

**(1980) 06 BOM CK 0009**

**In the Bombay High Court**

**Case No : Criminal Application No. 768 of 1979**

Arjun Babloo Tukaral

APPELLANT

Vs

G.V. Javalkar and Others

RESPONDENT

**Date of Decision : 17-06-1980**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 227, 311  
Criminal Procedure Code, 1973 (CrPC) — Section 482  
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2  
Railways Act, 1890 — Section 10, 138, 148(2), 3(7), 8

**Citation : AIR 1981 Bom 72 : (1981) MhLj 525**

**Hon'ble Judges : Dharmadhikari, J; Bhonsale, J**

**Bench : Division Bench**

**Advocate : V.D. Govilkar, for the Appellant; J.A. Barday, Public Prosecutor, for the Respondent**

## **Judgement**

Bhonsale, J.—Two interesting points of considerable importance, which may have important bearing on the relationship of the Railway Administration with their retired employees arise for determination in this petition filed by one Arjun Babloo Tukaral, an ex-employee of the Western Railway, Bombay. In order to appreciate these points, necessary undisputed facts which lie within a narrow compass may be stated as follows:--

The petitioner Shri Arjun Babloo Tukaral, who was employed as a Gang Man under the Western Railway at Parel and was allotted a railway quarter being Quarter No. 171, Room No. 14, Bandra (West), Bombay-400 050, it is alleged, without payment of any rent on account of his employment. Admittedly the petitioner retired from the service of the Western Railway on December 31, 1977. Even after his retirement from service the petitioner did not vacate the said quarter in spite of the notice being served upon him on January 17, 1978, calling upon him to hand over the vacant possession of the said quarter. As the petitioner did not vacate the said quarter, respondent No. 1 who is the Personnel Inspector, (Settlement) Western Railway, Bombay Central, filed an application u/s

138 of the Indian Railways Act, 1890 in the Court of the Metropolitan Magistrate, Bombay Central, Bombay for eviction of the petitioner from the said quarter belonging to the Western Railway. In the said application these facts were briefly stated and it was prayed that any competent police officer be ordered with proper assistance to enter upon the said quarter and remove any person found therein and take possession thereof and to deliver the same to the Railway Administration or to person appointed by the Railway Administration in that behalf. The application was made on behalf of the Railway Administration and signed by respondent No. 1 in his capacity as Personnel Inspector (Settlement) Western Railway, Bombay Central, Bombay and was dated September 14, 1978. Upon this application being presented to the learned Metropolitan Magistrate, 36th Court, Bombay Central, Bombay, the learned Metropolitan Magistrate issued the following notice to the petitioner Arjun Babloo to show cause why a warrant of eviction should not be issued against him. The notice issued by the learned Metropolitan Magistrate is dated September 14, 1978. The said notice of the learned Magistrate reads as follows:--

"To, Shri Arjun Babloo

Whereas on 14-9-1978 an application has been made by Shri G.V. Javalkar Bombay to this Court that you were employed in Western Railway as Gangman at Parel and you are occupying Quarter No. 171 2/M. 14 at Bandra, Bombay and you have been retired from the services of the W. R. since 31-12-1977 and that you have not vacated the said quarter though you were served with a notice on 17-2-1978 to do so.

You are hereby required to attend this Court on 25-6-1978 to show cause why a warrant of eviction should not be issued against you herein fail not.

Given under my hand and the seal of the Court Dated this 14th day of September 1978.

Sd/-

For Metropolitan Magistrate, 36th Court, Bombay Central, Bombay."

2. The petitioner in response to the said show cause notice as to why a warrant of eviction should not be issued against him filed his written say on October 16, 1978 in the Court of the Metropolitan Magistrate, 36th Court, Bombay Central, Bombay. The main contentions which were raised in the said written say were that the application made by respondent No. 1 under the provisions of Section 138 of the Indian Railways Act was misconceived, bad in law and was not maintainable. It was further stated that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is an Act to provide for the eviction of unauthorised occupants from the public premises and for certain incidental matters related thereto. After quoting the definition of unauthorised occupants, it was contended that the premises referred to in the notice in question were governed by the provisions of the Public Premises (Eviction of Unauthorised

Occupants) Act, 1958. It was further stated that the law was very clear in this respect and the applicant (i.e. the respondent) had to take steps under the relevant Act applicable to the public premises for evicting unauthorised occupants. The applicant had to refer the matter to the estate officer concerned and had to follow the procedure laid down in the Public Premises (Eviction of Unauthorised Occupants) Act. Some of the provisions of the said Act were quoted in the said written say. It may be mentioned that in the said written say at various places the Act was referred as Act of 1971 as well as Act, 1958.

