
(1959) 12 CAL CK 0028
In the Calcutta High Court
Case No : Civil Revn. No. 30 of 1959

Dr. Sudhir Chandra Neogy	Vs	APPELLANT
Calcutta Tramways Co. Ltd.		RESPONDENT

Date of Decision : 17-12-1959

Acts Referred:

Calcutta Tramways Act, 1880 — Section 10, 9
Constitution of India, 1950 — Article 226, 245

Citation : AIR 1960 Cal 396

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Arun Kumar Dutt, Chittatosh Mukherjee and Bibhuti Bhusan Mukherjee, for the Appellant; S. Chaudhury, Ginwalla and Surathi Mohan Sanyal for Opposite Parties (Nos. 1 to 3), for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The petitioner in this case is Dr. Sudhir Chandra Neogi, Reader at the University College of Science and Technology, Department of Applied Chemistry. He says that for the purpose of attending to his duties as a Reader, he has to travel daily by tram car, provided for by the respondent No. 1, the Calcutta Tramways Company Limited. The exact nature of his grievance in this petition is not very clear. Indeed, if we look at the prayers in the petition we find that what is prayed for is a Writ in the nature of Mandamus to be issued on the respondents, prohibiting them from charging and realising fares of 3 naye paise, 5 naye paise, 7 naye paise etc. and also prohibiting them from charging in excess of the legal fares on the basis of the new coins (under the decimal coinage system) "inasmuch as they are not legal tenders in terms of, Sections 14(1), (2) and (3) of the Indian Coinage (Amendment) Act 1955, and the relevant notification of the Ministry of Finance, Government of India, and Appendix III and IV of the Conversion Tables issued by the Ministry of Finance". The other relief that is asked for is for the issue of a Writ or order or direction in the nature of Prohibition prohibiting the respondents from realising in excess of

the legal fares in terms of 3 naye paise, 5 naye paise, 7 naye paise etc. inasmuch as the increase is in contravention of the said Statute read with the said Notification.

2. The facts in this case are as follows:

3. The Calcutta Tramways Company Limited is a company incorporated with liability limited by shares, under the English Companies Act, having its registered office and carrying on business, in London, England. The respondent No. 2 is the Agent of the said Company and the respondent No. 3 is the Traffic Manager of the Company, having their offices at Calcutta. In order to discover how this Company came to be in charge of the Tramways in the city of Calcutta, we have to look at the Calcutta Tramways Act 1880 (Bengal Act I of 1880). In the preamble of the said Act, we find that in 1879 the Corporation of the town of Calcutta, by an agreement dated 2-10-1879 granted to the persons named therein, called "grantees", the right to construct and maintain and use a tramway or tramways, in Calcutta, upon terms and conditions mentioned in the said agreement. It is further mentioned that inasmuch as the grantees were desirous of being empowered to construct the several street tramways etc., it was necessary to obtain the authority of the Legislature, and that is why the Statute came to be enacted, it is conceded that the powers in relation to tramways in the city of Calcutta are governed by this Act, read with the later Act which I shall mention presently, and it is not necessary for me to trace the devolution as to how the present grantees came to be the grantees under the said Acts,

4. Under the Calcutta Tramways Act, 1880 a provision was made for the grantees to fix the rate of fares for carrying passengers and goods, and the relevant Section is Section 9 which runs as follows;

"The grantees shall have power from time to time to fix the rates of fares for carrying passengers and goods in the said cars or carriages, and may demand and take the same for every passenger travelling upon any of their tramways, or for the carriage of goods by their tramways:

Provided that the rate of fare for each person or parcel shall, for any distance not exceeding three miles, not exceed three annas, and for any greater distance shall not exceed the same proportion".

5. In pursuance of this power, the grantees have from time to time fixed the rates of fares for carrying passengers and goods, and that has been done in terms of the provisions of the Section above-mentioned.

