

(1997) 12 MAD CK 0060
In the Madras High Court
Case No : W.P.No. 17875 of 1997

B. Venkatasami

APPELLANT

Vs

General Manager, Southern Railway Chennai and 3 others

RESPONDENT

Date of Decision : 03-12-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 9(1)

Citation : (1998) 1 CTC 369

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. K. P. Krishna Shetty, for the Appellant;

Final Decision : Dismissed

Judgement

1. The petitioner prays for the issue of writ of certiorari calling for the records of the second respondent pertaining to the order in letter No. M/W

277/16/XII dated 4.11.1997 and quash the same as illegal.

2. According to the petitioner, who is a railway civil engineering contractor for a number of years, was granted permission during 1974 to occupy

railway land at Arakkonam Railway Junction measuring about 4000 sq.ft as a licensee on a rental basis. The petitioner states that he had executed

an agreement accepting the terms and conditions. The petitioner states that he had signed the readymade and cyclostyled agreement and according

to him the copy of the said agreement had not been given to him. However, the petitioner admits that a copy of the agreement has been furnished

to him on 19.11.1997. The said agreement copy had not been placed before the court, initially. The petitioner states that the agreement is a

standard form, which applies to various lease/license to all type of railway lands at various places.

3. The petitioner states that he had paid the stipulated amount. The petitioner could not initially store materials nor he could part his lorries and

hence alternate site was allotted to him on commercial basis by letter dated 7.9.1989 measuring 139.5 sq.mts. for storing materials and parking of

licence fee of Rs. 1300 per 100 sq.m. in respect of the covered area of 135.35 sq.mts. per annum and Rs.870 per 100 sq.m. per annum in

respect of the open area, of 232.26 sq.m. The petitioner states that he had taken possession of the alternate site during 1992 and the same terms

and conditions apply to this licence of lease also according to the petitioner.

4. Admittedly, the petitioner had put up A.D.sheets roofs as a show room for sale of two wheelers for which the petitioner had not obtained

permission nor approval. However, the petitioner continued to remit the same rent as was prescribed. The petitioner had merely stated that at the

end of 1996 he constructed a small show room without giving details of measurements of the construction.

5. A letter dated 4.11.1997 from the Divisional Railway Manager's office (Respondent No.2) signed by the Divisional Engineer was served on the

petitioner. The said communication is being impugned in the present writ petition. Hence it is essential to extract the very impugned letter itself:-

Sub:- Railway Land Licence for storing of materials and parking of lorries at Arakkonam-Termination of Regarding.

As per the agreement executed by you with this administration a plot of Railway land measuring 371.61 sq.mts. (4000 sq.ft.) has been licensed to

you at Arakkonam for the purpose of storing of materials and parking of lorries, whereas the land has been misused by you for Automobile

showroom of sales centre which is in violation of clause 9 of the Agreement executed by you with this administration.

Hence you are requested to hand over the Railway land licensed to you to the Asst. Engineer/Arakkonam in its original condition on or before

10.12.1997 positively"".

6. After receipt of the said communication the petitioner had filed the present writ petition. The petitioner vehemently contended that clause 9 of the

agreement, which is alleged to have been violated by the petitioner, does not apply to the petitioner, that the lease cannot be terminated without

notice, that even if it is assumed to be licence it cannot be terminated in the

manner it had been done and that the action of the respondent is arbitrary, besides it is illegal exercise of power, which affects the petitioner's fundamental right to carry on his profession and business and his common law right. The petitioner further claims that he has no alternate or efficacious remedy and he had filed the present Writ petition.

7. Dr. K.P. Krishna Shetty, the learned counsel appearing for the petitioner vehemently contended that the action of the respondent is arbitrary violative of fundamental rights of the petitioner and it is an illegal action. The learned counsel further contended that the agreement on which his signature had been obtained is an unfair contract, the stipulations contained therein shocks the conscience and it would also shock the conscience of the Court that the bargaining power of the petitioner as against the respondents has to be taken into consideration and that the action taken by the respondents is violative of Article 14 and uncalled for. In his usual way Dr. Krishna Shetty raised the constitutional points and relied upon the pronouncements of the Apex Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, as well as a recent Full Bench pronouncement of this Court reported in Aluminium Industries Ltd. Vs. Minerals and Metals Trading Corporation of India Ltd. and Others, and contended that contractual matters of state or instrumentality of state or other authorities, the Court can compel the authorities to remedy breach of contract in exercise of writ jurisdiction in extraordinary cases, where judicial conscience is shaken and the present writ petition for enforcement of the petitioner's right though contractual is maintainable.

