
(2012) 10 DEL CK 0087
In the Delhi High Court
Case No : Writ Petition (C) No. 206 of 2012

D.S. Chauhan

APPELLANT

Vs

Railway Board, Ministry of Railways

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(1), 2(i), 2(i)(iv), 2(k)

Citation : (2013) 198 DLT 731 : (2012) 132 DRJ 905

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Pankaj Sinha, for the Appellant; Ashwani Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, Chief Justice

1. This pro bono public petition raises following questions, namely, (i) whether denial of Railway concession to the speaking deaf would be an arbitrary decision when such concessions are extended to the non-speaking deaf and all other groups, (ii) whether the railway has an obligation to all mobility challenged disabled persons under Article 20 of the Convention on the Rights of Persons with disability to extend the concession. The above questions arise on the following backgrounds. The petitioner, Sh. D.S. Chauhan is the Honorary Secretary of the Delhi Association of the Deaf, a recognized civic organization. According to him, the said organization works for the rights of the deaf in Delhi and across India. It appears that Indian Railways provides concession for numerous groups of people with health issues and has framed the General Rules for Concession. Among other category of persons, the following categories of disabled persons are made eligible for the concessions:

2. Serial No. 4 relates to the extension of concession to deaf and dumb persons

either travelling alone or with an escort for any purpose. The condition to avail such concession is that both afflictions of deaf and dumb are together in the same person. The challenge appears to be that in terms of Section 2(i) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Act") defining disability meaning (i) blindness; (ii) low vision; (iii) Leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; and (viii) mental illness read with Section 2(1) of the Act also defining the expression "hearing impairment" meaning loss of sixty decibels or more in the better ear in the conversational range of frequencies. According to the petitioner, there cannot be any discrimination for extending the concession for persons with disability of hearing impairment, and specially when such benefit apart from a concession is extended to a dumb person who is not one of the categories in the definition, insistence of presence of both deaf and dumb for availing concessions would amount to arbitrariness.

The further contention of the petitioner is that Rule 6 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Rules 1996 (hereinafter referred to as "the Rules") provides that in the event a certificate is issued in terms of Rule 4 by the competent medical authorities as to the disability defined u/s 2(i) of the Act, such person would be entitled for the concession automatically. It is the further contention that as per Article 20 of the Convention on the Rights of Persons with disabilities, the State Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost. In view of the mobility challenges of disabled persons, the State shall ensure personal mobility of even a person with deaf or dumb as the case may be. With the above grievance, the petitioner seeks for direction to the Railways to remove all the references to "dumb" from the Indian Railways Concession Rules and thereby provide concession to all persons certified as deaf.

3. As the writ petition basically seeks for relief based upon the provisions of the Act, the immediate question that arises for our consideration is, as to whether by virtue of the above provisions, the petitioner can claim concession from the Railways as a matter of right.

4. The Act is made applicable to the Railways for extension of benefit as the Railway Board is an establishment u/s 2(k) of the Act as it is an authority controlled by the Government. It is the contention of the Railways that grant of concession is a matter of policy of the Government of India and the petitioner cannot force the Railways to grant concession to any category, particularly, in the absence of any provision under the Act making it obligatory for the Railways to grant concession in fares to disabled persons. It is the further contention that as a social welfare measure and considering the requirement of the Society in the changed social and economic scenario, some concessions are provided by the

Railways to specified categories of disabled persons. Therefore, in the absence of any right conferred on the petitioner under the provisions to seek for inclusion of the dumb persons alone for availing concession, the petition deserves only a dismissal.

5. India is a signatory to the proclamation on the Full Participation of People with Disabilities in Asian and Pacific Region which inter alia provides as follows:

(i) To spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) To create barrier free environment for persons with disabilities;

(iii) To remove any discrimination against persons with disabilities in the sharing of development benefits, vis-à-vis non-disabled persons;

(iv) To counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) To lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) To make special provision of the integration of persons with disabilities into the social mainstream.

6. Pursuant to the above, Co-ordination Committees and Execution Committees at the Central and State Levels were constituted and ultimately to implement the same a Bill was introduced to provide to the disabled persons education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities etc. This led to the passing of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

7. The object of the Act is to provide education, employment and vocational training, reservation in identified course, research and manpower development, establishment of homes for persons with severe disabilities etc., there is no provision to show that the concession in fares could be also sought as a matter of right under the Act.

8. The question is as to whether by virtue of the above Act, concession in fares in Railways can be asked as a matter of right. A similar contention came up for consideration before the Madras High Court in the case of I. Elangovan Vs. The Central Co-ordination Committee & Ors. (Writ Petition No. 38230/2002) and the Madras High Court denied the relief in paragraph 5 of its decision dated 27.03.2007, which reads as follows:-

5. The question as to whether the Railway concession is to be allowed in favour of one or other class of Persons is a matter of policy decision of the Railway, which is the competent authority. The same cannot be decided by this Court. So

far as the "persons with disability" is concerned, particularly "disability" as defined u/s 2(i) of the Disabilities Act, such persons can claim benefits to which they are entitled under the Disabilities Act, 1995. As the Disabilities Act, 1995 do not relate to Railway concession, petitioner cannot derive any benefit of the same.

