
# LAW COMMISSION OF INDIA

## FIFTY-SIXTH REPORT

ON

## STATUTORY PROVISIONS AS TO NOTICE OF SUIT OTHER THAN SECTION 80, CIVIL PROCEDURE CODE

**MAY 1973**

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS

P. B. GAJENDRAGADKAR
*Chairman*

LAW COMMISSION
GOVERNMENT OF INDIA
Shastri Bhawan, New Delhi-1,
May 14, 1973

My dear Minister,

I have great pleasure in forwarding herewith the 56th Report of the Law Commission on statutory provisions as to notice of suit.

The circumstances in which the subject was taken up by the Law Commission are stated in the opening paragraph of the Report. The provisions dealt with are analogous to section 80, Civil Procedure Code, on which the Commission has recently made a Report (54th Report, in February 1973). The matter was therefore dealt with on an urgent basis, so that Government may, while considering implementation of the Commission's Report on the Code of Civil Procedure, also take into account the Commission's recommendations on the provisions in question.

The matter being urgent for the reasons stated above, it was not considered to issue a Press communique for inviting views. But the Commission's tentative proposals on the subject were circulated to the Ministries administratively concerned with the provisions under consideration. The comments received by the specified date (30th April, 1973) have received the Commission's due consideration.

The questions for consideration were studied and a draft Report was prepared by the Member-Secretary. This was considered by the Commission at length, and has been revised in the light of the discussions held in the Commission.

With warm personal regards,

Yours sincerely,

P. B. GAJENDRAGADKAR

Hon'ble Shri H. R. Gokhale,
Minister of Law, Justice & Company Affairs,
Government of India,
New Delhi.

# CONTENTS

# REPORT ON NOTICE OF SUIT REQUIRED UNDER CERTAIN STATUTORY PROVISIONS

*Genesis of the Report.*

1. This Report deals with the requirement of notice of suit under the provisions of certain statutes. The subject has been taken up by the Law Commission *suo motu*, after consideration of a suggestion received from a High Court[1]. Broadly speaking, the statutory provisions in question bar a suit unless notice of the suit is given. Having regard to the experience of practical working of these provisions, and also bearing in mind the changed conditions, the Law Commission has considered it proper to examine the law on the subject. It may be of interest to note that the Commission has, in its Report on the Code of Civil Procedure,[2] already recommended repeal of a section of the Code of Civil Procedure[3] which requires notice of a suit to be given in the case of a cause of action against the Government or against a public officer for an act done by him in his official capacity.

*Provision in article 361(4) of the Constitution.*

1A. We may mention here that the Constitution[4] contains a provision requiring two months' notice before instituting a suit against the President or the Governor. This provision stands on a special footing, and we do not propose to go into it in the present Report.

*Statutory provision covered by the Report.*

2. This Report is concerned with the following statutory provisions in so far as they enact a requirement of notice of suit:

(i) Section 78-B, Railways Act, 1890;

(ii) Section 273, Cantonments Act, 1924;

(iii) Section 478, Delhi Municipal Corporation Act, 1957;

(iv) Section 155(2), Customs Act, 1962;

(v) Section 120, Major Port Trusts Act, 1963.

*Section 78-B, Railways Act.*

3. The first provision to be considered is section 78-B, Railways Act (as amended in 1961). This, in its subject-matter, corresponds to section 77 of the Act, as it stood before 1961.

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1. Suggestion of the High Court of Andhra Pradesh, in the Registrar's letter dated 16th November, 1972, forwarded to the Law Commission by the Ministry of Law & Justice, Legislative Department, letter No. F. 14(22)/68- Leg. II, dated nil. See Law Commissioner's file No. F.2(1)/71-L.C.

2. 54th Report, Code of Civil Procedure, para. 1.C.2.

3. Section 80, Code of Civil Procedure, 1908.

4. Article 361(14) of the Constitution.

Section 77 of the Railways Act, 1890 (before 1961) was as follows[1]:—

> "A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration *within six months* from the date of the delivery of the animals or goods for carriage by railway."

Requirement of notice mandatory, under the Railways Act.

4. After the amendment of 1961, the section has been re-numbered as section 78-B, and certain textual modifications also made. But the broad requirement of "notice" (claim) within six months, remains unaffected. This provision is similar to section 80, Code of Civil Procedure, in so far as it requires prior notice of suit. It also lays down a period of limitation.

The *present section on the subject*—*section* 78B, Railways Act—is as follows:—

> "78-B. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf—
>
> (a) to the railway administration to which the animals or goods were delivered to be carried by railway, or
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> (b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred, within six months from the date of the delivery of the animals or goods for carriage by railway:
>
> Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this section, be deemed to be a claim to the refund or compensation."

