
(1997) 08 MP CK 0040

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1864 of 1997

Mahendra Kumar Tiwari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1998 MP 178 : (1997) ILR (MP) 418 : (1998) 1 MPLJ 368 : (1998) 1 MPLJ 268

Hon'ble Judges : A.K. Mathur, C.J;Dipak Misra, J

Bench : Division Bench

Advocate : S.K. Gangele, for the Appellant; S.P. Sinha, S.C. Dutt and Munish Dutt, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The petitioner, a public spirited person has called in question the propriety and validity of the action of the Railway authorities who have in total violation of the established norms and procedure and on consideration of extraneous facts have granted catering licences to the respondents 4 to 6, though the Railway Administration on objective assessment of complaint had cancelled their licences on earlier occasion.

The essential facts which need narration for disposal of the present application are as follows :--

Itarsi Railway Station is an important railway station of the Central Railway. Approximately 190 trains carrying passengers regularly pass through Itarsi Railway Junction in a span of 24 hours and about 1.5 lacs of passengers pass everyday through this junction. To take care of the need of food of the travelling people four contractors were awarded contracts for catering services. The respondents 4 to 6 have been carrying on the catering service for some decades.

There is averment in the petition that the four contractors continued to run their catering services though there had been no renewal of the said contracts/licences. As the facts have been put forth the Railways Administration terminated the licences of all the contractors on 2-8-96 on the ground of continuous poor and unsatisfactory performance and the said termination of licences was challenged before the Civil Judge, Class-II, Itarsi. In the suit an application was filed seeking injunction which was resisted by the Railway authorities contending, inter alia, that there was justification for termination of the contracts because of the unsatisfactory service and series of complaints received against the caterers. The Civil Court refused to grant injunction and an appeal being preferred, the appellate Court affirmed the view expressed by the learned Civil Judge. Revision before this Court met with similar fate. It was pleaded by the Railway Administration before the Court below that the Railway Administration vide Notification invited applications for grant of licences and a number of persons have submitted their applications. While this was the situation, as alleged in the petition, the Railway Administration coming under, extraneous pressure decided to give catering services to the old contractors, the respondents 4 to 6 and the applications which were invited, remained processed. The petitioner making various other allegations has prayed for issuance of direction to conduct an inquiry with regard to grant of licences for running catering services to respondents 4 to 6 by the Central Bureau of Investigation, the respondent 7.

A return has been filed by the respondents 1 to 3, the Railway authorities. While traversing the allegations made by the petitioner they have stated that as initially there was an order of status quo by the Court and the licensees continued but ultimately on assessment of their performance their licences were terminated. In the second round of litigation before the Civil Court, the Court refused to grant any interim order of injunction. They have disputed the fact of issuance of advertisement to fill up the vacancies caused due to termination of licences of respondents 4 to 6. Their stand is that a Notification was issued for filling up to vacancies caused due to the termination of the licence of Shri V. P. Diwadkar, a catering licensee of Itarsi. It is also disputed by the Railway Administration that no loss had ever been caused to the Railways. However, it is admitted by the said respondents that though the licences of the respondents 4 to 6 were terminated but on a review of the matter it was decided to restore their licences on ad hoc basis on certain terms and conditions for a period of six months. The said grants have been made by order dated 26-2-97 which has been brought on record under R-3.

A counter affidavit has been filed by respondent 4, M/s. S. D. Tiwari & sons indicating that the petition has been filed to harass the said respondent and no public interest is involved and in fact, it is an outcome of personal vendetta. It is admitted by the said respondent that his licence was terminated w.e.f. 2-8-96 but as he made a representation, the Railway Administration cancelled the order of termination and granted permission to run the food and tea stalls at the platform of the Railway Station, Itarsi on temporary basis under strict

supervision. It is further pleaded that the licences with regard to non-vegetarian food and tea-stalls were terminated by mistake by the Railway Administration though there was no complaint against the said stalls and the complaints only related to the non-vegetarian refreshment room which has not been given on ad hoc basis to him. All other allegations have been disputed.

An application for filing additional documents forming subject-matter of I.A. No. 2106/97 has been filed whereby the order dated 24-4-97 passed by the Divisional Office for reopening of the stall Nos. 1, 2, 3, 4 and 5 the order granting status-quo by the First Additional District Judge, Hoshangabad, order issued by the Divisional Railway Manager asking the respondent 4 to withdraw the suit, the new catering Policy dated 6-1-92, orders terminating the licences, the initial agreement and certificates of appreciation and certain newspapers cuttings are sought to be brought on record. We have perused the application and the same is hereby allowed.