3. Respondent No. 1, that is to say, Personnel Officer of the Western Railway in reply to this say of the petitioner filed his further written reply on March 7, 1979 and it was contended that the application dated September 14, 1978 preferred on behalf of the Western Railway Administration was u/s 138 of the Indian Railways Act, which provided a specific procedure for summary delivery to the Railway Administration of property detained by the railway servant. The respondent who was discharged from the office on December 31, 1977 on attaining the age of superannuation by way of retirement, it is the provisions of Section 138 of the said Act which were applicable to him. It was further contended that it was for the Railway Administration to avail any of the alternative remedies open to it under law and the railway servant could not insist upon the, Railway Administration of availing of any of the particular remedy. It was stated that when there is clear provision u/s 138 of the Indian Railways Act, the Railway Administration was not bound under the law to seek alternative remedies available to it under the other laws. After this further reply was filed by the Railway Administration on March 7, 1979, the learned Metropolitan Magistrate, 36th Court at Bombay Central, Bombay, passed the following order:

"Issue warrant of possession".

The petitioner, railway servant, Arjun Babloo, therefore, approached this Court under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure and challenged the said order passed by the learned Magistrate and prayed that the said order passed by the learned Magistrate on July 11, 1979 be quashed and set aside. Interim stay of the execution of the order passed by the learned Magistrate was granted by this Court on August 9, 1979. In this petition it was averred that in or about June 1977, the petitioner's son, Dharma Arjun was employed as a casual labourer in the Western Railway and at the time of the retirement of the petitioner in December, 1977, the petitioner was informed by the officers (presumably orally since there is no document on record in support of this say) that the quarter in question would be transferred to the name of his said son Dharma Arjun on his being confirmed in the railway services. It was further stated in the petition that till such time the quarter was transferred in the name of his son the said Dharma Arjun, Western Railway Authorities detained with them the amount of gratuity that would be payable to the petitioner at the time of his retirement. That amount of gratuity amounting nearly to Rs. 4,000/-has not yet been paid and is detained by the

Western Railway Authorities.

4. In this Court, the learned counsel appearing for the petitioner has contended that the respondent-Railway Administration has admitted that the said quarter in question would be transferred in the name of the petitioner's son since he was working with railways for more than six months from June 1977, in view of the Railway Board's letter dated June 25, 1966 addressed to the General Managers, All Indian Railways on the subject of regularisation of allotment of railway quarters in the name of dependents of a railway servant who retires or dies while in service. Thus according to petitioner his son was entitled to this railway quarter as a matter of right on his father's (petitioner) retirement. The said circular reads as follows:

"Sub: Regularisation of allotment of railway quarter in the name of dependents of a railway servant who retires from or dies while in service.

.....

The Railway Board have had under consideration the question of allotment of a Railway Quarter in occupation of a railway servant to his/her dependents when he/she retires from railway service. Accordingly in supersession of the orders contained in their letter No. E(G) 630R 1-7 dated 27-7-1963, they have decided that when a Railway servant who has been allotted railway accommodation retires from service or dies in service, his/her son, daughter, wife, husband, or father, may be allotted railway accommodation on out of turn basis provided that the said relation is a railway servant eligible for Railway accommodation and had been sharing accommodation with the retiring or deceased railway servant for at least six months before the date of retirement or death.

2. It has also been decided that the same residence be regularised in the name of the relation if he/she is eligible for a residence of that type or a higher type. In other cases the said dependent will be allotted a residence of his/her entitled type or of a type next below." It seems that the petitioner's son had not made an application for allotment prior to the filing of this petition in this Court and such an application was made while this matter was pending before this Court on January 30, 1980, praying that the quarter in question should be allotted on out of the turn basis as per the Rules of the Railway Administration to the petitioner's son. In reply to the said request by the petitioner's son, the Railway Administration by their letter dated March 5, 1980 rejected the said request on the ground that as he was not a regular employee, he was not entitled for allotment of the railway quarter according to the rules and instructions on the subject. This development took place during hearing of this petition.

