

Amar Nath Dogra vs Union Of India on 15 April, 1962

Equivalent citations: 1963 AIR 424, 1963 SCR (1) 657

Author: N. Rajagopala Ayyangar

Bench: N. Rajagopala Ayyangar, Bhuvneshwar P. Sinha, P.B. Gajendragadkar, K.N. Wanchoo

PETITIONER:

AMAR NATH DOGRA

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT:

15/04/1962

BENCH:

AYYANGAR, N. RAJAGOPALA

BENCH:

AYYANGAR, N. RAJAGOPALA

AIYYAR, T.L. VENKATARAMA

SINHA, BHUVNESHWAR P.(CJ)

GAJENDRAGADKAR, P.B.

WANCHOO, K.N.

CITATION:

1963 AIR 424 1963 SCR (1) 657

CITATOR INFO :

RF 1966 SC1068 (11)

R 1984 SC1004 (8)

ACT:

Suit against Government-Notice-Plaint not conforming to Civil Procedure-Maintainability-- Punjab Excise Act (Punjab Act 1 of 1914), S. 40-Code of Civil Procedure (Act v. of 1908), s. 80.

HEADNOTE:

The appellant who obtained a monopoly vend-licence for the retail sale of country-liquor, served during the subsistence of the license a notice under S. 80 of the Civil Procedure Code on the Government claiming damages for the alleged breach of certain stipulations. Thereafter the Excise

Authorities

658

suspended the license and themselves took over the management of the vend shops and instituted proceedings for the recovery of the monthly instalments due from the appellant. The appellant filed a suit for a permanent injunction against the State to restrain it from realising the balance of the license fees. That suit was withdrawn and the present suit was instituted claiming damages on various counts including damages consequent upon the suspension of the license. The Lower Court dismissed the suit for want of a proper notice under s. 80 of the Civil Procedure Code and also as barred by s. 40 of the Punjab Excise Act. It also however, recorded its findings on the merits. The High Court confirmed the dismissal of the suit but reversed the finding on one of the items of the claim. It was contended in this Court that the notice under s. 80 was proper and that the suit was maintainable.

Held, that if the first suit following the issue of a notice under s. 80 against the Government was withdrawn and a second suit tiled, if the notice satisfied the requirements of law in respect of the second suit there was no necessity for a further notice before filing the subsequent suit.

The notice should be construed not pedantically but in the light of common sense without being hypercritical about the language but as the purpose of the notice is to convey substantial information-relative to the claim on the basis of which the recipient of the notice can consider the claim of the would-be plaintiff with a view to avert the suit, if possible, the notice in the present case did not serve that purpose.

State of Madras v. C. P. Agencies, A. I. R. (1960) S.C. 1309 and Dhian Singh Sobha Singh v. Union of India, (1958) S.C.R. 781, referred to.

Held, further, that the plaint was at variance with the notice and claimed reliefs based on a cause of action arising subsequent to the notice and so even on a literal reading of s. 80 of the Civil Procedure Code, it could not be said that there had been compliance with it.

Held, also, that as regards the claim for the refund of the advance deposit, the suit did not lie as it was barred by s. 40 of the Punjab Excise Act, of 1914.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 417 of 1961. Appeal by special leave from the judgment and order dated December 31, 1958, of the Judicial Commissioner, Himachal Pradesh at Simla in Regular Civil First Appeal No. 4 of 1958.

A. V. Viswanatha Sastri and Gopal Singh, for the appellant.

V. D. Mahajan and P. D. Menon, for the respondent. 1962. April 10. The judgment of the Court was delivered by AYYANGAR, J.-This appeal, by special leave, is directed against the judgment of the Judicial Commissioner, Himachal Pradesh affirming a decree of the Senior Sub-Judge, Mandi dismissing the appellant's suit.

