

(1962) 03 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 77-D of 1959

Niranjan Singh Bela Singh

APPELLANT

Vs

Railway Board New Delhi and Another

RESPONDENT

Date of Decision : 19-03-1962

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(3), 226, 227

Citation : AIR 1962 P&H 482 : (1962) 1 LLJ 588

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Judgement

(1) Niranjan Singh, who was working as Mistri in the Train Lighting Shop, Alam Bagh, Lucknow, was removed from service in pursuance of an order passed by the General Manager, Northern Railway on 25-5-57. Having failed in his attempts to get this order reviewed by the appropriate authorities Niranjan Singh has sought his redress from this Court under Articles 226 and 227 of the Constitution of India.

(2) The petitioner was a permanent employee of the railway and had done service for some years before his removal. It appears that he was an active worker of the trade union, and was charge-sheeted on 7-11-1956 for (1) being instrumental "inforcing the shutting down on 31st May, 1956 an air compressor in the East Compressor House in the workshop of Alam Bagh, Lucknow", and (2) having attended five meetings in the railway premises without obtaining the prior sanction of the authorities concerned.

The petitioner disclaimed any liability on the first count while he denied the authority of the railway administration to impose an absolute interdict on meetings of the employees. It was his case that he was merely giving information to his fellow workers with regard to the meetings, which had been convened by the union. An enquiry committee was constituted consisting of three senior officers and after recording evidence of about 13 witnesses it came to the conclusion that the first charge had not been proved against the petitioner, but

found him guilty on the second one for participation and addressing of meeting on 23rd and 25th of June, 1956 and those held on 24th, 25th and 27th July, 1956.

The General Manager to whom the proceedings were referred by the enquiry committee considered that the evidence on the first count was incomplete, and therefore, remitted the case to the enquiry committee by his order dated 26-3-1957. The committee thereafter examined two more witnesses as desired by the General Manager and observed in their detailed report that "having once again thoroughly considered and assessed the evidence for and against Sri Niranjan Singh in regard to this incident, the Enquiry Committee still do not find any material which would warrant a modification in their original findings".

(3) The General Manager accepted the findings of the Enquiry Committee on the second charge and expressed his view that its conclusion on the first charge was erroneous. Accordingly he reached a "tentative" decision for the removal of the petitioner from service on 25-5-1957. The General Manager sent a show cause notice to the petitioner on 4-6-1957 and finally passed an order for his removal on 20th August, 1957. The petitioner was unsuccessful in his appeal before the Railway Board and has now moved this Court for issuance of a writ.

(4) It has been contended on behalf of the petitioner that so far as the first charge is concerned, it cannot be sustained because he was never afforded an opportunity to defend the findings of the Enquiry Committee before the General Manager or the appellate authority, nor was he supplied a copy of the report. It seems to me that the General Manager acted in contravention of the principles of natural justice in reaching the conclusion that the petitioner was responsible for the stoppage of the air compressor. The following passage provides the key to the reasoning, which influenced the mind of the General Manager:

"In those circumstances, it is incredible that a crowd which approached the compressor house to secure the shut down of the compressor so that the entire activity in the Workshop might be paralysed would be minus Shri Niranjan Singh. The witnesses who have deposed that Shri Niranjan Singh was in the Park adjacent to the Saw Mill at the time a crowd approached the compressor House cannot, therefore, be relied upon as their evidence has to be discarded".

(5) Now when the weight of evidence is in favour of the petitioner it seems to me that it is against all canons of natural justice to say that Niranjan Singh petitioner shall be presumed not only to be a member of the crowd, but also responsible for the "shut down". The Enquiry Committee had given a careful consideration to the material evidence, which was made available, and the statements of the witnesses could not be brushed aside on the conjectural ground that Niranjan Singh's presence should be presumed. The finding of the Enquiry Committee has been upset on mere inferences and cannot possibly be sustained.

(6) This brings me to the second contention of the learned counsel for the petitioner that the finding on the charge on which both the Enquiry Committee

and the General Manager are in concurrence is vitiated, based as it is, on instructions which are destructive of the freedom "to assemble peaceably and without arms" envisaged under Art. 19(1)(b) of the Constitution of India. This freedom can be circumscribed only to the extent mentioned in clause (3) of Article 19 by imposition of reasonable restrictions in the interest of public order.

The foundation of the case against the petitioner is based in a letter issued from the Headquarters of the Railway Administration on 19th June, 1956 (Annexure R. I) the relevant portion of which reads as:

"All staff may be warned that if any one of them is found organising or attending a meeting inside Railway Premises or at places of work, he will render himself liable to severe disciplinary action, as such action on his part will amount to misconduct arising out of violation of administrative instructions. Meetings of workers can be held on open grounds away from places of work with the permission of the Railway authorities concerned if such open grounds fall within Railway boundary".

