
(2011) 12 DEL CK 0346
In the Delhi High Court
Case No : Writ Petition (C) 3717 of 2010

Ajay Mehndiratta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 30, 33, 38, 39

Citation : (2011) 12 DEL CK 0346

Hon'ble Judges : Rajiv Sahai Endlaw, J; A.K. Sikri, J

Bench : Division Bench

Advocate : Roma Bhagat, for the Appellant; R.N. Singh, Advocate with Mr. R.V. Sinha, Ravi Prakash, Ms. Sangita Rai, Ms. Avni Singh, Advocates for R-1 and Mr. Ruchir Misra, Advocate for R-2, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Sikri, Acting Chief Justice

1. In this writ petition, which is in the nature of Public Interest Litigation, the petitioner is espousing the cause of all those persons who are suffering from disability within the meaning of Section 2 (i) of the Persons with Disabilities (Equal Opportunity, Non Discrimination and Full Participation) Act, 1995 (hereinafter referred to as "the Disability Act").

2. The respondent no. 1/Railways has given certain concessions on regular tickets to certain persons suffering from specific kind of disability and procedure to get such concession is also prescribed. The petitioner seeks mandamus directing the respondent to extend the said policy of concession on railway ticket to all disabled persons who fulfill the conditions u/s 2 (i) of the Disability Act.

3. The Railways formulated its policy granting certain concession in railway fares, details whereof are contained in IRCA Coaching Tariff, Part I (Vol.II). Though,

copy of such concession policy is not placed on record, the petitioner has filed the copy of "General Rules for Concession", as Annexure-A. These General Rules relate to concession for students, sr. citizens, war widows, sports persons and various other categories. It is stated that the Railway is presently granting concession to the following categories of disabled persons:

- (i) Orthopedically handicapped/paraplegic person- who cannot travel without escort: 50% in AC-1 and 2 and 75% in other classes
- (ii) Mentally retarded persons:- who cannot travel without escort; 50% in AC-1 and 2 and 75% in other classes
- (iii) Completely blind person-50% in AC-1 and 2 and 75% in other classes.
- (iv) Completely deaf and dumb person (both afflictions together in the same person)- 50% in 1st and 2nd Sleeper class.

It is further submitted that the 50% concession is also granted by the respondents in 1st and 2nd class fares in seasoned tickets. Further, the said concession is also granted to one escort with every disable person.

4. All those categories of persons suffering from aforesaid disabilities are entitled to concession on the production of requisite certificate from the concerned persons/organization in India. It is so stated in para 4 of the aforesaid General Rules in the following terms:-

4.Except Senior citizens, concession on Indian Railway will be admissible on production of the requisite certificate from the concerned person/organization in India and the documents issued by persons/organization in other countries shall not be valid for the purpose of concession.

5. In the case of Senior citizens, para-5 mentions that no proof of age is required at the time of purchasing tickets. They are only required to carry some documentary proof showing their age or date of birth and produce it if demanded by some railway official during the journey. The grievance of the petitioner, as pointed out above, is two fold namely;

- (i) All the persons including in the definition of its disability defined u/s 2 (i) of the Disability Act are not granted the concession. According to the petitioner it should be available to all such disabled persons.
- (ii) Those persons suffering from disability and having requisite certificate from the authority specified in the Disability Act should be allowed to avail the concession rather than forcing such persons to obtain requisite certificate from the concerned persons/organization specified by the railway for each journey, which according to the petitioner is quite cumbersome and onerous.

6. The first relief is premised on the submission that by including only limited categories of disabled persons and excluding others amounts to a hostile discrimination which is violative of Article 14 of the Constitution and also violates

their right under Article 21 of the Constitution. It is submitted that the concession is granted by the Railways to the people with visual and loco motor disabilities who usually need an escort and are not in a position to earn as much as persons without disability. The concessions were therefore aimed at providing them mobility as well as access to potential earning. Once this is the objective, a laudable one, which is sought to be achieved, why it should not be extended to all other categories of disabled persons as all disabled form one class under the Disability Act. Reference is made to Section 30 and 38 of the Disabilities Act, which puts an obligation on the State to provide for such benevolent schemes. It is further submitted that such benefits should be applicable to all the trains. At present, Rajdhani and Shatabdi do not accord this concession to the disabled though these trains are part of the concession policy for the senior citizens.