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[1]. For history of Section 77, See Appendix.

5. It is well established that requirements of this section are mandatory[1], and failure to comply with its provisions will result in the dismissal of the suit *in limine*. However, a combined notice given under section 77 (before the amendment of 1961) of the Railways Act and section 80 of the Code of Civil Procedure is valid.[2]

Section 273, Cantonments Act, 1924.

6. The next provision to be considered is in the Cantonments Act,[3] which is as follows:—

"273. (1) No suit shall be instituted against any Board or against any member of a Board, or against any officer or servant of a Board, in respect of any act done, or purporting to have been done, in pursuance of this Act or of any rule or bye-law made thereunder, until the expiration of two months after notice in writing has been left at the office of the Board, and, in the case of such member, officer or servant, unless notice in writing has also been delivered to him or left at his office or place of abode, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of abode of the intending plaintiff, and unless the plaint contains a statement that such notice has been so delivered or left.

(2) .....

(3) No suit, such as is described in sub-section (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(4) ....."

Sub-section (1) of section 273, quoted above, is similar to section 80, Code of Civil Procedure. Sub-section (3) of the section imposes a special period of limitation.

Case-Law on section 273, Cantonments Act.

7. Case-law on section 273 of the Cantonments Act[4] may now be referred to, in brief. The facts of an Allahabad case[5] were as follows:

The plaintiff was a shopkeeper, who alleged that he had supplied certain materials to the Cantonment Board, but had not been paid the full amount of the price. He claimed nearly Rs. 300 as the amount of the balance with interest. His case was that after having supplied the goods, he waited for some time, but the Board did not make any further payment, In consequence of this, he was obliged to sue the Board, after serving notice upon it as required by law.

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1. *Union of India* v. *Haji Jiwakhan*, A.I.R. 1962 Madhya Pradesh 374

2. (a) *Union of India* v. *Meghraj Khubchand* (1962) M.P. L.J. (cited in the yearly Digest);

(b) *Madko Prasad* v. *Union of India*, A.I.R. 1961 All. 433.

3. Section 273, Cantonments Act, 1924.

4. Paragraph 6 *supra*.

5. *Cantonment Board, Allahabad* v. *Hazarilal*, A.I.R. 1934 All. 436.

The Board denied the receipt of all the materials alleged to have been supplied by the plaintiff, and also pleaded that the claim was barred by the six months' rule of limitation, enacted in section 273(3), Cantonments Act.

The lower court decreed the suit, and the Cantonment Board filed a revision application before the Allahabad High Court.

The High Court held– "the plaintiff is not suing the Board for any act done by the Board in pursuance of the Cantonment Act; nor is he suing the Board for any act done by the Board or purporting to have been done by the Board under any rule or bye-law made under the Cantonment Act. The suit is for the recovery of the price of the goods supplied by the plaintiff to the defendant which is still unpaid."

"No doubt, under section 12, Cantonments Act, a Cantonment Board is empowered to acquire and hold property both movable and immovable and to contract. It is also clear that the purchase made by the Board was by virtue of the power vested in it under the Cantonments Act. But I am unable to regard the suit of the plaintiff against the Board as a suit in respect of an act done by the Board in pursuance of the Act itself as distinct from the act done in the exercise of the powers granted to the Board under the Act. In my opinion, section 273, sub-section (1), does not contemplate the class of suits of private contractor for which specific rules of limitation are prescribed in the Limitation Act. They contemplate actions brought against the Board in respect of acts done in pursuance of any rule or bye-law that has the force of law."

Therefore, the case was held not to be governed by S. 273 at all.

8. In another Allahabad case,[1] the plaintiff worked in the Cantonment Board, Meerut, as a Tax Superintendent. After some time, he was appointed as Office Superintendent on a salary of Rs. 225. The salary prescribed for his post was Rs. 300 p.m. and his predecessor was also receiving the salary of Rs. 300 p.m. The appointment of the plaintiff was made by the Board under the powers given to the Board by the Cantonments Act. But the Act contained no statutory obligation or cast a duty on the Board to make the appointment. On retirement the plaintiff filed a suit, after giving a proper notice as required by law, against the Board, claiming the arrears of salary.

The plea taken by the Board was that the suit was barred by limitation under section 273(3), as the notice was given on 22-12-1938 and the suit was filed on 19-9-1939, after a lapse of more than 8 months. The trial court decreed the suit, but the District Judge on appeal, reversed the decision of the trial court. Hence, an appeal was filed before the Allahabad High Court.

