

The Secretary of State for India in Council Represented by the Collector of Kistna Vs. Garapati Somayya

LegalCrystal Citation : legalcrystal.com/792727

Court : Chennai

Decided On : Apr-30-1926

Reported in : AIR1926Mad1084; 97Ind.Cas.847; (1926)51MLJ446

Appellant : The Secretary of State for India in Council Represented by the Collector of Kistna

Respondent : Garapati Somayya

Judgement :

Spencer, J.

1. The plaintiff in this suit was the owner of two motor buses called 'The Republic' and 'The Albion' which plied between Ellore and Chintalapudi. He instituted this suit against the Secretary of State for India represented by the Collector of Kistna for unliquidated damages caused to him by the improper cancellation of his licence. Under the Madras Motor Vehicles Rules, which have the force of law, the District Magistrate is vested by Rule 30 with the power of issuing permits in Form G for motor vehicles which are intended to be let or plied for hire outside the City of Madras. One of the conditions in Form G is that the owner of the vehicle, if it be a motor bus, shall arrange for its examination once in every six months by a person approved by the District Magistrate. It appears that the District Magistrate cancelled the licence for the bus 'The Republic' because it was not examined by the District Board Engineer as required by the permit. It was found by the Judge in the Lower Court that the District Board Engineer was a little negligent in not inspecting the car when it was produced for inspection. Assuming, however, that the District Magistrate committed an error of judgment in cancelling the licence and that the blame for the bus not being examined as required by the conditions of the permit lay more with the Engineer than with the plaintiff, the question for our decision is whether the Government is on that account liable for damages. The District Magistrate, both in issuing the licence and in cancelling it, was acting in pursuance of a statutory authority vested in him. In such a case it was held in *Shivabhajan v. Secretary of State for India* I.L.R. (1904) B 314, and *Ross v. Secretary of State for India* 29 ML J 280, that Government was not liable for the conduct of its servants. *Sadasiva Aiyar, J.*, in the latter decision, pointed out that the Crown could not be made liable for the action of a Government servant purporting to act under a statutory power conferred upon him, because his action when he purports to exercise a statutory power is not as agent of the Crown and he quotes the leading case of *Tobin v. The Queen* (1864) 33 L J C P 199 . In *Shivabhajan v. Secretary of Slate for India* I.L.R. (1904) B 314 a chief constable seized goods in pursuance of a statutory power vested in him under Section 550 of the Criminal Procedure Code. The goods being perishable were not forthcoming when the plaintiff demanded them. The learned Judges referred to the

liability under Statute 21 and 22 Vict., c. 106 which now are represented by the Government of India Act, Section 32. In that case, as in the present case, it could not be contended that the act of the chief constable was in any sense productive of benefit to the revenues of the Government, nor was it a transaction out of which profit could be derived, and the Government had not ratified or adopted the act. In the present case the Government derived no profit by the cancellation of the licence. This case does not resemble the case in *Wasappa v. Secretary of State for India* I.L.R. (1915) B 200, where the Government retained the proceeds of the sale of property which rightfully belonged to the plaintiff. Nor is it like the case in *Mothi Rungaya Chetti v. Secretary of State for India in Council* I.L.R. (1904) M 213, where the Post Office were held liable as carriers of value payable parcels when they delivered a parcel without obtaining payment from the consignee and remitting the value to the sender. *Vijaya Ragova v. Secretary of State for India* (1884) I.L.R. 7 M 466 (FB) was an instance where the Government removed a Municipal Commissioner for misconduct. The act which the Judges treated as a tort was an act of the Government itself and not of one of its servants. The soundness of the decision has been doubted. *Katlash Chandra Nag v. Secretary of State for India* I.L.R.(1912) C 452 was a case where the plaintiff sued to recover money illegally collected by a Deputy Collector when the Act only authorised the District Magistrate to apportion the tax due on account of a punitive police force. That was an instance where the Government servant concerned was not acting in pursuance of a statutory authority. I am therefore of opinion that the learned Subordinate Judge was right in holding that the Government was not responsible for the act of the District Magistrate in cancelling the permit, assuming that the District Magistrate acted in error in so doing. That concludes the case as regards the bus 'The Republic'.