5. However, the petitioner has challenged the order passed by the learned Magistrate on other important grounds, (a) It was contended firstly that the word "discharge" occurring in Section 138 of the Indian Railways Act is not applicable to a retired railway servant and it does not embrace in its fold both retired railway servant as well as his residential premises. The provisions of this section

apply to events unforeseen or not anticipated such as involuntary discharge, or discharge by way of punishment, suspension from his office or death or abscondence or voluntary absenting from duty, but not to such known or foreseeable or anticipated events as retirement of the railway servant; and (b) it was further contended that the second part of the section was attracted only when any of the relations of the railway servant mentioned therein had refused or neglected to hand over the railway property such as station, dwelling house, office or other building with its appurtenances, or any books, papers or other matters, belonging to the railway servant at the occurrence of any such events after the notice in writing being given on happening of those unforeseen events referred to in the first part of the section. What was contended was that the word "dwelling house" occurring in this section has to be interpreted as ejusdem generis so as to confine it to belong to class of premises referred to therein, i.e., station, office, etc. Therefore it was seriously canvassed before us that - provisions of Section 138, could not be invoked to evict a retired railway servant who continued to occupy the staff quarter even after his retirement. It was further contended that the provisions of Section 138 apply only when the railway servant was in possession of any property either moveable or immovable in normal course of his duties, that is when he had been entrusted with any railway property for discharging his official duties. The recourse to provisions of Section 138 of the Indian Railways Act for eviction of retired railway servant from residential premises was not contemplated and was therefore prohibited.

6. The second contention of the learned counsel is based on twofold submissions: It is urged that these premises are public premises, and therefore, provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are applicable which provide for eviction of unauthorised occupants (which is what the Railway Administration describes the present petitioner to be) from the public premises and it being a special statute must prevail over the general statute i.e. the Indian Railways Act, 1890.

7. The second and more important submission of the two was that in view of the fact that provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were also applicable to the premises in question, there were, in fact, two procedures available and the choice to select either of them was entirely left with the Railway Administration so as to pick and choose which procedure to apply in respect of a particular railway servant. It was left to the un-guided discretion of the Railway Administration, and therefore, it suffers from vice of discrimination. It was further contended that the remedy available to the Railway Administration u/s 138 of the Indian Railways Act, is more drastic and more prejudicial than the one available under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

8. Shri Masand, the learned counsel for the petitioner also contended that the original application u/s 138 was filed by one Shri Javalkar, Personnel Inspector (Settlement) Western Railway, Bombay Central in the Court of the Metropolitan

Magistrate, 36th Court, Bombay Central, but the learned Magistrate erroneously allowed one Shri Mayekar, who was Senior Personnel Inspector, Divisional Office, Bombay to be substituted in his place, improperly and illegally.

9. In reply to these contentions raised by the petitioner's counsel, Shri Masand, Shri Govilkar, appearing for respondents Nos. 1 and 3, i.e. Personnel Officer of the Western Railway and Union of India through General Manager, Western Railway tried to argue in terms of reply filed in the Court of the Metropolitan Magistrate, 36th Court, Bombay Central on March 7, 1979. As stated earlier, Shri Govilkar also argued in this Court that Section 138 of the Indian Railways Act, provides a specific procedure for summary delivery to the Railway Administration of Property detained by the railway servant. He further contended that it was for the Railway Administration to avail any of the alternative remedies open to it under law and the railway servant cannot compel the Railway Administration which remedy the Authorities should avail in order to evict the recalcitrant railway servant. He relied on the authority of the Calcutta High Court in Divisional Superintendent, Eastern Rly., Asansole Vs. Suresh Chandra Chakravarty, in support of his submission.

10. In order to appreciate the contentions raised by Shri Masand, the learned counsel for the petitioner it will be convenient to examine the provisions of Section 138 of the Indian Railways Act. Section 138 prescribes procedure for summary delivery to railway administration of property detained by a railway servant. It is as follows:--

"If a railway servant is discharged or suspended from his office, or dies, absconds or absents himself, and he or his wife or widow, or any of his family or representatives, refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration or to a person appointed by the railway administration in this behalf, any station, dwelling house, office or other building with its appurtenances, or any books, papers or other matters, belonging to the railway servant at the occurrence of any such event as aforesaid, any Presidency Magistrate or Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police officer, with proper assistance, to enter upon the building and remove any person found therein and take possession thereof, or to take possession of the books, papers or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf."

