

Khader Sheriff Vs. State of A.P. Rep. by Its Block Development Officer, Bandar Panchayat Samithi and anr.

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Court : Andhra Pradesh

Decided On : Sep-19-1997

Reported in : 1997(6)ALT733

Judge : Lingaraja Rath and ;J. Chelameswar, JJ.

Acts : [Administrative Tribunals Act, 1985](#) - Sections 15(2); Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 - Sections 4; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10; Limitation Act

Appeal No. : Letters Patent Appeal No. 171 of 1994

Appellant : Khader Sheriff

Respondent : State of A.P. Rep. by Its Block Development Officer, Bandar Panchayat Samithi and anr.

Advocate for Def. : P. Raghavender Reddy, S.C.

Advocate for Pet/Ap. : K. Janshi Rani and ;Shaik Mahboobvali, Advs.

Disposition : Appeal dismissed

Judgement :

J. Chelameswar, J.

1. The present L.P.A., arises out of a judgment of the learned Single Judge in A.S.No.2506 of 1987 dated 10-12-1993. The said first appeal was heard and disposed of along with another first appeal A.S.No.2572 of 1987 by common order. Both the appeals arose out of the judgment in O.S.No.10 of 1979 on the file of the Subordinate Judge's Court, Machilipatnam wherein both the appellants in the above mentioned appeals were the defendants 3 and 1 respectively.

2. O.S.No.10 of 1979 was originally filed on 18-1-1979 against the present appellant herein and two others(defendants) by the State of Andhra Pradesh represented by the Block Development Officer, Bander Panchayat Samithi, at Machilipatnam for a decree in favour of the plaintiffs for the recovery of an amount of Rs. 76,617.17 ps., and other reliefs on the ground that the defendants misappropriated the amounts belonging to the Bandar Panchayat Samithi.

3. On 24-8-1979, I.A.No.1102 of 1979 purporting to be one under Order 1 Rule 10 of the Code of Civil Procedure seeking to implead the Panchayat Samithi, Bandar represented by the Block Development Officer, Bandar, as second plaintiff, was filed and the same was allowed on 17-6-1983 and the second plaintiff was impleaded by that order. The defendants contested the suit. The learned Subordinate Judge decreed the suit.

4. Aggrieved by the said judgment and decree of the learned Subordinate Judge, Machilipatnam, dated 17-3-1987 the two appeals mentioned above were carried to this Honourable Court by the third and first defendants respectively. In the said two first appeals, various questions of fact and law were argued before the learned Single Judge. The learned Single Judge rejected all the contentions raised by the appellants before him on the questions of law. In so far as the third defendant, i.e., present appellant (is concerned), the learned Single Judge partially allowed his appeal granting relief to the appellant herein with reference to some of the items of claim made against him by the respondents /plaintiffs. Aggrieved by the judgment of the learned Single Judge in so far as the said judgment went against the appellant the present L.P.A., came to be filed by the third defendant in the suit.

5. Two principal submissions are made by the learned Counsel for the appellant Sri Shaik Mahaboob Vali. They are: that the suit as filed is not maintainable as the Civil Court would not have jurisdiction to try such a suit in view of Section 15 of the [Administrative Tribunals Act, 1985](#) as the dispute is one pertaining to the conditions of the service of the appellant and therefore it is only the Administrative Tribunal constituted under the [Administrative Tribunals Act, 1985](#), which would be competent to decide the issue to the exclusion of the jurisdiction of the Civil Court.

6. We wish to consider the first submission on the question of the maintainability of the suit. The following facts are relevant while considering the said question. Panchayat Samithis are created under Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959. Section 4 of the said Act declares that every Panchayat Samithi (is) to be a body corporate with perpetual succession and further declares that the Panchayat Samithi may sue or be sued by its corporate name. The employees of the Panchayat Samithi are those who are brought into service of the Panchayat Samithis by transfer from the cadre of erstwhile District Boards, which were created under Madras District Boards Act, 1935. This is so provided under Section 59(2) of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act. The said Act also provided that fresh recruitment of the employees and officers shall be under the procedure prescribed under the various provisions of the Act. Therefore it is clear from the scheme of the Panchayat Samithis Act that the employees of the Panchayat Samithis are the employees of the body corporate of a particular Panchayat Samithi and not employees of the State. Assuming for the sake of arguments that the contention of the appellants that the issue regarding the recovery of amounts alleged to have been misappropriated by the employees is a dispute relating to the service conditions, the fact remains that the jurisdiction over such disputes of the employees of bodies corporate is not given to the Administrative Tribunals under the [Administrative Tribunals Act, 1985](#). No doubt, Section 15(2) of the Administrative Tribunals Act contemplates that the jurisdiction with reference to the employees of the local bodies can be exercised by the Administrative Tribunal constituted under the Act. But such jurisdiction vests with the Administrative Tribunal only on the existence of a decision of the State Government to entrust such jurisdiction to the Tribunal by a notification. It is neither pleaded nor proved in this case that the jurisdiction with reference to the

employees of the Panchayat Samithis was entrusted to the Administrative Tribunal.

