
(2015) 10 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10896 of 2011

Jubair

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2015) 10 PAT CK 0036

Hon'ble Judges : Kishore Kumar Mandal, J

Bench : Single Bench

Advocate : Vijay Kumar, for the Appellant; D.K. Sinha and A. Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kishore Kumar Mandal, J—The writ petition under Article 226 of the Constitution of India prays, inter alia, for taking legal action against the personnel(s) of the Railway Protection Force (RPF) and the employees of the respondent-Eastern Railway for having misbehaved, manhandled and acted inhumanely with the petitioner and to compensate the petitioner for the damage caused to him by unlawfully confining him for hours together without the authority of law. This Court is not presently concerned with the first prayer as the respondent-Railways on making enquiry into the allegation has already taken action against the erring personnel(s)/officials. Adequacy thereof has neither been argued nor shall be looked into.

2. Prefatorial facts, in a nutshell, are that the petitioner, a tailor by profession, along with one Salluddin was traveling on train on 01.09.2006 on a valid ticket from Patna to Bhagalpur. As they reached Bhagalpur railway station at 1.30 pm and alighted from the train, the petitioner was surrounded by three RPF constables at the station and brought to Hajat and confined there. He was allegedly manhandled, abused and robbed of his cash. After his confinement for few hours, he was presented before the Ticket Travelling Examiner (TTE) or the

Ticket Collector (TC) who issued two receipts each of Rs. 50 for carrying luggage in excess of permissible limit. The amount was paid by contributions made by persons/passengers who had assembled at the scene of occurrence. Upon realization of the amount, he was allowed to go out of confinement. Aggrieved by such inhumane and atrocious behavior of the RPF personnel(s) in collusion of the TTE/TC, the petitioner attempted to lodge a complaint with the police station located at the railway station and the Station Superintendent, but was denied to do so. Harassed and restless petitioner on 06.09.2006 lodged a written complaint with the National Human Rights Commission (NHRC) and other statutory body. The NHRC taking cognizance of the written complaint directed an enquiry to be made into the allegation leveled by the petitioner by the competent authority of the respondent-Railways.

3. It appears from the counter affidavit filed on behalf of the respondent-Railways that an enquiry into the complaint was later made by the Inspector, RPF, Internal Vigilance Group, Eastern Railway, Kolkata and a report dated 17.11.2006 (Annexure-A) was submitted. The conclusion of the Inquiry Officer are as under:--

"Conclusion: The following allegations were proved during inquiry:

(1). That the complainant was detained by RPF at Bhaglapur station on 01.09.2006 without authority despite having a valid ticket.

(ii) That at the insistence of RPF an amount of Rs. 100/- was realized from the complainant as extra fare for carrying luggage more than free allowance without getting the luggage physically weighed and two EFTs were issued by the Ticket Collector with ulterior motive in favour of the complainant without mentioning therein the ticket number in possession of the complainant.

The following allegation leveled by the complainant, however, could not be proved due to lack of evidence:

(i) That the complainant was put to hazat of RPF post/Bhagalpur after detention, physically and mentally tortured, abused and intimidated while in custody.

(ii) That while in RPF custody, an amount of Rs. 5700/- was snatched by the RPF personnel from the complainant though extortion of some money from the complainant by some RPF staff during he time seemed probable ink view of the revelation of the TC that the extra fare of Rs. 100/- charged against the complainant was paid by some RPF staff."

4. The respondent-railways on the basis of the said report initiated disciplinary action against the RPF Inspector for his misconduct. The Ticket Collector (TC) who was allegedly involved in the incident was transferred. The disciplinary action was also directed to be initiated against him for arbitrary and unlawful action whereafter minor penalty charge sheet was issued against the Inspector, RPF and on conclusion of the proceeding punishment of withholding of increment of one year was imposed on him vide order dated 11.01.2007. Similarly, the TC

was also inflicted punishment in the departmental proceeding. In these factual background, the petitioner has prayed for compensation for the damage suffered by him on account of misconduct, misbehavior of the RPF personnel(s) and the Ticket Collector and for illegally and arbitrarily detaining him for hours together under confinement.

5. Heard Mr. Tandon for the petitioner and Mr. D.K. Sinha, learned Sr. Counsel for the respondent-railways.

6. It has been submitted on behalf of the petitioner that on the date when he was taken control of by the RPF personnel(s) he was travelling on train having a valid ticket for the destination. The RPF constables took physical control of his, brought to Hajat and confined him there for several hours. The liberty of the petitioner was curtailed/impaired unauthorisedly. The RPF constable(s) during his such confinement abused, intimidated and mishandled him. Later the Ticket Collector (TC) illegally issued two receipts for carrying excess luggage in order to save their skin and allowed him to go out of their confinement. Since his right to freedom was impaired in wholly unauthorized manner, the petitioner is entitled to compensation apart from the disciplinary action the respondents have taken against the erring personnel(s) employees.