The first part of the section contemplates two sets of events which, according to Shri Masand, are either unforeseen or not anticipated. A railway servant is either discharged or suspended from his office. In the second set of events he either dies or absconds or absents himself. It is clear that these two expressions which occurred in the first part are quite different and are unrelated to each other. It may be that these events are unforeseen or not anticipated, but that does not mean the same thing as to accept the proposition canvassed by the learned counsel that the word "discharge" occurring in Section 138 in the first part

applies only to discharge by way of punishment or involuntary discharge and does not embrace in its fold retirement after reaching the age of superannuation. The meaning of word "discharge" according to Oxford English Dictionary is "to relieve one of one's charge or office" and one can be so relieved of charge or office either on retirement or on being dismissed by way of a punishment on a charge being established against him. There is no dispute in that the railway servant is suspended from his office only temporarily by way of an interim measure. The learned counsel is therefore not right in confining the interpretation of word "discharge" to a dismissal or discharge by way of punishment alone or involuntary discharge so as to exclude the retirement after reaching the age of superannuation. In either of these three cases it is open to the railway admin administration to invoke the provisions of Section 138 for summary delivery of property detained by such a railway servant to railway administration.

11. In fact, the meaning of word "discharge" occurring in Section 138 of the Indian Railways Act is of wide amplitude and has been rightly interpreted by the Calcutta High Court so as to include in it "discharge on retirement", so that even if a railway servant who has been relieved from his service after retirement; he would come within the mischief of this section and it would be legally open to a Magistrate to deliver the quarters to the railway administration. See Divisional Superintendent, Eastern Rly., Asansole Vs. Suresh Chandra Chakravarty,

12. In interpreting the word "discharge" occurring in Section 138, the Court cannot be oblivious to the object and policy of the legislature in enacting the said provisions of the statute. Though as has been held by Gajendragadkar, J. in Kanai Lal Sur Vs. Paramnidhi Sadhukhan, "the first and primary rule of construction" "is that the intention of the legislature must be found in the words used by the legislature itself." However, the words used by the legislature do not always bear a plain meaning. In case of doubt, therefore, it is always safe to have an eye on the object and the purpose of the statute, or reason or spirit behind it. In more than one English decision it has been laid down that the Judges must look to what the purpose of the legislature is and as observed by Sir John Nicholl in Attorney General v. H. R. H. Prince Ernest Augustus of Hanover (1957) 1 All ER 49 that "the key to the opening of every law is the reason and the spirit of the law. This aspect of "purpose" is the very foundation of the rule in Heydon's case reported by Lord Coke as far back as in 1584. Statutes "should be construed not as theorems of Euclid" said learned Hand, J. "but with imagination of purpose behind them" V.O. Tractoroexport, Moscow Vs. Tarapore and Company and Another, Each word, phrase or sentence "is to be construed in the light of general purpose of the Act itself". It is again well settled that the purpose or object of the statute and the words in it are given a construction which they can reasonably bear to effectuate that purpose or object. The correct interpretation is one that best harmonises the words with the object of the statute. Lord Porter speaking for the board observed "a right construction of the Act" can only be attained if its whole scope and object together with an analysis of its wording

and the circumstances in which it is enacted are taken into consideration. AIR 1940 82 (Privy Council)

13. What is important to bear in mind is the context in which, the words occur and the object of the statute becomes relevant in construing the provisions. Is the word "discharge" confined to dismissal by way of punishment on a charge being established against him or also to be extended to railway servant who is relieved of charge of his office on retirement, i.e. on reaching the age of superannuation? In this context the object and the purpose behind enactment of this provision has to be construed. Ordinarily, the words used in a statute, as observed by Gajendragadkar, J. in *Sheikh Gulfan and Others Vs. Sanat Kumar Ganguli*, "have to be construed in their ordinary meaning; but there are cases where judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which those words occur. Very often, in interpreting a statutory provision, it becomes essential to have regard to the subject matter of the statute and the object which it is intended to achieve. That is the reason why in deciding the true scope and effect of the relevant words, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute become relevant and material."