The facts giving rise to this appeal are briefly as follows. There was a public auction on February 25, 1952 at Mandi in Himachal Pradesh for the grant of a monopoly vend-licence to sell by retail country-liquor for the year April 1, 1952 to March 31, 1953. The appellant was the highest bidder for Rs. 1, 28, 600/- and his bid was accepted. In accordance with the terms and conditions of the auction, 1/6 of the amount of the bid had to be deposited by him within a month. This sum amounting to Rs. 21,460/- was so deposited. The appellant who had started working his licence made payments of the monthly instalments of Rs. 10,714/- each for the months of April and May. Subsequently thereto there were disputes raised by the appellant that the Excise authorities had defaulted in performing certain of the obligations undertaken by them, in the matter of the supply of liquor etc. and there was correspondence relating to it. There appear to have been attempts by the authorities to remedy the situation but apparently the appellant was not satisfied with the steps taken, with the result that he stopped his sales of liquor and thereafter served a notice under s. 80 of the Civil Procedure Code dated September 2, 1952 on Government making a claim for damages for alleged breach of certain of the stipulations. After receipt of this notice the Collector of Excise directed the suspension of the appellant's licence under s. 36 of the Punjab Excise Act, 1914 and thereafter proceeded under s. 39 of that Act to take over the management of the vend-shops which theretofore were under the management of the appellant. As the appellant did not pay the monthly instalments due from and after June, 1952 the Collector also took steps for the recovery of these instalments. The appellant then filed a suit No. 345 of 1952 on the file of the Sub-Judge of Mandi on November 26, 1952 (alongwith certain others in whose names one other liquor licence had been taken and who were evidently similarly situated) for a permanent injunction restraining the State of Himachal Pradesh from realising the balance of the licence-fees due from him. Several technical objections were raised to the maintainability of that suit and thereafter the suit was withdrawn on May 12, 1953, with liberty granted under O 23 r. 1. Civil Procedure Code to file a fresh suit. In pursuance of this liberty the suit out of which the appeal before us arises, was instituted in the Court of the District Judge, Mandi on May 5, 1953, which was substantially one for damages for breach of contract. The Union of India against whom the suit was brought, raised several defences both on the merits as well as of a technical nature, the latter being mainly two: (1) that the suit was bade for want of a proper notice under s. 80 of the Civil Procedure Code, and (2) that the suit was barred under the Punjab Land Revenue Act as applied to Himachal Pradesh as well as under the Punjab Excise Act, 1914 and the Rules made thereunder. The learned District Judge upheld the technical objections raised but also recorded his findings on the merits and the findings on most of the items of claim were against the appellant. The appellant's suit was dismissed. An appeal was thereupon taken by the appellant to the Judicial Commissioner, Himachal Pradesh who substantially agreed with every one of the findings of the learned District Judge both on the technical objections to the suit as well as on the merits in so far as they were against the appellant. He further reversed the finding on one of the items of the claim which the trial-Judge had found in appellant's favour. The appeal was accordingly dismissed. The appellant thereafter applied for a certificate of fitness under Art. 133 (1)(b) for preferring an appeal to this Court but the same having been rejected, he applied

for and obtained special leave from this Court and that is how the appeal is now before us.

It would be seen from the above narration that what may be termed the merits of the appellant's; claim for damages could arise for consideration only if the suit was maintainable. As we were clearly of the opinion that the appeal must fail principally on the point that the suit was not maintainable because of the noncompliance of the terms of s. 80 of the Civil procedure Code, we did not hear learned Counsel about the merits of the appellant's complaint regarding breach of contract on the part of the State and the relief to which the appellant would be entitled on that basis.

We shall therefore confine ourselves to the statement of the facts necessary for deciding the point regarding the suit not being maintainable because of non-compliance with the requisites of s. 80 of the Civil Procedure Code. The section runs:

"80. No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

(a) in the case of a suit against the Central Government except where it relates to a railway, a Secretary to that Government;

(b).....

(c).....

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

That to the suits to which s. 80 applies compliance with it is mandatory and that a suit which does not satisfy its terms is liable to be dismissed is not in dispute. The submission which learned Counsel pressed for our acceptance was that there had been a substantial compliance with its terms and it is to this point that we shall address ourselves.

