
(2002) 08 MP CK 0076
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3946/98

Anil Garg

APPELLANT

Vs

Western Coalfields Ltd. and Another

RESPONDENT

Date of Decision : 05-08-2002

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(3), 19(6)

Citation : (2003) 2 MPHT 251 : (2003) 2 MPLJ 251

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : P.R. Bhave, for the Appellant; P.S. Nair and S. Aole, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner in this application seeks the quashment of the order declaring him "persona non grata".

Petitioner is a lawyer and Member of District Bar Association, Betul, Free Lance Journalist, Organiser of Jila Upbhokta Manch and is Secretary of Satpuda Kisan & Mazdoor Kalyan Samiti, Betul. Respondent Western Coalfields Ltd. is a Company carries on coal mining operations. Huge land was acquired for the coal mining operations. Area of Ghodadongari had 60% tribal population. Petitioner took up the various causes of the tribals. Petitioner pointed out to various authorities problems of tribals regarding rehabilitation, by diplere. The Government machinery was put in motion by petitioner respondent got irked and decided to control activities of petitioner within coal mines area and particularly in "Pathakhera" area. Restriction has been put on petitioner's movement and activities within coal mines area particularly in Pathakhera. Workers have been restrained to meet petitioner failure to comply directive may result in disciplinary action for misconduct. Pathakhera as per petitioner's case has 1 lac population

and is part of Sarni Municipal Council with total population of 2 lacs. At Pathakhera various civil amenities exists such as zonal bus stand, police station, Forest check post, Government hospital, Post Office, Banks, Veterinary Hospital, daily & weekly markets, Government Tribal High Schools, Little Flower and Swami Vivekanand Schools, sub-office of Municipal Council, Sarni etc. The impugned order (P-1) declaring him persona non grata is bad in law and is violative of Article 19 of Constitution of India, it amounts to "Externment" from area. The order is beyond jurisdiction. Petitioner has no criminal tendency. Since petitioner is a lawyer. Workers could not be prevented to meet the petitioner. The order tarnishes the image of the petitioner.

The respondents contest the claim of petitioner and seek to justify the order on the ground that petitioner is not a social worker. Petitioner assaulted Shri N.K. Anand, General Manager, WCL, Pathakhera on 26-2-98 when he went to Betul in connection of his official work. Petitioner has no right to instigate workers if they are aggrieved they can approach the respondents. There are five recognized trade unions to take care of the working interest. No civil right of petitioner has been affected. The order is in the interest of WCL. Petitioner creates unrest in the industry. Workers have no right to approach petitioner for redressal of grievance. Petitioner has made complaints for last 5 years in various offices. No worker has protested against order (P-1).

Shri P.R. Bhawe, learned Senior Counsel for the petitioner, submitted that order is violative of constitutional right under Article 19. Petitioner has been illegally declared, "persona non grata". Workers could not be prevented from meeting petitioner, he is an advocate and petitioner was well within his right to raise grievance against the W.C.L. to protect interest of workers and tribals as apparent from P-2 to P-15. Action is malafide. The petitioner has been deprived of using civil amenities at Pathakhera of which respondents have no jurisdiction. P-1 affects civil rights of petitioner in various ways, hence order (P-1) be quashed.

Shri P.S. Nair, learned Senior Counsel appearing for the respondents, submits that petitioner has no right to enter the premises owned by respondents. They can impose reasonable restriction in the interest of W.C.L. considering the nature of activities in which petitioner involved himself, an order has been passed which call for no interference in the writ petition.

Following questions arise for consideration :--

- (1) Whether the order declaring petitioner as "persona non grata" is valid and proper;
- (2) Whether respondents have powers to restrict the movement of petitioner and to what extent;
- (3) Whether order (P-1) imposing condition; If any worker, staff and officer keeps relation with petitioner, it will constitute a misconduct and disciplinary

action will be taken against him is illegal and unconstitutional.

First question for consideration is whether the order declaring petitioner as *persona non grata* is valid and proper. The order has the effect of ousting petitioner from "Pathakhera" area which is part of "Sarni" Municipal Council in the area in which restriction has been imposed includes local bus stand, police station, forest check-post, Govt. hospitals, veterinary hospital, post office, banks, daily & weekly market place, schools, sub-office of Municipal Council, Sarni. The order (P-1) has the effect of restricting the movement of petitioner in the area which is open to a person of general public and have amenities of day to day utility. It is not an order restricting movement of petitioner exclusively in place of work or office where the right of entry may be restricted with permission. The validity of the order has to be gauged in the backdrop of said fact situation.