We have heard Mr. S. K. Gangele, learned counsel for the petitioner, Mr. S. P. Sinha, learned counsel appearing for the respondents I to 3, the railway authorities, Mr. S.C. Dutt, learned Senior Counsel appearing for the respondent 4 and Mr. O.P. Namdeo, learned counsel for respondent 7, Central Bureau of Investigation.

Before we advert to deal with actual problem we feel it is essential to consider whether the petitioner in the guise of a public interest litigation has made an adroit effort and ingenious attempt to gratify his personal vengeance or it is a litigation with an ulterior motive to gain publicity. In a welfare State public interest litigation has its own significance and importance. In a public interest litigation there must be involvement of sanguine and genuine public interest. A public spirited person approaching the Court of law has to act bona fide and is required to do sufficient research and collect adequate materials to agitate a grievance relating to public at large without being actuated by any private motive or any oblique consideration. While entertaining a public interest litigation a Court has to be satisfied about the credentials of the person approaching the Court, the definiteness and correctness of the nature of informations and allegations and the seriousness of the information relating to public sphere. A busy body or an imposter or a meddlesome interloper, cannot elevate himself as a public spirited person and consume the Court's time in respect of issues which do not come within the sweep and ambit of public interest. In the case at hand, we find there were no materials to indicate that the application has been filed to gratify any personal revenge or to malign any person out of grudge or malice. On the contrary, the petitioner has collected certain informations and filed the documents which are revealing and has highlighted the action of the Railway authorities which relates to availability of food for the travelling public at large in the railways. This, in our considered opinion, irrefragably is a matter which relates to public in general and is a matter of public interest and satisfied the test of "pro bono publico", The petitioner has justifiably invoked our jurisdiction

agitating his grievance against the city Halls.

The question that falls for determination is whether the Railway Administration is justified in conferring the benefit of ad hoc licence on respondents 4 to 6 on the background of obtaining facts. Though the parties have referred to existence of earlier agreement, continuance thereof and previous litigations, it is not essential to refer to the said facts in detail. What is relevant for the present purpose is the order of cancellation of licence, the stand of the Railway Administration before the Civil Court, the determination by the Civil Court and the manner in which the order has been reviewed by the Railway authorities. The order or termination of licence of non-vegetarian foods, tea-coffee stalls passed on 2-8-96 which has been brought on record reads as follows :--

"It is inform you that your licence for Non-vegetarian Food, Tea, Coffee stall located on platform Nos. 1, 2/3 of Itarsi Railway Station is terminated with immediate effect due to continuous poor performance in terms of clause No. 28 of the Agreement.

You should handover the charge of all railway property in your possession to the Station Superintendent, Itarsi immediately. You should also remit all railway dues and advise the remittance particulars to this Office."

Similar orders were also passed in respect of other stalls belonging to other respondents. The said order of termination was challenged before the Civil Court, and the Railway Administration opposing the prayer for injunction took the stand that the performance of the plaintiff therein was continuously unsatisfactory. It is appropriate to refer to the stand of the Railway Administration while opposing the prayer for injunctions :--

^^3 pj.k ?ekad 3 ds mRrj esa fuosnu gS fd vkosnd dk ykblsUI mldh lsok;sa yxkrkj vUrks"ktud ik;s tkus ds dkj.k ij gh fujLr fd;k gS rFkk bls ifj.kkeLo:i mlds ;gka dk;Zjr dfeZ;ksa dks gksus okyh leL;kvksa ds fy, vkosnd gh mRrjnk;h gSA ;kf=;ksa dh [kkuiku lEcU/kh lqfo/kk ds fy, jsy iz"kklu us vius lk/kuksa ls oSdfYid O;oLFkk dj j[kh gSA

4 bl pj.k ds mRrj esa fuosnu gS fd jsy iz"kklu us ykblsUIh dh yxkrkj vUrks"ktud lsokvksa ds dkj.k fnukad 3&8&96 dks fof/kor ykblsUI fujLr fd;k gSA ftldh i`Fkd :i ls lwpuk nsus dh dksbZ vko";drk ugha Fkh D;ksafd djkj dh "krZ 43 ds vuqlkj bl rjg dh dkjZokbZ fof/k lEer gS ftldh lwpuk vkosnd dks djkj ds ckn le; ls gh gSA ykblsUIh us vUrks"ktud lsokvksa ds QyLo:i fn;s tkus okys vusd okj vFkZ n.M tek Hkh fd;s gSA