7. The respondents have contested the aforesaid relief claimed in this petition. The main defence of the Railways is that it is already losing substantial revenue in granting relief to different kind of people including concession to disabled persons. During the year 2009-10, the loss of revenue on account of concession to disabled persons in reserved segment only was more than Rs. 47.77 crores. If it is extended to all categories mentioned in the Disabilities Act, then the revenue loss would increase drastically. The respondents have submitted that this very issue was considered by the Madras High Court in its decision dated 27th March, 2007 in the case of I. Elangovan Vs. The Central Co-ordination Committee and Ors.(Writ Petition No. 38230/2002). Similar Relief claimed in the said petition was denied in the following manner:

5.The question as to whether the Railway concession is to be allowed in favour of one or other class of persons is a matter of policy decision of the Railway, which is the competent authority. The same cannot be decided by this Court. So far as the "persons with disability" is concerned, particularly "disability" as defined u/s 2 (i) of the Disabilities Act, such persons can claim benefits to which they are entitled under the Disabilities Act, 1995. As the Disabilities Act, 1995 do not relate to Railway concession, petitioner cannot derive any benefit of the same.

In the facts and circumstances, and in view of policy decisions taken by the Railways and the guidelines issued, no further order/direction is required to be issued in this writ petition. However, this order shall not stand in the way of the respondent to grant such benefits in favour of the other disabled persons such as blind, etc. if it so chooses. This writ petition stands disposed of with the above said observations. There shall be no orders as to the costs.

8. Our attention was drawn to similar complaint made before the Chief Commissioner For Person with Disabilities u/s 47 of the Disabilities Act which was dismissed by the said Chief Commissioner. It was in the case of Mr. V. Kesava Vasu Vs. Chairman, Railway Board, Rail Bhawan, New Delhi. (Case No. 215/99/8840 decided on 21.3.2001).

9. It is thus argued that these are policy decisions and the Court should not

interfere with the same, more particularly when such decisions have huge financial implications. The respondent also relied upon, the judgment of Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, .

10. We may remark, in the first instance, that the respondents are right in their submission that grant of concessions for undertaking railway journeys by certain category of persons is not their right which is a policy decision which the executive is free to take and various factors go into the said decision making. This would include the financial implications. Therefore, when a decision is taken to extend the benefit of concession to certain specified categories, ordinarily the others who are excluded may not have the right to come forward and claim the same benefit. In Balco (supra) which was also a PIL dealt with by the Supreme Court, the following conclusions were arrived at by the Court:-

91. Conclusion:

In a democracy it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court.

92. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. Here the policy was tested and the Motion defeated in the Lok Sabha on 1st March, 2001.

Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or statutory duties. None of these contingencies arise in this present case.

In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself.

11. Likewise, we find that in Union of India (UOI) Vs. Shankar Lal Soni and Another, the grievance was that though the senior citizens were entitled to

Airlines tickets on concession, two conditions which had been imposed thereon had in fact nullified these concessions. These two conditions were:

- (i) That the Airlines required that a senior citizen applying for a concessional ticket had to do so 7 days in advance of the journey; and
- (ii) That the senior citizen was required to stay a minimum of 2 days at the outgoing destination in order to be eligible for the return ticket."

Though the Rajasthan High Court has struck down those conditions, in appeal the Supreme Court reversed the decision of the Rajasthan High Court and allowed the appeal of the Union of India keeping in mind the financial implications of the grant of concession to senior citizens and also on the ground that it was a policy decision imposing those conditions, which could not be interfered with by the Courts. Para 8 and 12 of this Judgment may be quoted below:-

8. Dr. Singhvi, the learned Counsel for the respondents has also urged that it was rather unfair that a concession granted with one hand was being taken away by the other and that a duty lay on all citizens of this country to ensure a comfortable, happy and healthy life to its senior citizens and any condition laid down by the appellants had to stand the test of reasonableness and in this view of the matter there was no error in the order of the High Court. Mr. Parekh has further pointed out that subsequent to the judgment of the High Court the Airlines as well as the Railways had waived some of the conditions which had been challenged by the writ petitioner respondents and the matter was, therefore, largely academic at this stage.