14. We will have to consider the meaning of word "discharge" as used in Section 138 keeping in view these well established principles of construction of statute referred to above in various leading decisions. More recently the Supreme Court in *Union of India (UOI) and Another Vs. B.N. Prasad*, has observed that provision made in Section 138 has widest amplitude. The provision is made in public interest and is meant for gearing up the efficiency of railway administration and, therefore, must be construed liberally, broadly and meaningfully so far as to advance the object sought to be achieved by the Railways Act. In the said decision it is also held by Supreme Court that termination of the contract of railway contractor also amounts to "discharge" within the meaning of Section 138 of the said Act. In this context reference could usefully be made to the observations of Supreme Court in para 4 of the said judgment which reads as under:--

"In our opinion, a close perusal of this section clearly reveals that the provision has widest amplitude and takes within its fold not only a railway servant but even a contractor who is engaged for performing services to the railway, and the termination of his contract by the Railway amounts to his discharge, as mentioned in Section 138. As the provision is in public interest meant to avoid inconvenience and expense to the travelling public and gear up the efficiency of the railway administration, it must be construed liberally, broadly and meaningfully, so as to advance the Railways Act. Furthermore, the section only requires that an application should be made by or on behalf of the railway



administration. The section does not require that any particular person holding a partial post, should be authorised to file a complaint. The matter was considered by this Court in *Nanik Awatrai Chainani Vs. The Union of India (UOI)*, , where this Court pointed out, while relying on decisions of the Lahore and Calcutta High Courts that the appellant in the case was a railway servant, and an order of eviction would be passed against him. This court relied on the definition of the railway servant as contained in Section 3(7) read with Section 148 (2) of the Act. The Court approved of the decision in *S.L. Kapoor v. Emperor AIR 1937 Lah 547* and *Ratanlal Majumdar Vs. Alfred Ernest Young*, , which had taken the view that even a contractor is a railway servant within the meaning of Section 138. In this connection, this Court observed:

"The terms which govern the parties expressly reserve to the railway administration extensive power of directing and regulating the appellant's work and also to an extent, of controlling the manner of doing the work. Keeping in view the purpose and object of these agreements, namely, that of affording necessary amenities to the travelling public, retention of this over-all power by the railway administration is not only appropriate but necessary. The retention of this power by the railway administration, in our view, constitutes relevant material for sustaining the conclusion of the courts below that the appellant is a railway servant, as defined in Section 3 (7) read with Section 148 (2), Indian Railways Act, against whom action can be taken u/s 138 of the said Act."

This court went to the extent of holding that such a servant in view of the precarious contract under which he had entered in the Railway service was not governed by Article 311. In the case of *S.L. Kapoor v. Emperor AIR 1937 Lah 547*, the following observations were made :--

"The termination of his service by the railway under Clause 21 of the agreement amounts to his discharge within the meaning of Section 138 of the Act, and he is therefore liable to dispossession of the premises which he was occupying as a servant of the railway."

The word "discharge" embraces all types of termination of contract. It is well settled that the relationship of master and servant is created by a bilateral act. The contract of service is continuing in nature and the obligation under the said contract is terminable by following certain modes, or by operation of statutes. Retirement or even resignations are well recognised modes of terminating the contract of employment, since the object of these modes of termination is the same, i.e. the person concerned is relieved of the charge or of the office. Therefore, the word "discharge" in the context will embrace in its fold the fact of termination of contract, including the contract of employment, however it is produced. It postulates some act by the parties, or otherwise, which brings the contract of employment to an end.

15. In the present case the contract between the employee and the railway administration has come to an end because on reaching the age of

superannuation or because of retirement which amounts to "discharge" within the meaning of Section 138 of the said Act. We therefore cannot persuade ourselves to accept the interpretation placed on the word "discharge" by the learned counsel occurring in Section 138 of the said Act.

16. The next contention of the learned counsel was that the provisions of Section 138 of the said Act were not applicable to residential premises of the railway servant is only to be stated to be rejected. The word "dwelling house" is clearly mentioned in section itself and in the context in which it occurs it can not be interpreted ejusdem generis. There is no warrant for interpretation that the provisions of Section 138 were not applicable to residential premises occupied by the railway servant, but only to railway servant who was in possession of any of the property mentioned in section either moveable or immovable, in the normal course of his duties, that had been entrusted to him for discharging his official duties. We are of the opinion that this contention raised by the learned counsel is without any force.