5- pj.k ?ekad 5 ds mRrj esa lfou; fuosnu gS fd oknh us vUrks"ktud dk;Z dj jsyos iz"kklu dh Nfo dks /kwfey fd;k gS vkSj ;kf=;ksa }kjk mDr ykblsUIh dh lsokvksa ds lEcU/k esa "khdk;rsa dh xbZ gSA vr% ;kf=;ksa dks [kjk lsokvksa ds ifj.kkeLo:i gksus okyh vlqfo/kk ls cpkus rFkk jsy iz"kklu dh Nfo dks vksj /kwfey gksus ls cpkus ds fy;s bl ekeys esa fu"ks/kkKk tkjh u fd;s tkus gsrq vukosn?e.k ekuuh; U;k;ky; ls lfou; fuosnu djrs gSA**

Similar objection was also taken to the petition for injunction filed by the respondent 6. On consideration of the pleadings, the learned Civil Judge, Class-II, Itarsi came to hold that as per the stand taken by the Railway Administration the performance of the licensee was not satisfactory and he had either been fined or warned on 55 occasions. Accepting the stand of the authorities the Court held that the performance of the licensee was not satisfactory. After referring to many other aspects the Civil Court refused to pass an order of injunction.

While the situation remained thus, the railway authorities on 26-2-97 passed the following order :--

"On receipt of several representations received through Members of Parliament, the matter has been reconsidered. It has been decided that subject to the withdrawal of Court cases by the parties:--

(i) the Railway may permit on ad hoc basis reopening of the stalls of M/s. S. D. Tiwari & Sons; M/s. R. N. Vyas & Sons, ex-catering licensees, Itarsi for six months except those licences in respect of which specific complaints were received by the monitoring cell; and

(ii) the Railway should closely watch and monitor the performance of the reopened stalls for a period of six months and thereafter General Manager may review the cases on merits."

The question is whether the order passed by the Railway Administration is justified in the facts and circumstances of the case and whether it has been passed in public interest. At this juncture we must state that the petitioner had made several prayers in the writ application for directing inquiry by the Central Bureau of Investigation and for various other directions relating to loss of money by, the Railway Administration, initiation of prosecution but in course of hearing Mr. Gangele, learned counsel for the petitioner confined his prayer to the quashment of grant of permission for reopening of the stalls on ad hoc basis in favour of the respondents 4 to 6. Mr. Gangele, learned counsel for the petitioner has brought to our notice the new catering Policy on Indian Railway issued by letter Circular No. 91/PG-III/600/15 dated 6-1-92. Clause II of the policy reads thus :--

"POLICY FOR ALLOTMENT OF CATERING/VENDING LICENCES :--

In view of the policy decision for management of entire catering/vending service on the Indian Railway by the Private Sector, it has become necessary to frame a policy which will enable inductions of caterers of repute and expertise to ensure improved quality of catering services to the passengers. It has, therefore, been decided that catering/vending licences must be given to only reputed and professional caterers.

In supersession of all previous instructions, on the subject, it has been decided that following should be the mode of allotment and terms and conditions for all catering/vending licenses in future :--

Applications :

(a) Catering/vending licences should be awarded by calling applications. Tender system for selection of licencees shall not be followed. Applications should be invited only from professional and reputed caterers through press advertisement. Applications received in response to the Advertisement shall be entertained by a Screening Committee consisting of 3 officers of not less than JAG Grade in case of large important units and not less than Senior Scale Officers in respect of other units. The Screening Committee shall short-list the applicants keeping in mind following factors :--

- (i) Reputation/business standing of the applicants;
- (ii) Turnover of the applicant's business, if any;
- (iii) Catering experience of the applicants;
- (iv) Financial standing of the applicant.
- (v) Size of the establishment and staff required for the unit;
- (vi) Location of the unit/units; and
- (vii) Any other factor considered relevant by the Screening Committee.

Selection Committee :

In case of large/important units there shall be a Zonal Selection Committee at the Headquarter level. A list of large/important units should be drawn up by the Railways and intimated to the Board. The Zonal Selection Committee for such large/important units shall be consisting of two Principal HOES (one being the CCS) and Principal/Professor of recognised catering institute. A member of the ZRUCC could be co-opted where the ZRUCC is in existence.

In case of other units the Selection Committee should normally consist of JAG Officers.

The catering vending licences shall be awarded based on the recommendations of the Selection Committee and with the approval of General Manager, in case of large/important units and CCS/DRM in case of other units.