8. On the court insisting for the production of a copy of the agreement alone, the learned counsel for the petitioner placed a copy of the agreement, which one of the respondents had furnished to the petitioner. It is true that it is a standard form prescribed for licence for the use of railway land for stacking consignment received/for despatch by rail etc. Clause 9 of the agreement with respect to which, the learned counsel had made his submission reads thus:-

The licensee(s) shall not use the plot of land licensed to him/them for the purpose of trade, sale, auction etc. and any other purpose other than stacking of inward goods unloaded from wagons prior to their removal from the

Railway premises and outward goods brought for transportation

by rail outside. In the event of default of the licensee(s) to do so, the Administration shall be at liberty to forfeit the security deposit of the

licensee(s) and to terminate the agreement at once by a notice in writing to this effect"".

9. It is admitted that the petitioner a railway contractor had been granted licence of the railway land as seen from Clause 1(a) of the licence

agreement for parking lorries and for undertaking repairs. In the communication that took place between the petitioner and the railway

administration also, it is indicated that the petitioner had been granted licence to store materials and park lorries as he is a civil engineering

contractor for the railways. As seen from the petitioner's letter dated 21.10.1997 addressed to R.S.O./C.B.I, the petitioner had admitted that he

had put up a shopping complex with A.C.C. sheets and false ceiling during October 1996 without securing prior approval from the Railway

Administration and the said new construction measures 1600 sq.ft. The petitioner had further added that he would apply for fresh approval from

the Railway Administration for the new shops. The petitioner had also admitted that he is running a show room and sales centre for TVS two

wheelers for the last eight months. As usual the petitioner had been asked to pay the rent as was originally stipulated.

10. By the impugned notification, the licence of the railway land granted for storing of materials and parking of lorries at Arakkonam station had

been terminated as the petitioner had misused the licence and violated clause 9 of the agreement by locating and running automobile

showroom/sales centre. As a further consequence the petitioner had been called upon to hand over the railway land licensed to him on or before

10.12.1997 in its original condition. In other words, the railways after cancelling the licence in terms of the agreement had called upon the

petitioner to surrender the land in its original condition by removing the structures put up by the petitioner. Challenging the said termination of

licence and the demand made by the respondents to surrender the railway land the petitioner had come before this court and the learned counsel

for the petitioner had raised the above contentions.

11. The petitioner, admittedly had been granted licence for his storing of

materials and parking of lorries at Arakkonam railway terminal as a railway contractor, had definitely misused the licence and violated the terms and conditions of the agreement. Having admittedly violated the terms and conditions of the agreement, the petitioner had come before this Court challenging the same as if he has the fundamental right to violate the stipulations contained in the agreement, besides contending that the stipulations will have no application to the petitioner's case.

12. Clause 9 of the Agreement, extracted above, definitely applied to the petitioner's case and the petitioner cannot extricate himself from the said stipulation on the ground that the said clause applies only in respect of lease/licence granted for stacking of inward goods unloaded and outward goods brought for transportation. As already pointed out the agreement in question is a standardised form. The portion of the agreement, which is relevant and which is against the petitioner had been conveniently sought to be brushed aside. Clause 9 of the agreement definitely stipulates that the licensee shall not use the plot of land licensed for the purpose of trade, sale, auction etc. Thus it is obvious that the railway had granted licence to the petitioner as a railway contractor for storing of materials and parking of lorries and not for the purpose of running automobile showroom cum sales centre. The petitioner had violated the stipulations. Hence it does not lie in the mouth of the petitioner to contend that Clause 9 has no application to the petitioner's case.

13. The learned counsel for the petitioner vehemently contended that the petitioner's fundamental right to carry on business had been violated by the impugned notice by which the respondent had cancelled the licence. It is well open to the respondents to terminate the licence and take action for recovery of possession of the railway land, if the petitioner violates the stipulation which he had undertaken and the stipulation definitely binds the petitioner. None of the rights, much less the fundamental rights of the petitioner is violated. It is always open to the petitioner to carry on his business of two wheeler show room/ sales centre in any place of his own or any other place which he may acquire. Merely because the railways have cancelled the licence for violation of the stipulation, the petitioner cannot contend that his fundamental rights have been violated. The railways will not and have not violated the petitioner's fundamental right as it is well

open to the petitioner to locate his business at any other place of his choice. The violation of fundamental rights claimed by the petitioner is a misconception and an attempt to camouflage the act of the petitioner's violation. The contention of the petitioner cannot be appreciated and it cannot be sustained.

14. Reliance is placed by the learned counsel for the petitioner on the decision of the Apex Court in Central Inland Water Transport Corporation

Limited and Another Vs. Brojo Nath Ganguly and Another, as well as the Full Bench judgment of this Court in Aluminium Industries Ltd. Vs.