(7) It is submitted on behalf of the petitioner that the freedom to assemble, which is enshrined as a fundamental right under Article 19, cannot be lightly interfered with except under the authority of law, which may impose restrictions of a reasonable nature in the interest of public order. The ban which has been placed by the Railway authorities, as contended by the counsel, amounts to an absolute restriction of the right to assemble and cannot accordingly be sustained. On behalf of the respondent Union of India it is urged by Mr. Narula that the right to assemble has not been curtailed. It has only been modified to the extent that prior permission is necessary to convene meetings in the Railway premises and at such places over which the Railway Administration exercises control. It has even been suggested by the learned counsel that the administration as a rule gave permission whenever it was sought, and his attendances in meetings which the petitioner organised in defiance of the clear instructions, make him liable for the action, which has been taken against him.

(8) That there must be a nexus between the restriction imposed and the threat of disorder is well settled by authority. In the present instance, restriction is placed on every meeting within the railway premises without the permission of the authorities. It has been held by the Supreme Court in *Kameshwar Pershad v. State of Bihar*, in the judgment delivered on 22-2-1962 (Civil Appeal No. 413 of 1959 (Punj)) that regulation prohibiting Government servants to participate in demonstration or to resort to any form of strike is not a restriction which can be regarded as reasonable. Such a ban is not relatable to any breach of public tranquillity and cannot, therefore, be regarded as reasonable under Article 19(2) of the Constitution. The restriction on the right of association under 19(1)(c) can only be in the interest of public order.

On a parity of reasoning the right to hold meeting cannot be restricted absolutely without any indication how the public order would be threatened thereby. As has

been held by their Lordships of the Supreme Court in *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, a restriction in order to the reasonable must have a reasonable relation to the object the Legislation has in view and must not go beyond it. Restrictions, therefore, meant to be in the interest of public order which have no proximate relationship or nexus with it but can be only remotely or hypothetically connect with it, cannot be reasonable within the meaning of Article 19(2) of the Constitution.

(9) It has been faintly suggested by Mr. Narula that the tension amongst the railway workers was so high as a result of the happenings in Kalka that there was a very great danger of eruption of disorder if meetings were permitted to be held without prior permission. The Circular letter does not indicate the reasons why the ban was imposed. The isolated breaches of law in other parts of the country could not justify a blanket order of the kind contained in Annexure B. 1 of 19-6-1956. Freedom to assemble freely can be restricted only in the interest of public order and it is no answer to say that permission to hold meeting was as a matter of practice accorded on mere information. Plainly the intent of the instructions is to prohibit all meetings without the prior sanction of the Administration and the vice of the instructions is that every kind of demonstration in a public meeting has been forbidden.

(10) In a recent decision of the Supreme Court of America, *R. J. Thomas v. H. W. Collins* (1944) US 323 p. 516 it has been laid down:

"Any attempt to restrict the liberties of speech and assembly must be justified by clear public interest, threatened not doubtfully or remotely, but by a clear and present public danger, actual or intended."

In that case it was required from the outsiders, who came into the State temporarily for the purpose of making a speech at a mass to obtain an identity card, and it was held to be a restriction destructive of the right of public discussion.

(11) Mr. Narula has contended that the Railway Administration was within its rights to prohibit meetings within its premises. In other words the railway employees could be legitimately restrained from holding or making demonstration within the precincts of the place of their employment. This argument has been effectively dealt with in two decisions of the Supreme Court of the United States of America In *Grace March v. State of Alabama* (1945) 326 US 501 (504-505) a particular town was owned by the Corporation which introduced certain restrictions, which amounted to infringement of civil rights. It was pointed out

"that an ordinance completely prohibiting the dissemination of ideas on the city streets cannot be justified on the ground that the municipality holds legal title on them".

It was pointed out by Mr. Justice Black at p. 506, that,

"the more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it".

Mr. Justice Frankfurter pointed out that,

"title to property as defined by State law controls property relations; it cannot control issues of civil liberties which arise precisely because a company town is a town as well as a congeries of property relations".

In the same volume is reported another decision of *A. R. Tucker v. State of Texas* (1945) 326 US 517 in which the Federal Government owned and operated a certain village. It was held that by virtue of that ownership the Government acting pursuant to Congressional authorization may not abridge the freedom of press and religion safe-guarded by the First Amendment.

(12) The Railway authority may own or control the premises over which meetings have been prohibited without permission but that does not entitle it to curb or curtail the fundamental right accorded by the Constitution of India, unless the restriction comes strictly within the ambit of Article 19(3) which does not appear to be the case in the present instance.

(13) In my opinion this petition must succeed and the order impugned must be set aside, based as it is, on instructions which are unconstitutional and void. The petitioner would get his costs of this petition.

GF/J/D.H.Z.

(14) Petition allowed.