

**(1980) 09 AHC CK 0048**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 3821 of 1980

Avinash Glass Works and Another

APPELLANT

Vs

The Director, Movement, Railways, Railway Board, Calcutta  
and Another

RESPONDENT

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**Date of Decision :** 09-09-1980

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226  
Railways Act, 1890 — Section 27, 28A

**Citation :** AIR 1980 All 412

**Hon'ble Judges :** Satish Chandra, C.J;M.N. Shukla, J

**Bench :** Division Bench

**Advocate :** N.K. Chaturvedi, for the Appellant; B.D. Madhyan, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

M.N. Shukla, J.—This is an application for a writ in the nature of mandamus to compel the respondents, namely, the Director, Movement, Railways, Railway Board, Calcutta and the Director, Transport (Coal) Calcutta to treat the petitioners' Glass Unit at par with that of the Advance Glass Works, the West Glass Works, the Emkary Glass Works and others for the transportation of coal and to deliver the coal wagons in the same way as are being delivered to those Glass Units. The petitioners have also prayed for a writ of mandamus directing the respondents to supply the movement of sponsored Railway wagons month to month in the case without undue delay.

2. Petitioner No. 1 is a Glass Industrial Unit and manufacturing Block Glass and Imitation Glass. The factory is registered as Small Scale Industry and uses coal as fuel and energy. The petitioners purchase coal directly from Coal India Limited through its agent Mrs. Sikri Brothers. The loading of Railway wagons with coal is done under the supervision of respondent No. 1. It is alleged that the Director of Industries, U. P. has got certain number of Railway wagons at his disposal. It is his function through his various subordinate officers to assess the minimum

requirement of coal on the basis of policies adopted after reckoning certain factors such as capacity of furnace, the production given by a particular factory etc. Having determined requirement of each Glass Unit the Director of Industries makes a recommendation of the number of Railway wagons which ought to be allotted to a Unit for the transportation of coal. This system is known as sponsoring. The petitioners' claim is that after considering all the relevant factors the Director of Industries made a recommendation of 46 wagons to the Director, Movement, Railways, Calcutta, respondent No. 1 in favour of the petitioners. The allegation is that respondent No. 1 i.e. the Director, Movement, Railways, Calcutta unjustly started discriminating between the petitioners and other Glass Units similarly situate such as the Advance Glass Works, the West Glass Works, the Quality Glass Works, the Jain Scientific Glass Works, India Optical Glass Works and others. The result of this unequal treatment was that though the recommendation of the Director of Industries for sponsoring the wagons had been made in the same manner with respect to the other Glass Units aforementioned as it had been in the case of the petitioner, yet to those Glass Units entire wagons for January, 1980 had been delivered in March, 1980, while in the case of the petitioners the wagons due for the month of January, 1979 had not been delivered even in the month of March, 1980. In short, the petitioners' Glass Unit was being delivered the wagons after a period of about 13 months from the date of the month of sponsoring while in the case of other Glass Units the wagons duly sponsored and recommended for a particular month were being delivered after a period of three months only from its due date. This according to the petitioners had been occasioned by the flagrant discrimination and favouritism practised by respondent No, 1. In this situation the petitioners were obliged to purchase coal from the open market at exorbitant rates causing great hardship and loss to them.

3. The respondents contested the writ petition on several grounds. They contended that the Director of Industries, U. P. had no wagons at his disposal, he was merely a sponsoring/ recommending authority to accord higher priority Item "C (iii)" instead of lower priority Item "E (ii)" of the Preferential Traffic Schedule for movement of coal for industries in the State of U. P. Sponsorship only determines entitlement of the sponsored consumers for allotment of wagons under priority Item "C (iii)" of the Preferential Traffic Schedule but does not ipso facto convey any assurance or guarantee for the allotment of wagons as recommended. Allotment of wagons is made on day-to-day availability of the requisite type and grade of coal and of Railway wagons. The respondents' case further is that the allotment of wagons for transport of coal is made in accordance with set rules and procedure in a fair and equitable manner and whatever facility is available to other similarly situate consumers is provided to the petitioners as well. It was stated that the allotment of wagons depended on the day-to-day availability of coal of the requisite type and grade as offered by the coal companies and that when a particular type and grade of coal could be obtained the available wagons were allotted to the consumers of that particular