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[1]. *Ramchander Sahai v. Cantonment Board, Meerut*, A.I.R. 1947 1

The only question for consideration before the High Court was the question of limitation. Following its earlier decision,[1] the court drew a distinction between acts done in pursuance of the Act itself and those done in pursuance of the power given by the Act. The Court held that the case "did not come within the scope of s. 273(1) because there was no statutory obligation on or duty of the Board to make the appointment at all."

In this case, the Court relied on the interpretation placed in England on section 1 of the Public Authorities Protection Act,[2] which resembled section 273 of the Cantonments Act, 1924. Section 1 of that Act provided as follows[3]:—

> "Where, after the commencement of this Act, any action, prosecution or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such act, duty or authority, the following provisions shall have effect:
>
> (a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or in a case of continuance of injury or damage, within six months next after the ceasing thereof."

9. The question of interpretation of the provisions of section 273 of the Cantonments Act, 1924, arose before the High Court of Punjab also.[4]

The facts of the case were as follows:—

Bajrang Singh, plaintiff, was employed by the Cantonment Board, Ferozepur as a Pump driver. After some time, he was charge-sheeted for some mis-conduct, and was dismissed from service. After exhausting the departmental remedies, he filed a suit for a declaration that the order of his dismissal was inoperative and illegal, and that he continued to be in the service. The suit was contested by the Board on the grounds, *inter alia*, that the suit was not maintainable and that it was barred by time.

The trial court granted the required declaration to the plaintiff, and this was, on appeal, confirmed by the Additional District Judge, Ferozepore. In the second appeal before the High Court by the Cantonment Board, Ferozepore, one of the questions for consideration was whether the suit was barred by time.

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1. *Cantonment Board, Allahabad* v. *Hazarilal* A.I.R. 1934 All. 436.
2. Section 1, Public Authorities Protection Act, 1893 (Eng.)
3. The English Act was repealed in 1954.
4. *Cantonment Board, Ferozepur* v. *Bajrang Singh* A.I.R. 1961 Punj. 411.

> The Punjab High Court distinguished the present case from the Allahabad Judgment[1]. The Court held that section 1 of the Public Authorities Protection Act 1893 (referred to in the Allahabad judgment) had no bearing at all on the interpretation of section 273 of the Cantonment Act, 1924. The Court further held, "All that sub-section (1) of section 273 contemplates is that the act must have been done in pursuance of the Act or of any rule or bye-law made thereunder, and this section cannot be interpreted to mean that the acts done by the Board in exercise of its powers under the Act will stand on different footings than those done in discharge of the duties imposed on the Board by the Act."

Therefore, the suit was held to be governed by the provisions of section 273(3) of the Cantonments Act, 1924, and, as such, was barred by limitation.

10. A Madhya Pradesh case[2] may now be referred to. The firm Chhajrumal & Sons entered into a contract with the Cantonment Board, Mhow for repairing a road. When the Cantonment Board refused to make the payment to the firm for the repair work done by the firm, the firm filed a suit to recover the amount, after giving the notice required by law. One of the questions for consideration before the High Court was whether the suit was within limitation, according to the provisions of section 273(3) of the Cantonments Act, 1924.

The Madhya Pradesh High Court, following the decision of the Allahabad High Court,[3] drew a distinction between acts done in pursuance of the Act itself or in pursuance of any rule or bye-law thereunder, and acts done in pursuance of some power granted to the Board under the Act. The Court held that section 273(1) "does not contemplate suits on private contracts for which specific rules of limitation are prescribed under the Limitation Act. The Cantonment Act does provide for a duty to be performed, in so far as its funds permit, to get a street repaired, but it does not insist that it ought to be done through a contractor." For these reasons, s. 273 of the Cantonments Act had no application, and the suit was not barred by Limitation, even though it had been filed after six months from the date when the cause of action arose.

11. Provisions similar to section 273 of the Cantonment Act, 1924, occur in several Municipal Acts.[4] Provisions in Municipal Acts.

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[1] *Ram Chander Sahai* v. *Cantonment Board, Meerut* A.I.R. 1947 All. 42.

[2] *Cantonment Board, Mhow* v. *Chhajrumal & Sons*, (1968) M.P.L.J. 425;(1969) Jab. L.J. 304 cited in the Yearly Digest.

[3] *Cantonment Board Allahabad* v. *Hazari Lal*, A.I.R. 1934 All. 436.

[4] e.g. (*a*) section 326, U.P. Municipalities Act, 1916;

(*b*) Section 478, Delhi Municipal Corporation Act, 1957 (Para 12, infra).

Provision in Delhi Municipal Corporation Act, 1957.