17. Now the next contention of the learned counsel that it is not the provisions of the Indian Railways Act which will be applicable to the premises in question, but the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which will be applicable, inasmuch as the premises are public premises and the petitioner is unauthorised occupant of the premises is equally misconceived in principle and erroneous in detail. The provisions of Section 138 are enacted for summary delivery to the railway administration of property detained by the railway servant. This is, therefore, not only a summary remedy to be invoked by the railway administration for the delivery of its property, but its operation is confined to, as the provisions of section indicate to the property mentioned therein only i.e. belonging to the railway administration. It may be that since the property belongs to the railway administration, and therefore, to the Union Government, and therefore, provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 may be applicable, but from this it does not follow that the later Act becomes the special Act and the Indian Railways Act becomes the general Act. On the contrary, it will be clear that the provisions and the procedures prescribed in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are applicable to all the premises which are denned in the Act in Section 2 (e) as a "public premises" which mean premises belonging to or taken on lease or requisitioned by, or on behalf of, the Central Government. This provision of this Act is therefore of wider application and applies to all public premises of the Central Government whether taken on lease, requisitioned or belonging to the Central Government or even including premises taken on lease belonging or taken on lease by or on behalf of any company as defined in Section 3 of the Companies Act. This Act as indicated in the preamble, is intended to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters. The Act provides for a summary remedy against the unauthorised occupants to ensure unobstructed and undisturbed possession of the premises by the Government. It will be clear that these provisions are of

much wider scope and applicable to all premises which are defined in Section 2 (e) of the said Act. On the other hand, the premises to which reference is made in Section 138 belong to a definite class of persons and premises. The provisions of Section 138 are applicable to a definite class of premises occupied by railway servant. The Railways Act, therefore, deals with limited number of classes of premises, and therefore, it is the special Act as against the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which is a general Act. If this is the correct position then the submissions made by the learned counsel that the provisions of Section 138 could not be invoked to evict railway servant who continued to occupy the staff quarters even after his retirement are without any legal foundation whatsoever cannot be accepted. It is difficult to see how in such cases the recourse to provisions of Section 138 is barred.

18. However, this contention cannot be dealt with completely unless it is dealt with in context of the other contentions of the petitioner that there are two procedures available and the choice of either was entirely left to the un-guided discretion of the railway administration without laying down any guidelines, and therefore, suffers from vice of indiscrimination, and therefore, is violative of Article 14.

19. In the context of the facts of this case as observed, earlier the procedure that is made applicable is one under the provisions of Section 138. Having held that the Indian Railways Act is the special statute covering the premises belonging to the railway administration even though they may be public premises and the Public Premises (Eviction of Unauthorised Occupants) Act, is a general statute, it may now be examined whether merely because two sets of procedures are available, it suffers from the vice of discrimination, and therefore, violative of Article 14.

20. What is contended is that the procedure available under the Public Premises (Eviction of Unauthorised Occupants) Act ought to be followed by the railway administration because it not only provides for a show cause notice but an elaborate enquiry is also available to unauthorised occupant, and therefore, it confers a wider protection to the person concerned. It is necessary in this context to examine the scheme of the said Act. Public Premises (Eviction of Unauthorised Occupants) Act 1958 which was passed earlier was challenged on the ground that there were two procedures and the choice of either was left to the unguided discretion of the Estate Officer. It was then amended by the Amending Act, 1971. 1971 Act was deemed to have been given retrospective effect since 16th September 1958, except to some of its provisions. Further scheme of the 1971 Act is that it confers a power on Estate Officer to issue notice to persons who are in unauthorised occupation of any public premises to show cause why an order of eviction should not be made. "Unauthorised occupation" under the Act in relation to any public premises means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the

public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. "Premises" are defined to mean any land or any building or part of a building and includes the garden, grounds and outhouses, appertaining to such building or part of a building and any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. "Public Premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of the Central Government as enumerated in Section 2 (e) of the Act, The notice to show cause against order of eviction shall specify the grounds on which the order of eviction is proposed to be made. The Estate Officers under the Act are appointed by the Central Government. The Estate Officers are "Gazetted Officers" or officers of equivalent rank. "Corporate Authority" under the Act means any company or the Authority as mentioned in the Act. The Estate Officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of matters mentioned in Section 8 of the Act. These matters are summoning and enforcing the attendance of any person and examining him on oath; secondly, requiring the discovery and production of documents; and thirdly, any other matter which may be prescribed. Section 10 of the Act provides for finality of orders in circumstances mentioned in Section 10 of the Act.