type and grade of coal. It was pointed out that the Advance Glass Works, the West Glass Works, the Quality Glass Works, the Jain Scientific Glass Works, India Optical Glass Works and some other Units used higher grade, selected grades of Steam Coal while the petitioners used grade I Steam Coal. As regards the procedure the respondent submitted that though Steam Coal was non-controlled, the supply of selected or superior grades of coal was regulated by a Technical Committee of Coal India Ltd. for preservation of this quality of coal. Due to limited demands of selected grade of Steam Coal, allotment of wagons against offers on programmes of such coal was current, while allotment against offers of grade I Steam Coal on large number of programmes for such coal was in arrears. The charge of discrimination was emphatically denied and it was stated that no preference was given to any one with regard to the movement of wagons for transport of coal.

4. Rejoinder affidavit was also filed on behalf of the petitioners in reply to the averments made in the counter-affidavit. Thereupon the respondents filed a second counter affidavit to which the petitioner replied by a second rejoinder.

5. On the pleadings of the parties two questions arise for decision. The first relates to the nature of the duties performed by the respondents and the second is concerned with the question as to whether, the particular facts of the instant case justify the issuance of a writ of mandamus. A mandamus can be directed against persons who have to perform a public duty and cannot be issued to private individuals who have no public duty to discharge. To invoke the aid of mandamus a condition precedent is that the petitioner must have a legal right to the performance of legal duty by the party against whom the mandamus is sought and the duty which is sought to be compelled must be of a public nature. The Court will not interfere to enforce a law of the land by the extraordinary process of issuing a writ of mandamus in case where an action at law lies/for complete satisfaction. A writ of mandamus may issue to compel something to be done only if it is shown that the statute imposes a legal duty. In our opinion it is a legal duty of the Railway Administration to arrange for receiving and forwarding traffic without partiality and unreasonable delay. Section 27 (1) of the Indian Railways Act reads as under:

"27. (1) Every Railway Administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock."

There is a further injunction which the statute imposes. The Railway Administration cannot give undue and unreasonable preference to any one in the matter of movement of wagons for transportation, Section 2R of the Indian Railways Act is very specific. It reads:

"28. A Railway Administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or Railway

Administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or Railway Administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

5-A. In view of the above provisions of the Indian Railways Act it is manifest that the Railway Administration has a statutory duty to perform for affording all reasonable facilities for receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it. The duty is surely of a public nature. Its performance can be compelled by means of mandamus. There are numerous authorities to support the proposition that the performance of a statutory duty can be compelled by means of a writ of mandamus. Thus e.g. it has been held that a writ can issue at the instance of any consumer to a public utility concerned for its failure to perform its duty under the Electricity Act or under its licence. See *Corporation of the City of Nagpur Vs. The Nagpur Electric Light and Power Company Ltd.*, . Therefore, the petitioners have satisfied the first requirement of a writ of mandamus. In case the Railway Administration refuses to perform such duties as are assigned to it under the law or acts in excess of them a mandamus can issue. In *John Watson v. Caledonian Railway*, 14 Ry. and Can Tr. Cas 1-86, Lord Duendin observed:"

"If a trader is entitled to have a wagon of his own put on the line as a matter of right, whether that matter of right depends on a statutory provision or whether it depends upon the common law applicable to common carriers and the like, that is a thing he can have declared in the Courts of the country, and that is a thing he is entitled to have quite irrespective of whether his demand is for a reasonable facility or is not. In one sense, the right to reasonable facilities is a statutory right, because it is only statute that gives the person the right to have a reasonable facility, but the moment that person confesses that he has no other right, the precise determination of what, in the concrete, is or is not reasonable facility is a matter that has been committed by the legislature to the jurisdiction not of the Courts, but of the Railway Commissioners."