12. The third provision to be considered is in the Delhi Municipal Corporation Act[1], which is a Central Act, and is quoted below:—

"478.(1) No suit shall be instituted against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any other municipal officer or other municipal employee, in respect of any act done, or purporting to have been done, in pursuance of this Act or any rule, regulation or bye-law made thereunder, until the expiration of two months after notice in writing has been left at the municipal office and, in the case of such officer, employee or person, unless notice in writing has also been delivered to him or left at his office or place of residence and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of residence of the intending plaintiff, and unless the plaint contains a statement that such notice has been so left or delivered.

(2) No suit, such as is described in sub-section (1), shall, unless it is a suit for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(3) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit."

Section 155 (2), Customs Act.

13. The fourth provision to be considered is in the Customs Act, which is as follows[2]:—

"Section 155(1).....

(2) *No proceeding other than* a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from accrual of such cause[3]."

It may be noted that this section does not apply to suits. In other respects, it is broadly similar to section 80 of the Code of Civil Procedure, though the period of notice is only one month, as contrasted with the period of two months provided for in section 80, Civil Procedure Code.

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[1]. Section 478, Delhi Municipal Corporation Act, 1957 (66 of 1957).

[2]. Section 155(2), Customs Act, 1962.

[3]. Compare section 196, Sea Customs Act, 1878 (repealed).

Expression 'Local authorities' in Customs Act.

14. Section 198 of the Sea Customs Act, 1878, provided that no proceeding other than a suit shall be commenced against *any person* for anything purporting to be done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof. This Act was repealed by the Customs Act, 1962. In the Customs Act, 1962 it has been laid down in section 155(2) that no proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act, without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof. The words 'local authority' have not been defined in the Customs Act, 1962, but section 3(31) of the General Clauses Act lays down that 'local authority' shall mean a municipal committee, district Board, body of Port Commissioners or other authority legally entitled to or authorised by the Government with the control or management of a municipal or local fund.

15. It has been provided in section 6 of the Customs Act, 1962, that the Central Government may entrust to any officer of the Central or the State Government or a *local authority* any functions of the Board or any officer of Customs under this Act. Under section 151(c) of the Act, specified officers of the *local authorities* are empowered and required to assist officers of Customs in the execution of this Act.

16. No case appears to have been reported under section 155(2) of the Customs Act, 1962 regarding giving of the required notice to a *local authority* or the officers of a *local authority*.

16A. It has been held by Calcutta High Court[1] that *section 198 of the Sea Customs Act* (which was the predecessor of section 155 of the Customs Act, 1962,) was not a bar to the proceedings under article 226 of the Constitution against the order of the Customs Authorities[2].

Section 120, Major Port Trusts Act, 1963.

17. The fifth provision is in the Major Port Trusts Act,[3] which provides for notice of suit. It is quoted below:—

> "120. *Limitation of proceedings in respect of things done under the Act*—No suit or other proceeding shall be commenced against a Board or any member or employee thereof for anything done, or purporting to have been done, in pursuance of this Act until the expiration of one month

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[1] (*a*) *Sooraj Mull Nagar Mull* v. *The Assistant Collector of Customs*, A.I.R 1952 Cal. 103.

(*b*) *Assistant Collector of Customs* v. *Sooraj Mull Nagar Mull* A.I.R. 1952 Cal. 656.

[2]. Similar is the position as regards other provisions.

[3]. Section 120, Major Port Trusts Act, 1963.

after notice in writing has been given to the Board or him, stating the cause of action, or after six month after the accrual of the cause of action."

This provision covers suits *and* other proceedings. In other respects, it is similar to section 80 of the Code of Civil Procedure.

Sections in other Port Trusts Act.

18. It may be noted that this section corresponds to section 142 of the Calcutta Port Trusts Act, 1800, section 87 of the Bombay Port Trusts Act, 1870 and section 110 of the Madras Port Trusts Act, 1905. No decision on the section in the Major Port Trusts Act appears to have been reported.

Requirement of notice a common feature.

19. The provisions referred to above, while differing from one another in matters of detail, all share a common feature, namely, the requirement to give notice of suit (or proceeding) as a condition precedent to the institution of a suit (or proceeding). The period varies. So does the mode of computation of the period. Either the notice is required to be given within a particular period *from the date* of the cause of action, or the notice should have been given on a certain date *prior to the suit*. But, in some form or other, notice becomes a condition precedent.

We shall now proceed to consider the possible grounds on which the requirement of notice could be supported.

Object of notice considered

20. In the first place, such a notice could be regarded as desirable in order to give the authority concerned (the Railway Administration, the Cantonments Board, the Port Trust or other authority) an opportunity to settle the claim and thus to avoid unnecessary litigation. Secondly, at least in the case of some of the provisions referred to above[1], the notice may be intended to prevent the presentation of stale demands, particularly where the authority to be sued has to handle innumerable transactions in the course of which liability could possibly arise in favour of the citizen.