As required by the last portion of s. 80 reading "the plaint shall contain a statement that such notice has been so delivered or left", the appellant stated in paragraph 20 of his plaint: "The plaintiff delivered a notice under s. 80, Civil Procedure Code containing the requisite particulars to the defendant through the Collector. Mandi on September 4, 1952 and through the Chief Secretary on September 3, 1952. A previous suit for injunction was withdrawn on May 12, 1953 with permission to bring a fresh suit on payment of costs which was deposited on May 13, 1953 per Challan No. 17 of 1953. Copy of the order is attached herewith".

The Union of India in the written statement filed by it pleaded that this notice did not comply with the requirements of s. 80 and the objection was formulated thus-

"A fresh notice was necessary for the institution of this suit. The plaintiff has failed to serve such a notice under s. 80, Civil Procedure Code. The notice mentioned in paragraph 20 of the plaint was- not valid; it was defective and not according to law. The present suit, more-over is at variance with the notice. The suit shall therefore be deemed to be without notice and not maintainable."

This plea raised for consideration three matters: (1) that where after a notice under s. 80 Civil Procedure Code, suit is instituted but that suit is withdrawn with liberty to file a fresh suit, it is the requirement of s. 80, Civil Procedure Code that there should be a fresh notice before the second suit is instituted., (2) that the allegations in the plaint and the reliefs claimed in it were at variance with the cause of action and reliefs stated in the notice issued under s. 80, and (3) that the notice itself was defective as not complying with the requirements of s.

80. We, do not consider that there is much substance in the first objection we have set out above. If the plaint which is being considered by the Court has been preceded by a notice which satisfies the requirements of H. 80, Civil Procedure Code, then the fact that before the plaint then under consideration, there had been another plaint which had been filed and withdrawn cannot, on any principle, be held to have exhausted or extinguished the vitality of the notice issued.

We consider it necessary to concentrate mainly upon the second of the objections raised, viz. that there was substantial disconformity between the plaint filed by the appellant and the notice under s. 80 which was relied on in paragraph 20 of the plaint. It is necessary for this purpose to analyse somewhat closely the allegations and reliefs in the plaint, as well as in the notice to see how far the disconformity and variance pleaded by the respondent has been made out. We shall begin with the plaint. After reciting the auction dated February 25, 1952 under which the vend-licence was leased to the appellant for the year 1952-53 and the material terms and conditions of the auction, the plaint alleged in paragraph 2 that the defendant had broken the contract which entitled the plaintiff to file a suit for damages. The several heads of claim which went to make up the total of the damages for which a decree was prayed were set out in paragraphs 3 to

20. The first head of claim was in relation to loss of profits stated to have arisen on account of inadequate supply of liquor. This was stated in paragraph 3 where the allegation was made that there had been a deficient supply of 632 gallons during the months of May and June, 1952 on account of which the plaintiff lost Rs. 5,112 18/- in the profits that he would have derived if the supply had been properly made. While paragraph 4 dealt with the non supply of certain special varieties of liquor during the months of April, May and June, paragraph 5 complained that there had been a supply of kerosenic and unwholesome liquor which had been declared unfit for human consumption by the order of the authorities. The damages claimed on this account were computed in paragraph 18 of the plaint at Rs. 4,222/-, being the sum paid into the Treasury by way of excise duty in respect of liquor which had been declared unfit for human consumption. A claim was made in the later paragraph for the refund of this sum. In paragraph 6 an allegation was made that the plaintiff had bid at the figure of over one lakh and twenty thousands rupees because of the condition inserted in the terms of the auction that liquor would be supplied in pilfer-proof bottles with metal covers and because of the non-fulfilment of this condition he had lost Rs.-/8/- per bottle which totalled up to Rs. 26, 400/- on