12. The very basis of this judgment is that a decision to grant a certain concession or a certain benefit and the conditions for their grant are a matter for the administrators alone and the court should not interfere in the matter on the premise that it was of the opinion that some of the conditions imposed were not justified. A concession based on an administrative decision *de hors* a statute as in this case stands on a yet weaker footing."

12. These posers have become necessary having regard to the following principle laid down by the Supreme Court in the *E.V. Chinnaiah Vs. State of Andhra Pradesh and Others*, :-

82. Our Constitution permits application of equality clause by grant of additional protection to the disadvantaged class so as to bring them on equal platform with other advantaged class of people. Such a class which requires the benefit of additional protection, thus, cannot be discriminated *inter se* i.e. between one member of the said class and another only on a certain presupposition of some advancement by one group over other although both satisfy the test of abysmal backwardness as also inadequate representation in public service.

13. However, in the present case, the matter does not rest here and cannot be disposed of solely on the basis of aforesaid principle. The issue here assumes another dimension. The Railways has granted concession to certain categories of

disabled persons. In that light, what falls for consideration is whether non-grant of this concession to others to the excluded category of disabled, who are otherwise treated as "disabled" within the meaning of Section 2 (i) of the Disabilities Act, is discriminatory? In other words, whether the respondent can justify its concession to limited category on the basis of any reasonable classification based on intelligible differentia having nexus with any objective which is sought to be achieved. The related question would be as to whether all kinds of disabilities defined u/s 2 (i) of the Act form same class and are entitled to same benefit.

14. The position would have been different had there been a statutory provision in the Disability Act entitling such concession to all the persons suffering with disability specified u/s 2 (i) of the Act. However, there is no such legal right conferred. It is a concession which is granted by the Railways as benevolent measures de hors any statutory obligation. The respondents have chosen certain category of disabled persons viz. orthopedically handicapped/paraplegic person, mentally retarded person, completely blind persons and completely deaf and dumb person. There is a purpose of rationale behind giving concession to such persons. Normally, these are the persons who cannot travel without escort and since they are accompanied by escort, 50% concessional on fare is made permissible for persons suffering with such disability as the accompanying persons escorting such a person also needs to buy railway ticket which is available at normal fare. If there are other persons suffering from disability which can be placed within the same situation and condition as the persons from the aforesaid disabilities, position would have been different. We may quote following discussion from the judgment of Supreme Court in *Javed Abidi Vs. Union of India and Others*,

4. According to Mr. Sorabjee granting such concession to only disabled persons suffering from locomotor disability may be constructed to be a discriminatory attitude towards them and, therefore, the Court should not issue such direction, but he does not dispute the fact that blindness is one of the disability u/s 2(i) of the Act and the Airlines is granting concession for travelling by Air to those suffering from the disability of blindness. While we agree with Mr. Sorabjee, learned Attorney General that the economic capacity is a germane consideration while deciding the question as to whether all persons suffering from disability as defined u/s 2(i) of the Act should be granted concession like blind persons for travelling by Air, at the same time we cannot ignore the true spirit and object with which the Act was enacted. To create barrier environment for persons with disability and to make special provision for the integration of persons with disabilities into the social mainstream apart from the protection of rights, provision of medical care, education, training, employment and rehabilitation are some of the prime objectives of the Act. In this context the question that arises for consideration is whether atleast persons suffering from locomotor disability to a particular extent can be granted the facility of concession while travelling by Air which facility is already being given to those suffering from the disability of

blindness. When we consider the different types of disabilities mentioned in Section 2(i) of the Act and examine the same in relation to the difficulties one may face by travelling by train to far off places, say from Delhi to Trivandrum, those who are suffering from locomotor disability would stand by a separate class itself because of their immobility and the restriction of the limbs. It may not be difficult for a person with low vision or a person with hearing impairment or mental retardation or a person suffering from leprosy to travel by train even to far off places whereas a person suffering from locomotor disability above certain percentage of the same will find enormous difficulty in travelling by train or bus. We are considering the question of such disabled persons in the context of granting them the facility of concession for travelling by Air. Having considered the affidavits filed by different parties and having considered the submissions made by Mr. Sorabjee appearing for Indian Airlines as well as Mr. Abidi, petitioner in person and bearing in mind the discomfort and harassment a person suffering from locomotor disability would face while travelling by train particularly to far off places we are inclined to issue direction to the Indian Airlines to grant them the same concession which the Airlines is giving to those suffering from blindness..

