

APPELLATE CIVIL.

Before Falshaw and Dua, JJ.

UNION OF INDIA THROUGH CHIEF ADMINISTRATOR,
EASTERN PUNJAB RAILWAY, DELHI,—Defendant-
Appellant. *a*

versus

THE COMMERCIAL ASSOCIATION AMRITSAR AND
OTHERS,—Respondents.

Regular First Appeal No. 241 of 1950

1958

September, 19th *9* Indian Companies Act (VII of 1913)—Section 4—Association of more than twenty persons carrying on business for profit—Whether an illegal body—Suit by such an Association—Whether maintainable.

Held, that an association of more than twenty members who have joined together for the purpose of purchasing cloth and selling it at a profit for distribution among the members is hit by the provisions of section 4 of the Indian Companies Act, 1913, and without registration under the said Act is an illegal body. The mere fact that a number of such associations of cloth dealers were formed under the advice of the Textile Control Department for convenience of organising purchase and sales can make no difference, and will not absolve such a body from the necessity of getting itself registered if the business which it carries on is for the profits of the members. Such an association cannot maintain a suit. It is not necessary to incorporate in the Act a statutory provision barring a suit by such an illegal body, as it is a fundamental principle that an illegal body cannot maintain a suit.

Regular First Appeal from the decree of Shri Gobind Ram Budhiraja, Sub-Judge 1st Class, Amritsar, dated the 28th June, 1950, granting the plaintiff a decree for the sum of Rs. ~~486-7-0~~ with proportionate costs against defendant No. 1 and dismissing the suit against defendant No. 2.

F. C. MITAL and SURINDAR SINGH, for Appellant.

BHAGIRATH DASS and S. S. MAHAJAN, for Respondents.

18,786-7-3

JUDGMENT

FALSHAW, J.—These are two appeals (Regular First Appeal No. 241 of 1950 and Regular First Appeal No. 215 of 1952) filed by the Dominion of India, as it then was, against decrees passed in two suits by a Court at Amritsar in favour of the plaintiff, a body describing itself as the Commercial Association of Amritsar, for Rs. 18,786-7-3 and Rs. 4,393-1-3 with costs in both cases.

Union of India
through Chief
Administrator,
Eastern Punjab
Railway, Delhi
v.
The Commercial
Association
Amritsar and
others

Falshaw, J.

Although the details in the two suits are slightly different, the main points involved are common and it was on this account that the appeal against the smaller decree was transferred to this Court from the Court of the District Judge to be heard with the other case. Both suits were for the recovery of damages for the non-delivery of goods, which in each case consisted of quantities of cloth.

The plaintiff is an association formed of 312 members all of whom apparently are firms or individuals in Amritsar dealing in cloth. The suits were both instituted by four members in a representative capacity on behalf of the members of the Association as a whole, the remaining members being notified of the suit, and the four members who instituted the suit obtaining permission of the Court to sue in a representative capacity under Order 1 rule 8, Civil Procedure Code. Other persons were joined as defendants along with the Dominion of India in both suits, a firm of commission agents named Messrs Dewan Chand Shori Lal carrying on business at Bombay and Amritsar being impleaded in one suit while another firm of commission agents similarly carrying on business at Ahmedbad and Amritsar and

Union of India
through Chief
Administrator,
Eastern Punjab
Railway, Delhi

v.
The Commercial
Association
Amritsar and
others

—
Falshaw, J.

named Messrs Jagat Ram-Brij Mohan was impleaded in the other suit in which also an insurance company, the Standard General Assurance Company Limited of Calcutta, was also impleaded. In each case it was alleged that the firm of commission agents had despatched quantities of cloth to Jammu Tawi, a station on the North Western Railway. In one case the goods were despatched by the defendant firm of commission agents from Ahmedbad on the 8th of August, 1947 and in the other case the consignment of cloth was despatched from Carnac Bridge Bombay on the 14th of August, 1947. In each case the railway receipt was endorsed by the commission agents in favour of the plaintiff Association on payment of the value of the goods. The plaintiff Association thus became entitled to take delivery of the goods when received at the place of destination, but in neither case was the Association able to obtain delivery on presenting the railway receipts.

In both cases the plaintiff had applied under section 20, Civil Procedure Code, for permission to institute the suit at Amritsar on the ground that in each case one of the defendants, namely the firm of commission agents through whom the cloth was purchased, resided and carried on business at Amritsar, and this permission was granted *ex parte* by the learned Subordinate Judge who originally dealt with the suits.

In both cases technical objections were raised on behalf of the Dominion of India, both regarding the local jurisdiction of the Court at Amritsar and the *locus standi* of the plaintiff Association to bring the suit, the latter objection being based on the provisions of section 4 of the Indian Companies Act of 1913. It is only these technical

objections, together with the question whether the Government is liable for damages for the admitted non-delivery of the goods on account of the misconduct of the railway servants concerned, with which we are now concerned in these appeals.

Union of India
through Chief
Administrator,
Eastern Punjab
Railway, Delhi
v.

The Commercial
Association
Amritsar and
others

Falshaw, J.

The objection regarding local jurisdiction was overruled by the lower Court without considering whether or not there was any justification for the order passed *ex parte* in the preliminary stages on the ground that the learned Subordinate Judge who ultimately decided the cases had no power to review the order of his predecessor on this point even though it had been passed *ex parte*. This view was undoubtedly wrong, but at the same time it does not appear that any prejudice has resulted to the appellant through the decision of the suits by the Court at Amritsar, and it is not necessary to pursue this matter since, as will be seen, the suits must fail on other grounds.

