
(1976) 10 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 326 of 1975

Mohinder Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 14-10-1976

Acts Referred:

Citation : AIR 1977 Delhi 156

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : D.K. Kapur and D.P. Sharma, for the Appellant; H.S. Dhir, for the Respondent

Judgement

1. The question that this petition under Arts. 226 and 227 of the Constitution of India raises is as to the validity of a circular of the Railway Board banning all business dealings with the petitioner, -an erstwhile contractor on Indian Railways, including projects, for an indefinite period.

2. It is not disputed that the petitioner has been -a registered Railway contractor and has been having dealings with the Indian Railways until August 1973, when, apparently as a sequel to dissatisfaction with the petitioner, dealings with the petitioner on the Indian Railways, including projects, were banned for an indefinite period by a circular of the Railway Board of August 26, 1973 (Annexure P-5). The petition is replete with references to Arts. 14, 19 and 301 to 304 of the Constitution of India, but at the hearing of the petition it was conceded on behalf of the petitioner that the assault mounted on the impressive constitutional edifice was not open to the petitioner because of the suspension of the fundamental rights and because petitioner as a businessman, it was in having been made without affording a reasonable opportunity to the petitioner of being heard.

3. The only question that, Therefore, requires consideration is whether, independently of the constitutional provisions, referred to above, the circular is liable to be struck down on the ground that being condemnatory of the petitioner

it was made without affording a reasonable opportunity to the petitioner of being heard.

4. It is common case of the parties that no notice was ever issued to the petitioner requiring the petitioner to show cause why dealings with him should not be banned or, for that matter, why any other adverse action be not taken against the petitioner. It is, however, not disputed on behalf of the petitioner that in the course of execution of work entrusted to the petitioner by the Northern Railway a controversy did arise between the parties with regard to the issue of certain rails to the petitioner and as to their return to the Railways and a letter of July 2, 1973 (Annexure P-1) was sent by the Divisional Engineer to the petitioner pointing out that certain rails issued to the petitioner, while he was executing a certain work, were not used in any work and that when required to return, the petitioner denied having received the same but eventually admitted that the same had been received and accepted liability to return the same. "This change of statements by you", proceeds the letter, "is not worthy of a good contractor". The petitioner was accordingly requested to offer his "remarks in this connection". It is also a common case of the parties that by a letter of August 9, 19,73 (Annexure P-2) the petitioner informed the Divisional Superintendent that "There was no intention of mine to defraud the Railway Administration and after execution of the work whatsoever excess materials remained with me the same were returned to I.O.W. Charbagh and cost of the same material has also been recovered from my bills amounting to Rs. 8,999.20. The difference of opinion at different level is regretted and I assure you that such happening will not occur again." There was some further correspondence but it is not necessary to refer to it because that correspondence was exchanged after August 26, 1973 when the impugned circular was issued. It is also not in dispute that the impugned circular makes no reference either to the earlier correspondence or to any incident and gives no reasons for the decision to ban dealings with the petitioner, It may be useful to read here the relevant portion of the circular. This is what, it says:

"it has been decided by the Board that business dealings with Shri Mohinder Singh, Contractor, on Northern Railway, should hereafter be banned on All Indian Railways including projects for an indefinite period.

It should be ensured that the above concerned or others."

5. On this admitted hypothesis the petitioner contends that the issue of a condemnatory circular which depicts the petitioner as being not business worthy adversely affected his business image, as indeed, his business prospects and the action of the Railways in thus condemn the petitioner was arbitrary in that it gave no reasons for the decision nor was any opportunity given to the petitioner of being heard before it was issued. It is urged that if an opportunity had been given the petitioner would have been able to point out, why the petitioner could not be said to be guilty of any conduct which may attract such a penal action and, even if he was, why the drastic step banning dealings with him was too harsh a penalty for any fault that may have been committed by the petitioner.

6. On behalf of the Railway Administration it was urged that in view of the suspension of the fundamental rights the petitioner did not have any right, fundamental or otherwise, to carry on any trade; that, like any business organization, the Railways were free to decide if they would have dealings with a particular businessman or not and that, in the absence of any right to carry on business with the Railways, there was no obligation on the Railway Board to either indicate the reasons for the ban or to give to the petitioner any opportunity of being heard before imposing such a ban. In the alternative, it was urged, that the Divisional Engineer's letter of July 2, 1973 (Annexure P-1) was sufficient notice to the petitioner of the adverse circumstances appearing against him to which the petitioner had an opportunity to reply and exercised that opportunity by his letter of August 9, 1973 (Annexure P-2) and no exception could be taken to the ban because the Railway Board decided the question as to the action to be taken after considering all the circumstances including the correspondence exchanged between the parties. It was further pointed out that by his letter of August 9, 1973 the petitioner had virtually admitted, though in a veiled manner that the stores issued to the petitioner had not been returned, and by implication, that the petitioner had made contrary statements and that the failure to issue a formal notice to the petitioner to show cause against any adverse action would be of no consequence.

7. It is true that the petitioner has no fundamental right to carry on any business or trade much less a fundamental right to have dealings with any particular State undertaking. It is equally true that the petitioner does not even have a vested right to carry on dealings with the Railways or to insist that the Railways must deal with him. It is also undoubted that like any business organisation the State undertakings are also free to have business dealings with persons of their choice and who inspire their confidence. It is, however, difficult to ignore that the impugned circular not only deprives the petitioner of an opportunity to have dealings with the Indian Railways, which may neither exist nor be immutable, a condemnatory circular banning all dealings with the petitioner on Indian Railways for an indefinite period has serious repercussions for the petitioner in that it clearly paints the petitioner as an unreliable businessman. Such a circular, Therefore, adversely affects the interests of the petitioner. It is well settled that any State action which is prejudicial to the interests of a person, as distinguished from Constituting infringement of a right to carry on business or a fundamental right to carry on such business, would be struck down if it is arbitrary and vocative of the principles of natural justice in that it is made without giving a reasonable opportunity to the person affected of being heard. The obligation of the State to act in a just and fair manner in relation to its citizens and to conform its action to well established principles of natural justice is independent of any fundamental right of a citizen or any right that a citizen may claim to any property or to any legal character. If that be so, the circular must be struck down because of the vice it suffers in that it not only gives any reasons but, what is worse, was made without giving an opportunity to the petitioner of being heard,

It is true that two letters were exchanged between the parties before the circular was issued, but the letter to the petitioner was merely intended to elicit information from the petitioner and there was no indication from the letter that it was proposed to take any adverse action against the petitioner or that it was intended to ban dealings with the petitioner. The legal requirement would have been satisfied only if this fact was specifically brought to the notice of the petitioner so that the petitioner is put to notice that on the basis of certain allegations made against him an adverse action was sought to be taken against him. The letter in question, to my mind, does not constitute any opportunity much less a reasonable opportunity of being heard it is true that the principles of natural justice are not embodied rules and would, Therefore, vary with the varying constitution of the bodies. But, in any event, the minimum requirement, that a person sought to be adversely affected by an order must be informed of the proposed action and the material in support of it, must be satisfied. Otherwise, the order would suffer from the vice of being an arbitrary executive action.

8. For all these reasons the petition succeeds. The impugned circular (Annexure is quashed with liberty to the Railway Administration to take such action in the matter of dealings with the petitioner as they may be advised in accordance with law.

9. In the peculiar circumstances there would be no costs.

10. Petition allowed.