

(2019) 11 PAT CK 0126

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16079 Of 2019

Dilip Kumar Mahato

APPELLANT

Vs

Union Of India Through The General Manager And Ors

RESPONDENT

Date of Decision : 25-11-2019

Acts Referred:

Citation : (2019) 11 PAT CK 0126

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Rakesh Kumar Sharma, Anil Singh

Final Decision : Allowed

Judgement

Petitioner in the present case is seeking a writ in the nature of writ of certiorari to quash and cancel the letter no.C/4/Pay Phone/Begusarai/94 dated 22.05.2019 (Annexure-5 to the writ application) issued under the signature of respondent no.2 the Divisional Rail Manager, Sonapur. By the impugned order, the petitioner has been called upon to remove its PCO Booth from the platform and to deposit outstanding amount with the Commercial Superintendent, Railways, Begusarai. Petitioner also prays for a direction to the respondent authorities to allow the petitioner to continue the PCO Booth allotted to the petitioner at Platform no.1 at Begusarai Railway Station.

It is the case of the petitioner that on the ground of his being 60% disabled/handicapped person, the Railways allotted him Booth vide letter no.C/4/Pay Phone/Begusarai/94 dated 25.11.1994. A copy of the allotment letter is Annexure-2 to the writ application. Initially, the allotment was for the period from 01.12.1994 to 30.11.1995. It is 5"X6" area on the platform on which the petitioner was allowed to construct Booth.

It is not in dispute that the petitioner was running PCO Booth after the allotment, but the petitioner claims that all of a sudden he got letter dated 22.05.2019 from the Railways calling upon him to vacate the place of PCO Booth on the ground

that the allotment period has lapsed. The petitioner submits that prior to issuance of the letter, as contained in Annexure-5 to the writ application, no show cause notice or opportunity of hearing was given to the petitioner. In several paragraphs of the writ application, he has stated that he is running the PCO Booth and that is the source of his livelihood. In this connection, he has also submitted a representation dated 10.06.2019, as contained in Annexure-6 to the writ application, to the Divisional Manager, Rail, East Central Railway, Sonapur.

A counter affidavit has been filed on behalf of the Railways. They admit that the railways administration had granted extension to the PCO Booth for the period upto 30.06.2018. It is their case that no further extension has been given to the petitioner because in their opinion now there is no need for public telephone booth at the place where it is situated/allotted. It is submitted that in his representation (Annexure-6), the petitioner has himself accepted that there is no use of PCO Booth in the present mobile age, therefore, according to the respondents the petitioner has accepted non-relevance of PCO Booth, thus no illegality may be found in the impugned order directing the petitioner to remove the Booth and hand over the vacant place on which the Booth is standing.

After hearing learned counsel for the parties, on 18.10.2019, this Court passed the following order:-

"Let the counter affidavit filed on behalf of the Railways be taken on the record.

It seems to be a hard case and the Court is willing to call upon the authorities of the Railways to take a view keeping in mind that admittedly the petitioner who is a handicapped to the extent of 60% disability is now being sought to be thrown out after about 25 years of his continued occupation of the stall from where he is running his 'Pay Phone Booth'. The stall came to be allotted to the petitioner in the year 1994 and even in the counter affidavit of the Railways it has been admitted that the petitioner has been given extension and permission to occupy the stall upto 30.06.2018. It seems that only when the petitioner made a request to the authorities of the Railways to allow him to convert his business of running the Pay Phone Booth into some other kind of business which may be suitable for his livelihood in the changed circumstance because perhaps the Pay Phone Booth has lost its relevance in the present days of mobile age, the authorities of the Railways thought that the petitioner's license should not be extended and he should be called upon to vacate the premises.

Learned counsel for the Railways submits that in fact this request of the petitioner to allow him to convert the business came on 10.06.2019 vide Annexure '6' to the writ application whereas the Railways has not given extension of license after 30.06.2018, this contention of the learned counsel for the Railways has been contested by the learned counsel for the petitioner by submitting that prior to 10.06.2019 at no point of time the Railways has made any communication to the petitioner showing its intention not to extend the license period and in fact it is the contention of the learned counsel for the

petitioner that since the year 2008 the only thing which was required on the part of the petitioner for extension of license was to deposit the license fee which he had done upto period 2016-17 and had been under bonafide belief that the same is required to be done for the remaining period.

