Om Parkash Dhri and others
v.
The State of Punjab
Kapur J.

for students coming from outside the State, 12 were allotted to the recruited by government at their discretion in consultation with the Surgeon General and the rest were divided in accordance with the religions and castes and communities and it was only this last portion which was impugned. Indeed it seems to have been conceded even by the very eminent counsel who appeared for the petitioners in that case that "marks may not be the one and the only criterion." "No attack in that case was made on that portion of the order which gave discretion to the Government. That case in my opinions has no applicaition to the facts of the case now before us.

In my opinion, this application has no force and must be dismissed. I, therefore, discharge the rule, but in the circumstances of this case I leave the parties to bear their own costs.

The learned Advocate for the petitioners prayed that the case be certified under Article 132(1) of the Constitution for appeal to the Supreme Court. In my opinion it does not involve a substantial question of law as to the interpretation of this Constitution and I am therefore unable to grant any certificate.

1951

March 29th

REVISIONAL CIVIL

Before Kapur, J.

MESSRS NAGI BROTHERS, through L. DAULAT RAM, MANAGING PROPRIETOR,—*Plaintiff-Petitioner.*

versus

THE DOMINION OF INDIA, to be served through THE SECRETARY, MINISTRY OF RAILWAYS, CENTRAL SECRETARIAT, NEW DELHI,—*Defendant-Respondent.*

Civil Revision No. 6 of 1950.

Displaced Persons (Institution of Suits) Act XLVII of 1948—Section 4—Union of India—Whether "actually or voluntarily resides or carries on business or personally

works for gain" at Delhi—Whether under section 4 Delhi Court had jurisdiction to entertain the suit against the Union.

Held that the Union of India cannot be said to actually or voluntarily reside or carry on business or personally work for gain at Delhi and therefore the Judge, Small Cause Court, Delhi, had no jurisdiction to try, the suit, under section 4 of the Displaced Persons (Institution of Suits) Act.

Petition under section 25 Provincial Small Cause Courts Act, for revision of the Order of Shri P. S. Bindra, Judge, Small Cause Court, Delhi, dated 10th August 1949, ordering that the plaint be returned for presentation to proper court. Plaintiff to pay Rs 10 as costs.

SHAMAIR CHAND, for Petitioner.

BHAGWAT DYAL, for Respondent.

JUDGMENT.

This is a rule directed against an order of Mr. Bindra, Small Cause Court Judge, Delhi, holding that the Courts in Delhi had no jurisdiction to entertain the suit. The rule was issued by my learned brother Khosla, J., on the 21st March 1950.

As the question has now assumed some importance I took some time to decide the case. The plaintiff-petitioner booked some goods from Lahore to Baroda, but the goods were never delivered and he brought a suit in Delhi for recovery of Rs. 321 as damages against the Dominion of India through the Ministry of Railways. The plaintiff, who is a displaced person, relied on section 4 of the Displaced Persons (Institution of Suits) Act, Act XLVII of 1948, which gives the displaced persons the right to institute suits in Courts within the local limits of whose jurisdiction they reside provided the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides or carries on business, or personally works for gain in India and is not a displaced person. There is no doubt that the defendant, the Dominion of India, is not a displaced person. But

Messrs Nagi Brothers v. The Dominion of India

Khosla J.

can it be said that it actually and voluntarily resides or carries on business or personally works for gain in India ?

With the State starting commercial and industrial enterprises this question does assume a degree of importance which it did not have before, but from the reported cases which are contained in our Law Reports it appears that the Dominion of India and now the Union of India cannot be brought within the definition of the phrase " carry on business or personally work for gain in India. " As long ago as the year 1887 it was held by a Division Bench of the Calcutta High Court that the Government of India could not be said to be carrying on business within the meaning of these words of the section. There the interpretation was of section 12 of the Letters Patent " carry on business or personally work for gain ". In *Subharaya Mudali* v. *The Government* (1), Scotland, C.J., had held that by section 12 of the Letters Patent a personal attendance to business was intended, although the learned Chief Justice did apply these words to the Government. But in a later judgment of the Calcutta High Court, *Doya Narain Tewary* v. *The Secretary of State for Indian in Council* (2), a Division Bench of that Court disagreed with this judgment and held that these words were inapplicable to the Secretary of State for India in Council. The argument was addressed that although the business of governing the country was not business within the meaning of section 12 of the Letters Patent still as the Government was carrying on various trades such as the trades in opium and salt the Secretary of State would come within the words of that section. Mitter, J., with whom Trevelyan, J., concurred, said at p. 274—