21. The Supreme Court in *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, considered the very question of availability of two procedures to a public authority. In that case the facts were that Chapter V-A in Bombay Municipal Corporation Act was clearly enacted to provide to the Municipal Corporation a speedier remedy for eviction of unauthorised occupants from Municipal premises, as against the ordinary remedy of a civil suit involving expense and delay, so that the Municipal Corporation should be able to carry out effectively "its policy of slum clearance, speedy development of the estates of the Corporation and providing more housing accommodation". These provisions of the Bombay Municipal Corporation Act were challenged on the ground of availability of two procedures one more onerous and harsher than the other.

22. The Supreme Court observed: "the fact that Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Govt. and Corporation property and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants". Considering the object with which these special procedures were enacted by the legislature, it cannot be said that the difference between the two procedures is so unconscionable as to attract the vice of discrimination. After all, Article 14 does not demand a fanatical approach. Therefore neither the provisions of Chap. V-A of the Bombay Municipal Corporation Act nor the provisions of the Bombay Government Premises (Eviction) Act, 1955 are hit by Article 14 of the Constitution of India. Their Lordships therefore held that neither the provisions of Chapter V-A of the

Bombay Municipal Corporation Act nor the provisions of the Bombay Government Premises (Eviction) Act, 1955 were hit by Article 14 of the Constitution. Similar view is taken by the Supreme Court in *Director of Industries, U.P. and Others Vs. Deep Chand Agarwal*,

23. In the present case, it is true that the procedure provided u/s 138 of the Indian Railways Act is by making an application to any Presidency Magistrate or Magistrate of the first class on behalf of the railway administration, order any police officer, with proper assistance, to enter upon the building and remove any person found therein and take possession thereof, or to take possession of the books, papers or other matters and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf. It may appear that there is no provision for giving show cause notice for hearing the person aggrieved before he is evicted from the premises. However, it is well established principle and it has been held more than once by the Supreme Court that in such cases there is an obligation coupled with a duty imposed on the authority concerned to hear the person concerned and the principles of natural justice are to be observed. There is nothing in this section which debars the application of principles of natural justice." "On the other hand the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "audi alteram partem" rule could be imported. The nature of hearing would of course, vary according to the nature and function and what its just and fair exercise required in the context of the rights affected" (See *The Government of Mysore and Others Vs. J.V. Bhat and Others*, The doctrine of natural justice cannot be imprisoned within the strait jacket of a rigid formula. These principles are not inflexible and may differ in different circumstances. Ultimately it must obviously depend upon the facts and circumstances of the each case.

24. In fact, in this case the learned Magistrate has issued show cause notice to the petitioner to show cause as to why the petitioner should not be evicted. In fact, both remedies under Public Premises Act as well as under the Railways Act u/s 138 are summary remedies. As discussed above against the order of Estate Officer an appeal can be preferred to the District or Principal Judge, City Civil Court, Greater Bombay. However, that cannot be a reason to hold that this procedure u/s 138 of the Indian Railways Act is violative of Article 14. The Supreme Court had an occasion to consider this aspect of the matter in its latest pronouncement in *In Re: The Special Courts Bill, 1978*, in re Special Courts Bill 1978. In para 71 of the said judgment the learned Chief Justice Shri Y.V. Chandrachud has observed as follows:--

"This analysis will be incomplete without reference to a recent decision of this Court in *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, In that case two parallel procedures, one under Chapter VA of the Bombay Municipal Corporation Act, 1888 and the other under the Bombay Government Premises (Eviction) Act, 1955, were available for eviction of persons

