

(2000) 09 MP CK 0089

In the Madhya Pradesh High Court

Case No : Writ Petition No. 834 of 1999

Dinesh Seth

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-09-2000

Acts Referred:

Citation : (2001) 1 JLJ 50

Hon'ble Judges : N.G. Karamdelkar, J; Faizanuddin, J

Bench : Division Bench

Advocate : N.K. Modi, for the Appellant; H.D. Gupta, for Respondent Nos. 1 to 3 and K.B. Chaturvedi, Govt., for Respondent Nos 4 and 5, for the Respondent

Judgement

Fakhruddin, J.—The Petitioner has filed this petition in public interest for issuance of a direction to the Respondents No. 1 to 3 : (1) to change the timings of Train No. 1141 Dn and Train No. 1142 Up from morning to evening so that these trains would reach their respective destinations in the early hours of the morning of the next day; (ii) to change the route of other Express trains, namely. 4005 Nizamuddin-Indore and 4006 Indore-Nizamuddin. 5045 Gorakhpur-Ahmedabad and 5046 Ahmedabad-Gorakhpur and also 4309 Ujjain-Dehradun and 4310 Dehradun-Ujjain and divert them on the Gwalior-Indore route; (iii) to furnish a time bound programme when new and fast trains will be introduced on Gwalior-Indore route; (IV) to direct Respondents No. 4 and 5 to restrain video coach operators from operating illegally buses from Gwalior to Indore; (v) to direct Respondents No. 1 to 3 to provide 3 tier sleeper coaches in the Intercity Express trains so that the public at large would have better and convenient facility, and (vi) to direct the/ Respondents No. 1 to 3 to fix a date for the commencement of the Intercity Express.

2. It is stated that there was a narrow gauge railway line from Gwalior to Shivpuri since prior to independence. It is stated that about 15 years prior to the date of filing of this petition the Respondents took a decision to develop a new railway from Guna to Etawa via Shivpuri-Gwalior and steps were taken by them

to stop the narrow gauge train service and to remove the narrow gauge line. It is stated that in the last 15 years crores of rupees were spent for developing the railway line on this route and by now only the railway line from Guna-Gwalior was completed, and the Respondents are waiting to introduce the train services of public utility for an auspicious day. In para 5 4 it is stated that on 20.5 1999 a news was published in the newspaper Dainik Bhaskar" that it was decided to introduce Gwalior-Indore Intercity Express from 2 7 1999 thrice a week. i.e. Train No. 1141 Dn from Indore to Gwalior and 1142 Up from Gwalior to Indore. and timetable of these new trains was also published in the said newspaper According to the timetable so published Train No. 1142 up Gwalior-Indore at 9.10 pm and Train No. 1141 Dn Indore-Gwalior was to leave Indore at 8.10 a.m. reaching Gwalior at 9.30 p.m. Annexure P-1 is the copy of the timetable.

3. The Petitioner submitted that Indore is one of the important cities in the State of Madhya Pradesh; maximum commercial activities of the State are being conducted from Indore City, and because of this reason a number of persons are required to visit Indore frequently. Since there was no convenient facility of travel by train the travellers prefer to go from Gwalior to Indore or Ujjain by video coaches; more than 30 buses (video coaches) are plying between Gwalior and Indore. It is contended that these buses are being plied without there being proper permits issued by the competent authority The private bus operators are operating their buses on the National Highway, known as NH 3. and are having All India Tourist permit using it as a carnage permit.

4. It is contended that subsequently on 30th May 1999 news was published in the newspaper "Dainik Bhaskar" (which is Annexure P-2) that the train timings of the Intercity Express has been changed. The Petitioner alleges that this has been done in connivance with the private bus operators. It is stated that on 31.5.1999 again news was published in the newspaper "Dainik Bhaskar" that there was great objection to the timings of the Intercity trains starting from the two cities. In para 5,10 the contention is that the timings fixed are not at all convenient and only one train has been introduced after a long waiting. On 23.6.1999 a press statement of the Railway authorities was published in the newspaper "Nav Bharat" to the effect that the Intercity Express has been cancelled until further orders. The Railway has not assigned any reason for the cancellation of the train. The Petitioner, therefore, has filed this petition on the ground that the fixation of the timings of 1141 Dn and 1142 Up Intercity Express trains from Indore to Gwalior and Gwalior to Indore are not at all convenient to the public at large and the purpose of introducing the new trains on this route has completely frustrated. More or less similar grounds have been urged in ground (aa), (aaa), (b), (c) except in ground (d) where it is stated that the distance from Indore to Delhi via Guna is 877 KM while the distance from Indore to Delhi via Nagda. Kota. Mathura is 829 KM The Intercity Express No. 4005 Dn and 4006 Up running between Nizamuddin and Indore and from Indore to Nizamuddin are immediately required to be diverted to this route, as the route from Indore to Nizamuddin via Nagda is a very busy route, as a number of trains run on this route, such as Rajdhani

Express. August Kranti Express. Janta Express. Sarvodaya Express. Frontier Mail. Dehradun Express. etc. The relief prayed for is change of the timings of the Intercity Express Trains No. 1141 Dn and 1142 Up from the morning to the evening hours so that these trains would reach their respective destinations in the early morning of the next day.