7. Mr. D.K. Sinha conversely submitted that on a reference made to the respondent-railways by the NHRC the allegation has already been enquired into and finding fault of some of the RPF personnel(s) and employees of the railways legal action has been taken. If the petitioner wants damaged for the loss sustained by him on account of misconduct/misbehavior of the employees of the railways he is free to institute a proceeding under private law. Referring to the inquiry report he would argue that the allegation of illegal confinement in Hajat at the station by the RPF personnel(s) was not substantiated in the enquiry.

8. Article 21 of the Constitution of India guarantees the citizens the right to life and liberty. In exercise of the writ jurisdiction the Supreme Court or the High Court can pass an order for payment of money in the nature of compensation consequential upon the deprivation of fundamental right to life and liberty of the citizens by the State action. The aforesaid proposition of law is well-settled by the Apex Court several decades ago in case of Rudul Sah Vs. State of Bihar and Another, AIR 1983 SC 1086 : (1983) CriLJ 1644 : (1983) 2 SCALE 103 : (1983) 4 SCC 141 : (1983) 3 SCR 508 . In a case where there is violation of fundamental right by the State instrumentalities or servants, Court can direct the State to pay compensation to the victim or his heirs. Such remedy is in addition to the remedy available to the aggrieved person under the private law. It is apt to notice here Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which reads "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". The guarantee to fundamental right conferred under Chapter III of the Constitution of India is to be real. The enforcement of such right is possible in the constitutional scheme. The remedy in public law has to be more readily available to the citizens at large

when invoked. The legal principles having been adumbrated it is to be seen whether the constitutional right of the petitioner embodied in Article 21 of the Constitution of India was deprived of by the respondent-railways on the date and time alleged by the petitioner. The petitioner has alleged that he was arrested and confined to Hajat at the station for several hours before presenting him before the TC/TTE who illegally with a view to save skin issued receipts for carrying luggage in excess, although there was none. During the enquiry his statement (Annexure-4) was recorded wherein he deposed that he was arrested by the RPF personnel(s) at the platform and confined in Hajat where he was also manhandled and abused and at 5.15 in the evening he was made over to TTE/TC who illegally issued two receipts worth Rs. 100/which was paid by contribution. The illegal confinement of the petitioner by the RPF personnel(s) at the station for few hours does not appear much in dispute. The Inquiry Officer in his conclusion also found that the complainant was detained by the RPF personnel(s) at Bhagalpur railway station on 01.09.2006 without valid authority of law despite having a valid ticket. Such acts of RPF personnel(s) and the TC/TTE have been found to be acts of misconduct and legal action has been taken against them. The detention means and denotes confinement and thereby deprivation of freedom of the person detained which may be for some hours or some days or some months. The constitutional right to freedom of the petitioner was definitely impaired/curtailed. The next relevant question is whether this was under the authority of law. Obviously, it was not since the petitioner was travelling on the relevant date and time on the valid ticket issued by the respondent-railways. The realization of money on account of the petitioner carrying excess luggage by the TC/TTE has also not been found sustainable and approved in course of enquiry and a departmental action was recommended against him. The Chief Commercial Manager Eastern Railway, Kolkata, on conclusion of enquiry, found the same as arbitrary and unlawful action on the part of the delinquent Ticket Collector (TC) and punishment has been imposed. Any violation of the constitutional right by the State functionaries/instrumentalities merits to be viewed strictly. The Court shall be failing in its duty if any such incident brought to the notice of the Court is not viewed strictly lest such aberrations would become order of the day and the citizens of the country shall become more vulnerable entity. The materials on record as discussed above leads this Court to conclude that on account of unlawful and illegal conduct of the employees of the respondent-railways the petitioner suffered humiliation and deprivation of his fundamental right enshrined in Article 21 of the Constitution of India. He deserves to be compensated therefor. I accordingly direct the respondent-railways to pay by way of compensation for the loss of his fundamental right to freedom suffered at the hands of the employees of the railways in the sum of Rs. 25000/- payable by the respondent-railways to the petitioner within a period of three weeks as a palliative measure which would not, however, preclude the petitioner from seeking adequate relief for appropriate damage from the State in accordance with law. The respondent-railways would be at liberty to realize the amount of compensation, if so advised, from the erring/errant officers whose conduct

entailed deprivation of fundamental right of the petitioner.

9. The writ application is allowed with the cost quantified at Rs. 1000/-.