9. The same question again came up for consideration before this Court in the case of *Ajay Mehndiratta Vs. Union of India Vs. Ors.*, W.P. (C) No. 3717/2010 wherein the Division Bench passed the order dated 23.12.2011 giving a finding that there was no right for grant of concession for undertaking railway journeys by certain category of persons and the extension of such concession is a policy decision which the Executive is free to take and various factors go into the said decision making. The above judgment answers, in uncertain terms, that in the absence of any provision in the Act, no right is conferred on persons with disability to claim concession in Railway fares. That apart, extension of concession is a policy matter and the Railway is free to decide upon which category of persons should be made entitled for concession in Railway fares.

10. The Supreme Court in *BALCO Employees Union (Regd.) Vs. Union of India and Others*, while considering the power of this Court to entertain a writ petition which is in the nature of PIL felt that in a policy matter, the Court would not interfere unless any illegality is committed in the execution of the policy or the policy itself is contrary to the law or malafide, the relevant paragraph reads as under:

91. Conclusion:

In a democracy it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court.

92. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. Here the policy was tested and the Motion defeated in the Lok Sabha on 1st March, 2001.

Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there

is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or statutory duties. None of these contingencies arise in this present case.

In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself.

11. In fact, when a grievance of senior citizen who were entitled to airlines tickets on concession came up before the Supreme Court in Union of India (UOI) Vs. Shankar Lal Soni and Another, raising objections with regard to the two conditions, namely, that the senior citizens applying for concessional tickets had to do so seven days in advance of journey and the senior citizens required to stay a minimum of 2 days at the outgoing destination in order to be eligible for the return ticket, the Apex Court observed in paragraph 8 & 12 as follows:-

8. Dr. Singhvi, the learned Counsel for the respondents has also urged that it was rather unfair that a concession granted with one hand was being taken away by the other and that a duty lay on all citizens of this country to ensure a comfortable, happy and healthy life to its senior citizens and any condition laid down by the appellants had to stand the test of reasonableness and in this view of the matter there was no error in the order of the High Court. Mr. Parekh has further pointed out that subsequent to the judgment of the High Court the Airlines as well as the Railways had waived some of the conditions which had been challenged by the writ petitioner respondents and the matter was, therefore, largely academic at this stage.

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12. The very basis of this judgment is that a decision to grant a certain concession or a certain benefit and the conditions for their grant are a matter for the administrators alone and the court should not interfere in the matter on the premise that it was of the opinion that some of the conditions imposed were not justified. A concession based on an administrative decision de hors a statute as in this case stands on a yet weaker footing.

12. A combined reading of the above judgments would undoubtedly show that the Act under reference do not extend the benefit to the disabled persons to seek for concession as a matter of right and any decision to extent such benefit would be a matter of policy for the Board taking into consideration various factors including the financial aspects.

13. This takes us to the next question as to whether while the Railways have chosen to extend the benefit to certain categories of persons with disabilities as a matter of policy, it could further impose a condition that for such benefit a person must be afflicted with disability of deaf and dumb together. The contention of the petitioner appears to be that the said concession should not be denied to the

deaf person solely on the ground that he should also have the impairment of dumb as well. The said submission is made on the ground that in terms of the definition u/s 2(i)(iv), a disabled person with hearing impairment with loss of sixty decibels or more as contemplated u/s 2(1) would be entitled for concession.

14. We have already found that the Act merely defines the disablement for the benefits of certain rights conferred therein and not for the concessions which are to be independently considered by the Board in question. Nevertheless, the issue is as to whether having considered to grant concession, there can be any discrimination for such of those disabled persons, who are either deaf or dumb. We find no such discrimination in matter of concession. Of course, even while the Government or its organization or the Railways for that matter takes a policy decision to extend certain concessions to certain categories of persons, such decision should not be arbitrary and violative of Article 14 of the Constitution of India. However, the question of arbitrariness would depend upon the facts of each case. The concession has been granted to a person with the impairment of deaf and dumb only to mitigate the hardship of such persons. The concession is extended to a category of persons with impairment of deaf and dumb on the ground that they should be extended such concession to mitigate the hardship faced by them. The hardships faced by either deaf or dumb persons cannot be equated with the hardships faced by persons with the impairment of deaf and dumb. In our opinion, there should be reasonable classification and no exception can be taken to plead discrimination. This being a policy decision and in the absence of any right to the petitioner, we are not inclined to hold that the said classification is violative of Article 14 of the Constitution of India.

15. Lastly, it is contended that it is the obligation of the State to take effective measures to facilitate mobility of persons with disabilities as provided under Article 20 of the Convention on the Rights of Persons with disability. Here again, though the Article directs the State to take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities including facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice and at affordable cost, such necessary facilities have already been met by the provisions of the Act in reference and the petitioner cannot insist for the direction from this Court for extension of the benefit beyond the provisions of the Act.

16. Apart from that, the Act was intended to spell out the responsibility of the State towards the prevention of disabilities, protection of rights including medical care, education, training, employment and rehabilitation of persons with disabilities and etc., none of those proclamations makes it mandatory for the Railway Boards to extend the concession at the cost of government exchequer to all disabled persons irrespective of the nature of disability. Even in the act, in case of impairment persons, the right is restricted only to those who have loss of sixty decibels and more and not otherwise. The classification in question, therefore, is reasonable and cannot be termed to be one of arbitrary and

unreasonable. For the above reasons, we are of the considered view that in the absence of any right, the petitioner cannot seek for a direction and that too when this Court is not justified in interfering with the policy matters which are neither arbitrary nor discriminatory nor attacked on mala fide ground. Accordingly, the petition is dismissed. However, the Railway Board is always at liberty to consider the extension of the benefit to the petitioner independent of the decision of this Court by way of policy.