It is not in dispute that petitioner had been espousing the cause of poor tribals and has successfully set the machinery in motion at various levels. P-2 indicates that petitioner represented to Member of Parliament about removal of 600 employees in the year 1992. Action was requested to be initiated. Member of Parliament wrote a letter to Ministry of Coal with a copy to petitioner in his capacity as Convenor of Satpuda Kisan and labour Welfare Committee, Betul. P-3 and P-6 indicate that petitioner lodged complaint about possibility of damage by dipling P-7 & P-8 relates to complaint lodged of oppression of tribes and non-compliance of various directions issued by Supreme Court. Some more documents reflect that for several years petitioner had been raising grievance before various authorities.

It is clear that while associating with P-2 to P-15, it cannot be said that petitioner had involved himself in uncalled for activity or illegal activity in any manner nor it can be said that petitioner created unrest in the industry. The raising of grievance of the nature raised by petitioner cannot be said to be an illegal interference in the functioning of the W.C.L.

The action of declaring petitioner "*persona non grata*" and requiring him not to move in "Pathakhera" carries adverse civil consequences, hence it is bad for manifold reasons. Such an order has to be treated to at par with an order of externment. Right to move freely throughout India is a right guaranteed by Article 19(1)(d). The rights which are ensured under Article 19(1) can be curtailed as per Articles 19(3) and 19(6) only by a law as laid down in *Kharak Singh Vs. The State of U.P. and Others*, , such restriction is imposable by an intra vires law as laid down in *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, , and has held in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, , such law must be valid law. It must be within competence of legislation and must not contravene any other provisions of Constitution. P-1 deals with imposition of restrictions even in public places such as bus stand, hospitals, municipal office etc. hence such restriction is capable of being imposed only by law enacted by legislation. The order (P-1) does not have sanctity of law and cannot impose restrictions at places open to public. W.C.L. can only have right to

reserve entry in its offices or working place where permission may be required to enter. The order restricting free movement in entire "Pathakhera" area is patently illegal and ultra vires of power.

Order (P-1) is bad in law as it does not impose restriction for temporary/short period. In *Gurbachan Singh Vs. The State of Bombay and Another*, it was held that restriction on freedom of movement is reasonable only if it is of temporary duration.

The order is bad in law for yet different reason as it offends principles of natural justice. Petitioner has not been heard. He has not been informed of grounds. Communication of grounds in such a matter cannot be vague insufficient or incomplete as held in *Dr. N.B. Khare Vs. The State of Delhi*.

Order (P-1) is void as order has been passed without hearing him. In *State of Bihar v. Misra*, it is held that a law of externment or internment would be void if it does not offer a right of representation or an opportunity to be heard to the person against whom an order is passed. This is clearly laid down in *State of M.P. and Anr. v. Thakur Bharat Singh*, AIR 1967 SC 1170, *Gurbachan (supra)* and *State of Bihar v. Misra (supra)*. Before passing order (P-1) principles of natural justice have not been adhered to hence order is bad in law.

In my opinion, the respondents have no right to check the movement of petitioner at public places. The respondents can restrict entry only in their office and actual work place where permission is required and entry is restricted. No general restriction can be ordered when entire township exists at Pathakhera. Thus, P-1 is void and inoperative.

Yet another aspect invalidates the order (P-1) and makes it liable for quashment. The respondents have imposed restriction on their employees to have any relation with petitioner who is a lawyer and had been representing the cause of worker/tribals. The restriction is wholly unconstitutional as respondents have no authority to impose such a restriction with whom labourers may contact for redressal of grievance cannot be restricted as sought to be done by impugned order. The petitioner being lawyer has the right to meet workmen and vice versa. The workers could not be threatened with misconduct and disciplinary proceedings. This amounts to putting in jeopardy the right of petitioner to carry on profession of law and his right to have discussion enshrined under Article 19. The order is illegal and void as it infringes petitioner's right conferred under Article 19(1)(g) of the Constitution of India.

Resultantly, the writ petition is allowed. The order (P-1) is quashed with the observations made above. Costs on parties.