140 of the Indian Railways Act. This contention formed the subject-matter of issue No. 4. That is why the learned Judge himself stated that it was unnecessary for him to consider the question of jurisdiction which was the subject-matter of issue No. 1. It may be that this question was, therefore, not fully argued before the learned Judge. However, with respect, we do not agree with the observations incidentally made by Mr. Justice Shah on the question of jurisdiction in this suit. We are told that an appeal had been preferred against this decision, but that the matter was then compromised and the court of appeal was thus not called upon to consider this point.

We must, therefore, hold that the order made by the Full Court in returning the petitioners' plaint for presentation to the proper Court was right. The application accordingly fails and the rule is discharged with costs.

Rule discharged.

M. W. P.

⁽¹⁾ (1886) 14 Cal. 256.

⁽²⁾ (1951) O. C. J. Suit No. 1489 of 1947, decided by Shah J., on Jan. 12, 1951 (unrep.).