the total number of bottles that would have been supplied to him if the contract had gone on for the full year. In addition, under the same head there was a further claim in paragraph 8 for Rs. 1,047/10/-, stated to be the loss caused by the government charging a price based on the supply in pilfer-proof bottles though the supplies were made in ordinary containers. Paragraph 7 made a claim for a sum of Rs. 5,008/11 stated to be the price of deficient quantity of liquor supplied because of the supply in undersized bottles. Paragraph 9 contained a complaint that it was a terms of the contract that empty bottles would be bought back but that this had not been done, as a result of which the plaintiff had lost Rs. 931/8/-. Paragraph 10 complained that the Government had not taken steps to suppress illicit distillation which had caused loss, though ,the loss was neither quantified nor any claim made under that head, while paragraphs 11 to 13 challenged the legality of the action taken by the Excise authorities in suspending the licence and in taking over the vend-shops under their management. In paragraph 16 the plaintiff claimed a refund of Rs. 21,460 /- which had been deposited into the Treasury at the time the licence was granted to the appellant and finally in paragraph 19 the plaintiff made a claim that by reason of government having broken the contract the plaintiff had lost a profit every month of Rs. 5,052/ for the unworked period of the year of the licence, i. e. from July 1, 1952 to March 31, 1953 which totalled Rs. 45,471/6/-. These several heads added up to Rs. 1,09,653/11/and the plaintiff went on to state:

"The plaintiff is thus entitled to a total refund and compensation of Rs. 1,09,653/11/-

the details of which are given in Schedule B' (which set out the details of the computation by which the figures which we have stated above were arrived at). The plaintiff confines his claim for damages and refund of the amounts paid by and due to him to the extent of Rs. 74,935/8/3 out of the items as may be found due to him."

Finally, after making a claim for a decree for this sum the plaintiff prayed in paragraph 22:

"In addition to the grant of the ancillary relief of the defendant being permanently restrained from recovering any license fee or any other dues from the plaintiff."

We shall now turn to the notice of suit which was relied on by the appellant as complying with s. 80, Civil Procedure Code. The notice was by a lawyer who had been instructed to serve the Collector of Mandi and the Chief Secretary, Himachal Pradesh with the notice under s. 80, Civil Procedure Code. After stating that the appellant had been the successful bidder at the auction and reciting certain of the terms of the contract, it stated:

"Whereas my client has all along, beginning from April 1, 1952 onwards, been complying with the obligations under the agreement regarding auction of the said licenses., the Government of Himachal Pradesh has miserably failed in honoring and implementing the conditions thereunder".

This was followed by an enumeration of the contravention and these were : (1) that standard sized bottles were not maintained by ware-house contractors, (2) Liquor was being supplied in bottles with paper capsules instead of in pilfer-proof bottles with metal lids, (3) that month after month in

respect of urgent demands the quantity liquor required was either inadequately supplied or not supplied at all. These complaints were followed by an exhortation to government to be alive to its obligations and liabilities and the notice proceeded, and this is the important paragraph:

"I am hereunder detailing the items and the details which have mounted the damages in the above respects as at present accrued and would request the Himachal Government to arrange for immediate payment thereof. The loss accrued to L. Amar Nath Dogra in respect of quota unsupplied or when supplied though inadequately in under sized bottles, regarding miscellaneous Excise VIII charged on supplies in ordinary bottles and for not maintaining and enforcing Buy Back system of empty bottles ; together with the return of two months of advance deposits and deposit regarding Duty and Misc. Excise VIII credited in the treasury at Sunder Nagar amounts to Rs. 74,935/8/3.

I hereby make demand of the said amounts payable to my client which may either be paid direct to him or to me without delay".

The question now for consideration is how far and to what extent there is a variance between the plaint and the notice. At the outset it might be pointed out that as at a very early stage of the suit the appellant withdrew the relief for a permanent injunction, which was not claimed in the notice and the question of this extra relief need not therefore be considered.