5. The matter came up for hearing on 10.6.1999 when notices were directed to be issued. On 23.6.1999 two weeks time was granted to the Petitioner to amend the petition in order to bring on record the additional facts relating to subsequent events having material bearing on the controversy raised in the petition. On 15.9.1999 the amendment was allowed. On 31.1.2000 three weeks time was granted to the counsel for Respondents No. 1 to 3 to file counter-affidavit/return clearly indicating therein the circumstances leading to the suspension of the Gwalior-Indore Intercity Trains - 1142 Up (Gwalior-Indore) and 1141 Dn (Indore-Gwalior) - and the efforts made to restore the running of the aforesaid trains at the scheduled timings. The matter was fixed for 7.4.2000, on which date Shri H.D. Gupta, learned Counsel appearing for the Respondents No. 1 to 3, submitted that the return was under preparation and prayed for time to file the same. Time was granted. On 25.4.2000 the petition was formally admitted for hearing. On that date Shri Gupta stated that a draft return has been received from the Respondents No. 1 to 3 and he required time to settle the return. Shri K.B. Chaturvedi, Government Advocate appearing for the Respondents No. 4 and 5, also wanted time to seek instructions from Respondents No. 4 and 5 regarding the averments made in the petition. On 12.5.2000 this Court passed the following order:

It is pointed out by the learned Counsel for the Petitioner that despite spending crores of rupees for laying the line from Gwalior to Indore for running regular Intercity Express between the two stations no action has been taken with the result that passengers have been put to a lot of inconvenience by this inaction.

Reply has not been filed by this time. Shri Gupta submits that the reply is finalised and is likely to be submitted soon. The State Government may also file the reply being necessary in a case of this nature.

Looking to the expenditure involved and the convenience of the passengers it is desirable that Respondents No. 1 to 3 take immediate steps for starting the Intercity Express regularly. Learned Counsel for Respondents No. 1 to 3 will report to the Court the time within which this train is to be started regularly.

6. No report as such has been filed On behalf of the Union of India: through the Secretary. Ministry of Railways. Government of India. Rail Bhawan, New Delhi, the General Manager, Central Railway. Mumbai and the General Manager. Western Railway, Mumbai. Shri Sanjay Mohanty working as Senior D.O.M., Central Railway, Jhansi, has filed his affidavit in support of the return filed on behalf of the Respondents No. 1 to 3, which is material and quoted below:

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(1) That, I am one of the principal officers of the Railways Department and are aware with the facts of the case. Hence, competent to swear this affidavit.

(2) That, the accompanied return submitted on behalf of Respondent No. 1,2 and 3 has been prepared by the counsel in accordance with my instructions and the material furnished by me.

(3) That, I have read and understood the contents of the accompanied return.

(4) That, the contents of Para 1,2,3,4, 5. 1 to 5 10A relate to facts and the statement of facts as made in the said Paras is true and correct on the basis of my personal knowledge based on official record

7. We are constrained to observe that in a matter like the present one, the Respondents who are the Secretary, Ministry of Railways. Government of India, and the General Managers, Central Railway and Western Railway, Mumbai, have not bothered to file a proper detailed affidavit indicating therein the circumstances leading to the suspension of the Gwalior-Indore Intercity Trains (1142 Up Gwalior-to Indore and 1141 Dn Indore to Gwalior) and the efforts made to restore the running of the aforesaid trains at the scheduled times, as directed by this Court vide order dated 3.11.2000. The return filed on behalf of the Respondents No. 1 to 3, however, discloses that a sum of Rs. 337.33 crores has been spent. In the return it is stated in para 5.2 that there was a narrow gauge line from Gwalior to Shivpuri which was not only existing prior to independence but was also in operation much after independence up to 1975. It is stated that a decision was taken by the Ministry of Railways to construct a Broad Gauge line from Guna to Etawa via Shivpuri-Gwalior in public interest. The Narrow Gauge line between Gwalior to Shivpuri was therefore, programmed for conversion into Broad Gauge line and there was no intention on the part of the Railway Administration to withdraw the railway service from this area. In para 5.3 of the return, it is stated that the work of construction of the new Broad Gauge line between Guna and Etawa via Shivpuri-Gwalior-Bhind was a major cost and labour intensive project covering a distance of 348.25 KM and involving an expenditure of Rs. 337.33 crores. It involved construction of the railway line through extremely difficult terrain with deep cuttings in rocky area and high embankments. In view of the cost and labour intensive nature of the project, the progress was governed by the availability of funds as allotted from year to year. It is further stated in the return that the construction of this line was one of the many projects being undertaken by the Ministry of Railways and, therefore, the allotment of funds was made proportionately to this project. The 102 KM line between Guna and Shivpuri was accordingly completed in 1991 as Phase 1 of the project, and the 125 KM Shivpuri-Gwalior portion of the line was completed in 1999 as Phase II of the project. Thus, of the 348 KM long line of the project. 227 KM line has been completed so far.