> " But these trades are not carried on by the defendant in this case. As already observed the words carrying on of a business or trade are inapplicable to this case.

(1) 1 Mad. H. C. 286.
(2) (1886) I. L. R. 14 Cal 256.

> These trades, if they can be properly called trades, are carried on in one sense by the Government officers in charge of them, but they are so carried on for the benefit of the Indian Exchequer."

In a later judgment of the Calcutta High Court, *Rodricks* v. *Secretary of State for India* (1), this judgment was followed by another Division Bench. The principle there enunciated was—

> "The Court has no jurisdiction to entertain a suit brought against the Secretary of State for India in Council, where the cause of action has arisen wholly outside the ordinary original civil jurisdiction of this Court, on the sole ground that the Secretary of State for India in Council dwelt or carried on business or personally worked for gain within the local limits of Calcutta, the capital of India at the time of the institution of this suit."

The High Court of Lahore in a Single Bench judgment by Hilton, J., in *R. J. Wyllie and Co.* v. *Secy of State* (1), followed the Calcutta view. More recently a Division Bench of the Calcutta High Court (Harries C. J. and Banerjee J.) in *Dominion of India* v. *M/S. R. C. K. C. Nath and Co.* (2), said—

> "So far as defendant 1, the Dominion of India, is concerned, I think, the same principle applies, which was applicable in suits against the Secretary of State for India in Council."

This was a case where the plaintiff had brought a suit against the Governor-General of India in Council for damages for short delivery of goods which, he alleged,

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(1) I. L. R. (1913) 40 Cal. 308.
(2) 1930 A. I. R. (Lah.) 818.
(3) 1950 A. I. R. (Cal.) 207.

Messrs Nagi Brothers
v.
The Dominion of India

Khosla J.

he entrusted to the Railway Administration for carriage from Aligarh to Khulna which was in the Dominion of Pakistan. The researches into the Law Reports do not show that the principle which would be applicable to commercial corporations has ever been applied to the Government. At least I am not aware of any case and none has been cited at the Bar which would show that the principle laid down in *Doya Narain Tewary's case* has ever been dissented from in this country. I, therefore, dismiss this petition and discharge the rule, but in view of the importance and newness of this case in regard to the Dominion of India I do not think the opposite party are entitled to any costs.

CRIMINAL ORIGINAL

Before Khosla and Falshaw, JJ.

1951

April 12th.

S. KAPUR SINGH, I.C.S.,—*Petitioner.*

versus

L. JAGAT NARAIN, EDITOR, PRINTER and PUBLISHER of the daily "HIND SAMACHAR" JULLLUNDUR,—*Respondent.*

Criminal Original No. 3 of 1951.

Contempt of Court—Commissioner appointed under the Public Servants Inquiries Act (XXXVII of 1950)—Whether a Court—If so, whether it is subordinate to the High Court —Technical Contempt—Punishment for—Rule stated—Contempt of Courts Act (XII of 1926) Sections 2 and 3.

Held, that the Commissioner appointed under the Pubilc Servants Inquiries Act though not competent to give final decision is nonetheless a court as he has the powers of a court regarding the summoning of witnesses and other matters.

Held further, that the Commissioner is a Court subordinate to the High Court under section 2 of the Contempt of Courts Act read with section 8 of the Public Servants Inquiries Act and Articles 226 and 227 of the Constitution of India. High Court has the power to punish the offender