Be that as it may, let the Railways Authorities take a considerable view of the matter considering the handicapness of the petitioner and the fact that his livelihood is depending upon his business which he is running for last 25 years. It is not a case of new allotment of stall. The stand of the Railways shall be placed on record with a supplementary counter affidavit within a period of four weeks from today.

Let this matter be appeared in the cause list under the same heading after four weeks on 18th November, 2019.

In the meantime, status quo as on today shall also be maintained."

After the aforesaid order was passed, a supplementary counter affidavit has been filed. This time, the stand of the Railways is that the utility of the PCO Booth has lost its significance has further crystallized from the transaction bills of the Booth for the year 2017 to 2019. It shows that the monthly transaction of the Booth was in between Rs.200-300. A further statement has been made that there is no circular providing for exchange from PCO Booth to any other stall. The stand of the Railways is that the allotment of catering stalls or any other work in Railways is done by inviting open tenders for allotment to the successful bidder so as to maintain complete transparency. In these circumstances, the stand of the Railways is that it is not possible for the Railways to allow any other stall in place of PCO Booth.

Having heard learned counsel for the petitioner and learned counsel representing the Railways, this Court finds that the present case is required to be considered from the point of view of the petitioner because the equity weigh in his favour. The petitioner is said to be 60% disabled/differently abled person. In the year 1994 he had, pursuant to the scheme of the Railways applied for allotment of PCO Booth at the station. He was allotted Booth, the purpose behind such allotment was not only to facilitate the passengers with facility of telephone at the railway station but was also to provide a kind of engagement to a handicapped person like the petitioner. The petitioner engaged himself in the running of the PCO Booth and continued with the same for over 24 years. He has thus spent a long period running this PCO Booth. From the affidavit sworn with the writ application, it appears that presently the petitioner is aged about 49 years, therefore it is apparent that in his prime age of 24-25 years he engaged himself in running of the Booth. His entry in railway station was not a backdoor entry. It is his specific case that he had applied for PCO Booth and thereafter the allotment and agreement was made in his favour.

While it is true that over the period the PCO Booth has lost its relevance, but the question is whether that alone may be a ground to throw out the petitioner from

the station and by taking a plea that there is no circular in the Railways to provide stalls to such persons like the petitioner, the request of the petitioner for providing him a stall wherefrom he can earn his livelihood may be rejected. If the Railways has while formulating the schemes for allotment of stalls at the station not taken care of the fact that with the changing need of the people if the petitioner has been put in a position from where he cannot earn his livelihood from PCO so as to take care for himself and his family, a provision be made for such people giving them an opportunity to have a stall at the railway station from where they can earn their livelihood, this Court only says that it shows lacks of foresightedness on the part of the Railways.

In the present circumstance, this Court is of the considered opinion that the concept of human rights will remain shallowed and hallowed concept if the petitioner is thrown out with his PCO Booth on the ground that now his Booth has lost its relevance and he cannot get any stall at the station. It is not a case where the Railways is being called upon to violate a law, it is their stand that they have no circular in this regard. This does not mean that when the occasion arises the Railways cannot take a view on this issue and come out with a decision. Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of Senior Divisional Commercial Manager, South Central Railways & Ors. Vs. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Anr. reported in (2016) 3 SCC 582 and has submitted that in the said case which pertains to the Railways, the Hon'ble Supreme Court had taken a humanitarian view to save a large number of platform vendors from being ousted.

This Court, therefore, directs the Divisional Manager, East Central Railway, Hazipur to take up the matter with the appropriate authorities at appropriate level and come out with a decision whereunder care may be taken to provide a place of whatsoever size possible at the platform to the petitioner keeping in view that he is there for last 24 years and has already spent his prime period of life. Ousting him at this stage would have a civil consequence not only on him rather whole family who are depending upon him. Let a decision in this regard be taken at appropriate level within a period of four months from the date of receipt/production of a copy of this order.

The impugned order, as contained in Annexure-5 to the writ application, shall not be executed till such final decision is arrived at and communicated to the petitioner.

This writ application stands allowed to the extent indicated hereinabove.