8. As regards the timetable published of the two trains 1141 Dn Gwalior-Indore and 1142 Up Gwalior-Indore, it has been stated in para 5 4 that the train timings

are fixed by the Railway Administration on the basis of a large number of factors, mainly, the convenience of the majority of the railway users. availability of infrastructure at the two end terminals, viz. the originating and the destination stations availability of path to run the train to avoid clashing with other existing trains, etc. As regards the averments made in para 5.5 of the petition, the reply of the Respondents No. 1 to 3 is that the facts as stated by the Petitioner are a matter of verification on which the railway administration has no comments. In the said para it is stated that keeping in view the commercial and cultural importance of the two cities the railway administration has taken due care to provide adequate number of train services between Gwalior and Indore. The details of the trains available between Gwalior and Indore are as under:

(1) 4217 Dn Indore-Dehradun Bi-weekly Express via Guna-Shivpuri on even Saturday and Sunday from Indore. It departs Indore at 15.00 Hrs and arrives Gwalior at 4.25 Hrs.

(2) 9367 Malwa Express via Bhopal, which departs Indore at 13.00 Hrs and arrives at 01.05 Hrs. and departs for Jammu Tawi at 01 10 Hrs.

(3) 4318 Up Dehradun-Indore bi-weekly Express via Guna Shivpuri on every Friday and Saturday from Dehradun. It arrives Gwalior at 19.30 Hrs. and departs for Indore at 19.50 hours.

(4) 9368 Malwa Express via Bhopal. It departs Jammu Tawi at 08.20 Hrs arriving Gwalior at 09 05 Hrs and leaves for Indore at 00.13 Hrs.

It is further stated that the railway administration is conscious of the importance of both Gwalior and Indore cities and has made every attempt to provide railway service between the two cities

9. In para 5 6 of the return it is stated that the Respondents No. 1, 2 and 3 have no comments in regard to the alleged breach by the private bus operators operating bus service between Gwalior and Indore as also to the alleged connivance of Respondents No. 4 and 5 with the bus operators in this regard. In para 5.8 it has been stated that the train timings are fixed by the railway administration on the basis of a large number of factors, namely, the convenience of the majority of railway users, availability of infrastructure at the two terminals, viz. originating station and destination station, availability of path to run the train to avoid clashing with other existing trains, etc But it may be mentioned here that the decision of the railway administration in this regard has not been filed.

10. So far as the issue of an overnight train between Gwalior and Indore is concerned the railway administration has introduced a bi-weekly train between Dehradun and Indore via Gwalior-Shivpuri, which is providing an overnight service between Gwalior and Indore. Thus, it is stated that the allegation made by the Petitioner against the railway administration is baseless and motivated. In para 5.9 it is reiterated that the timings of the trains were fixed keeping in view

the convenience of a large number of passengers, availability of path maintenance and stabling facilities at the originating and terminating stations. It is stated that it is not always possible to fix timings convenient to a particular section of people. In para 5.10 it is stated that the said Intercity Express which was to provide a tri-weekly service between Gwalior and Indore, was to have been introduced w.e.f. 2nd July 1999 but before this could be done a dispute about its timings arose and the matter became subjudice due to the filing of this Public Interest Litigation, as a result of which the railway administration could not introduce this train as planned. In the same para it is further stated that the railway administration has introduced Anr. bi-weekly train which is providing an overnight service between Gwalior and Indore via Shivpuri-Guna, i.e. 4318 Up Dehradun-Indore bi-weekly Express. The timings of this train in fact fulfil the demands made in this petition, as the said train departs from Gwalior at 19 30 Hrs and reaches Indore at 8.40 am next day. In the return direction it leaves at 1500 Hrs and reaches Gwalior at 04 25 Hrs. In the same para it is further stated that the timings of the proposed Intercity train are convenient. The timings of the Intercity Express would definitely serve the larger interests of the travelling public, as no train service is presently available during the day period for the travelling passengers on this route. It is stated that the introduction of an overnight service originating/terminating at Gwalior/Indore is, in any case, not feasible due to non-availability of maintenance and stabling facilities at Gwalior in accordance with the demanded timings. In the existing pattern of operations, the maintenance facilities are available only during night period and, therefore, the provision of an overnight train between these two cities, even if warranted, was not feasible, as without adequate facilities for maintenance of the rakes of the train, which is a mandatory requirement, its safety would be endangered. It is stated that the railway administration, therefore, decided to first introduce one train and to assess the demand, patronization etc. before planning for other additional trains on this route, as this would involve considerable expenditure by way of provision for additional infrastructure. In para 5.10A again it is reiterated that the railway administration was compelled to resort to this as the issue has become subjudice.