6. The next Statute which is necessary to be considered, although it requires only a passing mention, is the Calcutta Tramways Act 1951 (West Bengal Act XXV of 1951). This is a post-Independence Act and the necessity for it arose because it was intended that the State of West Bengal should ultimately take over the working of the tramways, in accordance with the terms and conditions mentioned in the said Act. The preamble to the Act refers to an agreement which had been

entered into between the State of West Bengal and the Calcutta Tramways Company, dated 30-8-1951 and it has been set out in the schedule annexed to the Act. It is unnecessary for the purposes of this case to go into a detailed examination of this Act. It is sufficient to mention that under this Act, the Company is to carry on the work of running tramways in the city of Calcutta, for a certain number of years, during which it has to contribute certain moneys into a specified fund which has been floated in order to enable the State Government, at the appropriate time, to take over the undertaking. Because of this reason, and due to the general rise in prices, and owing to the persistent demand of its employees for a rise in their emoluments, the Company found it necessary to reconsider the tariff schedule, that is to say, the rates of fares for carrying passengers. Before I proceed further to deal with this aspect of the case, it is necessary to mention another fact, Previous to 1955, the system of coinage in India was governed by the Indian Coinage Act 1906. As we all know, under that Act, the legal tender in India consisted of rupees, annas, pice, pies etc. In 1955, it was decided to introduce a system of coinage known as the "decimal coinage". For that purpose was passed the Indian Coinage (Amendment) Act 1955 being Act No. XXXI of 1955. By this Act, the rupee was divided into 100 naye paise, and the provisions of the Act read with the notifications thereunder, provide for the gradual introduction of the new coinage to replace the old coinage. In other words, this change in the coinage was not intended to be effective all of a sudden, but a certain time lag has been allowed, to enable the members of the public to become familiar with the new coinage, and during this interregnum, both the old and the new coinage remain as legal tender. Actually, we are still passing through that phase in the introduction of the decimal coinage system. For the purpose of this application, it is necessary to refer to Section 2 of the Amending Act which introduces Section 14 into the main Act, namely, the Indian Coinage Act 1906. I set out below the relevant provisions of the Act.

"14(1).The rupee shall be divided into one hundred units and the new coin representing such unit may be designated by the Central Government, by notification in the official gazette, under such name as it thinks fit, and the rupee, half-rupee and quarter-rupee shall be respectively equivalent to one hundred, fifty and twenty-five such new coins and shall, subject to the provisions of Sub-section (1) and Sub-section (2) of Section 13 and to the extent specified therein, be legal tender in payment or on account accordingly.

(2) All coins issued under the authority of this Act in any denominations of annas, pice and pies shall, to the extent specified in Section 13, be legal tender in payment or on account at the rate of sixteen annas, sixty-four pice or one hundred and ninety-two pies to one hundred new coins referred to in Sub-section (1), calculated in respect of any such single coin or number of such coins, tendered at one transaction, to the nearest new coin, or where the new coin above and the new coin below are equally near, to the new coin below".

I have already mentioned that the company has resettled the tare, that is to say,

has revised the schedule of the rates of fares to be charged for carrying passengers. It appears from Ext. A annexed to the affidavit in opposition filed by Mr. A. C. T. Blease, that the company, through its agent forwarded to the Government of West Bengal the new schedule of tramfares in naye paise, for publication in the Calcutta Gazette on or about 5-4-1957. This was done u/s 10 of the Calcutta Tramways Act, 1880 which states that the printed list of such fares shall be printed and published in the official Gazette at the expense of the grantee. It appears that although this schedule of fares was forwarded to Government in or about April, 1957 it was not published in the Calcutta Gazette until 27-11-1958. A copy of this official publication has been handed over to me and I direct that it be kept on the record of this case, being marked as an exhibit. The item which has been published is headed "The Calcutta Tramways Company Limited" and the relevant part of it is headed "Revision of fares in Naye paise" and stating that, "with effect from 1-4-1957 the Tramway fares on Calcutta and How-rah Sections" will be as stated in the list given thereunder. So far as the list is concerned, first of all, the Section is mentioned and against it the rate is mentioned, for example, whether it should be "between Kalighat Depot and Esplanade Junction" or between "Behala and Dalhousie Square" and so forth. Against this, in the third column, the fares have been set down in naye paise denominations, both of the 1st and 2nd class. It is important to notice that in the schedule of fares there is no mention of any other denomination than naye paise. There is certainly no mention of our old coinage, namely, rupee, anna, pice. etc. The importance of this will presently be made clear. It appears from the facts stated in the petition and the affidavits that the practice that has been followed by the company is that all fares are calculated in naye paise but when it comes to a person tendering fares in annas, then the company follows a system of "rounding up of fares", as it has been called, and gives credit for each anna to the extent of 7 naye paise. Reverting back to the provisions of the Indian coinage (Amendment) Act 1955, we find that in Sub-section (2) of Section 14 of the newly introduced Section in the Indian Coinage Act 1906, the conversion rate comes upto 6 naye paise for each anna. Upon a mathematical calculation we find that it amounts to 6 1/4 naye paise and according to the system introduced in Sub-section (2) the legal tender would amount to 6 naye paise, the nearest whole number. That this is so is not disputed by either side.