Object of Provisions in the Railways Act.

21. Thus, for example, explaining the object of the notice prescribed by section 77, Railways Act, the Supreme Court has said, "the object of service of notice under this provision is essentially to enable the railway administration to make an enquiry and investigation as to whether the loss, destruction or deterioration was due to the consignor's laches or to the wilful neglect of the railway administration and its servants and further to prevent stale and possibly dishonest claims being made when owing to delay, it may be practically impossible to trace the transaction or check the allegations, made by the consignor.....[2]". The Supreme Court observed:—

"In enacting the section, the intention of the legislature must have been to afford only a protection to the railway administration against fraud and not to provide means for

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[1]. E.g. section 78B, Railways Act. (para 4, *supra*)

[2]. *Jetmull* v. *D.H. Rly.*, A.I.R. 1962 S.C. 1879.

depriving the consignors of their legitimate claims for compensation for the loss of or damage caused to their consignments during the course of transit on the railways."

Discrimination not to be favoured

22. As against those possible grounds of justification for the present provisions, it should be stated that *prima facie* such provisions are discriminatory and against the general principle of equality. It may not be improper to mention here that, in practice, the first object of these provisions, namely, to give an opportunity to the authority concerned to settle the claims, is hardly realised. Experience of the working of the corresponding provisions in the Code of Civil Procedure[1] has unfortunately shown that, for reasons into which we need not go, the notice of suit against the Government or public officer given under that Code is not acted upon within the time contemplated by the law. We venture to think that the position under the special statutory provisions with which this Report is concerned is not substantially different in this respect.

Reason given in earlier Reports for recommending deletion of section 80, Code of Civil Procedure.

23. It may be noted that several reasons weighed with the Law Commission[2] in recommending deletion of section 80, Civil Procedure Code. In the first place, the evidence taken by the Law Commission for the purposes of an earlier Report[3] disclosed that in a large majority of cases the Governments or the public officers made no use of the opportunity afforded by the section.

Secondly, the same evidence disclosed[4] that in a large number of cases Governments and public officers utilised section 80 mainly to raise technical defences contending either that no notice had been given or that the notice, though given, did not comply with the requirements of the section. Thirdly, the Commission was of the view that in a democratic country there should be no distinction of the kind envisaged by section 80 between the citizen and the State. A welfare State should have no such priviliges as are needed[5] by a police State in the matter of litigation, and should have no higher status than an ordinary litigant in this respect[5].

These reasons applicable to provisions in question.

24. These reasons apply with equal force to the provisions with which this Report is concerned.

25. For example, as to section 77, Railways Act (now replaced by section 78B)[6], nice questions as to the scope of the section arose in the past. Many of these have been set at rest. Here, we are referring to a few of them, to show how uncertainty could arise and might cause injustice. Thus, two problems raised

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1. Section 80, Code of Civil Procedure, 1908.

2. 27th Report (Code of Civil Procedure), pages 21,23, paras. 50-52; and also 54th Report.

3. 14th Report, Vol. I, pages 475-476.

4. 14th Report, Vol. I, pages 475-476.

5. 27th Report (Code of Civil Procedure) page 22, para 52.

6. Paragraph 4, *supra*.

*by section 77 were—*

(i) Whether the provisions of section 77 applied to cases of compensation for non-delivery or not[1], and

(ii) Whether under section 77, notice was required to be given to all the railway administrations which had carried the goods[2].

Judicial criticism.

26. No doubt, some of the points have been settled by judicial decisions or by statutory amendments. But the very fact that such controversies arose shown the difficulties created by the section. Unfortunately, there have been occasions where the courts had to criticise the conduct of the Railway authorities in raising the defence of want of notice. In one of the Calcutta[3] cases, for example, Henderson J., made weighty though caustic observations as to the plea taken by the railway. In a Patna case[4], in a very well considered judgment by Courtney Torrell C.J. and Fazl Ali J., it was pointed out that one of the defences taken by the railway company was the familiar, though somewhat disingenous contention that a claim in writing had not been preferred.

27. In another Calcutta case[5], the High Court was constrained to make the following observations:

> "Every step taken by the railway officials was as improper and as illegal as it could be. But, far from being apologetic for their irregular and high handed behaviour they have sought to escape from their just liabilities by raising the plea that they have not received the notice of claim, required by section 77, Railways Act and this plea has been accepted by a Judge, and a Full Bench of the Small Cause Court."

