

In Re: Comr. for Workmen's Compensation

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Court : Chennai

Decided On : Jan-05-1951

Reported in : AIR1951Mad880; (1951)2MLJ23

Judge : Rajamannar, C.J. and ;Panchapakesa Ayyar, J.

Acts : Workmen's Compensation Act, 1923 - Sections 2(2); Govt. of India Act, 1935 - Sections 176; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 13

Appeal No. : Case Ref. No. 7 of 1948

Appellant : In Re: Comr. for Workmen's Compensation

Advocate for Pet/Ap. : E. Venkataramana, Adv.;Govt. Pleader

Judgement :

Rajamannar, C.J.

1. This is a reference made by the Comr. for Workmen's compensation, Madras, Under Section 27, Workmen's Compensation Act, in the following circumstances.

2. One Kamaraju was employed by the Admiralty Civil Engineer of Kakinada, to unload girders brought by a slip crane, &, while so employed, on 25-6-1946, he received an injury by accident to his right forefinger which was caught in between the girders. He filed an appln. on 16-12-1946 under the Workmen's Compensation Act praying that the Comr. may determine the amount of compensation payable to

him. When notice of this appln. went to the Admiralty Civil Engineer, he was advised that the Indian Workmen's Compensation Act, 1923, does not bind the Crown in the right of the United Kingdom & that the workmen employed by the Admiralty have therefore no legal claim, under that Act. It was further indicated in the reply sent from His Majesty's Naval Base at Bombay that the case fell to be dealt with under the Treasury Injury Warrants & not under the Act. The Comr. thereupon has made this reference on the question whether the case can be dealt with under the Indian Workmen's Compensation Act or not. As no one appeared for the Admiralty Civil Engineer represented by the Cashier, His Majesty's Naval Base, we requested the learned Govt. Pleader to assist us.

3. The appln. was filed in December 1946 at a time when India was still a part of the British Empire. The question is whether the Indian Act applies to the Crown in respect of a transaction involving the British Navy. It is a well established principle of constitutional law that the Crown is not bound by a statute unless expressly named or bound by necessary implication. Vide Halsbury's Laws of England, Edn. 2, Vol. VI (6), p. 482. It is also a part of the common law that no proceeding, civil or criminal, is maintainable against the Crown in the ordinary Cts. of law. Vide Halsbury's Laws of England, Edn. 2, Vol. VI (6), p. 486. In England the corresponding Workmen's Compensation Act of 1925 contains a special provision, Section 33(1) which runs thus:

'This Act shall not apply to persons in the Naval or Military or Air Service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employee were a private person; provided that in the case of a person employed in the private service of the Crown, the head of that Dept. of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.'

In the Indian Act, Section 2, Sub-section (2) declares that the exercise & performance of the powers & duties of a legal authority or of any Dept. acting on behalf of the Crown shall, for the purposes of the Act, be deemed to be the trade or business of such authority or Dept.

4. Though in legal theory the Crown is one & indivisible throughout the Empire, nevertheless the Crown appears in various aspects, & in each part of his Dominions, the King has a distinct personality for certain purposes. 'In re Silver Bros Ltd.', 1932 A C 514, Viscount Dunedin observed thus :

'It is true that there is only one Crown, but as regards Crown revenues & Crown property by legislation assented to by the Crown there is a distinction made between the revenues & property in the Province & the revenues & property in the Dominion. There are two separate statutory parses. In each the ingathering & expending authority is different.'

Therefore a distinction must be made between the Crown in right of the United Kingdom & the Crown in right of any of the Colonies & the Crown in right of the Federation of India or a Provincial Govt. of India. No doubt the Crown in right of the Federation of India & any Provincial Govt. is bound by a valid Federal or Provincial enactment (Vide Section 176, Govt. of India Act, 1935). But it does not follow that the Crown in right of the United Kingdom is bound by any Indian enactment however valid it might be & binding on the Crown in right of the Federation or Provinces of India. In this case it is obvious that the claim can in no sense be against the Govt. of India. The claim is against the British Admiralty. It must therefore be held that the appln. was not maintainable under the Indian Workmen's Compensation Act on the date it was filed.

5. After the Indian Independence Act & after the Constitution came into force, on 26-1-1950, the position has become worse for the appct. India is no longer in the British Empire. It has become a Sovereign Republic. Though for certain purposes India has chosen to remain in the Commonwealth, India does not acknowledge the sovereignty of the British Crown. Any claim therefore against the British Crown will be in the nature of a claim against a foreign Sovereign. One of the cardinal principles of International Law is that every Sovereign State respects the independence of every other Sovereign State & as a consequence of this absolute independence & of the international comity which underlies the relations between Sovereign States, each State declines to exercise by means of any of its Cts., jurisdiction over the person of any Sovereign or Ambassador, or over the public

property of any State. Vide the 'Parlement Beige', (1880) LR 5 PD 197. A Sovereign State cannot be sued in the Cts. of a foreign State, unless of course it voluntarily submits to the jurisdiction of the Ct. concerned. Vide Oppenheim's International Law, 1948, Edn. Vol. I (1) pp. 238 & 239; Fenwick's International Law, 1948th Edn., p. 307 & Dicey's Conflict of Laws, 1949th Edn., pp. 131 & 132. Any claim against the British Admiralty will be really a claim against the British Crown which is entitled to immunity from the jurisdiction of Cts. & Tribunals of the Indian Republic. The appln. therefore cannot be proceeded with now.

6. It may be that the appct. has other remedies, but we are not called upon to deal with them. The reference is answered accordingly.

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