15. As is clear from the above, the benefit was extended to the persons suffering from loco motor disability as for the purpose of travel, such disability was put at par with persons suffering from blindness. Therefore, it is difficult to pass general directions extending the benefit to all the category of disabled persons. It would be apt to extract the following passage from the decision of the Supreme Court in Union of India (UOI) Vs. Devendra Kumar Pant and Others, :-

Sub-section (2) of Section 47 provides that no promotion shall be denied to a person merely on the ground of his disability. "Disability" as per the definition in Section 2(i) of the Act, means blindness; low vision; leprosy-cured, hearing impairment, locomotor disability, mental retardation; and mental illness. "Person with disability" is defined in Clause (t) of Section 2, as a person suffering from not less than forty percent of any disability as certified by a medical authority. What is significant is all persons with disability are not treated equally or similarly, under the Act. The benefits extended under the Act depends upon the nature of disability and extent of disability. Different principles relating to non-discrimination apply depending upon the context in which the benefit is extended. Let us illustrate. Section 33 refers to reservation of posts for persons or class of persons with disability. But it however makes it clear that the reservations will be made only to those suffering from (i) blindness or low vision, (ii) hearing impairment, (iii) locomotor disability or cerebral palsy. There is no provision for reservation of posts for persons suffering from mental retardation, mental illness or leprosy-cured, though they are also "persons with disability". On the other hand Section 39 requires all educational institutions to reserve seats for persons with disability, without restricting the reservation only to certain categories of persons with disability. Similarly some of the provisions in Sections 44, 45 and 46 with reference to non- discrimination in transport, non-discrimination on the road and non- discrimination in the built environment may

be user-specific depending upon the nature of disability, that is some are meant only for persons with locomotor disability and some for persons suffering from blindness or low vision and not for others. Therefore the provisions of the Act cannot be applied mechanically to all persons with any and every kind of disability. It will be necessary to keep in view, the object of the Act, identification of the category of persons for whom a particular beneficial provision has been made, and the extent of the benefit provided.

16. In view of the aforesaid discussion, though we cannot give general direction to the respondents to accord such benefit of concessional fare to all the persons suffering from the disability defined under 2 (i) of the Act, at the same time, we would like to clarify that if a particular kind of disability is brought before the Court and Court finds that such a disability falls in the same class for which the Railways have already grant concession, then in those particular cases, the Court would not be powerless in extending the concession. No doubt, on one hand it may be a matter of policy having financial and other implications, but where issue involves to be public interest that has not engaged the attention of those concerned with the policy. It is open to the Court to bring the same to the notice of the policy makers pointing out the need for change in the policy. These remarks of ours are borrowed from the observations of the Supreme Court in *Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others*, where the Court held:-

We are conscious of the fact that the issue is a matter of policy having financial and other implications. But where an issue involving public interest has not engaged the attention of those concerned with policy, or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interest, courts will be failing in their duty if they do not draw attention of the authorities concerned to the issue involved in appropriate cases. While courts cannot be and should not be makers of policy, they can certainly be catalysts, when there is a need for a policy or a change in policy.

17. We thus make it clear that we are not accepting the argument of the Railway that the concession granted is a policy matter per se predicted on "financial implication". At the same time, it would not be possible to give any direction in the present case. We find that the concession given to the persons suffering from particular kind of disabilities mentioned in "General Rules for Concession" forms separate class.

18. Therefore, as observed above, if any kind of disability which is at par with the persons suffering from disability entitled for concession, the Court will not be powerless to extend the benefit.

19. The present writ petition thus stands disposed of with the aforesaid observations.