28. In a Patna case[6], the Full Bench, after referring to a few cases, observed—

> "In other words, the railway, in order to defeat the claims of the claimant, does not hesitate to take up unattractive disingenuous, if not uncommendable and contradictory, defences."

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[1] See now, *G.G. in Council* v. *Musaddi Lal* A.I.R. 1961 S.C. 725, followed in *Union of India* v. *Mahadeo Lal*, A.I.R. 1965 S. C. 1755.

[2] See *Jethmull* v. *D.H. Rly.*, A.I.R. 1962 S.C. 1870.

[3] *Srinthidar Mandol* v. *Governor General-in-Council* A.I.R. 154 Cal. 412; 49 C.W.N. 240.

[4] *D.N. Railway* v. *Maharaja Komeshwar Singh*, I.L.R. 12 Pat. 67, 71; A.I.R. 1933 Pat. 45.

[5] *Shamsul Haq* v. *Secretary of State*, A.I.R. 1931 Cal. 332, 334 (Lord Williams J.).

[6] *G.G.-in-Council* v. *G.S. Mills*, A.I.R. 1949 Pat. 347, 351 (F.B.).

29. Even some of the more recent cases make interesting reading. In a Madhya Pradesh case[1], for example, while sending notice under section 77, counsel had, by mistake, sent his office copy which was unsigned. The Railway challenged the validity of the notice. Fortunately, the High Court held that this mistake did not affect its validity.

30. A recent Kerala[2] case illustrates the difficulty that exists in relation to interpretation of the words "for carriage by railway", and the word "preferred", in section 78B.

31. Even in 1969, an objection was put-forth that notice of claim served on the Refunds Officer was not valid under section 78B[3], even though the Ministry of Railways had issued a pamphlet stating that the Refunds Officer may receive such notices.

Inconvenience.

31A. The inconvenience caused by such technical plans is, thus, apparent.

As has been observed by one Australian writer[4] with reference to an analogous provision in an Act in force in Victoria (Australia),—

> "Numerous indeed are the unfortunates who, through mistake or for some other reason, have failed to give the necessary notice."

Stale demands guarded against by law of limitation.

32. As regards the object of preventing the making of stale demands, that could be achieved by the general law of limitation, and we do not see any reason why there should be special provision requiring the giving of a notice (or submission of claims) to the authority concerned *within a specified period*, for suits concerning the matters to which the provisions in question apply. Moreover, it should be stated that in practice, prospective litigants will always take care, in their own interest, to give a notice to the authority concerned before filing a suit.

Inconvenience and injustice.

33. In our view, the inconvenience and injustice caused by the various provisions for notice, outweigh the possible advantages of those provisions.

Comments of Ministries concerned.

33A. We had, before finalising the recommendation, invited the views of the Ministries concerned. One of the Ministries has offered the following comments[5] with reference to section 273, Cantonments Act:—

> "It is considered that the provision of giving 2 months' notice in section 273 affords protection to the Cantonment Board and its officials and an opportunity to make amends, if neces-

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[1] *Union of India* v. *Homal Chand* (1966) M.P. L.J. (Notes) 150, cited in the Yearly Digest (1966), Col. 2295.

[2] *Union of India* v. *M/s. Lakshmi Textiles*, A.I.R. 1968 Ker. 23.

[3] *Brooke Bond India (Private) Ltd.*, v. *Union of India* A.I.R. 1969 Cal. 39.

[4] J.A. Redmand, "Notices before action" (1964) 37 Aust. L.J. 316, 317.

[5] Ministry of Defence letter No. 793-C/D (Q & C), dated 18th April, 1973.

sary. It does not appear to cause any undue hardship and injustice to anybody."

In the circumstances, the Ministry favours retention of the provision for notice.

We may, in this connection, reiterate what we have already stated[1], that *mandatory* notice does not lead to any practical advantage and that in practice, if notice is not given, the Court can award costs.

In the comment received from the Ministry[2] concerned with the Major Port Trusts Act, it is stated that the provision in that Act, (and similar provisions in the Acts relating to Bombay and Madras Port Trust)[3]-[4] are helpful and necessary for the purpose of obtaining the relevant information and documents from various quarters in order to settle the cases, if possible, out of court. In the absence of this provision, it is stated, it would also not be possible for the Port Trust to gather the required information or material in time for defending the suit, if a suit is ultimately filed. It has been conceded that in some quarters this provision may not have been properly utilised; but the real remedy (it is stated) lies in making it obligatory for the concerned officer of the Department to give a proper reply within the statutory period or to seek extension of the time. It is, lastly, stated that the contention that in a democratic country observance of the distinctions of the kind envisaged by section 80, Code of Civil Procedure between the citizens and the State will be invidious, "is only partly true", as "the State has to be supreme in order to keep the welfare of the citizens before it in everything it does. If this be so, the inclusion or retention of the special provision cannot be assailed."