7. Mr. Dutt on behalf of the petitioner argues that in giving 7 naye paise for one anna there is violation of the provisions of the Indian Coinage (Amendment) Act 1955, which of course would make it a violation of the Indian Coinage Act 1906. The reason why he says that a violation takes place is that the company is supposed to be compelling persons using the tramways to calculate the conversion rate at 7 naye paise to an anna. Now, if that is correct, there can be no doubt that there has been a violation of the provisions of the said Acts. The question is whether this view is justified on the facts and circumstances of this case. As I have stated above, the company being the grantee has power under the provisions of the Act of 1880 to fix the fares. As long as it fixes the fares and

makes the necessary publication required by the Act, it becomes binding. With regard to the publication in the official gazette an objection is taken to the effect that this schedule does not purport to be signed or "authenticated" by the Agent or the Company. To start with, I do not see that this is required by law to be done. As Mr. Chaudhury has pointed out, all that is necessary under Sections 9 and 10 of the Act of 1880 is that the printed list shall be published in the official gazette at the expense of the grantee. I do not see again how the question of "authentication" at all arises. It is not as if the provisions of the Constitution relating to authentication of the orders of the Governor of a State has any analogy to the facts and circumstances herein. If the petitioner had taken the plea that this schedule of fares as published had not in fact been settled or decided upon by the company, then such a point should have been expressly taken, in which case the respondents could have placed before me the appropriate materials to decide the point. In my opinion, the publication in the official gazette appears to be in order. The question is whether this publication has violated the provisions of the Coinage Act or the amendment thereof. As I said, it is not easy to discover the exact complaint that is made upon this point, but on the basis of what I understand to be the basis of the petitioner's case, I think that there is a misconception in the mind of the petitioner as to the exact position both in fact and in law. If the schedule was not a schedule of fares in the denomination of naye paise only, but in denominations of the old coinage as also the new coinage and if it could be shown that the denominations in the new coinage violated the conversion rates as prescribed by the Coinage Act or the amendment thereof, then in that event, there might be justification in the complaint made. In other words, if in the schedule of fares, it could be shown that the tickets were of the denomination of an anna but were calculated in terms of naye paise on the footing not of six naye paise to the anna but of seven naye paise, then indeed the provisions of the Coinage Act would be violated. If in working out the schedule of fares, a particular person using the tramways tenders an old coin and is given as change, something which is not in terms of the rule of conversion laid down in the Coinage Act, that would certainly be a violation of the provisions of the Coinage Act. But neither of these things are taking place in fact. The Company has fixed a schedule of fares in the denomination of naye paise only, and it is prepared to carry passengers upon payment thereof. In making such payment, it is certainly open to the passenger to tender anything which is legal tender in the land. If he tenders the old coinage, he is at least entitled to get credit for it in terms of naye paise at the conversion rates mentioned in the Coinage Acts. If anything less is offered to him, that is violative of the Acts and cannot be permitted. In fact, however, what is being actually done is that he is getting credit for more, and not less. If a passenger offers an anna, the Company gives him credit for seven naye paise, although it is bound to give him credit for six naye paise only. I do not see how this is a violation of the provisions of the Coinage Acts. In my opinion there is no violation. Actually, the reliefs that have been asked for have really no reference to the real complaint or grievance as formulated. In any event, once we

understand the exact nature of the complaint, it appears that the only thing to consider is as to whether the action of the company, both in regard to the fares as settled or the practice that is being followed, is wholly in conformity with the law and not in violation thereof. It will now be apparent why it is important to consider the fact that the new schedule of fares that is to say, the revised fares, are wholly in denominations of naye paise and not in denominations of the old and new coinage, in which case, complications could have arisen. In view of this, it is unnecessary really to go into the other points raised but I shall shortly deal with them.