Minerals and Metals Trading Corporation of India Ltd. and Others, . In my considered view on the facts of this case they have no application at

all. The law, as laid down by the Supreme Court with respect to the stipulations in a contract, which are oppressive or the stipulations contained in

such contract or agreement which are shocking the conscience of the court or violative of Article 14, the court could go to the rescue and give

relief. In the present case, no such contingency definitely arises or appears at all. The out of context attempt on the part of the learned counsel for

the petitioner to blow the small bubble out of proportion, as if the railways have violated his fundamental rights and as if the railways have imposed

an unconscionable condition or the condition, is opposed to public policy, cannot be appreciated.

15. It is to be pointed out that in a licence or lease or contract entered either between two individuals or public bodies and third parties or

individuals normal stipulations being that there would be no diversion of the purpose for which the licence/lease has been granted. The petitioner

had been granted licence/lease as he happened to be a railway contractor and as such licence had been granted to park his lorries and store his

materials. It has to be made clear that the railways had not granted licence for the petitioner to carry on any business of his choice. The petitioner

having agreed to a stipulation cannot violate and definitely such a stipulation or condition is not extraordinary nor it is oppressive nor it shocks the

conscience of the Court.

16. The petitioner having accepted the terms and conditions of the stipulations which are normal and incidental in all transactions of lease of licence

cannot turn round and contend that the condition has been imposed unilaterally

that he did not have a bargaining power at all. The circumstances, under which the Supreme Court had occasion to consider this aspect Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, is totally different and the law laid down by the Supreme Court in the said case has no application at all to the facts of the present case.

17. The Full Bench judgment relied upon by the learned counsel for the petitioner will have no application to the facts of the case and the action taken in the present case is valid and clearly justifiable on facts as well as on law. The respondent railways, though a state had not acted oppressively nor its conduct could be said to be shocking the conscience of the Court. This is not a case where the exercise of judicial review could even be invoked by the petitioner and it is his violation, which had led to the termination of licence/lease. The claim of the petitioner that he has got a fundamental right to continue on railway land and carry on any business of his choice has to be deprecated and it cannot be definitely appreciated.

18. That apart, in terms of the agreement the very invocation of jurisdiction of this Court cannot be entertained. The agreement, with respect to which the petitioner had got a grievance, the cancellation of licence for violation of the stipulations contained in the agreement and with respect to all disputes that arises between the petitioner and the respondent railways in respect of all the claims under the agreement or with respect to the interpretation of the agreement or the rights claimed thereunder or rights sought to be exercised thereunder or enforced thereunder has to be decided by an arbitrator and the arbitration clause has been provided for. The petitioner had accepted the arbitration clause. The relevant clauses read thus:-

19. In case any doubt, difference, or dispute shall arise between the licensee(s) on the one hand and the Administration on the other hand as to the true intent of those present or of any article, clause or things herein contained, then in every such case the doubt, difference, or dispute shall be referred to the Divisional Railway Manager/Additional Divisional Railway Manager of the Administration and his decision thereon shall be final and binding"" (portion not legible)

20. In the event of any question, dispute or difference arising under these conditions in connection with this licence, having been referred to

Divisional Railway Manager/Additional Divisional Railway Manager as per clause 24 and whose decision is not acceptable to the licensee(s), the

same may be referred to the sole arbitration of a person appointed to be the arbitrator by the General Manager. If, however, the arbitrator is a

railway servant, he will not be one of those who had an opportunity to deal with the matter to which the licence relates or who should in the course

of the duties as Railway servant has expressed views of an all or any of the matters under dispute (portion not legible)

Thus the petitioner, had executed the agreement and had also undertaken to abide by the stipulation. The petitioner is bound by this stipulation and

the petitioner has to seek for arbitration in terms of the stipulations contained in the agreement. Having agreed for this clause in the agreement

which provides for an arbitration, this Court holds that the petitioner cannot invoke the writ jurisdiction of this Court.

21. This Court, further holds that the action of the respondent in terminating the licence is valid and the petitioner has to blame himself for violation

of the stipulations and the Railway Administration is well justified and well within their rights, when they had terminated the licence for the admitted

violation of the licence/lease terms. The fundamental rights of the petitioner had not been violated by the respondents by terminating the licence.

The petitioner had attempted to enrich himself by violating the conditions of licence/lease agreement, which was taken note of and the respondents"

action is warranted on the facts.

22. In the circumstances, this Court holds that no case been made out for interference under Article 226 and the Writ Petition is dismissed.