from public premises. The constitutional validity of the relevant provisions of the two Acts was challenged on the ground that they contravened Article 14, since the procedure prescribed by the two Acts was more drastic and prejudicial than the ordinary procedure of a civil suit and it was left to the arbitrary and unfettered discretion of the authorities to adopt such special procedure against some and the ordinary remedy of civil suit against others. It was held by this Court that where a statute providing for more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure without affording any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14. However, a provision for appeal could cure the defect and if from the preamble and the surrounding circumstances as well as the provisions of the statutes themselves, explained and amplified by affidavits, necessary guidelines could be spelt out, the statute will not be hit by Article 14. On the merits of the procedure prescribed by the two Acts it was held by the Court that it was not so harsh or unconscionable as to justify the conclusion that a discrimination would result if resort to them is had in some cases and to the ordinary procedure of civil courts in others. By a separate but concurring judgment two of us, namely, Bhagwati, J. and V.R. Krishna Iyer, J. held that it was inevitable that when a special procedure is prescribed for a defined class of persons, such as occupiers of municipal or government premises, discretion which is guided and controlled by the underlying policy and purpose of the legislation has necessarily to be vested in the administrative authority to select occupiers of municipal or government premises for bringing them within the operation of the special procedure. The learned Judges further observed that minor differences between the special procedure and the Ordinary procedure is not sufficient for invoking the inhibition of the equality clause and that it cannot be assumed that merely because one procedure provide the forum of a regular court while the other provides for the forum of an administrative tribunal, the latter is necessarily more drastic and onerous than the former. Therefore, said the learned Judges, whenever a special machinery is devised by the legislature entrusting the power of determination of disputes to an authority set up by the legislature in substitution of regular courts of law, one should not react adversely against the establishment of such an authority merely because of a certain predilection for the prevailing system of administration of justice by courts of law. In the context of the need for speedy and expeditious recovery of public premises for utilisation for important public uses, where dilatoriness of the procedure may defeat the very object of recovery, the special procedure prescribed by the two Acts was held not to be really and substantially more drastic and prejudicial than the ordinary procedure of a civil court. The special procedure prescribed by the two Acts, it was observed, was not so substantially and qualitatively disparate as to attract the vice of discrimination."

In view of this clear and unambiguous observation that mere availability of two procedures did not violate Article 14 when a special procedure is prescribed for a

donned class of persons or premises such as occupiers of municipal or government premises, (in this case railway premises) discretion which is guided and controlled by the underlying policy and purpose of the legislation itself. The special provision is made in Section 138 of Railways Act for speedy and expeditious recovery of public premises for its utilisation for the other railway servant on duty. This provision is made in public interest to avoid inconvenience, and to gear up the efficiency of the Railway administration. If the dilatory tactics such as adopted by present petitioner are allowed to be practised then the very purpose of the provision will be frustrated. In these circumstances, having regard to the object of the Act, the special procedure prescribed by the Railways Act cannot be held either drastic or prejudicial. We therefore reject the contention of the learned counsel that the special or parallel procedure prescribed u/s 138 of the Indian Railways Act is without any guidelines and suffers from vice of discrimination and therefore violative of Article 14.

25. Shri Masand, the learned counsel for the petitioner has also raised a minor point that Shri Mayekar ought not to have been allowed to be substituted in place of earlier officer of the Railways Shri Javalkar -- original respondent on behalf of the Railway Administration is baseless. It is seen from the section itself that it does not specify any particular person or authority. It does not lay down that any person holding a particular authority or post should be authorised to file or continue as a complainant. This matter was earlier considered by Supreme Court in Nanik Awatrai Chainani Vs. The Union of India (UOI), It is also held by the Supreme Court in Union of India (UOI) and Another Vs. B.N. Prasad, that it is not necessary that any particular person holding a particular" post should be authorised to file a complaint. Therefore, a complaint filed by Shri Javalkar and continued by Shri Mayekar, who is in fact Senior Personnel Officer of the respondent Railway Administration is quite proper and legal.

26. Similarly there is no substance in the contention raised by Shri Masand, the learned counsel for the petitioner on the basis of circular issued by the Railway Board dated June 25, 1966. We have already reproduced the said circular in detail. The very phraseology used in the circular clearly indicates that it does not confer any absolute right upon the son of the petitioner in the matter of allotment of the quarter. The words used are "May be allotted railway accommodation on out of turn basis provided that the said relation is a railway servant eligible for Railway accommodation". It is the contention of the Railway Administration that petitioner"s son is not eligible for the Railway accommodation as he is merely a casual employee; and not a regular employee. The circular issued by the board cannot be read in isolation and will have to be construed in the light of rules and instructions on the subjects. Even otherwise the word used is "may" and not shall. In any case this is a disputed question of fact and it is an admitted position that till January 30, 1980, neither the petitioner nor his son had approached the authorities concerned for allotment of the quarter in the name of petitioner"s son. In these circumstances it cannot be said that the order passed by the Metropolitan Magistrate is anyway illegal. This is more so when

even the belated request made by Shri Dharma Arjun, son of petitioner is rejected by the Railway Administration vide letter dated March 5, 1980, on the ground that he is not a regular employee, and therefore, not eligible for allotment of railway accommodation; as per rules and instructions on the subject.

27. In the result, the petition fails and the Rule is discharged. In the circuits stances of the case, there will be no order as to costs.

28. Petition dismissed.