We have given our anxious thought to these points, but we regret that we are unable to agree. We do not, in the first place, regard a statutory provision for notice (as a condition precedent to litigation) as indispensable or necessary in order to enable Department concerned to collect the material for defending the suit. In practice, as is well known, the prospective plaintiff does not usually rush to court without calling upon the Department to redress the alleged illegality; if he dares to do so, he runs the risk of being denied the costs of the suit. Settling the claim can be done even after the suit is filed.

Secondly, under the Civil Procedure Code, reasonable time is allowed to every defendant to file his defence; and if within that time, he makes a reasonable offer of settlement, the court is not precluded from taking that into account in exercising its discretion as to costs.

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[1] Paragraphs 32—33, *supra*.

[2] Comment of the Ministry of Shipping and Transport dated 3rd May, 1973.

[3] (a) Section 85, Bombay Port Trusts Act, 1897;

(b) Section 110, Madras Port Trusts Act, 1905.

[4] *Cf.* Paragraph 18, *supra*.

Thirdly, as regards the suggested alternative remedy of requiring the appropriate officer to send a proper reply to the notice within the specified time, or to seek extension, we think that it would hardly be workable. If the officer concerned does not send a reply, the question of consequences of non-compliance will arise. Controversies are also bound to arise as to whether the reply sent was adequate, and so on. The suggested alternative would hardly be an improvement on the present position.

Finally, as regards the point made about the supreme position of the State and its duty to secure the welfare of the citizens, we may state that what we are recommending does *not, in any* way, come in the way of the performance of that duty.

Recommendation.

34. In the light of what is stated above, we recommend that the provisions in question, in so far as they require the service of notice as a condition precedent to the institution of a suit or other proceeding, should be deleted. So much of these provisions as relates to the periods of limitation for the institution of suit or proceeding will, of course, remain unaffected by our recommendation.[1]

Period of limitation under the limitation Act, 1963 for a suit for compensation for loss, destruction or Deterioration of animals or goods delivered to be carried by railway.

35. We have considered the question whether our recommendation, in so far as it affects section 78B Railways Act[2], renders it desirable to make any change in the Limitation Act in respect of the period of limitation for suits for compensation for loss etc. of goods carried on railway. The Limitation Act, 1963, Article 30 provided one year as the period of Limitation for suits against a carrier for compensation for loss of or injury to goods. On the recommendation of the Law Commission[3], the Limitation Act of 1963 has provided the period of three years[4] as the period of limitation for such suits.

36. We do not think that any modification of the period of limitation provided in respect of suits against the Railways[5] is required. In practice, there is not much likelihood of stale demands or dishonest claims, because the normal period of limitation would still apply.

Effect of recommendation indicated with reference to each provision.

37. Our recommendation will involve—

(i) repeal of section 78B, Railways Act, 1890;

(ii) repeal of section 273(1), Cantonment Act, 1924 and consequential re-casting of sub-section (3) of that section;

(iii) amendment of section 478, Delhi Municipal Corporation Act, 1957;

(iv) amendment of section 155(2), Customs Act, 1962;

(v) amendment of section 120, Major Port Trusts, Act, 1963;

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[1] See also para. 36-37, *infra*.

[2] Para. 27, *supra*.

[3] Law Commission of India, 3rd Report (Limitation Act), pages 30-31, para 72.

[4] Article 10, Limitation Act, 1963.

[5] Article 10, Limitation Act, 1963.

38. The amendments concerning the above provisions[1] will be confined to removing the portion requiring notice, and, as already indicated,[2] they will not affect the periods of limitation specified in the provisions concerned. The actual amendments will be on the following lines—

(i) Section 78B, Railways Act, 1890 should be repealed;

(ii) Section 273(1), Cantonment Act, 1924, should be repealed and section 273(3), Cantonments Act, should be revised as follows:—

"(3) *No suit against any Board or against any member of a Board, or against any officer or servant of a Board, in respect of any act done, or purporting to have been done, in pursuance of this Act or of any rule*[3] *or bye-law made thereunder, shall, unless it is a suit for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the the cause of action arises.*"

(iii) Section 478, Delhi Municipal Corporation Act, 1957, (66 of 1957), should be revised as follows:—

"478. (1) No suit shall be instituted against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee, in respect of any act done, or purporting to have been done, in pursuance of this act or any rule, regulation or bye-law made thereunder, ..... after the expiry of six months from the date on which the cause of action arises.

(2) *Nothing in sub-section* (1) *shall apply* to a suit for the recovery of immovable property or for a declaration of title thereto....."

