

(1996) 04 KL CK 0014

In the High Court Of Kerala

Case No : O.P. No"s. 4126, 5604, 5738, 6419 and 10370 of 1993

J. William John alias Gandeewan

APPELLANT

Vs

Chairman, Railway Board, New Delhi and Others

RESPONDENT

Date of Decision : 03-04-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : AIR 1997 Ker 178

Hon'ble Judges : K. Narayana Kurup, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; T.P.M. Ibrahim Khan, Standing Counsel and ACGSC, for the Respondent

Judgement

K. Narayana Kurup, J.—The common prayer in these original petitions is inter alia for the issuance of a writ of mandamus directing the Railways to permit short distance commuters and season ticket holders to travel in sleeper coaches by paying a nominal fare of Rs. 2/- and without paying sleeper class fares and the minimum fare for 200 kms. during day time in Kerala.

2. The grievance of the petitioners is that in Kerala, short distance passengers without sleeper class tickets and season ticket holders are not permitted to travel in sleeper class of long distance trains during day time without paying sleeper class fares and the minimum fare for 200 kilometres. To realise the gravity of this grievance, one has to take note of the fact that in Kerala unlike many other States there are no sufficient suburban trains, short distance fast trains and electric trains to cater to the needs of short distance travellers and season ticket holders. In the absence of such parallel trains, these commuters are forced to travel by sleeper coaches in long distance trains by paying a nominal fee. In fact they have been enjoying this facility for the last many years. By the introduction of the new sleeper class scheme with effect from 1-4-1993 railway short distance commuters (mostly day time passengers) are prohibited from travelling in sleeper coaches in long distance trains that pass through the State unless they

pay sleeper class fares which is shockingly prohibitive (fare to Alwaye which is less than 20kms. from Ernakulam junction is Rs. 58/-) as can be seen from the table of rates furnished by the petitioner in paragraph 44 of O. P. No. 6149/93 in spite of the fact that they possess a sleeper class ticket. The petitioner is also aggrieved by the collection of the minimum fare of 200 kilometres from passengers travelling without sleeper tickets in the sleeper compartments of long distance trains during day time in Kerala. In vindication of the grievance, the petitioners have cited relevant portions of the Indian Railways Act, decisions of the Supreme Court touching on the subject and some facts and figures which will go to show the differential increase in the fares as a result of the introduction of the new scheme.

3. Learned counsel appearing for the Railways strenuously opposed the grant of any relief to the petitioners as according to him the decision was taken at high level after due deliberation and being a "rate fixing" decision this Court cannot sit in judgment over the same.

4. However, having regard to the importance of the question raised which has a definite bearing on public interest, I treated the petitions as an action *pro bono publico* and after hearing both sides, directed the Railways to make appropriate arrangements to alleviate the misery and suffering caused to the travelling public, namely, short distance passengers and season ticket holders by relaxing the new scheme or by providing sufficient additional bogies or by any other satisfactory method to suit the convenience of the commuters. The respondent was given a period of one week from the date of order to take all necessary steps in the matter to mitigate the suffering of the commuters as aforesaid, failing which, on the expiry of the said period of one week, status quo which obtained before the promulgation of the impugned rule/ scheme was ordered to be continued and the impugned scheme/rule was stayed as far as State of Kerala is concerned. Vide order in CMP No. 10873/93 in O.P. No. 6149/93 dated 11-5-1993.

5. Thereafter, the matter was heard at length and both sides marshalled facts and figures in support of their respective contentions.

6. On a consideration of the rival contentions, I am satisfied that the petitioners are entitled to the indulgence of this Court. As noticed above, the commuters (short distance travellers and season ticket holders) in Kerala have been using sleeper coach facility for a long number of years. It is the only convenient method of reaching their destinations and places of work. For example, a person travelling from Cochin to Trivandrum can travel by the Trivandrum mail by the sleeper coach by paying a nominal fee, say Rs. 2/- in addition to the fare. By this, the long distance travellers are not put to any inconvenience or hardship since, by the time the long distance train reaches Cochin, many long distance passengers might have detrained leaving number of seats vacant to accommodate the short distance passengers. Similarly, a person travelling from Trivandrum to Cochin can do so by boarding one of the sleeper coaches attached