11. We have elaborately discussed the averments made in the petition as well as the reply to those averments made in the return with an object whether the railway administration has seriously taken matter. The various order sheets passed by this Court have been referred and the order sheet dated 12.5. 2000 has been reproduced. Interim relief was prayed in the petition but it was not granted. On the contrary, the Court has sought for the reasons by issuing directions from time to time under which the proposed Intercity Express was suspended. Though an amount of Rs. 337.33 crores is said to have been spent, it appears that the authorities are not at all mindful. The Respondents No 1, 2 and 3, who are the Secretary, Ministry of Railways; the General Manager, Central Railway, and the General Manager, Western Railway, Mumbai have not filed their affidavits. We are constrained to observe that the plea that the train was not

started because a lis has been filed, is wholly unjustified The Intercity Express train was to start from 2.7.1999. The Timetable was published that it will be started from 2.7.1999 in the evening. Then, as stated in the petition, there was a publication that the train will start in the morning but the train has not started, though huge amount, as stated, has been spent. It is public money. The Union of India and the Railways are accountable to the public at large. The contention advanced by the Respondents No. 1 to 3 that the decision to suspend the train was taken because the petition was filed in this Court, docs not appear to be sound at all. No interim relief was granted to the Petitioner The lame excuse sought to be placed has no basis at all. There was prima facie no justifiable ground for not starting the scheduled train. The Railway authorities did not take the matter seriously. Even the return was not filed promptly and time after time was taken for filing the return. We do not wish to make any comment on this aspect of the matter, as we do not have the requisite information. It is in the domain of the Respondents. This Court, however, is concerned with the public exchequer which has certainly suffered. All those who are responsible have prima facie failed in taking steps Loss may be in crores of rupees. The public has suffered and is suffering. The passengers have been deprived of their right to travel conveniently. It is a fit case where a direction is issued to the Union of India to get the matter enquired so that the responsibility is fixed. Efforts shall also be made to recover the loss in accordance with law from those who are responsible. The damage done has got to be repaired, and we hope that the Railway authorities including the highest authority in the Railway Ministry would do the needful. We hope that the damage will be retrieved and a report will be submitted within 3 months from the date of receipt of this order, duly supported by the affidavit of the Secretary. Ministry of Railways. Government of India. New Delhi.

12. The contention raised by Shri Modi, learned Counsel for the Petitioner, that about 30 buses operating from Gwalior to Indore via Guna and Shajapur and from Indore to Gwalior during the night have been plying illegally on tourist permits and there is a loss to the public exchequer, is a serious one. The gravity of the matter requires that the Respondents No. 4 and 5. i.e.. the Secretary. Home Department and the Secretary. Transport Department. Government of Madhya Pradesh. Bhopal. make an enquiry into the matter. Instead of placing proper material on record, the State merely directed the RTO. Gwalior to file affidavit as Officer-in-charge of the case. The State would look into the matter and get the same examined in public interest.

13. The various order sheets passed by this Court will show the anxiety of this Court as to when the Intercity Express would start. If the authorities would have taken due care and attention the delay would not have occurred. It is informed that railway stations at Mohna, Shivpun and Kolaras were constructed and improvements made at Guna Railway station. It is further stated by the Counsel that the traffic on bi-weekly days on which Indore-Dehradun Express is available, is heavy and crowded and there is waiting list Shri Modi further submits that it is

the night time which is suitable, and if day time is there, then it will result in wastage of 3 days. i.e. one whole day for going and night stay, next day working and again night stay and third day travelling.

14. Train timings are fixed by taking into account various factors such as availability of infrastructure at the two terminals, viz originating and destination stations, availability of path to run the train to avoid clashing with other existing trains, convenience of the majority of the travelling public, etc. We do not have the expertise in this matter, but since an amount of Rs. 337 33 crores has been already spent we feel that the track should not be left idle. We have expressed our concern about the apathy of the Government in earlier paras and we do not wish to state further at this stage. We are conscious of the fact that the Railway administration is the best judge to fix the timings of the Intercity Express train as they have the expertise and the relevant data,

15. With the aforesaid observations and directions this petition is disposed of. No order as to costs. The outstanding amount of security, if any, be refunded to the Petitioner.

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