It would have been noticed that the plaint claim was reduced to Rs.74,935/8/3 obviously because that was the figure that was claimed in the notice of suit. In the notice however how the total of Rs. 74,935/8/3 was arrived at, in what manner the several items claimed were to be related to this figure were not set out. Nor can those details be inferred or gathered from the detailed statements which accompanied the plaint on the basis of which the several items claimed in the plaint were derived. There is one other matter which requires mention in this connection. There were two items of loss claimed in the plaint which had and could have absolutely no place in the notice because they arose only after the Government suspended the licence and later cancelled it and took over the vend-shops under Government's own management. These items were : (1) loss on the yearly quota of liquor worked out at Rs. 26,400/-, and (2) the loss of profit for the unworked period i. e., from July 1, 1952 onwards which was worked out to Rs. 45,471/6/-. If these two items are deducted from the total Rs. 1,09,653/11/-, there would be a balance of only Rs. 37,782/5/-, whereas with reference to the same items of complaint a sum of Rs. 74, 935/8/3 was claimed in the notice. Besides, there is one item which figures both in the notice as well as in the plaint regarding which the amount is certain and that is in relation to the claim for the refund of Rs.; 21,460/- being the amount of initial deposit of 1/6th of the bid amount which had been paid into the Treasury by the appellant in March, 1952. If this were deducted from Rs. 37,782/5/it would leave a sum of Rs. 16,322/5/- as against. Rs. 53,475/8/13 which could be the sum which was the subject of claim by the appellant in his notice in respect of his three items of complaint, viz., the failure to supply standard sized bottles, failure to observe the buy-back system and non-supply of liquor in pilfer-proof bottles. It would therefore be apparent from these calculations that there is a complete variance between the claim made in the notice and the claim in the plaint. We desire to make it clear that what we have here is not a case

where a claim for a definite sum in the notice is later reduced in the plaint, but one where there is no possibility of establishing any relationship between the claim made in the suit and that in the notice which precedes it. On the notice the claim under one head, might for all one knows, be for an infinitemally small sum while the other was exaggerated beyond what is found in the plaint, and hence there is no means of identifying the claim for any particular sum in the plaint with that for which a claim was being made in the notice.

There is one other aspect from which the same matter could be viewed. In the notice served by the appellant there were several heads of claim, though they all arose out of a single contract and we consider that on a reasonable and proper construction of s. 80, Civil Procedure Code the authority on whom the notice is served has a right to be informed what the claim of the party is in respect of each of the several heads. It is, no doubt, true that a notice under s. 80 is not a pleading and need not be a copy of the plaint and that no particular or technical form is prescribed for such a notice, still having regard to the object for which s. 80 has been enacted we consider that the details which it contains should be sufficient to inform the party on whom it is served of the nature and basis of the claim and the relief sought, and in so stating the position we are merely reproducing the terms of the section. No doubt, a notice has to be interpreted not pedantically but in the light of commonsense without one being hypercritical about the language but the question is whether in the notice before us there is substantial information conveyed on the basis of which the recipient of the notice could consider the claim of the would-be plaintiff and avert the suit. For the reasons already stated this question can only be answered in the negative.

Mr. Sastri invited our attention to the decision of this Court in *State of Madras v. C. P. Agencies* (1) in which Das, C. J., speaking for the Court, said:

"The object of s. 80 is manifestly to give the Government or the public officer sufficient notice for the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for."

Reliance was also placed on a later passage where the learned Chief Justice extracted a passage from the judgment of this Court reported as *Dhian Singh Sobha Singh v. Union of India* (2) which read :

"The Privy Council no doubt laid down in 54 Ind. App. 338 : (Air 1927 PC 176) that the terms of this section should be strictly complied with. That does not however mean that the terms of the notice should be scrutinized in a pedantic manner or in a manner completely divorced from commonsense."

On this line of reasoning this Court held that the notice before them sufficiently complied with the terms of s. 80. It must, however, be pointed out that this conclusion was reached on the notice which gave the details of the several heads of claim which were there made. With reference to the

notice then before the Court the learned Justice observed, after setting out the several paragraphs of the notice in which the details were set out (1) A. 1. R. 1960 S. C. 1309, (2) [1958] S.C.R. 781.

"Therefore, on a fair reading of the notice it may be said that the fact of the contract for the payment of the godown rent, the quantity of goods stored the rate at which and the period for which the claim was made and the failure of the first defendant to pay the same are sufficiently stated so as to enable the first defendant, which is the appellant before us, to know that the plaintiff's claim was about and whether the claim should be conceded or resisted".

It is precisely these details that are lacking in the present case. No doubt, there is a general complaint that Government have not conformed to the contract, but these are itemised in the paragraphs of the notice which we set out. If the notice had gone on to state the amount claimed under each of the several heads of items claimed it would have been possible for the Government to have considered whether it was worth their while to settle with the plaintiff by agreeing to pay the sum demanded. This they had never an opportunity by reason of form of the notice, and the manner in which the relief claimed was stated.

