

Privy Council Appeal No. 15 of 1937

Patna Appeal No. 20 of 1934

The Secretary of State - - - - - *Appellant*

v.

Messrs. Sunderji Shivji & Co. and others - - - *Respondents*

The Secretary of State and others - - - *Appellants*

v.

Deoji Shivji & Co. and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 16TH NOVEMBER, 1937.

Present at the Hearing :

LORD THANKERTON.

LORD ALNESS.

SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

These are two consolidated appeals against the decrees of the High Court of Judicature of Patna dated the 4th July, 1934. The first appeal relates to a suit brought in the Subordinate Court of Dhanbad exercising Small Cause Court jurisdiction in which Sunderji Shivji & Co. sued the Secretary of State for India in Council representing the East Indian Railway and the North Western Railway for damages for the conversion of certain coal, of which the plaintiffs claimed to be the proprietors. The other appeal relates to a suit brought by Deoji Shivji & Co. against the Secretary of State representing the East Indian Railway and the Bengal and North Western Railway Company in the above-mentioned Court in which a claim of a similar nature was made in respect of certain coal which the plaintiffs alleged had been sold by the Railway administration in a manner which was illegal, irregular and ultra vires.

The Small Cause Court Judge dismissed both suits with costs.

The plaintiffs in both suits applied to the High Court under section 25 of the Provincial Small Causes Courts Act for revision. The applications were disposed of in one judgment, by which the High Court held that the plaintiffs in both suits were entitled to succeed and decreed the suits

for the amounts claimed with costs. Leave to appeal to His Majesty in Council was granted to the Secretary of State and the Bengal and North Western Railway Co., Ltd., for although the amount claimed in each suit was small, the learned Judges of the High Court held that the cases were fit for appeal under section 109 (c) of Act V of 1908 as substantial questions of law were involved.

The plaintiffs in the two suits were not represented at the hearing of the appeals before their Lordships.

The same important question arose in both cases, and related to sections 55 and 56 of the Indian Railways Act (IX of 1890). They are as follows:—

“ 55.—(1) If a person fails to pay on demand made by or on behalf of a railway administration any rate, terminal or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession.

“ (2) When any animals or goods have been detained under subsection (1) the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction, published in one or more of the local newspapers, or, where there are no such newspapers, in such manner as the Governor General in Council may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including in the case of animals, the expenses of the feeding, watering and tending thereof.

“ (3)

“ (4)

“ (5)

“ 56.—(1) When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him, requiring him to remove the animals or goods.

“ (2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may, within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly as may be under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.”

In both suits the Secretary of State relied upon the provisions of the above-mentioned sections as protecting him from any liability in respect of the acts of which the plaintiffs complained.

The learned Judges of the High Court in their judgment dealt with the applications for revision upon the facts which were proved in the first of the above-mentioned suits, stating that the facts in the two cases were similar in so far as they were material for their decision.

Their Lordships propose to adopt the same course.

The material facts in the first suit are as follows:—

The plaintiffs are coal merchants carrying on business at Jharia. On the 8th March, 1929, Messrs. Villiers, Ltd., who were the managing agents of Bagdiji Colliery, acting on behalf of the plaintiffs, consigned a wagon of coal to Sikri Brothers: the destination, described in the declaration note of the East Indian Railway, was Doaba: this was a mistake. The wagon should have been sent to Adampur. The wagon of coal was received at Doaba on the 26th March, 1929, and it appears that on the 15th April, 1929, a letter in the following terms was sent by the Railway Company's agent at Lahore to the consignees, viz., Sikri Coal Merchants at Lahore:—

DEAR SIRS,

Please take notice that the following consignment of coal booked to your address is lying undelivered at the station named below and that the wharfage is due the Railway on it up to date. You are now given this final notice and warning that if within 15 days from date the consignment of coal is not taken delivery of and coal removed from Railway premises on payment of full wharfage and all other charges due, we reserve to ourselves the right to take civil action against you for recovery of all charges including wharfage. If the consignment is not removed within 15 days from date, it will be sold by public auction under sections 55 and 56 of the Indian Railway Act (IX of 1890) at your risk. The coal is being advertised for sale.

Invoice No. 1.	Railway receipt No. 27940.
Station from Pathardih.	Station to Doaba.
Weight in tons 21 cwts. 13.	Dated 18-3-29.
Coal Wagon No. 14714	Railway freight Rs. 342-3.