A more serious objection is that based on the *locus standi* of the plaintiff Association to maintain the suit. It is contended that the Association is quite evidently an illegal body and no suit can be maintained by any such illegal body. Section 4 of the Indian Companies Act for 1913 reads—

“4 (1) No Company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament of the United Kingdom or some other Indian Law or of Royal Charter or Letters

Union of India
through Chief
Administrator,
Eastern Punjab
Railway, Delhi
v.

The Commercial
Association
Amritsar and
others

—
Falshaw, J

patent thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament of the United Kingdom or some other Indian Law or of Royal Charter or Letters Patent.

- (3) This section shall not apply to a joint family carrying on joint family trade or business and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this section. minor members of such families shall be excluded.
- (4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.
- (5) Any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding one thousand rupees."

It is not in dispute that the number of members of the plaintiff Association exceeds twenty. In fact, as I have said, there are 312 members, most of them being firms themselves having a number of partners. It is also quite evident that the members are cloth dealers who associated together for the purchase of large quantities of cloth, the Association apparently having been formed for convenience on account of the textile controls which were in existence in those days. The extent of the dealings of the Association can be seen in the accounts produced and proved by Ghasi

Ram P.W. 1 in the major suit, who is one of the four members of the Association who brought the suit in a representative capacity. These accounts, which were produced to prove the payment made to the firm of commission agents, show dealings between the Association and the firm amounting to several lacs. The same witness has also clearly stated that the goods purchased through the commission agents were to be sold at a profit. He has in fact stated that the Association had to deliver these goods at Amritsar at a profit of 10 per cent, the rate of profit being fixed by the Government. Although he has not stated so in so many words, it must be inferred that the profits realised by the sale of these quantities of cloth were to be divided among the members in accordance with the rules of the Association.

Union of India
through Chief
Administrator,
Eastern Punjab
Railway, Delhi
v.
The Commercial
Association
Amritsar and
others
Falshaw, J.

Thus *prima facie* the Association required registration under the provisions of the Companies Act and without such registration it is an illegal body, and it has been held by the Privy Council that an illegal body which contravenes the provisions of section 4 of the Companies Act cannot maintain a suit. This had been held by the Madras High Court in a judgment delivered by Kumaraswami Sastri, Officiating C.J., which was challenged in appeal in *Senaji Kapurchand and others v. Pannaji Devichand* (1). In the report the judgment of the Madras High Court is reproduced in full, and the judgment of their Lordships of the Privy Council consists simply of the following words delivered by Lord Thankerton:—

“Their Lordships need not call upon the respondents’ counsel. They agree with the judgment of the Court below, and

(1) A.I.R. 1930 P.C. 300

Union of India
through Chief
Administrator,
Eastern Punjab
Railway, Delhi

v.

The Commercial
Association
Amritsar and
others

—
Falshaw, J.

with the reasons given by that Court; accordingly, their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs."

In overruling this objection the lower Court has simply relied on the decision of Walsh and Banerji, JJ., in *Bhagwandas Singh and others v. Pinjra Pole Pashu Anathalaya*, (1) of which the headnote reads—

"Unregistered society can hold property. It can sue or be sued. There are, no doubt, great difficulties about suing it because it is necessary to sue it as a joint body, and to implead all the members thereof."

The judgment, however, is very brief and gives no indication of the facts in that particular case or what kind of a body was suing or being sued.

Some attempt was made to argue that even in spite of the provisions of section 4 there was no bar to the maintenance of a suit by the plaintiff Association. since the Act did not contain any provision to the effect that no Court could entertain a suit brought by an unregistered association of more than twenty members, it being pointed out that the Partnership Act does contain such a statutory bar against the entertainment of a suit by an unregistered partnership. The answer to this argument is that an unregistered partnership is not an illegal body and can carry on business, and the only legal disability is that such a partnership cannot institute a suit. On the other hand if an association of a certain kind is declared

(1) A.I.R. 1927 All. 789

to be an illegal body unless it is registered, there is no need to incorporate in the Act a statutory provision barring a suit by such an illegal body, and it is a fundamental principle that an illegal body cannot maintain a suit. A number of cases were cited by the learned counsel for the respondents regarding associations of more than twenty persons which were held not to contravene the provisions of section 4, but none of them was at all a parallel case, and to my mind there can be no doubt whatever that an association of more than twenty members who have banded together for the purpose of purchasing cloth and selling it at a profit for distribution among the members is hit by the provisions of section 4, and without registration under the Companies Act is an illegal body. The mere fact that a number of such associations of cloth dealers were formed under the advice of the Textile Control Department for convenience of organising purchases and sales can make no difference, and will not absolve such a body from the necessity of getting itself registered if the business which it carries on is for the profits of the members. The suit must therefore fail on this ground alone.

Union of India
through Chief
Administrator,
Eastern Punjab
Railway, Delhi
v.
The Commercial
Association
Amritsar and
others
—
Falshaw, J.

I therefore, do not think it is necessary to go into the question whether if the suit had been maintainable, the Government of India was correctly held liable for damages for non-delivery of the goods, and would accept the appeals and dismiss the suits. However, as is usual and reasonable where the plaintiffs have suffered losses though no fault of their own, I would leave the parties to bear their own costs throughout.

DUA, J.—I agree.

R. S.

Dua, J.