to the same train without causing any inconvenience to the long distance passengers because there will be only very few long distance travellers to embark the sleeper coaches between Trivandrum and Cochin and a number of berths and seats will be lying vacant and unoccupied in the sleeper coaches which can profitably and conveniently be permitted to be occupied by short distance passengers after collecting from them a nominal fee. By long and continuous use of this facility, a right has been crystallised in their favour in this regard which cannot be taken away by the respondent overnight, in an arbitrary and unjust manner subjecting the citizen to untold misery and hardship and leaving them high and dry. It is strongly urged by the learned counsel for the petitioners that the modern judicial activism has elevated such a right to the high pedestal of fundamental right to life guaranteed under Article 21 of the Constitution of India. By a catena of decisions Courts have held that right to life includes right to livelihood and the right to life connotes not merely animal existence but includes the final graces of human civilisation. Applying the above principle, it has been held that the right to pure drinking water, right to pollution free air (*Attakoya Thangal v. Union of India*, 1990 (1) KLT 580 and right to good roads etc. (*State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others*), are facets of valuable constitutionally guaranteed right to life and such a right can be deprived of only by a law which is just, fair and reasonable. Viewed in the above light, I am inclined to hold that the right of short distance passengers and season ticket holders who travel by sleeper coaches during day time in long distance trains by paying a nominal fee cannot but be characterised as the fundamental right to life, the denial of which can be effected only by law which is just, fair and reasonable. By enforcing the impugned scheme in question by the respondent, the commuter has been subjected to untold misery and hardship -- which is avoidable -- by compelling him to travel in trains packed like sardines at the behest of the respondent-Railways which is a public utility service having a monopoly in the field amounting to violation of the constitutional right to life guaranteed under Article 21 of the Constitution of India.

7. Yet another reason that militates against the introduction of the new scheme behind the back of the commuters is the theory of "legitimate expectation". Since the facility of travelling in the sleeper coaches in long distance trains had been enjoyed by the public for several years without any let or hindrance, they are entitled to "legitimate expectation" of following "consistent past practice" in the matter of enjoying the sleeper class facility in the absence of any compelling reason to the contrary. Any deviation from the "consistent past practice" affecting thousands of members of travelling public is to be preceded by public notice enabling the affected parties to make effective representation against the change of "consistent past practice". The impugned scheme is hit by that principle also. See *Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others*, paras 15 & 16). See also *HWR Wade Administrative Law* 5th Edn. pages 464- 465 on "Legitimate Expectation".

8. Learned counsel for the respondent/ Railways submitted that the impugned

sleeper class scheme introduced with effect from 1-4-1993 is a sequel to the Railway budget for the "current year" 1993-94 and being an eco-nimic policy, this Court has no jurisdiction to interfere. I fail to see any merit in this contention in the light of the decision of the Hon"ble Supreme Court reported in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, where the Court rejected the submission that economic or corporate issues can never be a subject-matter of judicial review. It is also noteworthy that the respondent Railways being a public utility service having monopoly in the field cannot act solely on the basis of profit motive by mulcting the travelling with oppressive and expropriatory levy disregarding public interest.

9. Viewed in the above light, this Court itself would have issued appropriate direction in mitigation of the hardships experienced by the commuter public but for the fait accompli with which this Court is confronted now.

10. When these petitions came up for final hearing before me today, learned counsel Shri T.P.M. Ibrahim Khan who is appearing for the Railways submitted that pursuant to the interim order issued by this Court in CMP No. 10873/93 the hardships experienced by the short distance commuters and season ticket holders have been mitigated to a great extent by the following actions taken by the Railways :

- (i) Addition of unreserved compartments to the existing long distance trains;
- (ii) Dereservation of certain existing reserved compartments of long distance trains;
- (iii) Increasing the frequency of short distance trains; and
- (iv) Introduction of new trains like push pull trains.

I am satisfied that the changes for the better introduced by the Railways will mitigate to a great extent the hardships experienced by the short distance commuters and season ticket holders. The anomalies highlighted by me in my interim order in CMP No. 10873/93 in O.P. 6149/93 has been removed to a great extent. Learned counsel further submits that short distance commuters and season ticket holders can travel in reserved compartments of long distance trains during day time by paying a nominal additional fare of Rs. 10/-per day, thereby removing the anomaly pointed out by me in my interim order under which short distance commuters (mostly day time passengers) were prohibited from travelling in sleeper coaches in long distance trains that pass through this State unless they pay . sleeper class fares which is shockingly prohibitive (fare to Alwaye which is less than 20 kms. from Ernakulam junction was Rs. 58/-which has now been reduced to the usual fare addl. fare of Rs. 10/-. The case of the petitioners is that they should be permitted to travel in sleeper compartments of long distance trains by paying a nominal fare of Rs. 20/-. The Railway administration has applied their mind to this aspect and has taken a decision that it may not be in public interest to allow short distance passengers and season

ticket holders to avail of the facility in reserved compartments of long distance trains by paying a nominal fare of Rs. 2/- as it will cause inconvenience to long distance passengers. Unless certain restrictions by way of increased fare is introduced the interest of long distance travellers who have paid higher charges at the rate of 56 paise per km. compared to 6 paise per km. for season ticket holders, will be adversely affected. It appears that the provision enabling the Railways to collect the additional fare of Rs. 10/- for travelling in the reserved compartments of the long distance trains is a reasonable restriction conceived in public administrative policy beyond the pale of judicial review unless it can be characterised as colourable, oppressive or confiscatory. I am not satisfied that the fare now introduced is arbitrary or oppressive.

11. In short, as a result of the positive response shown by the Railways pursuant to the observations made by the Court in the interim order noted above to mitigate the hardships of the travelling public especially short distance passengers, I do not think that the petitioners can have any further substriving grievance in this regard.

In the result, all the original petitions are disposed of recording the submission of the counsel for the Railways as already noted. Original Petitions are accordingly closed.