6. A mandamus can also issue when a power or discretion is exercised arbitrarily or mala fide. Mala fide is established when the authority is influenced by extraneous or irrelevant considerations. As Farwell, L.J. laid down in *Rex v. Board of Education* (1910) 2 KB 165 at p. 179:

"If the tribunal has exercised the discretion entrusted to it bona fide, not influenced by extraneous or irrelevant considerations, and not arbitrarily or illegally, the courts cannot interfere; but they have power to prevent the intentional usurpation or mistaken assumption of a jurisdiction beyond that given to the tribunal by law, and also the refusal of their true jurisdiction by the adoption of extraneous considerations in arriving at their conclusion or deciding a point other than that brought before them, in which cases the Courts have regarded them as declining jurisdiction."

So if an authority is influenced by irrelevant considerations in discharge of its duty, the Court can interfere to correct the same. Likewise, if an authority which has to discharge a public duty, while performing such duty, is influenced by irrelevant considerations, the Court can always interfere to correct the mischief. Arbitrary and capricious exercise of power is no exercise of power in the eye of law.

7. The gravamen of the charge in the present case is that the action of the respondents is "not just or equitable and is based on highly mala fide and discriminatory manipulations by respondents Nos. 1 and 2". It has, therefore, to be examined as to whether on the facts of the case the petitioners have succeeded in establishing the alleged mala fide or discriminatory action by the respondents to the detriment of the petitioners. The respondents submitted two weighty grounds for explaining their conduct. In the first place, it was stated in the counter affidavit that the petitioners used Grade I Steam Coal whereas the other Glass Units to which they had referred in the writ petition used higher grade, Selected Grade of Steam Coal. In the rejoinder affidavit this contention was controverted but the petitioners have failed to place sufficient material before us on the basis of which it may be possible for us to hold that the quality of coal used by them was the same as used by the other five Glass Units mentioned in the writ petition. There is, therefore, no reason to discard the respondents' factual plea that the two grades of coal were of different types and their availability also differed from each other. We are also inclined to accept the second hurdle which according to the respondents stood in the way of the petitioners. The defence of the respondents was that glass factories while submitting their programme had to indicate the class of coal required by their factories for selected A grade or Grade "I". These programmes were then submitted to the Railways with the proper consent of the Coal India Limited. The Coal India Limited had a Technical Committee which regulated the supply of selected grade coal to the glass factories. It was stated in the counter-affidavit that there were certain glass factories of Firozabad which were certified by the Technical Committee of the Coal India Limited as factories to which the Coal India Limited permitted programming for selected A-Grade coal. When programmes for selected A-Grade coal on account of those certified consumers were received, such programmes were sanctioned for allotment of wagons by the Railway. Unlike the other glass factories the petitioners' factory had not yet been certified by the Technical Committee of Coal India Limited, permitting programming for selected A-Grade coal. As such the petitioners had submitted their programmes for Grade I Steam Coal which alone had been sanctioned. Moreover, the allotment of wagons against sanctioned programmes were made as per day-to-day offers of different grades and class of coals made by the Coal India Limited and according to the availability of rail transport. The petitioners were sanctioned Grade I coal by the Coal India Limited and the Technical Committee did not certify the petitioners glass factory for supply of selected A Grade coal. That explains why it was not possible for the respondents to allot

coal wagons to glass factories having permission for Grade 1 Steam Coal only, including the petitioners.

8. Thus, it appears to us that the respondents discharge their duties in the matter of allotment of wagons bona fide and their action had naturally to be founded on predominantly policy considerations which comprehended within their ambit many imponderables and practical exigencies of the situation. The petitioners have not succeeded in establishing that the respondents practised discrimination against them or betrayed partiality to the other Glass Units whose names were mentioned in the writ petition as the objects of such alleged preference. On facts we are not satisfied that the petitioners and the other Glass Units complained of were placed in identical positions. So the petitioners have failed to make out any case for the grant of a writ of mandamus against the respondents.

9. In the result this writ petition fails and is dismissed with costs.