2. The permit for the bus 'The Albion' appears to have never been issued to the plaintiff though it was signed by the District Magistrate, and the failure to issue it was due to the plaintiff's delay in producing the registration certificate which he was required to have under Rule 2 of his licence, which declares that 'No motor vehicle shall be used or allowed to be used in a public place unless it has been registered in accord' ance with these rules or any other rules under the Act having application to the Madras Presidency.' The result is that the Memorandum of Objection fails and is dismissed with costs.

3. The Government have preferred an appeal on the question of costs in the Lower Court which were disallowed. The ground that appears in the Subordinate Judge's judgment for disallowing the costs is that the plaintiff had sunk a large amount of capital in motor bus service and was put to an immense loss for no fault of his. This reason for disallowing costs would be a good one if the suit had been instituted against the right defendant. When the plaintiff institutes a suit against a party who shows that he is in no way liable to, be sued and the suit fails, the defendant should get his costs. The appeal must therefore be allowed and the suit dismissed with costs and in the Lower Court.

Ramesam, J.

4. I agree, but I wish to add a few words. I do not think that the cancellation of the permit in the case of 'The Republic' by the District Magistrate on account of a breach of the conditions in the permit can be described either as a breach of contract or a tort. The District Magistrate being an officer on whom the duty of issuing permits was imposed by statutory rules, the case of a contract, such as *Mothi Rungaya Chetti*

v. Secretary of State for India I.L.R. (1904) M 213 in which the post office undertakes to carry insured parcels or the case relating to a tort, cannot therefore apply. Nor is this a case where the Government has received money belonging to the plaintiff wrongfully collected as in *Kailash Chandra Nag v. Secretary of State for India* I.L.R. (1912) C 452. I think therefore the suit is rightly dismissed as against the Secretary of State for India.

5. On the merits, I wish to make one observation. So far as 'The Albion' was concerned no permit was issued to the plaintiff. What was done was only the passing of a conditional order for the issue of a permit and the plaintiff must thank himself for not producing the registration certificate which ended in the cancellation. As to 'The Republic' it appears that the District Board Engineer wrote to the plaintiff saying that he would go to Ellore on the 7th of July and asking him to keep the car ready for inspection. The plaintiff had the car ready for inspection, but the Engineer did not go there. Afterwards the plaintiff sent letters to the District Magistrate on the 22nd and the 23rd of August and a telegram on the 20th of September. This is alleged in para. 7 of the plaint, and this fact is not denied in the written statement. It may be that the plaintiff thought that the District Board Engineer was a subordinate of the District Magistrate. We know that the District Board Engineer is a subordinate only of the President, District Board, and not of the District Magistrate though the same individual may fill both offices. But the plaintiff seems to have thought that it is the business of the District Magistrate to have the car inspected through the Engineer who was his subordinate. In doing so, no doubt he fell into a mistake. Still it looks as if the plaintiff, who was ready to have his car inspected, could get nobody to inspect it and therefore the permit was cancelled. It may be that the District Magistrate is technically right in cancelling the permit because no certificate was produced. The District Board Engineer in his examination says that it was not obligatory on him to inspect the car, though he also adds that he never declined. As the facts of this case are somewhat obscure and at any rate, if does not appear that reminders were sent to the District Board Engineer, I do not want to make it appear that my further remarks apply to this case.

6. I think it is desirable to make the rules clear that there is some officer who is bound to inspect the car. The rules should also be made clear whether the owner of the car should take the car to the place which is his head-quarters, or whether the officer may fix a place for the inspection, or whether the owner of the car should go in search of the officer. Unless these things are made clear, I think the vagueness of the rules will make it possible to so manoeuvre the situation as to catch a man technically and deprive him of the renewal of his permit. I do not think it ought to be possible for anybody to say that it is not obligatory on him to inspect. It is very inconvenient to have a rule which requires a man to have his-car inspected by a certain person, but there is nobody found to inspect the car. I do not mean that these remarks do apply to this case. I say that the rules should not be in an indefinite form.

7. I agree with my learned brother's order both as regards the appeal and the memorandum of objections.