8. A point was taken by Mr. Dutt to the effect that the fixing and charging of fares in a municipal tramway is, and should be, a legislative act and therefore the action on behalf of the Company in settling the fares is violative of the Constitution, Frankly speaking, I am unable to follow this argument. Item 13 of List II in the Seventh Schedule undoubtedly makes "communications" including municipal tramways as State subjects. There is no dispute on the fact that the legislation with regard to the municipal tramways is to be effected by the State Legislature. The Calcutta Tramways Act 1880 was a provincial Act, and by adaptation it has now become a State Act. In dealing with the fares of the municipal tramways within the city of Calcutta, it is open to the State Legislature to make such provisions as it thinks fit. One of the provisions is that the duty of carrying out transportation by tram-cars within the city is given to grantees mentioned in the relevant Statute, and it is conceded that the present grantee is the respondent No. 1, the Calcutta Tramways Company Limited. Section 9 grants to the grantee power to fix, from time to time, the rate of fares for carrying passengers and goods. There is a certain procedure to be followed, which, as I have held above, has been followed. Therefore, the fares have been correctly fixed in terms of the law. What is argued is that the fixing of fares really comes under Item 66 in the State List, namely, "Fees in respect of any of the matter mentioned in the List". I must at once repel this argument. I think it would be extra-ordinary to call the fares charged by the Tramways Company Limited, as "fees" chargeable by the State Government in terms of Item 66. Item 66 deals with such things as registration fees or licence fees etc. Next it is argued that even assuming that the fixing of fares is not the fixing of fees, it is still an operation that can only be carried out by the Legislature and it should not have been delegated to a private body like the Calcutta Tramways Company. In my opinion, there is no substance in this argument. The power to fix the rate of fares is based on legislative sanction. As is now well settled, it is not possible for the Legislature to look into every detail of every act to be done under any particular statute. Even assuming that this is a delegated legislation, it has now been firmly held that as long as the Legislature lays down the policy, the details can be left to a non-legislative body to work out. Nothing illegal, has been done on this ground, and the provisions of Sections 9 and 10 of the Act of 1880 are valid and constitutional.

9. The other point that has been taken is by the respondents. It is a point by way

of demurrer, namely, that a Writ of Mandamus does not lie against a Company. In the view that I have taken on the merits of the case, it is really not necessary for me to deal with this, but inasmuch as certain arguments have been advanced, I shall briefly deal with this point. In my opinion, the correct view to take in a matter like this is as follows:

10. Normally speaking, a Writ of Mandamus is not issued against a private individual. In the Supreme Court decision *Sohanlal Vs. The Union of India (UOI)*, , Kapur J., relied on the law as delineated in Halsbury's Laws of England, Volume 11, page 85, para 159. As I said, a Writ of Mandamus does not normally or ordinarily issue against a private individual. Such an order is made against a person directing him to do some particular thing specified in the order which appertains to his office or is in the nature of a public duty. Thus, the most familiar instance of the issue of such a Writ. is against officials, public bodies or statutory Corporations, which are governed by the Statute of their incorporation. It does not follow however that such a Writ does not lie against a Company in any event. There are instances in which such Writs have been issued in the case of a company, or even a private-individual. But in these restricted cases, it would have to be shown that there does not exist an, alternative legal remedy or that such remedy is not sufficient, or adequate. It might be said that in the case of a private individual, if there is a violation of the ordinary law, then in that case recourse can be had to the remedies laid down in the ordinary law of the land, and that in such a case, recourse to a Court of equity would be unnecessary. It is however not necessary for me to go further into this aspect of the question, because the, present case, in my opinion, is a case of a public utility concern and in such cases a special principle applies. This is an aspect of the question which was discussed in a Bench decision of the Bombay High Court, in *Corporation of the City of Nagpur Vs. The Nagpur Electric Light and Power Company Ltd.*, . The learned Judge delivering judgment has quoted from the *Corpus Juris Secundum* 998, the relevant part whereof is as follows:

"As a general rule, a public utility has the duty to give the public reasonable and adequate service at reasonable rates and without delay.

A public utility has the duty to supply a commodity or to furnish service to the public. This duty exists independently of Statutes regarding the manner in which it shall do business or of contracts, with municipalities or individuals, and is imposed because the utility is organized to do business affected a public interest and holds itself out to the public as being willing to serve all members thereof. Broadly speaking, the primary duty of a public utility is to give reasonable and adequate service at reasonable rates and without delay".

11. The learned Judge is of the opinion that a Writ could issue at the instance of any consumer to the public utility concern, for its failure to perform its duty under the Statute. If therefore, it could be shown that the Calcutta Tramways Company Limited was violating any provisions of the law for which there was no adequate remedy provided, then in that event I am of the opinion that a Writ

would have lain. Coming back now to the facts of this case, I find that the Company cannot be said to have done anything which is either illegal or unconstitutional and consequently the question does not arise about the jurisdiction to issue a Writ.

12. These are the points raised in this case and for the reasons given above, this application must fail and must be dismissed. The Rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.