The only item regarding which it could be said that there is a quantification in the notice would be that relating to the claim for the refund of Rs. 21,460/- being the amount of advance deposit made before the licence was granted, but the plaintiff's claim in this regard is barred under the terms of a. 40 of Punjab Excise Act which runs:

"40. When a license, permit or pass is cancelled or suspended under clause (a), (b),

(o), (d) or (e) of section 36 or under section 37, the holder shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof."

The result therefore would be that the entire claim in the suit must fail reason of the combined effect of s. 80, Civil Procedure Code and s. 40 of the Punjab Excise Act.

With reference to s. 80, Civil Procedure Code there is one further submission of Mr. Sastri to which it is necessary to advert. He urged that whatever other defects there might be in the notice dated September 2, 1952, there was a literal compliance with requirements of s. 80 and that in consequence the Court was bound to treat it as valid. In this connection he pointed out that the only requirements of s. 80 relevant to the present context were that the notice should state the cause of action and the relief which was claimed. His argument was that the contract was single and entire and as the notice had stated that there had been a breach thereof, and had gone on to enumerate the several stipulations which were claimed to have been broken, the requirement that the cause of action should be stated had been complied with. Next was the requirement that the relief claimed should be stated and this also satisfied as the notice claimed damages by way of compensation and had set out the amount so claimed. He pointed out that in regard to the claim for damages the plaintiff had totalled up the items to reach the figure of Rs. 1,09,653/11/- but had confined the claim to Rs.

74,93518/3 which had been the figure at which damages had been computed in the notice and the argument therefore was that the Court would have jurisdiction to grant the relief at least in respect of those items of the claim which were common to the notice and the plaint. We consider that the validity of the notice now impugned cannot be sustained on the basis suggested. It would be noticed that when the notice dated September 2, 1952 was issued the Collector had not suspended or cancelled the licence and that the claim set out in the notice was on the basis of seeking relief for branches of stipulations in a subsisting contract. This was made clear by the paragraphs that follow that which we have extracted earlier. These run:

"Under the conditions and circumstances disclosed, my client could not be forced to pay in the fees etc. as accrued without first making good to them by you the damages and losses that have resulted hereto before on account of the Government not fulfilling the material conditions. It is therefore requested that no untoward action be proposed by the Government in that behalf, for it would otherwise be unwarranted, illegal and unjustified.

The licence, my client has been and would be willing to carry out his part as relates to auction conditions if the Government gives immediate redress in the terms aboveboard, and arrange supplied in pilfer-proof bottles. Otherwise, treating the contract determined he will be forced to take the matter to law courts in which event the Himachal Government will be liable in addition to the damages; to costs and expenses that may accrue for the stated steps."

When one comes to the plaint however, the entire basis or rather the cause of action is changed. By that date the contract had been terminated, the licence having been suspended and afterwards the Collector had taken over the management of the shops under s.39 of the Punjab Excise Act. There was, therefore a radical difference between the state of circumstances when the impugned notice was issued and when the plaint was filed which is reflected in the allegations made in the two documents and the reliefs claimed in each.

In summary, the notice was based on the breach of stipulations in a contract which had not been broken and was still subsisting. In that sense, it would be the items claimed in respect of each breach that would constitute a cause of action in the technical sense and it was on their account that the sum of Rs.74,935/8/3 was claimed as damages. In the plaint, however, the cause of action was different. By that date the allegation was that the contract had been broken by the government repudiating it and taking over the shops after cancelling the licence. The cause of action then was the breach of the entire contract and the items set out in the plaint were the heads of claim under which the damages were computed. In view of these circumstances we have no hesitation in holding that even on a very narrow and strict view of s. 80 there was no compliance with its terms.

The result therefore is that the entire claim in the suit must fail for the reasons we have indicated earlier. The appeal, therefore, fails and is dismissed. In the circumstances of this case we considered that the parties should bear their own costs in this appeal. Appeal dismissed.