On the 22nd April a letter was sent to the consignors, Messrs. Villiers, Ltd.; at the Bagdiji Colliery, asking for instructions regarding the disposal of the coal, and stating that if delivery was not effected within a week of the receipt of the letter and all charges due thereon paid, arrangements would be made to dispose of the same under sections 55 and 56 of the Indian Railways Act (IX of 1890).

On the 26th April, 1929, Messrs. Villiers, Ltd., sent to the plaintiffs a copy of the letter which they had received from the Railway Company and asked for instructions.

On the same date Messrs. Deoji Shivji & Co., the plaintiffs in the second suit, wrote to the Railway Company's agent at Lahore the following letter:—

P.O. Jharia.
(Manbhum).
Dated the 26th April, 1929.

Deoji Shivji and Co.,
Colliery Agents.
Best Bengal Coal Suppliers and Contractors.
The Agent,
North-Western Railway, Lahore.

DEAR SIR,
Pathardihi to Doaba Bagdigi Slack Wagon No. 14714 Con-
Sikri Bros.

With reference to your letter No. 208/P/CC/29 of the 15th inst. to Messrs. Sikri Bros., Lahore, please note that the wagon was misdespatched to Doaba and hence we had to hand over the R/R to Messrs. Punjab United Coal Co., who state that on account of heavy wharfage occurred they could not take delivery.

We shall thank you if you will please instruct the Station Master, Doaba, to deliver the consignment free of wharfage so that the delivery may be effected and thanking you in anticipation.

Yours faithfully,
Deoji Shivji and Co.

Negotiations by the Punjab United Coal Company for delivery free of wharfage charges came to nothing.

There was no local newspaper at Doaba, so on the 27th June, 1929, there was inserted in the Civil and Military Gazette which was published at Lahore a notice in the following terms:—

NORTH-WESTERN RAILWAY.

SALE OF UNCLAIMED PROPERTY.

Notice is hereby given that unless the under-mentioned consignments lying undelivered are removed on payment of all charges due before the 16th July, 1929, they will be sold by public auction and the sale proceeds disposed of in terms of sections 55 and 56 of the Indian Railways Act IX of 1890.

Then followed a list of 21 consignments which had been sent from various stations to other stations: giving in each case the numbers of the invoice and the railway receipt, the date, the number of the wagon, the names of the sender and of the consignee.

The consignment in question was one of the items: the information relating thereto was that it had been sent from Pathardih to Doaba by Villiers Co. to Sikri Brothers on the 18th March, 1929: the numbers of the invoice, railway receipt and the wagon were given.

It is to be noted that in the above-mentioned notice there was no information given as to the nature of the consignments, or of the time or place of the public auction referred to in the notice. It appears that the notice of the proposed sale was proclaimed locally at Doaba and a copy thereof was posted on the station notice board.

Delivery of the wagon of coal was not taken, and the station master at Doaba under instructions from the chief commercial manager of the Railway Company endeavoured to sell the coal for a sum which would be at least sufficient to cover the freight charges due on the consignment. The result of the station master's efforts was that the highest offer for the coal was Rs.40, which the above-mentioned manager refused to accept. The station master was then directed by the manager to send the wagon to Mogalpura: this was done and the wagon arrived at Mogalpura about the 18th August, 1929. At Mogalpura there was "a sale proclamation", as it was called, in the Bazaar and notice of the proposed sale was placed on the notice board at the station. Certain persons made offers to the station master

at Mogalpura and eventually the sum of Rs.205, which was the highest offer, was accepted by the chief commercial manager of the Railway Company and the coal was sold for that price.

Notice of the sale was sent by the Railway Company to Messrs. Villiers, Ltd. in a letter dated the 15th September, 1930, in the following terms:—

To
The Manager,
Messrs. Villiers Limited,
Bagdigi Colliery, post Jharia.
Pathardihi to Doaba Jun (?)
No. one of 10-3-29 Wg. No. 14714.

The above consignment having been sold for Rs.205 a sum of Rs.1,170-4-0 is still due to the Railway on account of freight, wharfage and advertisement charges, *vide* details below:—

	<i>Rs. a. p.</i>
Invoiced freight	328 4 0
Sale proceeds	205 0 0
	<hr/>
Loss in freight	123 4 0
Demurrage	—
Wharfage	1,044 0 0
Advertisement charges	3 0 0
	<hr/>
Total	1,170 4 0

This is to advise you that I am agreeable, strictly without prejudice to our claim for the entire amount, to forego amount of wharfage and shall look to you to make good the loss in freight Rs.123-4-0 and the out-of-pocket advertisement cost, viz., Rs.3. (Total Rs.126-4-0) if the consignee do not pay.