The Selection Committee shall choose the most suitable among the shortlisted candidates based on the reputation, capability, experience and track record of the shortlisted parties.

Preferences :

There shall be no reservation or preference for any category in award of contracts and the basic criteria should be capability, reputation, experience and track record of the party to give requisite standard of food and service to the passengers. However, in case of small and roadside stations preference will be given to Scheduled Caste/Scheduled Tribe candidates. Zonal Railways should

make out a list of such stations and send a copy of the same to the Board."

It is also relevant to refer to the renewal clause which reads as follows :--

"6. Renewal:

After expiry of 5 years the licence can be further extended subject to the performance of the licensee being satisfactory during the previous agreement period. The decision regarding renewal shall be taken based on the recommendations of the Screening Committee and shall consist of 3 SAG Officers, in case of large/important units and at least senior scale level for other units." The learned counsel has also referred us to the supplementary guidelines dated 1-11-96 to the catering policy. The said guidelines, inter alia, contain that the Zonal Railway before entering into an agreement with the allottee shall verify the antecedents of the allottee. In the counter affidavit it is admitted that these policies are in existence. A stand has been taken that they are meant to be followed while awarding fresh licences, but not applicable for temporary restoration. The respondent 4 has also stated that the policies refer to grant of the fresh licences but do not deal with old cases or temporary restoration.

We have referred to the aforesaid policies only to indicate that the Railway Administration has given emphasis on professional experience need of the public, public interest quality of food, verification of antecedents and reputation of the persons who are desirous of getting licence and the procedure for grant of licence. The policy, as it appears, is an ideal one and the intention behind it is quite laudable but the stand of the Railway Administration is that the same is only applicable while granting fresh licence but does not apply to cases of restoration which are done as a temporary measure. Without getting into the rationality or justifiability of the stand of the Railways we would only scrutinise the propriety of the order passed by the Railway Administration permitting the respondents Nos. 4 to 6 on ad hoc basis after the orders of termination and the affirmation of the said orders by the competent Civil Court.

Indian Railways, is required to cater to the large travelling public of the sub-continent people do travel for days and their expectation is to have acceptable food which meets the requirement of hygiene. That apart, there is expectation that they are not constrained to eat some unacceptable food or food-stuffs which are supplied at a price which is beyond the price fixed by the Railway Administration. Conferring the benefit of a licence to run a food stall at the railway platform is definitely a distribution of state largesse and such conferment of benefit cannot be done in an arbitrary or capricious manner. A policy has been evolved laying down the principles for grant of these benefits. As has been stipulated in the policy applications are to be invited only from professional and reputed caterers through press advertisement. It is stipulated that the tender system for selection of licences is not to be followed but applications are to be invited. While granting licence of this nature the consideration of public interest has to be kept in mind. In the case of Kasturi Lal Lakshmi Reddy, Represented by

its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, the Apex Court highlighted that in conferment of state largesse there is involvement of public interest. Validity of grant is to be tested on the anvil of reasonableness and public interest. The State cannot act in an arbitrary and unprincipled manner. If the action of the State becomes the subject-matter of judicial scrutiny, it becomes incumbent upon the State to satisfy that the action was bonafide and was not based on irrelevant considerations. In the case at hand, the Railways Administration terminated the licences on the ground of dissatisfactory performance on the part of the licensee. It adhered to its stand before the Civil Court and the Court accepting the justification in the action of the Railways refused to interdict. But the respondent 3 on the basis of certain considerations which did not have germaneness, passed the impugned order granting permission to the licensees on ad hoc basis. We have referred to the pleadings of the Railway authorities before the Court below in extenso with the sole purpose to indicate the proclivity of somersault by the Railway Administration. An authority might have power, might have discretion but it has to be exercised rationally and dispassionately. In the case of State of U.P. and Others Vs. Renusagar Power Co. and Others, the Apex Court has laid down that exercise of power whether legislative or administrative is bound to be set aside if there is manifest error in the exercise of such power or the exercise of the power is perceptibly arbitrary. If irrelevant considerations have been given weightage, the discretion vested in an authority amounts to an abuse of the said power. Courts while taking recourse to control by judicial review of administrative action or executive function keep in view the broad principles of illegality, irrationality and procedural impropriety and also grant certain measure of freedom of play in the joints to the executive. The learned counsel for the Railways has submitted that the Railway administration keeping the public need has taken recourse to this interim arrangement and this action is in the public interest and does not amount to exercise of discretion in a capricious manner. To put it differently submission of the learned counsel for the Railways is that the action taken would come within the sweep and scope of permissible freedom of play of joints as this is an act to take care of a situation which required pragmatic delineation. At this juncture, we would like to emphasise that fair-play in a governmental action is expected and even while allowance is given in free play of the joints, the same also has to conform to the golden concept of fair-play. In the name of pragmatism or practical necessity an action cannot be taken which would manifestly establish that the action taken is not in consonance with the rules of fair-play but a product of caprice and humour. We are reminded of the observation made by Lord Denning in his inimitable style in the case of Breen v. Amalgamated Engineering (1971) 1 All ER 1148.