7. It is also pertinent to mention here that the third defendant in his written statement never took the objection that the suit is not maintainable on the ground of lack of jurisdiction nor does such an argument seem to have been advanced before the trial Court. At the stage of the first appeal, this argument was raised.

8. The learned Single Judge rejected the argument holding that the issue regarding the misappropriation of money by the employee is not a dispute pertaining to the service conditions.

9. We for the reasons mentioned above reject the first submission made by the learned Counsel for the appellant without deciding the issue whether misappropriation by an employee is a dispute pertaining to his service conditions.

10. The second submission: even assuming that the suit is maintainable, the suit is time barred as the competent person to sue for the relief as prayed for in the suit is only the second plaintiff and the first plaintiff has no manner of right whatsoever to maintain the suit. The second plaintiff having been brought on record by an order of the Court on 17-6-1983, the claim of the second plaintiff for the recovery of the amounts in dispute, (the cause of action for which arose even as per the case of the plaintiffs latest on 3-7-1977) is barred by limitation.

11. No doubt the suit was originally instituted purporting to be one filed by the State of Andhra Pradesh represented by the Block Development Officer, Bandar at Machilipatnam. Having realised that the State of Andhra Pradesh has no manner of right whatsoever to claim a decree as prayed for in the suit, and it is only the Panchayat Samithi, Bandar which could recover the amounts from the appellant herein, an application under Order 1 Rule 10 of the Code of Civil Procedure was filed on 24-8-1979 which was allowed by the trial Court on 17-6-1983. The reasons for such delay are not available on the record of this Court. The suit if were to be instituted by the Panchayat Samithi, Bandar either on 18-1-1979 or on 24-8-1979 would have been perfectly within the time allowed under the Limitation Act. This proposition is not disputed by the learned Counsel for the appellant. However his

submission is that the suit having been filed in the name of a wrong plaintiff and the Panchayat Samithi having been brought on record as second plaintiff by the order of the lower Court dated 17-6-1983, the suit should be deemed to have been filed only on 17-6-1983 and hence barred by limitation.

12. The learned Counsel for the respondent/second plaintiff argued that the suit as originally instituted, purporting to be one by the State of Andhra Pradesh was also filed by the Block Development Officer, Bandar, who is the principal executive officer of Bandar Panchayat Samithi. Even if it were to be brought in the name of the Panchayat Samithi, (which in our view ought to be instituted in the name of the Panchayat Samithi), the authorised person to institute the suit would still be the Block Development Officer of Bandar Panchayat Samithi. Hence, there is only a misdescription of the plaintiff and therefore the question of limitation would not arise.

13. The learned Counsel relied on Venkata Mallayya v. T. Ramaswami & Co., : AIR 1964 SC818 , in support of his contention. Their Lordships held that'.....where there is a case of misdescription of parties it is open to the Court to allow an amendment of the plaint at any time and the question of limitation would not arise in such case.'

14. The learned Counsel also relied upon Mohideen v. V.O.A. Mohamed, : AIR1955 Mad294 and A.P. State Electricity Board v. Patel & Patel, : AIR 1977 AP172 .

15. We accept the submission of the learned Counsel for the respondents and hold that in view of the facts mentioned above, this is only a case of misdescription of the plaintiff and in view of the judgment of the Supreme Court referred to above, the question of limitation does not arise in this case.

16. Even otherwise when a person is added as a party on an application made for the purpose such addition must be deemed to have effect from the date of application and not merely from the date of the order on the application (vide AIR 1927 Madras 468 (DB)). Applying this principle to the present case admittedly the petition under Order 1 Rule 10 of the Code of Civil Procedure to implead the

Panchayat Samithi, Bandar was filed on 24-8-1979 i.e., within three years from the last date on which the cause of action arose.

17. In any view of the matter the suit is within time and for the reasons mentioned above we reject the second submission of the learned Counsel for the appellant.

18. The appeal is therefore dismissed.

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