Please acknowledge.

Yours faithfully,

(Sd.)

Offg. Distt. Traffic Manager Coal.

(Sd.) Illeg., 18-9-30.

Messrs. Villiers, Ltd., paid the sum of Rs.126-4-0 to the Railway Company, and subsequently recovered the amount so paid from the plaintiffs. That sum was an item in the total amount claimed by the plaintiffs against the Secretary of State, viz.: Rs.256-13-6 as damages for the alleged wrongful conversion of the coal by the Railway Company.

It was contended on behalf of the appellant, the Secretary of State, that the above-mentioned acts of the Railway Company constituted a compliance with the provisions of sections 55 and 56 of the Indian Railways Act and that consequently the Railway Company was not liable to the plaintiffs for any compensation or damages in respect of the sale of the coal.

This was the only point raised for their Lordships' consideration. It was argued that as there was no local newspaper at Doaba or Mogalpura, and as the Governor-General in Council had not prescribed any manner for the publication of the notice referred to in section 55, the Railway

Company had taken all such steps as could reasonably be required to give notice of the intended sale by public auction. It is not necessary to consider that part of the case in any detail, for in their Lordships' opinion the first question to be considered and decided is whether there was in fact any public auction of the coal. It was contended on behalf of the Secretary of State that there was such a public auction.

In their Lordships' opinion it is clear that whether the right of the Railway Company to sell the coal arose by reason of section 55 (2) or by reason of section 56 (2) the sale should have been by public auction and in no other way. It is true that in section 56 (2) it is provided that the Railway Company is to "sell the goods as nearly as may be under the provisions of the last foregoing section," but no suggestion has been made that there were any facts in this case which would prevent the Railway Company from selling by means of a public auction in the event of the Company putting in force the right to sell given to the Railway Company by section 56 (2).

There is no definition in the Act of the words "public auction" and their Lordships are of opinion that there can be no doubt that they must bear the meaning which is ordinarily given to them in the English language.

The words mean a public sale at which each bidder offers an increase upon the price offered by the preceding bidder, the article put up being sold to the highest bidder.

This involves the auction being held in public, all members of the public having a right to attend, and a valuable element being the competition between the persons who are openly bidding for the subject matter of the sale. This is of importance not only to the Railway Company but also to the owner of the goods, the competition being calculated to produce the highest price.

Their Lordships are of opinion that in this case there was no public auction of the coal in question.

Notice of the intended sale was given in the manner already mentioned, by proclamation and notice on the board at the station, and some offers were sent to the station master at Mogalpura which were forwarded by him to his superior officer who directed him to accept the offer of Rs.205 which was in fact the highest.

But there was no public auction in the ordinary meaning of the words: there was no sale in public, there was no opportunity for competitive bidding: in fact, what was done bore no resemblance to a "public auction".

This conclusion is sufficient to dispose of the appeal, for the Railway Company did not sell the coal in the manner prescribed by the above-mentioned sections, and therefore the Railway Company cannot rely on the protection given by the Act.

As already stated the question of the sufficiency of the notice was referred to in the course of the argument, and while their Lordships in view of the conclusion already mentioned do not consider it necessary to give any decision on that part of the case, they are of opinion that it is difficult to see how a notice of an intention to sell at a public auction can be sufficient or effective, unless it specifies the time and place of the proposed public auction, the nature of the goods intended to be sold and all other particulars necessary to enable the members of the public to appreciate what it is which it is intended to put up for sale at the public auction.

Their Lordships were informed that the facts relating to the second appeal were not exactly the same as in the first appeal, but that they were similar to those in the first appeal in all material respects, and that the decision in respect of the first would govern the second appeal. Their Lordships, therefore, are of opinion, that the two appeals should be dismissed and they will humbly advise His Majesty accordingly.

In the Privy Council.

THE SECRETARY OF STATE

2.

MESSRS. SUNDERJI SHIVJI & CO.
AND OTHERS

THE SECRETARY OF STATE
AND OTHERS

2.

DEOJI SHIVJI & CO. AND OTHERS

DELIVERED BY SIR LANCELOT SANDERSON

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