"There is nothing like unfettered discretion immuned from judicial reviewability."

In the instant case the justification advanced by the Railways does not appear to be in the realm of propriety. At one point of time they terminate the licence, justify their action before the Court and later on certain extraneous and

irrelevant considerations permit the same licensees to operate on ad hoc basis. The whole action ex facie exposit arbitrariness and abusive exercise of discretion. That apart it has been brought to our notice that while permitting the licensees to operate on ad hoc basis no steps whatsoever, have been taken by the Railway Administration to select licensees on regular basis keeping in view the procedure laid down under the Policy in vogue. The Railway has, for no rhyme or reason, has reengaged the said licensees who had rendered dissatisfactory service. It is difficult to believe that the Railway could not have arranged some one-else till the selection of a regular licensee. It appears that the Railway Administration has forgotten the cardinal principle that no one is indispensable, more so, a recalcitrant licensee. The whole action of the authorities is unreasonable, An unreasonable and unfair action cannot stand the scrutiny of law. In this regard we may refer to the decision rendered in the case of Tata Cellular Vs. Union of India, wherein, the Apex Court held as under :--

",..... it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of the policy is fair. It is only concerned with the manner in which those decisions have been taken. The question of the duty to act fairly will vary from case to case. Shortly put, the grounds upon an administrative action is subject to control by judicial review can be classified as under :--

(i) illegality : This means the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it.

(ii) Irrationality namely, Wednesbury unreasonableness.

(iii) Procedural impropriety."

Tested by the touchstone of aforesaid principles we are of the considered view that the I grant of permission by the Railways is unreasonable and arbitrary.

The entire scenario can be viewed from another angle. Grant of licence by the Railways to run food-stalls at various platforms is indubitably a distribution of largesse. The Railway has framed a Policy to call for applications by press advertisement. Additional guidelines have been issued for grant of certain preferences. The people who come within the zone of consideration have legitimate expectation to put in an application and compete to qualify to obtain the licence. The authorities cannot be allowed to indulge in granting permission on ad hoc basis. The best reputed person having the professional expertise has to be engaged. There has to be a fair competition and objective assessment. The State or its authorities cannot enter into a contractual relationship as per their desire. Grant of permission in favour of the respondents 4 to 6 without taking steps to engage a licensee on a regular basis mars the legitimate expectation of the other persons who can compete. True it is, the present petitioner has not styled himself as a competitor or an expectant person but has brought it to our notice as a public spirited person. But we have adverted to this aspect only to indicate that the action of the Railways is also unsustainable on this ground.

Before we part with this case we must state that the large number of people travelling in the Railways expect a fair deal from the Railways. Having full faith in the Railway Administration people consume food supplied by the caterers engaged by the Railway Administration. If a licensee has been found not up to the standard and his performance has been found dissatisfactory it is not expected on the part of the Railway Administration to give indulgence to one individual at the cost of the collective causing jeopardy to the public at large. It is to be borne in mind that in matters of this nature individual interest has to play a secondary role to the collective good and an insufferable peril cannot be countenanced for pyramiding the prosperity of an individual.

In view of our preceding analysis, we quash the orders dated 26-2-97 issued by the Executive Director, Traffic (Comml.) G. Railway Board permitting the licensees, the respondents 4 to 6, to reopen their stalls on ad hoc basis for six months and consequently orders passed by the Divisional Railway Manager (Comml.) on 24-4-97 passing orders for reopening of the stalls in favour of the said respondents are also quashed. We further issue a Writ of Mandamus directing the respondents 1 to 3 to take appropriate steps in accordance with the prevalent policy to select regular licensees for catering within a period of two months from today. Respondents 4 to 6 are restrained from operating the stalls. The licence fees for the non-utilised period shall be calculated on the principles of average and proportionality and shall be refunded to the licensees by the Railway Administration.

In the result, the writ application is allowed. However, there shall be no order as to costs. Security amounts, if any, be refunded to the petitioner.