(iv) Section 155(2) of the Customs Act, 1962, should be revised as follows—

"(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government *or any officer of* a local authority for

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[1] Para. 37, *supra*.

[2] Para. 35, *supra*.

[3] The amendment is confined to the requirement of notice, and does not purport to deal with the conflict of decisions as to the meaning of the words "in pursuance of".

anything purporting to be done in pursuance of this Act, ..... after the expiration of three months from the accrual of the cause of action for such *proceeding.*"

(v) Section 120 of the Major Port Trusts Act, 1963 should be revised as follows:—

"120. No suit or other proceedings shall be commenced against a Board or any member or employee thereof for anything done, or purporting to have been done, in pursuance of this Act ..... after six months after the accrual of the cause of action."

# APPENDIX

## *History of section 77, Railways Act, 1890*

Section 77

Section 77 of the Railways Act corresponded to an executive order[1], which provided for notification of claims to refund of overcharges and compensation for loses etc.[2] in respect of goods carried by railways.

At the time when the Indian Railways Bill was under consideration, it was observed[3] with reference to Clause 77—

> "*This validates the Bill of a rule at* present of a very doubtful legality. One would date the six months period from the date on which the overcharge was intimated, or the loss, destruction or deterioration became known to him. Might the rule not be made subject to 'reasonable and sufficient cause' for delay?".

It may also be noted that when the Bill, was under consideration, certain authorities suggested[4] (in the correspondence on the Bill) that the period of six months was too long and that 2 months was sufficient to claim the refund of overcharges or compensation in respect of animals and goods.[5]

There was a comment from a Lieutenant Governor[6] to the effect that the Railway Administration should be similarly debarred from recovering undercharges from the public unless the claim is made within 6 months.

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[1] U.O. Reg. No. 3874 of 1882.

[2] Information taken from the file relating to the Indian Railways Bill, Legislative papers relating to Act 9 of 1890, marginal note against clause 77 of the Bil National Archives).

[3] Government Advocate, Punjab, *vide* Govrnment of India, Legislative Department Office Memorandum No. 387, dated 13-2-1880 (Cl. No. 1712 R.T.). refee red to in the papers in the file relating to the Indian Railways Bill; Legislativ Papers relating to Act 9 of 1890 (National Archives).

[4] (*a*) Board of Directors, Bengal and North-Western Railway, Col. No. 687, dated 21-2-1889 (General No. 3701 R.T.); and

(*b*) Agent and Chief Engineer Rehilkhand and Human Railway, Col. No. 274 S. dated 27-10-1888 (Cl. No. 4359 R.T.), and

(*c*) Agent, D.N.R. *vide* Consulting Engineer, Lucknow No. 2270, dated 9-12-1888 (Cl. No. 14720 R.T.).

[5] *Information taken from the file relating to the Indian Railway Bill; Legis*lative Papers relating to Act 9 of 1890 (National Archives).

[6] Lieutenant Governor, Government of Bengal No. 26442, dated 27-11-1889 (Cl. No. 11846 R.T.). Information taked from file relating to the Indian Railways Bill, LegislativePapers relating to Act 9 of 1890 (National Archives).

There was also a comment by the Manager of a Railway, that just as, by section 77, the public are debarred from obtaining a refund of an overcharge, unless the claim is preferred within 6 months from the date of delivery, the Railway Administration should also be debarred from recovering overcharges from public unless the claim is made within 6 months.[1]

These comments do not, however, seem to have carried much weight, and the clause was passed without substantial change on the points raised.

We should, before we part with this Report, place on record our warm appreciation of the assistance we have received from Shri Bakshi, Member-Secretary of the Commission, in dealing with the problem covered by the Report. As usual, Shri Bakshi first prepared a draft which was treated as a Working Paper. The draft was considered by the Commission point by point, and, in the light of the decisions taken tentatively by the Commission, Shri Bakshi prepared a final draft for consideration which was after elaborate discussion approved by the Commission. Throughout the study of this problem, Shri Bakshi took an active part in our deliberations, and has rendered very valuable assistance to the Commission.

P. B. Gajendragadkar— *Chairman*

V. R. Krishna Iyer
P. K. Tripathi
S. S. Dhavan
S. P. Sen-Varma
} *Members*

P. M. Bakshi— *Member-Secretary*

New Delhi,
the 7th May, 1973.

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1 Manager and Engineer-in-Chief, Thirhout State Railway, No. 5336, dated 23-7-1888 (Cl. No. 075 R.T.).

2 Information taken from the file, relating to the Indian Railways Bill, Legislative papers relating to Act 9 of 1890 (National Archives).

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